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April 13, 2010

MEMORANDUM TO: The File

THROUGH: Gene Degnan
Program Manager, Office 8
Antidumping and Countervailing Duty Operations

FROM: Paul Stolz
Senior Case Analyst, Office 8
Antidumping and Countervailing Duty Operations

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

SUBJECT: Case Number on the April 8, 2010 Issues and Decision Memorandum for the Final Determination in the Less Than Fair Value Investigation of Certain Oil Country Tubular Goods from the Peoples' Republic of China

The April 8, 2010 issues and decision memorandum in the above referenced case, released to interested parties on April 12, 2010, identified an incorrect case number in its heading: "A-570-898." The correct case number for this document is "A-570-943."

A-570-898
Investigation
Public Document
AD/CVD 8: BMP

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

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Oil Country Tubular Goods from the People's Republic of China

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SUMMARY:

We have analyzed the case and rebuttal briefs of interested parties in the antidumping duty investigation of Certain Oil Country Tubular Goods ("OCTG") from the People's Republic of China. As a result of our analysis, we have made changes in the margin calculations. 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 and rebuttal comments from the parties:

I. GENERAL ISSUES

Comment 1: Labor Wage Rate
Comment 2: Application of Targeted Dumping
Comment 3: Deduction of Domestic Inland Insurance from U.S. Price
Comment 4: Exchange Rate Rupees to U.S. Dollars
Comment 5: Deduction of Chinese VAT from U.S. Price
Comment 6: Zeroing
Comment 7: Double Counting

II. TPCO SPECIFIC ISSUES

Comment 8: Total AFA to TPCO
Comment 9: Partial AFA for certain TPCO Transactions
Comment 10: TPCO Affiliations

III. CREDIT EXPENSE

Comment 11: Credit Expense

BACKGROUND

On November 17, 2009, the Department of Commerce published in the *Federal Register* its *Preliminary Determination* in the antidumping duty investigation of OCTG from the PRC.[1] On December 30, 2009, the Department published its *Amended Preliminary Determination* in the *Federal Register*.[2] On February 22, 2010, Petitioners and Changbao submitted to the Department information on the appropriate surrogate values to use as a means of valuing factors of production. On February 23, 2010, TPCO submitted its surrogate value information. On March 9, 2010, Petitioners, Changbao, and TPCO submitted case briefs to the Department. On March 11, 2010, interested parties submitted case briefs to the Department. On March 15, 2010, interested parties submitted rebuttal briefs. On March 17, 2010, the Department released a letter arranging for an open hearing. On March 26, 2010, in an open hearing, Petitioners and TPCO commented on the factual information placed on the record.

DISCUSSION OF THE ISSUES:

I. GENERAL ISSUES

Comment 1: Labor Wage Rate

USS argues that for the final determination the Department should value Chinese labor at $1.39/hour, which is in accordance with the Department's December 9, 2009, revised wage rate. USS acknowledges that in announcing the wage rate revision the Department stated that the $1.39/hour rate "will be applied to all antidumping proceeding final determinations subsequent to December 9, 2009, for which the Department has not yet reached the preliminary results." However, USS contends that the *OCTG Amended Preliminary Determination* was not issued until December 30, 2009, which was well after the December 9, 2009 cut-off date set forth in the *2009 Expected Wage Rate, Clarification*. In addition, USS asserts that because the revised wage-rate data are more contemporaneous with the POI, the Department should, therefore, value Chinese labor using the revised $1.39/hour rate.

Conversely, TPCO argues that for the final determination the Department should continue using the pre-December 9, 2009, wage rate, *i.e.*, $1.04/hour, which was used in the *Preliminary Determination*. Primarily, TPCO contends that because the Department issued its *Preliminary Determination* on November 17, 2009, (three weeks before the cut-off date cited in *2009 Expected Wage Rate, Clarification*, the Department is prohibited from applying the higher wage rate to this investigation. Additionally, because liquidation on subject entries was suspended on November 17, 2009, TPCO suggests that the plain language of the *2009 Expected Wage Rate, Clarification* notice requires the Department to utilize the pre-December 9, 2009, wage rate.

Department's Position: For the final determination, the Department is valuing Chinese labor using the Department's *2007 Expected Wage Rate* Notice, *i.e.*, a rate of $1.04/hour. According to the Department's *2007 Expected Wage Rate* Notice, which provided effective NME wage rates for all antidumping proceedings with final decisions due after the Notice's publication date

[1] *See OCTG Preliminary Determination* (November 17, 2009).
[2] *See OCTG Amended Preliminary Determination* (December 30, 2009).

(*i.e.*, May 14, 2008), the expected China wage rate was $1.04/hour.[3] On December 9, 2009, the Department's *2009 Expected Wage Rate* Notice provided an updated $1.39/hour regression-based wage rate for "China, P.R.: Mainland."[4] However, as explained in a clarification notice issued by the Department on December 30, 2009, the revised December 2009 "NME wage rates have been finalized in the {*2009 Expected Wage Rate* Notice} and will be applied to all antidumping proceeding final determinations subsequent to December 9, 2009, for which the Department has not yet reached the preliminary results."[5]

In the instant case, the Department issued its *Preliminary Determination* on November 17, 2009. Based on the plain language of the Department's *2009 Expected Wage Rate, Clarification*, we disagree with USS's argument that the Department's issuance of an *Amended Preliminary Determination* on December 30, 2009, decides which wage rate applies. According to the clarification notice, the revised wage rate only applies to "final determinations subsequent to December 8, 2009, for which the Department has not yet reached preliminary results." Therefore, because the Department reached its *Preliminary Determination* on November 17, 2009, which is well before the December 8, 2009, cut-off date cited in the *2009 Expected Wage Rate, Clarification*, the standard for applying the revised 2009 rate is not met. Moreover, given the *2009 Expected Wage Rate, Clarification*'s plain language, USS's assertion that the 2009 revised wage-rate data are more contemporaneous with the POI is immaterial. Thus, for the final determination, the Department is continuing to value Chinese labor using the Department's *2007 Expected Wage Rate* Notice, *i.e.*, $1.04/hour.

Comment 2: Application of Targeted Dumping

USS argues that the Department should not have applied the *Nails*[6] test (hereinafter referred to as the *Nails* test) to identify targeted dumping for the *Preliminary Determination*. Thus, for the final determination, USS suggests that the Department should apply the Preponderance at 2 Percent ("P/2") test to identify targeted dumping. According to USS, the *Nails* test is unlawful, fundamentally flawed, and places an undue burden on Petitioners attempting to demonstrate that targeted dumping has occurred, particularly because the *Nails* test makes it impossible for USS to identify and address targeted dumping in this investigation. On the other hand, USS contends that the P/2 test, as applied in *Coated Free Sheet Paper from the Republic of Korea*, is in accordance with U.S. law and the Department's policy for analyzing price differences.[7]

In addition, USS suggests that despite using the average-to-average methodology for the *Preliminary Targeted Dumping Memorandum*, the Department should reassess whether to apply the weighted average-to-transaction methodology based on its findings and methodologies in the final determination. Specifically, USS recognizes that the Department concluded the use of the weighted average-to-transaction methodology did not address targeted dumping that might

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[3] *See 2007 Expected Wage Rate, Amended* (May 14, 2008).
[4] *See 2009 Expected Wage Rate* (December 9, 2009).
[5] *See 2009 Expected Wage Rate, Clarification* (December 30, 2009).
[6] *See Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008), and *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) (collectively, *Nails*).
[7] *See Coated Paper/Korea* (October 16, 2007) at Comment 1.

otherwise have been concealed using the Department's standard average-to-average methodology; however, the Department's conclusions were based on certain findings and methodologies that were applied in calculating TPCO's dumping margin specifically for the *Preliminary Determination*. Therefore, USS contends that because the Department found targeted dumping by customer and time period in its *Preliminary Targeted Dumping Memorandum*, the Department should reassess which methodology is appropriate for the final determination.

Further, USS asserts that if the Department concludes that it is necessary to use the weighted average-to-transaction methodology to address the identified targeted dumping, the Department must apply the weighted average-to-transaction methodology to all of TPCO's sales for the final determination. In particular, USS argues that the United States has taken a position before the World Trade Organization (WTO) Appellate Body that Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994) (Antidumping Agreement) prohibits the calculation of a dumping margin using different methods for different subsets of sales.[8] In addition, USS argues that the Statement of Administrative Action (SAA), makes clear that the use of the average-to-transaction methodology, where targeted dumping is identified, is intended to limit the problem of "masking" that occurs under the average-to-average methodology where higher-priced sales of a product would, through averaging, conceal dumping margins attributable to lower-priced sales. USS asserts that the application of the average-to-average methodology to the non-targeted sales, however, leads precisely to this result. Finally, USS argues that if the Department does use the weighted average-to-transaction methodology, the Department must also employ zeroing in the process.

Conversely, TPCO argues that the Department should not use the P/2 Test to identify targeted dumping because it ignores basic statistical norms. Specifically, TPCO contends that the P/2 Test ignores variations in the prices being considered and, therefore, depending on the degree of variability in the underlying price data, one may or may not be able to distinguish suspect prices from a normal degree of variability. Furthermore, TPCO suggests that the Department should reject USS's claim that, if used, the weighted average-to-transaction methodology should be applied to all of TPCO's sales. TPCO contends that, contrary to USS's claim, U.S. law limits the use of the weighted average-to-transaction methodology to only those sales found by the Department to be targeted. TPCO argues that using the weighted average-to-transaction methodology is expressly an "exception" to the general rule, which requires the Department to find that the average-to-average methodology does not account for varying price patterns before deciding to employ the weighted average-to-transaction methodology.

In addition, TPCO argues that while the Department correctly employed the average-to-average comparison methodology, the Department incorrectly found that TPCO engaged in targeted dumping. TPCO suggests that the methodology used by the Department to identify targeted dumping for the *Preliminary Targeted Dumping Memorandum* fails to reliably identify the existence of a pattern of prices that differ among purchasers, regions, or periods of time. Specifically, TPCO asserts that the Department's two-stage targeted dumping test used in the

[8] *See* US Submission, *United States – Continued Existence and Application of Zeroing Methodology* (Nov. 21, 2008) at paragraph 107.

Preliminary Targeted Dumping Memorandum lacks a statistically valid methodology. Thus, for the final determination, TPCO proposes that the Department employ one of two additional statistical approaches to analyze TPCO's export prices to determine if TPCO engaged in targeted dumping.

First, TPCO argues that a t-test (and corresponding confidence interval) would reliably identify targeted dumping by revealing inherent variations (*i.e.* variance) between TPCO's prices to allegedly targeted and non-targeted customers; thus, the t-test would establish whether a pattern of significantly different prices in fact exists between customers or time periods. Alternatively, TPCO suggests that the Department should alter its present methodology (*i.e.*, the "standard-deviation test") to require that a significant volume of sales to the targeted group be made at export prices more than two standard deviations, rather than one standard deviation, below the weighted-average price to all customers, targeted and non-targeted.

Similarly, contrary to USS's assertion, Changbao argues that if the Department decides to make weighted average-to-transaction comparisons for the targeted U.S. sales identified in the *Preliminary Targeted Dumping Memorandum*, the Department must incorporate the negative dumping margins from non-targeted sales when aggregating the margins in the calculation of the overall weighted-average margin. In other words, Changbao contends that based on WTO Appellate Body precedent, the Department cannot engage in zeroing with regard to the weighted average-to-transaction comparisons.

In response to TPCO's arguments, USS suggests that the Department should reject TPCO's additional statistical techniques because they have already been rejected on previous occasions. Specifically, USS notes that the Department rejected using the t-test to identify targeted dumping in *OTR Tires/PRC 07/15/08*.[9] USS also suggests that the Department previously declined to adopt a proposal to examine whether a significant volume of sales to the targeted group was made at prices that are two or more standard deviations – as opposed to one standard deviation – below the weighted-average price to all customers. Thus, USS contends that adopting either of TPCO's proposals would impose an undue burden on Petitioners seeking to show targeted dumping, which would be contrary to the Congressional intent.

Department's Position: For the final determination, to identify targeted dumping, the Department is using the test introduced in *Nails/PRC 6/16/08*, and applied most recently in *Carrier Bags/Taiwan*,[10] and *Carrier Bags/Indonesia*.[11] Using this test, the Department finds that TPCO engaged in targeted dumping. Based on our analysis, the Department is using the alternative average-to-transaction comparison methodology on all of TPCO's sales to calculate TPCO's dumping margin.

Generally, when calculating dumping margins in an investigation, section 777A(d)(1)(B) of the Act allows the Department to employ the alternative average-to-transaction margin-calculation methodology only if (1) there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time; and (2) such differences cannot be taken into account

[9] *See OTR Tires/PRC 07/15/08* at Comment 23.D.
[10] *See Carrier Bags/Taiwan* (March 26, 2010) at Comment 1.
[11] *See Carrier Bags/Indonesia* (April 1, 2010) at Comment 1.

using the standard average-to-average or transaction-to-transaction methodology.[12] Unless these two criteria are satisfied, the Department is not permitted to use average-to-transaction comparisons to determine dumping margins in an investigation. Thus, unless the criteria are satisfied, in an investigation the Department will use either the standard average-to-average or transaction-to-transaction comparison methodology provided in section 777A(d)(1)(A) of the Act. The *Nails* test provides a two-stage analysis to determine whether there is a pattern of export prices that differ significantly among purchasers, regions, or periods of time. The first stage addresses the "pattern" requirement; the second stage addresses the "significant difference" requirement. Although the following example applies to customer targeting, the procedures are the same for customer, regional, and time-period targeted-dumping allegations.

In the first stage of the *Nails* test, the "standard-deviation test," the Department determines the share of the alleged targeted-customer's purchases of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price to all customers, targeted and non-targeted. The Department calculates the standard deviation on a product-specific basis (*i.e.*, CONNUM by CONNUM) using the POI-wide weighted-average prices for each alleged targeted customer and customers not alleged to have been targeted. If that share exceeds 33 percent of the total volume of a respondent's sales of subject merchandise to the alleged targeted customer, then the pattern requirement has been met and the Department proceeds to the second stage of the test.

In the second stage, the Department examines all sales of identical merchandise (*i.e.*, by CONNUM) by a respondent to the alleged targeted customer. From those sales, the Department determines the total volume of sales for which the difference between the weighted-average price of sales to the alleged targeted customer and the next higher weighted-average price of sales to a non-targeted customer exceeds the average price gap (weighted by sales volume) for the non-targeted group.[13] The Department weights each of the price gaps in the non-targeted group by the combined sales volume associated with the pair of prices to non-targeted customers that make up the price gap. In doing this analysis, the alleged targeted customers are not included in the non-targeted group; each alleged targeted customer's average price is compared only to the average prices to non-targeted customers. If the share of the sales that meets this test exceeds 5 percent of the total sales volume of subject merchandise to the alleged targeted customer, the significant-difference requirement is met and the Department determines that customer targeting has occured.[14] In such a case, in accordance with *Carrier Bags/Taiwan*[15] and *Carrier Bags/Indonesia*,[16] the Department will evaluate the extent to which applying the alternative

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[12] *See* section 777A(d)(1)(B) of the Act.

[13] The next higher price is the weighted-average price to the non-targeted group that is above the weighted-average price to the alleged targeted group. For example, if the weighted-average price to the alleged targeted group is $7.95 and the weighted-average prices to the non-targeted group are $8.30, $8.25, and $7.50, we would calculate the difference between $7.95 and $8.25 because this is the next higher price in the non-targeted group above $7.95 (the average price to the targeted group).

[14] For example, if non-targeted customer A's weighted-average price is $1.00 with a total sales volume of 100 kg and non-targeted customer B's weighted-average price is $0.95 with a total sales volume of 120 kg, then the difference of $0.05 ($1.00 - $0.95) would be weighted by 220 kg (*i.e.*, 100 kg + 120 kg).

[15] *See Carrier Bags/Taiwan* (March 26, 2010) at Comment 1.

[16] *See Carrier Bags/Indonesia* (April 1, 2010) at Comment 1.

average-to-transaction methodology to all U.S. sales unmasks targeted dumping not accounted for using the standard average-to-average comparison methodology.

Currently, the Department's practice is to utilize the *Nails* test to identify targeted dumping. Therefore, in this investigation, the Department disagrees with USS's assertion that the P/2 test is more accurate and reliable than the *Nails* test. As the Department indicated in *OTR Tires/PRC 07/15/08*, "the P/2 test collapses the pattern and significant difference requirements, which are analyzed separately under our new methodology. In so doing, the P/2 test may find targeted dumping in many cases when arguably no such dumping is occurring. The P/2 test relies on a single, bright-line price threshold of two percent to define targeted dumping that does not account for price variations specific to the market in question."[17] Thus, the Department considers the *Nails* test to be statutorily and statistically superior to the P/2 test for identifying targeted dumping in this final determination.

Similarly, the Department disagrees with either of TPCO's suggestions to modify the *Nails* test in order to identify targeted dumping. First, regarding TPCO's suggestion to use a difference-in-means test (t-test), the Department explicitly rejected using this test to identify targeted dumping in *Tires*.[18] Specifically, while the t-test identifies whether the difference in sample means is statistically different from zero, it does not say anything about whether the difference in sample means is significant. As a result, a t-test does not produce results that satisfy the statutory requirement that requires the Department to identify prices that differ significantly across purchasers, regions, or time periods. Therefore, the Department finds that the use of a t-test would not be appropriate in the context of a targeted dumping analysis.

Second, regarding TPCO's suggestion that the Department should alter its present methodology (*i.e.*, the "standard-deviation test") to require that a significant volume of sales to the targeted group be made at prices more than two standard deviations below the weighted-average price to all customers, the Department disagrees with TPCO. The Department is not using the standard deviation measure to make statistical inferences. Rather, the Department is employing the standard deviation as a relative standard against which to measure the differences between the price to the alleged target and to the non-targeted group. For this purpose, the Department finds that one standard deviation below the average price, *i.e.*, the weighted-average price across all customers who purchased that CONNUM during the POI, is sufficient to distinguish the alleged target from the non-targeted group.

The Department considers the price threshold of one standard deviation below the average market price as a reasonable indicator of a price difference that may be indicative of targeted dumping because (1) it is a distinguishing measure relative to the spread or dispersion of prices in the market in question, and (2) it strikes a balance between two extremes, the first being where *any* price below the average price is sufficient to distinguish the alleged target from others, and the second being where only prices at the very bottom of the price distribution are sufficient to distinguish the alleged target from others. In contrast, the number of sales with prices that are two standard deviations below the average market prices is too restrictive a standard because it would likely only identify outliers in the observed price data and not identify a pattern of

[17] *See OTR Tires/PRC 07/15/08* at Comment 23.C.
[18] *Id.* at Comment 23.D.

targeted prices within the observed price data. Therefore, the Department believes that one standard deviation, rather than two standard deviations, is a better measurement to distinguish potentially targeted prices using this test.

For the final determination, the Department is again testing TPCO's U.S. sales using the *Nails* test to identify targeted dumping. Similar to our findings in the March 2, 2010, *Preliminary Targeted Dumping Memorandum*, by applying the *Nails* test to TPCO's sales, the Department finds that there was a pattern of prices that differ significantly by customer, region, or time period (*i.e.*, targeted dumping).

In doing so, the Department finds that the pattern of price differences identified cannot be taken into account using the standard average-to-average methodology because the average-to-average methodology conceals differences in price patterns between the targeted and non-targeted groups by averaging low-priced sales to the targeted group with high-priced sales to the non-targeted group. Thus, the Department finds, pursuant to section 777A(d)(1)(B) of the Act, that application of the standard average-to-average comparison methodology would result in the masking of dumping that would be unmasked by application of the alternative average-to-transaction comparison method to all of TPCO's sales.

Additionally, regarding USS's argument that the U.S. government has taken a position that the Antidumping Agreement dictates either an application of the average-to-average or an average-to-transaction comparison methodology for all sales, the Department disagrees.[19] The U.S. government's position in that dispute was that, if offsets are required, mathematical equivalence was obtained regardless of whether the average-to-transaction methodology was applied to a subset of sales or the average-to-transaction methodology was applied to all sales. Additionally, because the Department is not applying a split methodology to TPCO's sales (*i.e.*, average-to-transaction to targeted sales and average-to-average to non-targeted sales), USS's assertion that the SAA accompanying the Uruguay Round Agreements Act supports applying a single methodology (*i.e.*, average-to-transaction) to all of a respondent's sales when targeted dumping is identified is irrelevant.

Rather, in accordance with our recent decision in *Carrier Bags/Taiwan* (March 26, 2010), the Department determines to apply the alternative average-to-transaction methodology to all of TPCO's sales on the basis of the Department's examination of the language in section 777A(d)(1)(B) of the Act. The Department finds that the language of section 777A(d)(1)(B) of the Act does not preclude adopting a uniform application of average-to-transaction comparisons for all transactions when satisfaction of the statutory criteria suggests that application of the alternative average-to-transaction methodology is appropriate. The only limitations that section 777A(d)(1)(B) of the Act places on the application of the alternative average-to-transaction methodology are the satisfaction of the two criteria set forth in the provision. When the criteria for application of the alternative average-to-transaction methodology are satisfied, section 777A(d)(1)(B) of the Act does not limit application of the alternative average-to-transaction methodology to certain transactions. Instead, the provision expressly permits the Department to determine dumping margins by comparing weighted-average normal values to the export prices

[19] *See* US Submission, *United States – Continued Existence and Application of Zeroing Methodology* (Nov. 21, 2008) at paragraph 107.

(or constructed export prices) of individual transactions.

While the Department does not find that the language of section 777A(d)(1)(B) of the Act mandates application of the alternative average-to-transaction methodology to all sales, it does find that this interpretation is a reasonable one and is more consistent with the Department's approach to selection of the appropriate comparison method under section 777A(d)(1) of the Act. As mentioned, unless the criteria of section 777A(d)(1)(B) of the Act are satisfied, the Department is not permitted to use average-to-transaction comparisons to determine dumping margins in an investigation. In the absence of satisfying the criteria of section 777A(d)(1)(B) of the Act, section 777A(d)(1)(A) of the Act requires the Department to use either average-to-average or transaction-to-transaction comparisons. The Department has established criteria for determining whether average-to-average or transaction-to-transaction is the more appropriate methodology; the Department generally uses average-to-average comparisons except under relatively rare circumstances that make use of the transaction-to-transaction comparisons more appropriate.[20] The Department does not have a practice of using transaction-to-transaction comparisons for certain transactions and average-to-average comparisons for other transactions in calculating the weighted-average dumping margin. Rather, the Department chooses the appropriate comparison methodology and applies it uniformly for all comparisons of normal value and export price (or constructed export price).

Accordingly, consistent with the Department's recent decision in *Carrier Bags/Taiwan* (March 26, 2010), the Department is departing from the practice adopted under the now-withdrawn regulation of applying average-to-transaction comparisons to only a subset of sales. Thus, if the criteria of section 777A(d)(1)(B) of the Act are satisfied, as is the case in this investigation, the Department will apply the alternative average-to-transaction methodology for all sales in calculating the weighted-average dumping margin.

Finally, regarding USS's argument that the Department should employ "zeroing" if it utilizes the alternative average-to-transaction methodology, the Department agrees that it does not have a practice of granting offsets for non-dumped sales when applying the alternative average-to-transaction methodology. While it is the Department's standard practice to grant offsets for non-dumped comparisons when using the standard average-to-average methodology in an investigation,[21] the Department has not adopted a similar standard practice in the context of applying the alternative average-to-transaction methodology to analyze a respondent's sales. Therefore, to the extent that application of the alternative average-to-transaction methodology may demonstrate that any of TPCO's sales are not dumped, offsets would not be provided for such sales to reduce the amount of dumping found on other sales.

In sum, the Department finds that TPCO engaged in targeted dumping, and the Department is using the alternative average-to-transaction methodology on all of TPCO's sales to calculate TPCO's dumping margin because applying the standard average-to-average methodology does not account for such price differences and, thus, results in the masking of dumping that is unmasked by the application of the alternative average-to-transaction methodology to all sales.

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[20] *See Coated Paper/Korea* (October 16, 2007), and the *Softwood Lumber Remand Redetermination/ Canada* (July 11, 2005) at 11.

[21] *See Final Modification*.

Comment 3: Deduction of Domestic Inland Insurance from U.S. Price

USS argues that in the *Preliminary Determination* the Department erred in excluding TPCO and Changbao's domestic inland insurance expense. USS claims that the Department should have deducted TPCO's domestic inland insurance from the gross unit price because it is included in TPCO's marine insurance expense. USS further claims that the Department erred in excluding domestic inland insurance from Changbao's U.S. price because Changbao reported that it incurred this expense. According to USS, it is the Department's normal practice to deduct domestic inland insurance from U.S. price when it is incurred by the respondent. Therefore, USS contends that the Department should deduct respondents' domestic inland insurance from the U.S. price by applying an SV to this expense because the insurance is provided by an NME vendor for both TPCO and Changbao. Finally, USS notes that a deduction for domestic inland insurance would not result in double-counting for TPCO because TPCO's NME insurance company bundles marine insurance with domestic inland insurance and the SV for marine insurance used by the Department does not include domestic inland insurance. To support its argument, USS cites to *Prelim Wire Strand-PRC 12/23/09*, TPCO CQR, Prelim SV Memo, TPCO revised CQR, *OTR Tires-PRC-AD 02/20/08*, TPCO Prelim SV Memo, Petitioners' Prelim SV Submission, *Mushrooms-PRC10/2/09*, and Petition, at Exhibit 14 of Volume II-A. According to TPCO, it only incurred marine insurance, which was deducted from U.S. price in the *Preliminary Determination*, and not domestic inland insurance during the POI. TPCO asserts that the Department has no basis to impute an expense for inland insurance that it did not incur.

Changbao argues that the Department should not deduct Changbao's domestic inland insurance from the U.S. price. Changbao contends that it misreported "yes" in its section C database to indicate that it incurred this expense, but that the Department verified that Changbao did not incur any domestic inland insurance expense. To support its argument, Changbao cites to Changbao Prelim SV Memo, Changbao Post-verification section C database, and Changbao Verification Report.

Department's Position: In the *Preliminary Determination*, the Department did not deduct domestic inland insurance expense from either respondent's U.S. gross unit price. We are not addressing this issue with respect to Changbao because we have applied total AFA to Changbao for the final determination.

However, with regard to TPCO, notwithstanding its claims that it did not incur this expense, we note that TPCO stated that its marine insurance includes a "warehouse-to-warehouse" clause, which covers the risk of domestic inland shipment.[22] Therefore, TPCO's own response acknowledges that TPCO's NME marine insurance covered inland insurance as well. Furthermore, because the SV for marine insurance does not include domestic inland insurance, it is irrelevant that TPCO's NME marine insurance provider bundles inland and marine insurance in one package. This fact would be relevant if we were considering the price TPCO paid to the provider; however, because TPCO's marine insurance is from an NME supplier,[23] we are valuing this expense using an SV. We have valued TPCO's domestic inland insurance using an Indian

[22] *See* TPCO CQR, at C-20.
[23] *See* TPCO Revised CQR, at C-31.

domestic insurance value derived from *Mushrooms-PRC10/2/09.*[24] We used this rate because it is the only domestic inland insurance rate on the record of this proceeding. For the final determination, we have revised TPCO's net U.S. price calculation to deduct domestic inland insurance from the gross unit price as part of domestic movement expenses.[25]

Comment 4: WTA Exchange Rate (Rupees to U.S. Dollars)

USS argues that where the Department uses WTA Indian import data to calculate surrogate values, it should obtain WTA data denominated in rupees rather than WTA data denominated in U.S. dollars. USS contends that by using WTA Indian import data denominated in U.S. dollars in the *Preliminary Determination*, the Department employed the WTA's exchange rate rather than the Department's official daily exchange rate. Therefore, USS suggests that for the final determination the Department should obtain WTA Indian import data denominated in rupees and then convert the amounts to U.S. dollars utilizing the Department's official exchange rate.

Conversely, TPCO submits that the Department should continue retrieving U.S. dollar-denominated WTA Indian import data when calculating surrogate values for the final determination. TPCO argues that it is well within the Department's discretion to use dollar-denominated WTA data based on the record facts and, given the circumstances, the use of rupee-denominated WTA data is not otherwise mandated by statute.

Since the case and rebuttal briefs were received, the Department placed on the record a Memorandum regarding Indian Import Statistics Currency Denomination in the WTA and requested comments from interested parties. In response to this request, the Department received comments from USS. USS contends that the WTA's new method of converting Indian import data should have no impact on the application of the Department's normal practice regarding currency conversion because the WTA began using its new method in October 2009 while the subject data in this case cover the period October 1, 2008 through March 31, 2009. Additionally, USS argues that because the Department is required to use its official daily exchange rate in effect on the date of sale, the Department must use this methodology to convert WTA data denominated in Rupees in the present case.

Department's Position: For the final determination, the Department is using U.S. dollar-denominated WTA Indian import data to calculate surrogate values. In October 2009, the Department learned that Indian import data obtained from the WTA, as published by GTIS, began identifying the original reporting currency for India as the U.S. Dollar. The Department then contacted GTIS about the change in the original reporting currency for India from the Indian Rupee to the U.S. Dollar. Officials at GTIS explained that while GTIS obtains data on imports into India directly from the Ministry of Commerce, Government of India, as denominated and published in Indian Rupees, the WTA software is limited with regard to the number of significant digits it can manage. Therefore, GTIS made a decision to change the original reporting currency for Indian data from the Indian Rupee to the U.S. Dollar in order to reduce the loss of significant digits when obtaining data through the WTA software. GTIS

[24] *See* Petition, at Exhibit 14 of Volume II-A and TPCO Final SV Memo.
[25] *See* TPCO Final Analysis Memo.

explained that it converts the Indian Rupee to the U.S. Dollar using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded and converted.[26]

Subsequently, GTIS restored the ability to view Indian Rupee values in the WTA software for the Indian import data. Therefore, the Department again contacted GTIS officials who explained that the Indian Rupee values currently available through the WTA software are not the original Indian Rupee values as published by the Ministry of Commerce, Government of India, but instead are values that have been twice converted. First, the original Rupee value is converted to U.S. Dollars using the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded, which is reported as the original reporting currency. Then, the original reporting currency amount (*i.e.*, in this case U.S. Dollars) is converted to an Indian Rupee value by applying the monthly Federal Reserve exchange rate applicable to the relevant month of the data being downloaded. GTIS officials also indicated that, with each calculation, the WTA software handles only a certain number of significant digits. Accordingly, the numbers converted back to Indian Rupees from the U.S. Dollar values do not necessarily correspond to the original Indian Rupee values provided by the Government of India.[27]

Consequently, the Department disagrees with USS's assertion that the WTA's change in reporting currency is irrelevant because the new U.S. dollar-denominated reporting method was not employed until October 2009. USS suggests that because the data that are the subject of this investigation cover the period October 1, 2008, through March 31, 2009, this case is unaffected by the WTA's change in reporting denomination. This argument is incorrect. Even though the WTA's change to U.S. dollar-denominated reporting occurred in October 2009, the change affected all data reported in the WTA, not just data reported after October 2009. Therefore, data collected from WTA covering the POI was also affected by this change. In sum, the WTA POI data are reported in U.S. dollars using the method described above. Thus, if the Department were to retrieve the WTA POI data in Indian Rupees, the values would not necessarily be the same as the values originally published by the Ministry of Commerce, Government of India, because of the loss of significant digits during each phase of the double conversion. Furthermore, the double-converted Indian Rupee value would have to then undergo a third conversion in order to be used in the margin calculation program. USS has not demonstrated how subjecting the original Indian Rupee value to three subsequent conversions leads to a more accurate result.

Finally, the Department disagrees with USS's assertion that the Department is required to retrieve WTA Indian Rupee-denominated values for this case. For the reasons described above, the Department finds that the WTA values denominated in Indian Rupees that have been twice converted using monthly exchange rates – and would be converted a third time using daily exchange rate if these data were used in the dumping margin calculation – would not produce more accurate results than relying on the U.S. dollar denominated information provided by WTA. While it is the Department's practice, pursuant to section 773A of the Act, to use its official daily exchange rate in effect on the date of sale when it is necessary to convert foreign currencies into United States dollars, in this case, original Indian Rupee denominated import values are presently not available from the WTA. Instead, that information is already

[26] *See* WTA Currency Denomination Memo, dated March 23, 2010.
[27] *Id*.

denominated in U.S. dollars. Section 773A of the Act does not require the Department to rely exclusively on information denominated in foreign currencies to value the factors of production. Accordingly, where the Department determines that U.S. dollar denominated WTA data is the best information available for valuing the factors of production, it is not necessary for the Department to convert a foreign currency into U.S. dollars. Section 773A of the Act does not direct a different result.

Comment 5: Deduction of Chinese VAT from U.S. Price

USS argues the Department should deduct 17 percent from TPCO and Changbao's respective U.S. prices to account for the Chinese VAT. According to USS, during the POI, China imposed a VAT of 17 percent on export sales of the subject merchandise. USS further maintains that the Act provides that U.S. price shall be reduced by "the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of subject merchandise to the United States." USS asserts that because the VAT is an "export tax, duty or other charge" imposed by the exporting country on the exportation of subject merchandise to the United States, the entire amount of the VAT included in the price reported by the respondents must be excluded from the U.S. price used by the Department in the margin calculations for the final determination. To support its argument, USS cites to section 772(c)(2)(B) of the Act, *CWP-PRC 11/24/08, OCTG-CVD 12/7/09,* and *Wire Rod-Mexico 03/13/08.*

TPCO and Changbao argue that the Department cannot reduce U.S. price by the amount of any export tax, duty, or other charge imposed by the export country on exports of subject merchandise because the Department has found that prices and costs within an NME are unreliable measures of value. Further, TPCO and Changbao maintain that USS fails to demonstrate, in any way, that the export tax was actually included in the U.S. price. According to TPCO and Changbao, nothing on the record shows that the VAT is included in the U.S. price to the ultimate customer. To support their argument, TPCO and Changbao cite to *Magnesium Corp (CAFC 1999),* section 772(c)(2)(B) of the Act, TPCO Verification Report, Changbao Verification Report, *CTL Plate-Romania 01/12/00, Titanium Sponge-Russia 11/15/96, Silicon Metal-PRC 01/12/10,* and *Wire Rod-Mexico 03/13/08.*

Department's Position: Pursuant to the CAFC's decision in *Magnesium Corp (CAFC 1999)* and the Department's NME practice, the Department has determined not to reduce TPCO's U.S. sales price based upon a VAT imposed by the PRC government. USS's argument for deduction of the VAT is based on the assumption that the PRC government's VAT imposition was necessarily included in the U.S. price and that the Department should deduct it from the respondent's U.S. price as an export tax. However, the tax payments by NME respondents to NME governments are intra-NME transfers that do not support the Department's determination to adjust the price. In *CTL Plate-Romania 01/12/00,* the Department declined to reduce U.S. price based upon a tax imposed by an NME government on foreign inland freight because the tax was an intra-NME transfer that the Department could not consider under its NME methodology. The same principle applies here, the PRC VAT is an internal NME transaction that does not provide a basis to reduce U.S. price pursuant to section 772(c)(2)(B) of the Act. As the Department explained in *Silicon Metal-PRC 01/12/10,* the Department cannot in the NME context, "apply the statutory instruction set forth in section 772(c)(2)(B) to reduce U.S. price by

the amount of any export tax, duty, or other charge imposed by the export country on exports of subject merchandise," because prices and costs within an NME country are not reliable measures of value. Accordingly, because the Department cannot rely on NME prices and cannot determine how much of the VAT imposed on TPCO's sales is reflected in the U.S. price, the Department has no basis to reduce U.S. price for the VAT.[28] We find USS's reliance of *Wire Rod-Mexico 03/13/08* is inapposite because, as the Department stated in *Silicon Metal-PRC 01/12/10*, it does not accept such comparisons to market economy cases.

Therefore, for the final determination, the Department has determined not to reduce TPCO's U.S. price by the VAT. Because the Department has determined to apply total AFA to Changbao, we have not addressed this issue with respect to Changbao.

Comment 6: Zeroing

USS argues that if the Department does not apply zeroing for the final determination, the dumping margin will be identical regardless of whether the average-to-average or average-to-transaction comparison methodology is used. USS asserts that the Department has already acknowledged this, citing Opening Statement of the United States at the First Substantive Meeting of the Panel, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294/R (March 16, 2005).[29] According to USS, Congress amended the Act in 1994 to mandate specific comparison methodologies be applied in specific circumstances because it intended the Department to engage in zeroing.

USS also argues that the courts have repeatedly held that the rules of statutory construction require that a statute be interpreted so as to avoid rendering superfluous any provision of the statute citing *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001); *Ishida v. United States*, 59 F.3d 1224, 1230 (Fed. Cir. 1995) and *Immigration and Naturalization Service v. Cardoza-Fonseca*, 480 U.S. 421, 448 (1987); therefore, any interpretation of the statute should give effect to the different comparison methodologies stipulated within the Act, and, the appropriate way to do this is to use zeroing.

Changbao argues that the Department must incorporate the negative dumping margins in the calculation of the overall weighted-average margin, thereby abstaining from applying zeroing in its margin calculation. It states that the WTO determined that the Department's zeroing practices involving aggregation of margins have been ruled WTO inconsistent and that the U.S. Mission to the WTO in Geneva reiterated the U.S. government's commitment to comply with these decisions as recently as March 2010, citing *U.S. Tells WTO Meeting It Will Comply With WTO*

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[28] *See also Titanium Sponge-Russia 11/15/96.*

[29] *United States – Laws, Regulations and Methodology for Calculating Dumping Margins*, WT/DS294/R (March 16, 2005), *available at* http://www.ustr.gov/assets/Trade_Agreements/Monitoring_Enforcement/Dispute_Settlement/WTO/Dispute_Settlement_Listings/asset_upload_file6_7156.pdf, at 5, paragraph 13; WTO- DS – Zeroing (2005) at 142, paragraph 7.266; Report of the Panel, *United States – Final Dumping Determination on Softwood Lumber from Canada - Recourse to Article 21.5 of the DSU by Canada*, WT/DS264/RW (April 3, 2006) at paragraph 5.70; Final Report of the Panel, *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/R (September 20, 2006) at paragraph 7.127; Report of the Panel, *United States – Final Anti-Dumping Measures on Stainless Steel from Mexico*, WT/DS344/R (Dec. 20, 2007) at paragraph 7.136.

Rulings Against Use of Zeroing, BNA WTO Reporter, March 4, 2010, *available at* http://news.bna.com; *United States – Measures Relating to Zeroing and Sunset Reviews*, WT/DC322/AB/R.

Department's Position: We do not agree with Petitioners' assertion that the statute precludes the Department from following the methodology for calculating the weighted-average dumping margin as set forth in the *Final Modification*.

In *Corus Staal 2005*, the CAFC found that ambiguity in the statute was present such that the Department was permitted, but not required, to use its "zeroing" methodology for calculating weighted-average dumping margins in investigations.[30] With respect to USS's argument that providing offsets for non-dumped sales would result in the same margin regardless of which comparison methodology is employed, thereby rendering the statute meaningless, we disagree with USS's claim that the Department is making such an interpretation. Pursuant to the *Final Modification*, it is now the Department's standard practice to grant offsets for non-dumped comparisons (*i.e.*, not to apply the "zeroing" methodology) where it uses the average-to-average comparison methodology in investigations.[31] Contrary to USS's claim, this standard practice produces meaningfully different results from application of the average-to-transaction methodology where the criteria of section 777A(d)(1)(B) of the Act are satisfied because in such cases offsets are not routinely granted. It has not been the Department's practice to provide offsets for non-dumped comparisons when using the average-to-transaction comparison methodology. It should be noted, however, that regarding USS's argument that the U.S. government has taken a position that the Antidumping Agreement dictates either an application of the average-to-average or an average-to-transaction comparison methodology for all sales, we disagree. The U.S. government's position in that dispute was that, if offsets are required, mathematical equivalence was obtained regardless of whether the average-to-average methodology or the average-to-transaction methodology was applied to all sales.

In further regards to the use of the average-to-transaction comparison methodology in this investigation based on allegations of targeted dumping, *see* Comment 2.

With respect to USS's argument that the Department is not acting in accordance with Congress' intent, we note that as part of the implementation process that led to the *Final Modification*, the Department consulted with Congress regarding the scope of that implementation.[32] This consultation combined with Congress' express acknowledgement that addressing adverse WTO reports could lead to differing interpretations of the same statute,[33] demonstrates that Commerce has not violated Congressional intent. We, therefore, have not changed our calculation of the weighted-average dumping margin as suggested by Petitioners for this final determination, and to the extent that the average-to-average comparison methodology is used, the Department continues to apply offsets for non-dumped comparisons in accordance with the policy set forth in the *Final Modification*.

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[30] *See Corus Staal 2005* at 1347.
[31] *See Final Modification.*
[32] *See* 19 USC § 3533(g).
[33] In enacting the URAA, Congress contemplated that such implementation of an adverse WTO report could create different, but permissible, interpretations of the statute that may lawfully coexist. *See* SAA at 1027.

Comment 7: Double Counting

TPCO and Changbao argue that the Department must take action to avoid the double remedy that results from the simultaneous application of countervailing duties and antidumping duties determined under the NME methodology.

TPCO maintains that the double-remedy problem arises because in the application of simultaneous AD and CVD remedies involving NME countries, both remedies address the same underlying problem: distortion of market prices from government influence. According to TPCO, the self-correcting mechanisms that prevent a double remedy for domestic subsidies when the normal ME AD methodology is used do not exist when the special NME AD methodology is used, because under its NME methodology, the Department does not utilize either actual sales prices in China or the Chinese producer's actual costs, *i.e.*, the elements that might have been distorted by the domestic subsidy. TPCO adds that when the Department restates the Chinese producer's costs using SVs, Congress has explicitly instructed the Department to use only SVs that are subsidy free, such that the NME normal value has been constructed in a way specifically designed to eliminate any distortions due to government interventions and/or subsidies in the NME. TPCO states that double remedies result because the Department both measures the alleged subsidy benefit with reference to market benchmarks (including third country prices) and at the same time measures dumping by using a factors of production analysis based on third-country prices for many of the very same inputs – interest expenses, material components, or utilities. According to TPCO, Chinese producers are, therefore, being taxed twice, in the form of overlapping AD and CVD duties for the same purported offense: that the price they pay for certain inputs are purportedly not market determined. TPCO submits that while both remedies address different types of behavior, in that the antidumping law offsets unfairly low prices in the U.S. market and the CVD law offsets unfair economic advantage bestowed by a government, however manifested, whether in price, production cost, or some other competitive benefit, the Act provides safeguards to prevent the threat of overlapping remedies when the AD and CVD laws are applied in tandem.

TPCO maintains that when the United States imposes a CVD in the amount of the export subsidy, it fully corrects for the subsidy, because imposition of antidumping duties in addition to CVD, *i.e.*, imposing a second tax to offset the artificially low export price would double the corrective penalty. According to TPCO, the Act explicitly prohibits such a double remedy when it provides for an adjustment to the export price in the dumping calculation by adding the amount of any CVD attributed to export subsidies.[34] Further, TPCO claims that the Department has explained that

> if the Department finds that a respondent received the benefits of an export subsidy program, it is presumed the subsidy contributed to lower-priced sales of subject merchandise in the United States market by the amount of any such export subsidy. Thus, the subsidy and dumping are presumed to be related, and the assessment of duties against both would in effect be "double application" or

[34] TPCO cites 19 U.S.C. § 1677a(c)(l)(C).

imposing two duties against the same situation.[35]

TPCO claims that in ME AD cases, there is also no double-remedy problem for *domestic* subsidies because the respondent's own prices and costs (which reflect the domestic subsidies) are utilized in the AD margin calculation. TPCO argues that in competitive markets, the domestic subsidy will lower prices in both the export and domestic markets; therefore, where there are domestic subsidies in an ME case, there is no double remedy if the United States levies both AD and CVD duties on imports of the product.

TPCO argues that the self correcting mechanisms that prevent double-remedy penalties for domestic subsidies when the ME AD methodology is used do not exist when the NME AD methodology is used, because the Department does not use either actual sales prices in China or the Chinese producer's actual costs. TPCO further states that when the Department restates the Chinese producer's costs, Congress has explicitly instructed the Department to use only SVs that are subsidy free, so that the normal value is constructed in a way specifically designed to eliminate any distortions due to government interventions and/or subsidies in the NME. According to TPCO, this punishes Chinese companies twice for the same allegedly "unfair" trading practice: first for the CVD to offset the alleged subsidy, and second, when the allegedly subsidized export price is compared to a non-subsidized constructed normal value. TPCO maintains that double remedies result because the Department measures the alleged subsidy benefit with reference to market benchmarks, while at the same time measures dumping by using a factors of production analysis based on third-country prices for many of the very same inputs - interest expenses, material components, or utilities.

TPCO states that the primary subsidy found by the Department in its companion CVD case was because TPCO's actual steel billet purchases were at prices "less than adequate remuneration," whereupon the Department imposed a CVD duty that equaled the difference between TPCO's actual steel billet purchase prices and a "world market price" for steel billets.[36] However, TPCO argues that in the instant investigation, under its NME methodology, the Department ignores TPCO's actual purchased steel billet cost, and instead substitutes a SV for TPCO's purchased steel billet cost, and to the extent that this SV is higher than TPCO's actual cost of purchased steel billets, the AD duties will offset the *same* alleged unfair advantage of low-cost purchased steel billets.

TPCO suggests that in previous cases in which the double-counting issue has been raised, the Department has provided two principal responses to respondent's arguments: first, the Department stated its *economic* conclusion that there is no basis to presume that domestic subsidies in fact lower export prices, and second, the Department has stated its *evidentiary* conclusion that respondents had not sufficiently demonstrated that there was actual double counting of remedies.[37] TPCO argues that each of these conclusions is wrong.

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[35] *See Cold-Rolled Steel/Korea* (October 3, 2002).
[36] *See OCTG/PRC-CVD 12/7/09* at Comment 14.
[37] *See* TPCO cites *Kitchen Racks/PRC 07/24/09* at Comments 10-11; *see also CWP/PRC-AD 03/31/09* at Comment 14.

TPCO claims that the Department has in prior cases concluded that "whereas the connection between export subsidies and export prices is direct, the connection between domestic subsidies and export prices is indirect . . . ."[38] TPCO argues that there is no economic justification for the Department to conclude that the OCTG producer will always choose to keep 100 percent of the benefit conveyed via a domestic subsidy, but will choose to give up 100 percent of the benefit through a lower price if the benefit is conveyed via an export subsidy. Moreover, according to TPCO, this Department economic conclusion is inconsistent with the Department's own previous economic analysis, citing *Low Enriched Uranium/France* (August 3, 2004), in which the Department ruled that "domestic subsidies presumably lower the price of the subject merchandise both in the home and the U.S. markets, and therefore has no effect on the measurement of any dumping that might also occur."[39] TPCO says that, in that same case, the Department also stated that "domestic subsidies are assumed not to affect dumping margins, because they lower prices in both the U.S. and the domestic market of the exporting country equally."[40] TPCO submits that these conclusions cannot be reconciled with the Department's current position concerning the double counting issue. In addition, TPCO claims that the Department's distinction between the economic effects of export subsidies and domestic subsidies is legally irrelevant because the Act, requiring that the Department assess a CVD "equal to the amount of the net countervailable subsidy," assumes complete pass through.[41]

TPCO asserts that the problem of double-remedy of CVD and AD duties is already fully recognized in the law for export subsidies where, because the Department assumes that the full amount of the export subsidy is used by the exporter to lower its price to the U.S. market, the Department undertakes an adjustment to the AD calculation to reflect the full amount of the export subsidy. TPCO states that the Department does not grant an adjustment in the AD calculation in ME cases for domestic subsidies because the Department presumes that the benefit from domestic subsidies is fully reflected in both home-market and export-market sales. In other words, according to TPCO, although the Act makes an explicit offset for export subsidies that do not lower domestic prices, the Act also makes an implicit offset for domestic subsidies by allowing the use of lower domestic prices in the AD calculation, prices that are lower precisely because of the pass through of the domestic subsidy. TPCO argues that the important point is that such assumptions about "pass through" are built-into the law.

TPCO asserts that the Department's conclusion that a double remedy would not occur in virtually all cases in which both CVD duties and NME AD duties are applied is contrary to findings made by other experts that have studied this issue and was explicitly rejected by the United States Government Accounting Office ("GAO") following its extensive analysis of the issue:

> Commerce also said that our suggestion that Congress provide Commerce with authority to correct any double-counting of domestic subsidies in companion CVD and AD actions was not warranted or appropriate. We maintain that our analysis shows that there is substantial potential for double-counting of domestic

[38] TPCO cites *OTR Tires/PRC 07/15/08* at Comment 2.
[39] *See Low Enriched Uranium/France* (August 3, 2004).
[40] *Id.*
[41] *See* 19 U.S.C. § 1671(a).

subsidies if Commerce applies CVDs to China while continuing to use its current NME methodology to determine AD duties.[42]

Finally, TPCO claims that the Department's conclusion that there is no evidence of double counting in this case imposes an impermissible burden of proof, noting that in prior cases the Department also concluded that respondents had "not demonstrated that a double remedy will result from this investigation."[43] TPCO argues that respondents have no burden of proof to establish a double remedy any more than petitioners have a burden to establish the absence of a double remedy, but that the Department has a duty to investigate the issue, and to identify and request pertinent evidence it needs to resolve the question.[44] Furthermore, TPCO claims, in concluding that there is no double remedy problem, the Department in effect has created what purports to be a rebuttable presumption that a double remedy does not exist, and in so doing, the Department failed to notify respondents of the presumption, failed to notify them of the evidence they would be required to submit to rebut the presumption, and failed to provide an adequate opportunity for them to present rebutting evidence or otherwise to protect their interests.[45] According to TPCO, if the Department is to create a presumption, it must have a rational basis, and must be consistent with economic theory and the trade Act's structure as a whole. TPCO maintains that while an administrative agency has the power to create a presumption, the presumption "must rest on a sound factual connection between the proved and inferred facts."[46] TPCO argues that "an agency presumption must be both consistent with the intent of the Act and based upon a rational connection between the facts proven and the facts presumed."[47] TPCO further claims that an evidentiary presumption is "only permissible if there is a sound and rational connection between the proved and inferred facts, and when proof of one fact renders the existence of another fact *so probable* that it is sensible and timesaving to assume the truth of {the inferred) fact . . . until the adversary disproves it."[48] TPCO argues: "If there is an alternate

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[42] *See GAO Report (June 2005)* at 27-28; *see also* USCSC Testimony (April 4, 2006) at 18.
[43] *See OTR Tires/PRC 07/15/08* at comment 2.
[44] *See Freeport Minerals Co.* v. *United States,* 776 F.2d 1029, 1034 (Fed. Cir. 1995); *Timken* v. *United States, 25* CIT 939, 166 F. Supp. 2d 608,629-630 (2001) ("Commerce could not unreasonably forfeit its duty to collect significantly important data."); *Wieland-Werke AG* v. *United States,* 22 CIT 129, 135, 4 F. Supp. 2d 1207, 1212 (1998) ("Commerce has a duty to investigate by gathering information."); *Rhone-Poulenc, Inc.* v. *United States, 20* CIT 573,578,927 F. Supp. 451, 456 (1996) (finding that Commerce has a statutory duty to perform an independent investigation of the facts related to issues before it).
[45] *See Transcom, Inc.* v. *United States,* 294 F.3d 1371, 1382 (Fed. Cir. 2002) (affirming the Department's presumption of state control in NME AD cases because Commerce had provided adequate notice to the respondent and an opportunity to rebut the presumption); *British Steel pIc v. United States*, 19 CIT 176,255; 879 F. Supp. 1254, 1316-17 (1995) ("irrespective of whether Commerce adopts a presumption by a change in agency practice, through informal rulemaking, or by some other means, fundamental fairness dictates Commerce should have given plaintiffs due notice of the agency's decision to adopt the ... presumption as well as afforded plaintiffs the opportunity to submit evidence to rebut the... presumption"), *affd in pertinent part sub nom LTVSteel Co. Inc.* v. *United States,* 174 F.3d 1359 (Fed. Cir. 1999); *see also* ITA Policy Bulletin No. 05.1 (Apr. 5, 2005) (bulletin stating NME presumption of state control and specifying requirements to rebut presumption).
[46] *NLRB* v. *Baptist Hospital, Inc.,* 442 U.S. 773, 787 (1979); *see also United Scenic Artists, Local* 829 v. *NLRB, 762* F.2d 1027, 1034 (D.C. Cir. 1985) ("Presumptions may, of course, be established both by legislative bodies and by administrative agencies, but their validity depends as a general rule upon a rational nexus between the proven facts and the presumed facts.")
[47] *See British Steel plc* v. *United States,* 20 CIT 663, 699, 929 F. Supp. 426, 454-55 (1996), affd sub nom *Inland Steel Indus., Inc. v. United States*, 188 F.3d 1349 (Fed. Cir. 1999).
[48] *See Sec'y of Labor* v. *Keystone Coal Mining Co.,* 151 F. 3d 1096, 1100-01 (D.C. Cir. 1998).

explanation for the evidence that is also reasonably likely, then the presumption is irrational."[49] TPCO asserts that these standards are not met here because there is no economic or rational basis to presume that any domestic subsidy found to have been conferred did not affect that producer's U.S. price and did not thereby create double counting.

TPCO submits that this presumption is adverse to respondents, and was applied without any attempt by Commerce to gather the "evidence" necessary to make an actual finding as to whether or not there is double counting and, thus, it violates the statutory requirement that Commerce cannot make adverse inferences unless respondents fail to cooperate.[50]

Finally, TPCO maintains that the Department's refusal to take action to avoid the double counting resulting from the simultaneous application of CVD duties and AD duties utilizing the NME methodology is unlawful based on the recent decision by the Court of International Trade in *GPX Int'l Tire* v. *United States* ("GPX"),[51] in which the court found that "dual imposition of ADs and CVDs in NME countries has a high potential for double remedies.[52] TPCO argues that the court specifically ruled that "Commerce cannot avoid addressing an important aspect of the problem caused by applying CVD and AD methodologies to goods from NME countries by placing the burden to demonstrate double counting on {respondents}, because there is likely no way for any respondent to accurately prove what very well may be occurring.[53]

Changbao argues that the CIT specifically found that the Department's concurrent imposition of AD remedies based on NME methodologies alongside CVD remedies has a high potential for double-counting of benefits and overlapping remedies.[54] According to Changbao, the Department itself has acknowledged (without need for specific evidence) in previous cases involving simultaneous ME AD and CVD proceedings that parallel AD and CVD proceedings create risks of double remedies and that such double remedies are to be avoided.[55] Changbao submits that double counting is not an issue with respect to domestic subsidies in ME AD cases because, to the extent that general domestic subsidies are presumed to impact domestic and import pricing equally, they would not create differences between domestic and export prices that would impact the dumping calculation.[56] Changbao states that the impact of general domestic subsidies on production costs and pricing are reflected in both the normal value and export price or constructed export price.

Changbao maintains that the relationship between domestic subsidies and antidumping duties is fundamentally different in NME cases, where normal value is not based on the respondents' actual home market prices or actual costs of production, (which would reflect the actual impact

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[49] *ld.; see also National Mining Ass 'n* v. *Babbitt*, 172 F. 3d 906,911 (D.C. Cir. 1999).
[50] *See Nippon Steel* v. *United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003); *Dorbest v. United States*, 462 F. Supp. 2d 1262,1317 (CIT 2006) ("Section 1677e(a) requires that there be a gap in the record of verifiable information due to a party's failure to supply necessary or reliable information in response to an information request from Commerce.")
[51] *See GPX (CIT 2009).*
[52] *Id* at 13.
[53] *Id* at 18.
[54] *See GPX (CIT 2009)* at 1242-43.
[55] Changbao cites *Low Enriched Uranium/France* (August 3, 2004) at 46506.
[56] *See GPX (CIT 2009)* at 1242.

of any domestic subsidies conferred by the NME government). Instead, Changbao notes, normal value is based on third-country SVs for inputs, SG&A expenses, financial expenses, and profit. Changbao claims that the NME methodology compares a normal value that does not reflect any general domestic subsidies conferred by the NME government with an export price or constructed export price value that does reflect the actual commercial impact of any such subsidies.

Changbao argues that in an ME context, the effects of subsidized material inputs or financing would be offset through countervailing duties in the CVD investigation; however, the respondent would retain the benefit of the subsidy in the .antidumping investigation through a lower normal value *(e.g.,* in the form of lower cost of manufacturing). In the NME context, Changbao argues that using SVs in the AD proceeding strips any benefit from subsidized material inputs out of the normal value, adding that the Department routinely disregards proposed SVs deemed to be subsidized. According to Changbao, the NME respondent is thus penalized twice for the effects of the subsidized inputs: first, through direct imposition of the CVD to offset the benefit and second through disregarding any mitigating effects of the benefit in the dumping calculation.

Changbao claims that in *GPX*, the CIT recognized that "the NME AD Act was designed to remedy the inability to apply the CVD law to NME countries, so that subsidization of a foreign producer or exporter in an NME country was addressed through the NME methodology."[57] Changbao notes that before the *Preliminary Determination* in the instant investigation, the Government of China ("GOC") formally demanded that the Department "either (1) make its AD OCTG determination without employing its NME methodology, instead using its normal, ME methodology, or (2) terminate its CVD investigation of the same OCTG imports."[58] However, according to Changbao, in the *Preliminary Determination*, the Department explained that it "disagrees with this claim that application of the NME provisions of the Act concurrent with application of the CVD provisions of the Act is precluded by any provision of law" and resolved to "follow its practice" from other recent parallel CVD and AD investigations of the same products from China.[59]

Changbao acknowledges that the CIT's decision in *GPX* is not yet a final decision of the court. Nonetheless, Changbao argues, the Department is obligated to implement effective measures to avoid double counting of benefits and double remedies for the same activities. Changbao asserts that for the final determination, the Department should deduct the CVD margin assigned to Changbao in the companion CVD investigation from any final antidumping margins; otherwise, the Department should reopen the record to determine normal value for Changbao as a market-oriented enterprise based on actual production costs and/or home market sales. Changbao maintains that such steps are necessary to effectuate the CIT's direction that if there is a substantial potential for double counting, and it is too difficult for the Department to determine whether, and to what degree double counting is occurring, the Department should refrain from imposing CVDs on NME goods until it is prepared to address this problem through improved

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[57] *See GPX (CIT 2009)* at 1238; *see also, Georgetown Steel Corp. v. United States*, F. 2d 1308, 1316 (Fed. Cir. 1986).
[58] *See* Letter from Mark S. McConnell, Hogan & Hartson LLP to the Hon. Gary F. Locke re: Simultaneous Application of the Department's Current Non-Market Economy Antidumping Methodology (Oct. 29, 2009).
[59] Changbao cites *OCTG Preliminary Determination (November 17, 2009)* at 59118.

methodologies or new statutory tools.

USS counters that the respondents' and the GOC's arguments are wholly without merit. Moreover, according to USS, the Department has considered – and squarely rejected – identical arguments by the GOC and other Chinese respondents in a recent case,[60] and neither the GOC nor the company respondents have made any arguments here that would warrant a different result.

USS claims that, despite the respondents' suggestions to the contrary, it is plain that the AD and CVD laws are meant to address different behavior and that, for NME countries just as for ME countries, it is appropriate that these laws be separately applied. USS submits that the courts have long recognized that the AD laws are intended to offset unfairly low prices in the U.S. market,[61] whereas the CVD laws are intended to offset unfair economic advantages bestowed by a foreign government.[62]

USS refutes TPCO's claim that the CVD laws and the NME AD methodology are both designed to correct for the same "distortion of market prices from government influence" is flatly wrong, and suggests that the NME AD methodology corrects for price distortions that move in both directions. USS claims that the GAO considered the implications – for purposes of calculated AD duties – of moving from an NME to an ME AD methodology for China, and stated:

> The impact of using Chinese price information on China AD duty rates would likely vary from one industry to another under the market economy methodology. Chinese prices are widely viewed as distorted to varying degrees. Where prices for key inputs are artificially low, relying on Chinese price information would produce an artificially low normal value. The result would be an AD duty that is lower than would be obtained by applying surrogate country input prices. Conversely, where Chinese prices are artificially high, AD duty rates may be higher if based on Chinese prices . . . At any point in time, however, the probable effect of such a methodological change in an individual industry investigation would depend on the particular facts applying to that industry. The net impact of changing the source of price information on overall China duty rates cannot be estimated with confidence.[63]

USS also maintains that, as the Department stated in its final affirmative determination in the companion CVD investigation of OCTG from China, the respondents' reliance on *GPX* is wholly misplaced,[64] as the Department stated, "{t}his decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted."

Further, USS maintains that *GPX* was not correctly decided. First, USS argues that while the

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[60] USS cites *Kitchen Racks/PRC 07/24/09* at Comment 1.
[61] *See, e.g., Badger-Powhatan, Div. of Figgie Int'l, Inc. v. United States*, 608 F. Supp. 653, 656 (Ct. Int'l Trade 1985).
[62] *Zenith Radio Corp. v. United States*, 437 U.S. 443, 455-56 (1978).
[63] *Id.* at 31.
[64] USS cites *OCTG Preliminary Determination (November 17, 2009)* at Comment 2.

court acknowledged that there is no statutory language or legislative history that even arguably supports the conclusion that it reached, it rejected the Department's analysis, which reflects the Department's expertise and was developed after long and careful deliberation.

USS disputes the court's ruling in *GPX*. First, USS argues, because the Act explicitly provides for automatic offsets for export subsidies, the Act is not silent on the issue in question. The existence of this provision, and the absence of such a provision for domestic subsidies, shows that offsets for domestic subsidies are not appropriate. Second, USS asserts that there is no basis for the court's statement that the "{t}he NME AD Act overlaps with the functioning of the CVD Act, which is 'to counteract any unfair advantage gained by government intervention' . . . over the 'manufacture, production, or export of . . . merchandise imported . . . into the United States."[65] According to USS, the purpose of the NME AD methodology is not to counteract such an unfair advantage but, rather, to ensure that distorted prices are not used in the AD analysis. Moreover, USS submits, the Department's reasoning on the double-counting issue has been significantly clarified since the decision by the Department that was at issue in *GPX*. USS claims that in *Kitchen Racks/PRC 07/24/09*, the Department presented a detailed analysis of this issue,[66] in which the Department explained that the assumption that domestic subsidies inflate dumping margins in NME countries because they do not affect normal value under the Department's NME AD methodology is simply incorrect. USS asserts that the Department explained that, while NME subsidies may not affect the factor values used to calculate normal value in a NME proceeding, such subsidies may affect the quantity of factors used by the NME producer in manufacturing the subject merchandise, and that in the instant investigation these factors include inputs such as steel billets, for which the respondents have asserted that the likelihood of double-counting exists because factor values from ME countries are used under the Department's NME methodology.[67] For example, USS suggests that a domestic subsidy in an NME country may enable an investigated producer to purchase more efficient equipment, lowering its consumption of labor, raw materials, and energy, and when the factor values are multiplied by the resulting lower factor quantities, they result in lower normal values and, hence, in lower dumping margins. Thus, according to USS, TPCO is wrong when it states that the "normal value has been constructed in a way specifically designed to eliminate any distortions due to . . . subsidies in the NME by using subsidy-free and market economy values to construct normal value."[68]

In addition, USS claims that any reduction in the quantities of factors would also have a secondary effect of reducing normal value by reducing the amount of factory overhead, SG&A expenses, and profit under the final step of the Department's NME methodology, because these amounts are determined on the basis of ratios derived from ME sources that are multiplied by the labor, raw materials, and energy costs so that reductions in factor usage by NME producers resulting from the subsidies would also result in proportionate reductions in factory overhead, SG&A expenses, and profit.[69] USS argues that the failure of the court's decision in *GPX* to take

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[65] *GPX (CIT 2009)* at 1238.
[66] USS cites *Kitchen Racks/PRC 07/24/09* at Comment 1.
[67] *See* TPCO's Case Brief at 88 (Public Version); Changbao's Case Brief at 3-4 (Public Version).
[68] *See* TPCO's Case Brief at 83 (Public Version).
[69] USS argues that the Department also observed that, in at least some cases, the NME exports of the subject merchandise may account for a sufficient share of the world market to influence prices in the world market. As a result, domestic subsidies in China could increase output and exports from China, which would reduce the prices of

into account the effects of domestic Chinese subsidies on the normal value thus fatally undermines an essential predicate for that decision, and, therefore, provides no support for the arguments advanced by the respondents here.

USS also suggests that, while the respondents claim that they are not required to provide proof of double-counting – and that there is no way for respondents to do so – they then proceed to attempt to prove that there is double-counting in this case. USS states that TPCO and Changbao both focus on the Department's finding that they received a countervailable benefit in the form of steel billets provided by the government for less than adequate remuneration, and that the "unfair advantage" derived from these purchases "has been fully offset by the CVD imposed by the Department," and that the use of factor values for steel billets from a surrogate country under the Department's NME AD methodology "will offset the same alleged unfair advantage of low-cost purchased steel billets."[70] But, according to USS, this analysis assumes that the subsidy in question does not affect the normal value calculated under the Department's NME methodology, and that there is no basis for that assumption. USS suggests that the subsidization of steel billets may enable the investigated producer to purchase more efficient equipment, lowering its consumption of labor, raw materials, and energy, and when the factor values are multiplied by the resulting lower factor quantities, they result in lower normal values and, hence, in lower dumping margins.

Finally, USS argues that the respondents' argument that the simultaneous application of the CVD laws and NME methodology to imports from China automatically results in double-counting is wrong in that it ignores the fact that many subsidies do not take the form of subsidized inputs. USS asserts that, in the companion CVD investigation, the respondents were found to have received many subsidies that were treated as grants, and that the Department's NME AD methodology in no way reflects the effects of such subsidies. Thus, USS claims, there is no conceivable argument that the application of the CVD laws to such subsidies and the simultaneous application of the Department's NME AD methodology involve any double counting.

Petitioners argue that the Department has consistently rejected in several cases the same arguments made by respondents in the instant investigation. Petitioners further state that the Department has also pointed out that the CIT decision in *GPX* is not final and does not actually support the position that respondents advance. As a result, Petitioners argue that the Department should summarily reject Respondents' arguments here for the same reasons as in its nine previous decisions and further, if the Department bases its AD rate for Changbao on total AFA, there would not even be a colorable basis for concluding that any part of that rate resulted from double counting.

Maverick argues that the combined application of CVD and AD duties using an NME methodology does not result in duplicative remedies. Maverick asserts that respondents'

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the good in the world market. In turn, this would result in reduced profits for producers in these markets, which would reduce the profit rates that the Department derives from their financial statements to add to normal value, citing *Kitchen Racks/PRC 07/24/09* at Comment 1.

[70] USS cites TPCO's Case Brief at 87-88 (Public Version) (emphasis in original).

arguments are not only inconsistent with the Act, they are based on a faulty presumption that has been rejected by the Department in every investigation in which it has been raised. Maverick argues that to adjust the dumping margin to account for domestic subsidies is inconsistent with the Act, which specifically addresses the adjustments that the Department is to make in concurrent AD/CVD investigations, and adjustments for domestic subsidies are not included. Maverick notes that section 772(c)(1)(C) of the Act states that the Department shall increase the Export Price or Constructed Export Price by "the amount of any countervailing duty imposed on the subject merchandise . . . to offset an *export* subsidy."[71] According to Maverick any offset for *domestic* subsidies is conspicuously absent, evidencing Congress' intent that no adjustments are to be made for domestic subsidies.

Further, Maverick maintains that the respondents' arguments are based on a faulty presumption that, in contrast to an ME case where the actual impact of general domestic subsidies on production costs and pricing are reflected in both the normal value and export price or constructed export price, none of the SVs used in an NME case are affected by domestic subsidies. Maverick maintains that the Department has properly rejected such a presumption, explaining that, while the connection between export subsidies and export prices is direct, the connection between domestic subsidies and export price is indirect and subject to a number of variables, and presuming domestic subsidies automatically lower export prices, *pro-rata*, would be speculative. Maverick submits that the Department has found no indication that Congress harbored any presumption about the effect of domestic subsidies upon export prices, let alone the presumption that they automatically reduce export prices, *pro-rata*. Maverick claims that, as the Department made clear in *CFS Paper/PRC 11/25/07*, the Senate Report accompanying the 1979 legislation states that:

> for domestic subsidies (where the situation with respect to the domestic and export markets is the same) no adjustment to U.S. price is appropriate….in so stating, Congress may have presumed that domestic subsidies had no effect on prices, had the same (if uncertain) effect on domestic and export prices, or may have presumed nothing.[72]

Maverick argues that the fact that a material input (*i.e.*, billet) was found to be subsidized in a CVD investigation does not automatically mean that benefit obtained from the subsidy resulted in reduced prices for the U.S. customer. Maverick argues further that, though "Congress believed that Commerce should avoid using values that may have been affected by dumping or subsidies," there is nothing requiring that the Department only use surrogate values that are subsidy free,[73] and that the "Department has acknowledged simply that the existence of dumping or subsidies may taint the values upon which it would otherwise rely."[74]

Maverick asserts that TPCO's reliance on the Department's finding in *Low Enriched Uranium/France* (August 3, 2004) is misplaced. According to Maverick, there the Department specifically reasoned:

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[71] Maverick cites 19 U.S.C. § 1677a(c)(1)(C)(emphasis added).
[72] Maverick cites *CFS Paper/PRC 11/25/07* at Comment 2.
[73] *Id*.
[74] *Id*.

> The fact that the {Act} addresses CVDs to offset export subsidies directly, however, and then remains silent about the plainly related issue of CVDs to offset domestic subsidies, is not complete silence---it implies that no adjustment is appropriate. There is no reason why Congress would have provided for the addition of export subsidy CVDs, but not considered the plainly related issue of domestic subsidy CVDs.[75]

Maverick states that the Department also noted that export subsidies are assumed to increase dumping margins by lowering the export price but not the domestic price in the exporting country, whereas "domestic subsidies are assumed not to affect dumping margins, because they lower prices in the both the U.S. market and the domestic market of the exporting country equally."[76]

Maverick argues that the respondents have provided no evidence to substantiate their presumption that the combined application of CVD and AD duties results in duplicative remedies in this case, adding that both respondents make reference to the subsidies given to respondents for steel billets, but offer no concrete evidence of (1) how these domestic subsidies directly lower export prices, and (2) how these subsidies are not accounted for in the surrogate values.

Maverick asserts that, while the CIT in *GPX* properly concluded that the Department is not barred from applying the CVD law to imports from China, the CIT erred in determining that the Department must adopt further policies and procedures for its NME AD and CVD methodologies to account for the imposition of CVD law to imports from an NME country and avoid the double counting of duties to the extent possible. Maverick disagrees with the court's finding that if the Department "now seeks to impose CVD remedies on the products of NME countries as well, {the Department} must apply methodologies that make it unlikely that double counting will occur."[77] According to Maverick, this conclusion ignores the fact that:

> The AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices. The CVD law provides for the imposition of duties to offset foreign government subsidies. Such subsidies may be countervailable regardless of whether they have any effect on the price of either the merchandise sold in the home market or the merchandise exported to the United States. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. With one exception, AD duties are calculated the same way regardless of whether there is a parallel CVD proceeding.[78]

According to Maverick, the *only* adjustment for subsidies in concurrent AD/CVD

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[75] Maverick cites *Low Enriched Uranium/France* (August 3, 2004) at 46505-6.
[76] *Id*.
[77] Maverick cites *GPX (CIT 2009)* at 19.
[78] Maverick cites *Kitchen racks/PRC 07/24/09* at Comment 1.

investigations that is permitted under the Act is provided in Section 772(c)(1)(C).[79] Thus, Maverick argues that the Department should continue to apply antidumping duties to the respondents in this investigation for its final determination.

Department's Position: The Department disagrees with TPCO and Changbao that the concurrent application of AD duties calculated under the Department's NME methodology and CVDs creates a double remedy for domestic subsidies in China. First, we note that the Act is silent with respect to this issue. The automatic offset that section 772(c)(1)(C) of the Act provides for an adjustment to the AD calculation to offset CVDs based on export subsidies, combined with the absence of any such adjustment to offset domestic subsidies, would imply that Congress did not intend for any adjustment to be made to offset domestic subsidies. The AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices. The CVD law provides for the imposition of duties to offset foreign government subsidies. Such subsidies may be countervailable regardless of whether they have any effect on the price of either the merchandise sold in the home market or the merchandise exported to the United States. AD duties are imposed to offset the extent to which foreign merchandise is sold in the United States at prices below its fair value. With one exception, AD duties are calculated the same way regardless of whether there is a parallel CVD proceeding.

The one point of contact between the AD and CVD regimes is section 772(c)(1)(C) of the Act. This provision requires that the price used to establish the export price shall be increased by the amount of any CVD imposed on the subject merchandise . . . to offset an *export subsidy* (emphasis supplied) . . .. TPCO and Changbao suggest that the Department erred in refusing to interpret this provision as if it actually read, "to offset an export subsidy *or, where the NME antidumping methodology is applied, a domestic subsidy* (emphasis supplied)." In other words, TPCO and Changbao would have the Department read an automatic 100-percent offset for domestic subsidies in NME AD proceedings into the Act, based upon the logic purportedly inherent in Congress's decision to provide an automatic offset for export subsidies to implement the requirements of Article VI(5) of the GATT. Plainly, the highlighted language is not in the Act, which does not provide the automatic offset sought by TPCO and Changbao. Moreover, contrary to the respondent's assertion, the GAO study cited by TPCO does not create any legitimate doubts about the Department's interpretation of the Act. The GAO did not conclude that domestic subsidies were automatically passed through into export prices, *pro rata*. On the contrary, in referring to the possibility of double counting that might result from the simultaneous application of CVDs and the Department's NME AD methodology, the GAO Report stated that "current trade law does not make any specific provision for adjusting antidumping duties in such situations, and the implications of such situations arising are therefore unclear."[80] Similarly, in *Cold-Rolled Steel/Korea* (October 3, 2002) cited by TPCO, the Department refers only to adjusting the AD duties for any CVD determined to be based on export subsidies,[81] and does not find an automatic *pro rata* offset for domestic subsidies. We further discuss this *pro rata* offset below. As the Department noted in *Low Enriched Uranium/France* (August 3, 2004), Congress amended the Act to provide for an adjustment to the AD calculation to offset CVDs for export subsidies. If anything, the absence of the

[79] *Id.*
[80] *See GAO Report (June 2005)* at 28.
[81] *See Cold-Rolled Steel/Korea* (October 3, 2002) at 62125.

additional language related to a domestic subsidy implies that Congress intended to not provide the additional adjustment for domestic subsidies.

Indeed, TPCO and Changbao cite no statutory provision that would be a basis for imposing such an adjustment because there are no such provisions in the Act. The various theories advanced by respondents in prior cases to support their requests for an automatic 100-percent offset of AD duties determined under the NME methodology by any CVD duties are based on mistaken premises. Accordingly, the Department has consistently and properly rejected these claims.[82] Similarly, in the instant investigation, TPCO and Changbao assert that export subsidies automatically lower export prices, *pro rata*, thereby increasing dumping margins and, as a result, the Act makes an explicit offset for export subsidies. However, where the Department disagrees with TPCO and Changbao is with their claim that the Act also makes an *implicit* offset for domestic subsidies by allowing the use of lower domestic prices in the AD calculation in ME cases, prices that are lower precisely because of the "pass through" of the domestic subsidy, according to respondents. TPCO argues that the important point is that such assumptions about "pass through" are built into the law. The Department has rejected this proposition.[83]

In fact, the legislative history of the export subsidy adjustment establishes only that Congress considered it to satisfy the obligations of the United States under Article VI:5 of the GATT. The legislative history does not appear to be based on any specific assumption about whether foreign government subsidies lower prices in the United States and, in fact, is not solely concerned with the effects of subsidies in the United States.[84] Thus, although the Act requires a full adjustment of AD duties for CVDs based on export subsidies in all AD proceedings, it provides no basis for concluding that Congress's action was based on any specific assumptions about the effect of subsidies upon export prices. It may be simply that Congress recognized the complexity of the issues that would have had to have been resolved in order to provide anything less than a complete offset for export subsidies, and simply opted for a full offset to avoid those potential problems.

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

TPCO and Changbao are similarly mistaken about the Department's statement in *Low Enriched Uranium/France* (August 3, 2004), that "domestic subsidies presumably lower the price of the

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[82] *See, e.g., Kitchen Racks/PRC 07/27/09* at Comment 1.
[83] *Id.*
[84] Trade Agreements Act of 1979, Report of the Committee on Finance United States Senate on H.R. 4537, July 17, 1979, 96th Cong., 1st Sess. Rep. No. 96-249; Trade Agreements Act of 1979, Statement of Administrative Action, H. Doc. No. 96-153, Part II (1979), at 412.

subject merchandise in the home and the U.S. markets."[85] This statement does not stand for the proposition that domestic subsidies are passed through into export prices, *pro rata*. Taken at face value, the statement is that "domestic subsidies presumably lower the price of the subject merchandise in export markets . . . ." This is no more than a presumption, and a very limited presumption at that – *e.g.*, the reductions in price could be 1 percent of the subsidy in each market. Commerce's point was not that all domestic subsidies are presumed to be fully passed through into domestic and export prices, but that the effect of domestic subsidies on the price in each market presumably was the same.

The Department has explained that the effect of domestic subsidies upon export prices depends upon many factors (*e.g.*, the supply and demand for the product on the world market, and the exporting countries' share of the world market), and is therefore speculative.[86] Thus, the Department has correctly refused to assume that domestic subsidies automatically reduce export prices, *pro rata*. There is substantial support for the Department's position in the economic literature.[87]

In considering the impact of domestic subsidies upon export prices, the form of the subsidy is again important because, like export subsidies, some domestic subsidies give domestic producers a greater incentive to increase production than others. A production subsidy (*e.g.*, the provision of raw materials at reduced prices) reduces the unit cost of producing that merchandise and, therefore, increases the producer's profit on sales of that merchandise. This may give the producer a commercial incentive to increase production of that merchandise. In an NME, however, it is not necessarily safe to assume that economic decisions are made on the basis of such market forces. In any event, more general subsidies (*e.g.*, general grants or debt forgiveness) would not provide that direct incentive. A foreign producer might use a general subsidy to modernize its plant, pay higher dividends, fund research and development, clean up the environment, make severance payments, increase the production of some other product, or waste the money. Consequently, this type of domestic subsidy will not necessarily result in any increase in production and, therefore, will not necessarily result in any reduction in export prices, still less an automatic *pro rata* reduction.

Even if a producer attempted to respond to a domestic subsidy exclusively by increasing production, it might not be able to do so, at least in the short or medium term. Various constraints (*e.g.*, limits on the supply of raw materials, energy, or transportation) might limit its ability to do so. Moreover, adding capacity takes time. Thus, it would be incorrect to claim that domestic subsidies automatically result in increased production.

Additionally, even if all producers in an NME country do respond to domestic subsidies by increasing production, it is by no means certain that this increase would result in lower export prices. If the world market price is going up, it is not realistic to assume that an NME producer that receives a domestic subsidy automatically will reduce its export prices by the full amount of the subsidy, as allocated under the Department's CVD methodology. Increased production and

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[85] *See Low Enriched Uranium/France* (August 3, 2004) at 46506.
[86] *See OTR Tires-PRC-AD 02/20/08* at 9287.
[87] World Trade Organization, *World Trade Report 2006* (page 57), Alex F. McCall and Timothy E. Jostling, *Agricultural Policies and World Markets*, MacMillan Pub. Co., 1985, p. 126-7.

exports will tend to lower export prices *over time*, but this reduction will be neither automatic nor necessarily *pro rata*. In fact, during the years preceding prior Department investigations, some Chinese producers raised their prices in line with world market prices, despite having received substantial subsidies.[88] Increased export sales will reduce the price of the subject merchandise on world markets only to the extent that the producer or producers in question supply a substantial share of the world market, so that the additional production will drive down prices in that market. Even this will take time and will not occur if other producers in the market reduce production to avoid a price war. In sum, as the Department concluded in *OTR Tires-PRC-AD 02/20/08*, the relationship of domestic subsidies to export prices is speculative.

The respondents' presumption about the effect of domestic subsidies on export prices is derived from what they consider to be the assumption that Congress made concerning export subsidies in amending section 772 of the Act to require the automatic addition to U.S. prices of CVDs to offset export subsidies – that export subsidies automatically reduce export prices, *pro rata*. The implication is that Congress did not provide an adjustment for domestic subsidies because Congress considered them to reduce both export prices and domestic prices, *pro rata*, thereby not affecting the dumping margin. However, the respondents argue that under the NME methodology, the Department compares the export price, presumably reduced by the domestic subsidies, to a normal value that has been calculated using non-subsidized SVs, meaning that the respondents argue that safeguards against double counting that they claim are inherent in the ME methodology don't exist in the Department's NME methodology.

This argument that domestic subsidies inflate dumping margins by automatically lowering export prices assumes that domestic subsidies in NME countries do not affect normal value. There is no basis for this assumption. Put simply, while NME subsidies may not affect the factor *values* used to calculate normal value in an NME proceeding, such subsidies may easily affect the *quantity* of factors consumed by the NME producer in manufacturing the subject merchandise. The simplest example would be where a domestic subsidy in an NME country enables an investigated producer to purchase more efficient equipment, lowering its consumption of labor, raw materials, or energy. When the SVs are multiplied by the NME producer's lower factor quantities, they result in lower normal values and, hence, lower dumping margins.[89] Any reduction in factor usage by NME producers would reduce normal value in a second manner, because the final factor values are also used to calculate the amounts for overhead, SG&A, and profit[90] that are additional components of normal value.

Moreover, in determining normal value in NME cases, the Department does not exclusively use factor quantities in the NMEs valued in the surrogate, ME country. Some factors values are based on the prices of imported inputs (priced in the currency of the country from which the inputs were obtained or in U.S. dollars). Given that the input suppliers in these countries are often competing with Chinese suppliers of those same inputs, it is by no means safe to assume

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[88] *Certain New Pneumatic Off-the-Road Tires from China, ITC Final Report* (Publ. 4031, August 2008), pages IV-5 (Table IV-2), E-3 (Table E-1) and E-6 (Table E-4), and *Circular Welded Carbon-Quality Steel Pipe from China, ITC Preliminary Report*, (Publ. 3938, July 2007), pages V-12 ((Table V-3) V-14 (Table V-5), and V-19, showing rising average unit values on imports from China for the years 2005-2007.

[89] *See* section 773(c)(3) of the Act, 19 U.S.C. 1677b(c)(3).

[90] *Hebei Metals & Mineral v. United States*, 366 F. Supp. 2d at 1277 (citation omitted); *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1300 - 01 (CIT 2006).

that those prices are not influenced by subsidies in China.

Finally, in at least some cases, the NME exports of the subject merchandise will account for a significant share of the world market, enough to influence prices in world markets. In such cases, particularly where the industry is export oriented or has excess capacity (a chronic problem in China), subsidies could increase output and exports from China, which, in turn, would reduce the prices of the good in question in world markets. These lower prices would reduce profits for producers selling in these markets which, in turn, would reduce the profit the Department derives from their financial statements, (used as surrogates for the Chinese producers), and, thus, reduce normal value.

Another argument put forth by the respondents, *i.e.*, that AD and CVD proceedings against NME countries automatically result in the application of a double remedy is even vaguer. TPCO and Changbao argue that the effects of countervailable domestic subsidies can pass through to normal value under the Department's NME methodology, so that AD duties on Chinese exports, by themselves, remedy all subsidies attributable to that merchandise. In other words, TPCO and Changbao assert that the NME methodology inherently provides a remedy for any and all countervailable subsidies such that concurrent application of CVDs is necessarily duplicative. Apparently, the respondents conclude that the NME methodology arrives at this result mechanically because of the lack of any statutory provision that requires or achieves this result. It appears that the general premise of this argument is that concurrent ADs and CVDs do not create automatic double remedies in ME proceedings, because domestic subsidies automatically lower normal value, and hence the dumping margins, *pro rata*. The NME AD methodology, on the other hand, produces a normal value that is not affected by subsidies in any way, so that it necessarily exceeds what would have been the ME dumping margin by the full amount of the subsidy, thus creating a double remedy, which the statue requires the Department to offset. We reject this proposition.

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

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

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

The counterpoint to the argument that domestic subsidies automatically lower normal values (and, thus, dumping margins) in ME cases, *pro rata*, is that domestic subsidies have no effect whatsoever on normal values (and, thus, dumping margins) determined under the NME methodology. Respondents argue that domestic subsidies do not affect normal value in NME cases because normal value is essentially imported from surrogate, ME, countries. As explained above, this premise is also incorrect, as there are several ways in which subsidies can lower NME normal values.

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

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

In *Kitchen Racks/PRC 07/24/09* and *OTR Tires/PRC 07/15/08*, the Department refused to interpret the Act requiring the automatic addition of export subsidies to U.S. prices in NME proceedings as an automatic addition of domestic subsidy CVDs. The Department refused to deduct domestic CVDs from U.S. prices because this would have resulted in the collection of total AD duties and CVDs that would have exceeded both independent remedies in full. The

Federal Circuit has upheld this position.[91] Similarly, the Department's refusal to treat antidumping duties and safeguard duties as a cost in AD calculations reflects the Department's effort to collect these distinct remedies in full, but no more.

The Department is charged with calculating dumping margins as accurately as possible. TPCO and Changbao fail to identify any item in the dumping margin calculation that is being counted twice. Thus, even if the normal value and export price have been determined accurately, TPCO and Changbao contend that the difference between these amounts should not be treated as the margin of dumping. Rather, because the respondents argue that the CVD law cannot be applied concurrently with the NME AD methodology, they would argue that the margin of dumping would be determined as the difference between the normal value and export prices (or constructed export price), less the amount of the CVD determined in a concurrent investigation of subsidies. Contrary to respondents' assertions, nothing is being double counted in the dumping margin calculation. Accordingly, the accurately calculated dumping margin should be collected in full as the remedy for pricing at less than normal value.

Additionally, we do not agree with TPCO's argument that the Department's conclusion in several prior cases that there is no evidence of a double remedy imposes an impermissible burden of proof. This would imply that TPCO attempted to furnish some evidence that a double remedy was actually created, but was unable to meet the heavy burden of proof imposed upon it by the Department. TPCO asked the Department to read an automatic 100-percent offset into the Act that would make any evidence concerning the alleged double remedy irrelevant. Even in cases where a clear statutory basis for granting a price adjustment exists, the burden to establish entitlement to that adjustment is on the party seeking the adjustment, which has access to the necessary information.[92]

Lastly, we reject the notion that Congress passed the AD and CVD laws to correct unspecified economic distortions and that, to the extent that these unspecified economic distortions may overlap, the Department is required to measure this overlap and provide an offset. Congress established two separate remedies for what it evidently regards as two separate unfair trade practices. The only point at which the Act requires the Department to reconcile these separate remedies is in the adjustment of AD duties to offset export subsidies. Because neither AD nor CV duties are concerned with economic distortion, as such, but are simply remedial duties calculated according to the detailed specifications of the Act, it follows that no overall economic distortion cap for concurrent proceedings can be distilled from the Act.

The theory advanced by TPCO and Changbao would not result in a reduction in AD or CVD assessed in concurrent proceedings by some fraction of the CVD. The theory is that the NME AD methodology entirely replaces subsidized, below market, costs with purely market-determined costs, creating a double remedy to that full extent. Thus, accepting this theory would result in the complete nullification of CVDs for China, as long as the NME methodology is applied. The Department does not accept this premise.

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[91] *Wheatland Tube Co. V. United States*, 495 F. 3d 1355 (Fed. Cir. 2007) (reversing *Wheatland Tube v. United States*, 414 F. Supp. 2d at 1271 (CIT 2006)).

[92] *See* Statement of Administrative Action, H. Doc. No. 103-316, Vol. 1 (1994) at 829.

Additionally, the respondents' reliance on *GPX (CIT 2009)* is misplaced. This decision is not final, as a final order has not been issued by the CIT, nor have all appellate rights been exhausted. Even if reliance on *GPX (CIT 2009)* were not misplaced, *GPX (CIT 2009)* does not support the positions attributed to it by the respondents. *GPX (CIT 2009)* did not find a double remedy necessarily occurs through concurrent application of the CVD statue and NME provision of the AD Act, only that the "potential" for such double counting may exist.

II. TPCO SPECIFIC ISSUES

Comment 8: Total AFA to TPCO

Petitioners argue that throughout this proceeding TPCO has engaged in a pattern and practice of intentionally withholding crucial information and misrepresenting other crucial information. Petitioners maintain that TPCO's actions indicate that it has failed to act to the best of its ability in complying with the Department's requests for information throughout this investigation. Petitioners argue that as the Department has already found, TPCO's actions have "seriously impeded" the Department's ability to properly calculate TPCO's dumping margin. Marverick argues that the law is clear that the Department shall "use the facts otherwise available" in reaching a determination where an interested party: (1) withholds information requested by the Department; (2) fails to provide information in a timely manner or in the form requested; (3) significantly impedes a proceeding; or (4) provides information that cannot be verified.[93] In selecting among the facts otherwise available, the Act permits the Department to use adverse inferences wherever an interested party fails to act to the best of its ability in responding to the Department's requests for information.[94]

Moreover Petitioners argue that the "statutory mandate that a respondent act to 'the best of its ability' requires the respondent to do the maximum it is able to do,"[95] and that in determining whether an interested party has met this standard, the Department should evaluate "whether {the} respondent has put forth its maximum effort to provide {it} with full and complete answers to all inquiries in an investigation or review."[96] "{A}ffirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference."[97] Petitioners argue that the Department has discretion to apply adverse inferences to a party "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully," and should consider "the extent to which a party may benefit from its own lack of cooperation."[98] Petitioners argue that, as described below, TPCO has "seriously impeded" this investigation on several key issues, and has repeatedly and willfully refused to provide the Department with necessary information.

Petitioners claim that at verification, the Department discovered that TPCO had in two instances

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[93] Section 776(a) of the Act.
[94] Section 776(b) of the Act.
[95] *Nippon Steel (2003).*
[96] *Id*.
[97] *See AD/CVD Final Rule (1997).*
[98] *SAA* at 870.

deliberately altered sales documents solely for purposes of this antidumping investigation. Petitioners maintain that TPCO's actions in this respect undermine the integrity of all of TPCO's information and documentation and renders TPCO's data completely unreliable. Furthermore, Petitioners claim that TPCO's actions rendered verification meaningless.

Petitioners argue that at verification, the Department discovered two instances where TPCO requested that the representative of its U.S. customer, Company B[99], sign and return altered purchase orders. First, Petitioners argue that the Department placed on the record an original purchase order and a "revised" one in which the price had been altered.[100] Petitioners argue that in the second instance, TPCO requested that Company B's representative revise certain purchase orders to change the descriptions of the products from "mechanical tubing" to "coupling stock."[101] The Department placed on the record the original purchase orders and the altered purchase orders containing the changed product descriptions.[102]

Petitioners argue that this reveals a pattern of behavior that calls into question the reliability and veracity of all of TPCO's submissions, and warrants the Department's application of total AFA to TPCO. Furthermore, Petitioners maintain that the Department's uniform policy has been to apply adverse inferences wherever a respondent submits documents that are not the genuine and original documents generated or obtained by the company in the normal course of business, but were instead altered in response to an antidumping proceeding.[103] In addition, without citation, Petitioners argue that in a changed circumstances review of the antidumping duty order on certain large newspaper printing presses from Japan, the Department applied total AFA with respect to a respondent that submitted documentation that had been altered so as to conceal from the Department the true price of a U.S. sale, thus lowering its dumping margin.

Moreover, Petitioners argue that same TPCO salesperson involved in altering purchase orders referenced above also reported that a computer virus had "conveniently" destroyed any trace of TPCO's e-mail correspondence with Company B, its EP customer. Petitioners argue that these emails would be critical in establishing both the date of sale for TPCO's EP sales, and as discussed below, in evaluating the nature of the relationship between Company A[104] and Company B.

In addition to the above, Petitioners claim that TPCO impeded the progress of this investigation by withholding critical information regarding its relationship with its U. S. customers. Petitioners argue that due to these actions, the Department twice found that TPCO had impeded the progress of this investigation. Petitioners maintain that because TPCO withheld vital information relating to its affiliation with its U.S. customers TPCO's U.S. database currently

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[99] Company B's name is considered to be business proprietary information, accordingly we have used this designation throughout when referencing this party.
[100] TPCO Verification Report at 14 (Public Version).
[101] TPCO Verification Report at 13 (Public Version); FOP Verification Exhibits at Exhibit 10, p. 1 (APO Document). .
[102] TPCO Verification Report at 13 (Public Version); FOP Verification Exhibits at Exhibit 10, p. 1 (APO Document).
[103] Petitioners cites *FMTC/PRC 3/16/09*
[104] Company A's name is considered to be business proprietary information; accordingly, we have used this designation throughout when referencing this party.

includes sales to an affiliated party.

Specifically, Petitioners claim that TPCO failed to disclose the nature of its relationship with a U.S. customer, Company A.[105] After reviewing TPCO's initial response, the Department discovered this relationship and issued a supplemental questionnaire stating that although TPCO was aware of the relationship, TPCO did not describe it in the narrative of its Section A response, did not mention it in its Section C response, did not contact the Department about this issue, and in fact incorrectly identified the name of the company with which TPCO shared a business relationship with its customer. Further, Petitioners argue that the Department stated in the supplemental questionnaire that while being fully aware of this issue TPCO nevertheless submitted a U.S. sales database to the Department consisting of what appear to be sales to an affiliated reseller, again, without any notice to the Department that these sales were to potentially affiliated parties.[106]

Petitioners argue that the Department further found that TPCO's omission had "seriously impeded the progress of this investigation."[107] Petitioners assert that TPCO had been aware of the possible affiliation issue, discussed the issue with Company A, yet refused to raise the issue with the Department and instead waited to see if the Department would discover the issue.

In addition, Petitioners argue that despite the Department's previous warning with respect to Company A, TPCO proceeded to withhold information regarding its relationship with, Customer B. Although TPCO had previously acknowledged that it co-owned ajoint venture with yet another company (Company C) [108], it did not disclose that Company C is the parent of Company B.[109] Petitioners argue that the Department discovered this relationship through its own research. Furthermore, Petitioners argue that by letter dated November 17, 2009, the Department reviewed the relevant facts and admonished TPCO for failing to disclose the connection between Company C and Company B, especially in light of the Department's earlier rebuke regarding TPCO's handling of its connection to Company A.[110] Petitioners argue that the Department stated in its November 17 letter that TPCO failed to consult with the Department as to whether Company C and Company B should be considered affiliated with TPCO in spite of the Department's August 31, 2009 letter and supplemental questionnaire wherein the Department raised affiliation concerns similar to those expressed in this letter with respect to TPCO's relationship with Company A. Petitioners argue that in response to that letter TPCO acknowledged its affiliation with Company A and provided a revised U.S. sales database as requested, reporting sales made by Company A but made no mention of its potential affiliation with Company C or Company B.[111] Petitioners argue that the Department then concluded for the second time that TPCO's actions had seriously impeded the progress of the investigation.[112]

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[105] Aug. 31, 2009 Supplemental Questionnaire at 1 (APO Version).
[106] *Id.* at 2.
[107] *Id.* (Public Version).
[108] Company C's name is considered to be business proprietary information, accordingly we have used this designation throughout when referencing this party.
[109] TPCO's Section A Response at Ex. A-11 (APO Version).
[110] Nov. 17, 2009 Supplemental Questionnaire at 2 (APO Version).
[111] *Id.*
[112] *Id.* As a result of the relationship between Company B and its parent, the Department subsequently found that TPCO and Company B are affiliated. Affiliation Memo at 6-7 (APO Version).

Further, Petitioners maintain this forced the Department to make not one, but two requests to TPCO to report their CEP sales to the first unaffiliated customer.[113] Moreover, Petitioners maintain that the evidence demonstrates that Company A and Company B are intimately connected, yet Company B declined to provide its sales data as requested by the Department.

In addition, Petitioners claim that TPCO repeatedly made assertions concerning its FOPs that were directly contradicted by its own business records and provided information that could not be verified. Petitioners argue that TPCO initially reported compressed air as an FOP and provided consumption data for this input.[114] However, Petitioners maintain that prior to verification, TPCO submitted purported corrections to its Section D response in which it asserted that it had actually self-produced all of the compressed air it used during the POI.[115] It therefore changed its reporting of the FOP for compressed air in its revised cost database.[116] Petitioners maintain that TPCO's own documents show that it purchases compressed air. Furthermore, Petitioners maintain that at verification, the Department found documents demonstrating that TPCO had, in fact, both self-produced and purchased compressed air.[117]

In addition, Petitioners argue that in its submission of proposed surrogate values, TPCO reported that it used coking coal.[118] However, Petitioners argue that TPCO later reversed itself and claimed that that it used steam coal, not coking coal, in its production process.[119] Petitioners claim that at verification, the Department found documents demonstrating that, TPCO used coking coal in its production process.[120] Petitioners claim that documents collected at verification and other documents on the record show that TPCO purchases coking coal as a direct input in the steel making process. Petitioners claim that given all of the above, the evidence overwhelmingly demonstrates that total AFA should be applied to TPCO.

Petitioners argue that the law is clear that the Department "shall" use facts available in reaching a determination where a respondent: (i) withholds information that has been requested by the Department; (ii) fails to provide such information by the deadline for the submission of the information or in the form and manner requested; (iii) significantly impedes a proceeding; or (iv) provides information that cannot be verified.[121] The application of facts available is required where any one of these criteria is met. Petitioners claim that here, all of the criteria are met and, accordingly, the Department must disregard all information submitted by TPCO in this

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[113] *See* Letter from Eugene Degnan, Program Manager, to Daniel L. Porter, Winston & Strawn, LLP, re: *Less-Than-Fair-Value Inv. of Certain OCTG from PRC: Supplemental Questionnaire – Deadlines No. 25, 2009 and Dec. 1, 2009* (No. 17, 2009) at 2 ("Department's November 17, 2009 Supplemental Questionnaire to TPCO"); and Letter from Eugene Degnan, Program Manager, to Daniel L. Porter, Winston & Strawn, re: *Less-Than-Fair Inv. of Certain OCTG from PRC: Supplemental Questionnaire* (Aug. 31, 2009) at n. 3 ("Department's August 31, 2009 Supplemental Questionnaire to TPCO").
[114] TPCO's Section D Response at Ex. D-3 (APO Version).
[115] TPCO's Clarification and Corrections to Section at 3 (Public Version).
[116] Compare TPCO's FOP Database (Oct. 30, 2009) (APO Document) with TPCO's FOP Database (Nov. 25, 2009) (APO Document).
[117] TPCO's Clarification and Corrections to Section D at Exhibit 6d (APO Version); TPCO Verification Report Exhibits at Exhibit 20 (APO Version).
[118] TPCO's Comments Regarding Coal at 2 (Public Version).
[119] *Id.*
[120] TPCO Verification Report Exhibits at Exhibit 20, pp. 45-46 (APO Version).
[121] 19 U.S.C. § 1677e(a)(2) (2006).

investigation and apply total facts available.

Petitioners claim that TPCO has significantly impeded this investigation by altering purchase orders and therefore has undermined the reliability of all of TPCO's submitted information and jeopardized the integrity of the Department's information gathering and verification process.[122] Petitioners argue that in *Sulfanilic Acid/Hungary 2/12/93*, the Department concluded that the respondent's entire response – including information that had been seemingly verified – was unreliable.[123] Petitioners argue that the Department has repeatedly relied on this principle in other cases where the existence of fabricated or altered documents has come to light.[124] Furthermore, Petitioners claim that the CIT has similarly concluded that the Department properly disregards all of a respondent's information under such circumstances.[125]

Moreover, Petitioners contend that, in situations where documents are altered, the Department has determined that the issue of whether the respondent intended to commit wrong doing is irrelevant.[126] Furthermore, Petitioners argue that while it is the rare case where the Department will discover evidence showing that a respondent has altered documents, in this case it happened not once, but twice. Petitioners argue that the fact that the Department twice discovered TPCO's alterations of its documents – and TPCO did not volunteer this information at any point– is highly significant.[127]

Moreover, Petitioners maintain that while there is simply no way to know whether TPCO's other

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[122] Petitioners cite *Sulfanilic Acid/Hungary 2/12/93*.

[123] *Id.*

[124] *See, e.g., FMTC/PRC 3/16/09*, IDM at Comment 1 (applying total adverse facts available to a respondent that fabricated documents to support its claimed purchases of steel inputs from market economy suppliers because these submissions "undermine{d} the reliability and credibility of {the respondent's} entire questionnaire response"); *CWP/PRC 4/24/08* (finding that the respondent's failure to contest an allegation that false documents had been submitted to the Department concerning its purchases of hot-rolled steel coils "calls into question the veracity of all information {the respondent} submitted on the record"), *unchanged in the final determination*; *Pure Magnesium/PRC 12/14/09* IDM at Comment 1 (applying total adverse facts available where respondents, among other things, provided the Department with altered documentation); *see also Honey/PRC 7/6/05*at IDM at Comment 8 (even where the respondent brought the backdating of certain documents relating to affiliation to the attention of the Department, the Department found that the backdated materials "call{ed} into question the overall integrity of the documents that have been provided to the Department" on that issue and did not rely on any of them).

[125] Petitioners cite *Qingdao Taifa (2009)* (finding that where the respondent had "attempted to withhold or alter sales and production documents," the Department "properly concluded that the information that {the respondent} provided was 'incomplete and unreliable' and that no information on the record could be used to calculate an accurate dumping margin for {the respondent}"). Petitioners also cite *Chang Tieh (1993)* (citing *Acid from Hungary* and recognizing the Department has authority to disregard a respondent's submitted information "where documents discovered at verification indicate{} that information might have been fabricated for the purposes of the investigation.").

[126] Petitioners cite *Honey/PRC 7/6/05* IDM at Comment 8.

[127] *See PSCW/PRC 6/17/97*. Petitioners claim that in that case, while recognizing the gravity of the situation where a respondent altered source documents, the Department decided to limit the application of facts available to the portion of the response relating to labor costs, emphasizing that when questions arose concerning the documents, the respondent "immediately" reported to the Department that certain labor cost documents had been altered. This is a far cry from the instant case, where TPCO did not come forward with the information regarding the altered purchase orders at any time—not even after the Department made its initial discovery that TPCO had retroactively revised its documents.

documents were similarly "revised," there is certainly nothing in the record to suggest that this was an isolated incident. Petitioners maintain that there is simply no question that TPCO could make similar "revisions" to its own sales documents where it would be able to do so without the assistance of its customer and there would be no "paper trail" for the Department to detect. Petitioners maintain that the bottom line is that, as in *Sulfanilic Acid/Hungary 2/12/93*, the evidence here compels the conclusion that all of TPCO's information – even information that was seemingly "verified" – is unreliable and unusable.

Moreover, Petitioners claim that TPCO has significantly impeded this investigation by repeatedly failing to supply vital information on the issue of affiliation. Petitioners claim that the Department has found that TPCO is affiliated with its U.S. customer, Company A.[128] Furthermore, Petitioners maintain that although TPCO was plainly aware of this relationship, it failed to disclose it to the Department.[129] Petitioners argue that this failure prevented the Department (and Petitioners) from adequately assessing this issue in a timely manner, delayed the submission of the correct U.S. sales and prompted the Department to conclude that TPCO's actions "seriously impeded the progress of this investigation."[130]

Moreover, Petitioners claim that despite this warning, TPCO still did not provide essential information regarding its relationship with Company B. Specifically, Petitioners argue that TPCO failed to disclose that Company C, TPCO's partner in a joint venture, was the parent of Company B[131] Petitioners argue that as the Department concluded, TPCO's actions prohibited the Department from conducting a meaningful analysis of the relationships between TPCO, Company C, and Company B, and prevented the Department from identifying the correct U.S. customer prior to the preliminary determination. Petitioners claim that this caused the Department to conclude for a second time that TPCO's omission "seriously impeded the progress of this investigation."[132]

Moreover, Petitioners claim that TPCO has significantly impeded this investigation by failing to provide accurate, reliable and useable information to the Department. Petitioners claim that the failure of a respondent to provide accurate, reliable and useable information plainly impedes the Department's investigation.[133] Petitioners argue that in many instances, where TPCO revised its reported data asserting that the changes were based on its "further review," the revised data were directly contradicted by its own documentation. Petitioners claim that after initially reporting compressed air as an FOP,[134] TPCO subsequently submitted purported corrections in which it asserted that it actually self-produced all the compressed air it used during the POI.[135] Furthermore, Petitioners claim that at verification, the Department found documents

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[128] Affiliation Memo at 3-5 (APO Version).
[129] Aug. 31, 2009 Supplemental Questionnaire at 2 (Public Version).
[130] *Id.*
[131] Nov. 17, 2009 Supplemental Questionnaire at 1 (APO Version).
[132] *Id.* at 2 (Public Version).
[133] *See Honey/PRC 7/6/05*, IDM at Comment 8 (citing *Mannesmanrohrn-Werke* (CIT 2000) ("it is the respondent's responsibility to build an accurate record, as the information necessary to calculate accurate margins is in the sole possession of respondents")).
[134] TPCO's Section D Response at Exhibit D-3 (APO Version).
[135] TPCO's Clarification and Corrections to Section D at 3 (Public Version).

demonstrating that TPCO had, in fact, purchased compressed air.[136] In addition, Petitioner s claim that after TPCO initially reported that it used coking coal,[137] it later reversed itself and claimed that "{u}pon further review" it "discovered" that it used steam coal, and not coking coal, in its production process.[138]

Petitioners claim that at verification, the Department found documents demonstrating that, in fact, TPCO used coking coal in its production process.[139] In addition, Petitioners argue that the Department was unable to verify the following items: 1) the date of sale and completeness of TPCO's reported sales due to missing email records for all of 2008;[140] 2) the date of payment for one of TPCO's surprise EP sales;[141] 3) the percentages of purchased and self-produced billets consumed by TPCO during the POI;[142] 4) TPCO's reported coal consumption for several months of the POI;[143] 5) The distance between TPCO's coal suppliers and its production facilities;[144] 6) the composition of the protective caps and rings used for packing;[145] 7) the reported labor hours for one of TPCO's steel factories;[146] and 8) the total production quantities for both of TPCO's steel factories.[147]

Petitioners argue that when these items are viewed in conjunction with TPCO's alterations of sales documents, its stonewalling regarding its relationships with its U.S. customers, and its numerous unsolicited and unexplained changes to its data, they more than amply demonstrate that TPCO has impeded the conduct of this investigation.

Furthermore, Petitioners maintain that not only did TPCO fail to provide the information concerning its relationships with its customers on the critical affiliation issue, it also failed to: (i) respond to Section E of the Department's Questionnaire with regard to sales that were further manufactured in the United States; (ii) report U.S. sales to affiliates of Company A; and (iii) provide FOPs for a number of raw materials.[148] Petitioners claim TPCO also failed to provide numerous documents that were repeatedly requested by the Department.[149] Thus, they contend there is no question that this criterion for using facts available has been met as well.

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[136] *See id.* at Exhibit 6d; FOP Verification Exhibits at Exhibit 20 (APO Version). *See also* Section IV.
[137] TPCO's Comments Regarding Coal at 2 (Public Version).
[138] *Id.*
[139] FOP Verification Exhibits at Exhibit 20, pp. 45-46 (APO Version).
[140] FOP Verification Report at 12 (APO Version).
[141] *Id.* at 19 (Public Version).
[142] *Id.* at 23.
[143] *Id.*
[144] *Id.* at 24.
[145] *Id.* at 27.
[146] *Id.* at 28.
[147] *Id.* at 29.
[148] Specifically, TPCO failed to calculate FOPs for a number of raw material inputs vital to the production of the subject merchandise, including scrap processing and fluxing agents used to remove impurities from steel – *e.g.*, lime, coal particles, desulfurizers, etc. TPCO's Supplemental Questionnaire Response (Oct. 5, 2009) ("TPCO's Oct. 5 Response") at 12, 20, 23 (Public Version). Indeed, in the case of FOPs relating to scrap processing, the Department explicitly instructed TPCO to report these FOPs in its Supplemental Questionnaire, but TPCO failed to do so. *Id.* at 12, 23.
[149] For example, TPCO failed to provide documents and information twice requested by the Department that were essential to determine whether TPCO is eligible for a separate rate. *Id.* at 7 (Public Version).

In addition, Petitioners claim that TPCO has failed to provide accurate and reliable responses to the Department's requests in a timely fashion. Rather, petitioners claim that TPCO has provided numerous unsolicited changes to its databases and purported corrections to it responses well beyond the deadlines established by the Department. Petitioners argue that this course of conduct has prevented both the Department and Petitioners from having a meaningful opportunity to analyze TPCO's information. Petitioners claim that the following are but two examples: First, Petitioners claim TPCO made wholesale revisions to its U.S. sales database shortly before the preliminary determination. Petitioners contend that TPCO submitted an unsolicited and completely revised U.S. sales database for the sales by Company A. According to TPCO, the net quantities, product codes, product descriptions, physical characteristics, control numbers, further manufacturing costs, U.S. import duties, international freight, gross unit prices, inland freight, and indirect selling expenses were all misreported in its previous submission.[150]

Secondly, Petitioners claim that TPCO made extensive revisions to its FOP database. Petitioners claim that TPCO revised its Section D database after discovering that it had failed to report certain pig iron purchases during the POI, omitted FOPs for couplings, misreported the FOPs for argon, electricity, steam, coke and natural gas, and reported the wrong unit of measurement for a number of other FOPs.[151] In addition, Petitioners argue that TPCO also changed the usage rates for numerous FOPs, *e.g.*, calcium iron line, carbon wire, direct and indirect labor, ferrotitanium, ferrosilicon, micro-chromium, mid-chromium, niobium, and water, without any explanation whatsoever.

Petitioners claim that the application of facts available is required where even one of the four criteria for using facts available is met. Here, Petitioners claim, all four of the criteria have been met. Accordingly, the Department must disregard all information submitted by TPCO in this investigation and apply total adverse facts available.

TPCO claims that Petitioners' argument for application of total adverse facts available is lacking in merit. TPCO argues that Petitioners base their argument on four factual claims:.1), Petitioners assert that TPCO has impeded this antidumping investigation, 2) Petitioners assert that TPCO provided information that cannot be verified, 3) Petitioners assert that TPCO has withheld information from the Department, and 4) Petitioners assert that TPCO has failed to provide responses by the Department's established deadlines. TPCO argues that it did not impede this investigation. TPCO claims that Petitioners' assertion that TPCO significantly impeded this investigation is based on three alleged actions by TPCO: 1) Petitioners assert that TPCO submitted altered purchase orders to the Department in response to the Department's request for information, 2) Petitioners assert that TPCO withheld essential information on affiliation, and 3) Petitioners assert that TPCO engaged in a pervasive pattern of defective reporting. TPCO claims that these assertions are not true.

TPCO argues that it did not submit altered purchase orders to the Department. TPCO claims that petitioners base their claim of altered purchase orders on two emails found by the Department at verification. With respect to the first email, TPCO contends that a company official emailed its

[150] TPCO's Additional SDQR-10/13/09at 1-5 (Public Version).
[151] TPCO's Additional SDQR-10/13/09 at 2-5 (APO Version).

customer's representative to request that it submit a revised purchase order in accordance with TPCO's normal business practice. TPCO argues that a TPCO sales manager requested the revised purchase orders in an attempt to make TPCO's records comport with the normal way TPCO conducted and documented its sales negotiations. TPCO argues that the sales manager explained at verification that during normal times, the long-standing practice of TPCO International's sales team was to have the customer issue a revised purchase order every time there was a change after the original purchase order was issued, but before the invoice was issued. Furthermore, TPCO claims that TPCO International had this practice because TPCO International's sales system required that terms of every final invoice to the customer match the final purchase order issued by the customer. However, TPCO claims that, as the sales manager explained at verification, during the last half of 2008 and the first quarter of 2009, the U.S. market was extremely volatile, often requiring multiple changes to original purchase orders prior to shipment (and invoicing the customer). Furthermore, TPCO claims that the sales manager explained that during these "crazy market times," TPCO did not always obtain revised purchase orders in accordance with TPCO's practice that it do so. Rather, in some cases, last minute changes to price or quantity made over the phone were incorporated into the invoice but a corresponding revised purchase order was not issued. TPCO argues that, believing that it was important to demonstrate that all TPCO International requirements were followed, the sales manager decided, on his own, that he should ask the customer to send those revised purchase orders that that customer would have sent in the ordinary course of business.

Moreover, TPCO claims that with the exception of one, the amended purchase orders in question were never submitted to the Commerce Department. In addition, TPCO argues that none of the amended documents, even if they had been submitted to the Department, would have had any impact whatsoever on the Department's analysis. Furthermore, TPCO claims that the purchase orders in question were not altered, rather the sales manager simply had the customer send the actual amended purchase orders. Furthermore, TPCO argues that these documents would have done nothing more than provide additional superfluous substantiation to the facts that were actually presented to the Department via other, fully verified means. TPCO claims that in sum, even if there was an attempt by a misguided but well-intentioned employee to perfect his own records prior to verification, this attempt did not have, and could not have had, any effect on TPCO's outcome in this investigation.

TPCO argues that with respect to the second email, the sales manager asked the same customer to change the product description of certain purchase orders so that the purchase orders to be presented to the Commerce Department would better reflect what was actually being sold pursuant to the purchase orders; namely, subject merchandise, *i.e.*, coupling stock. TPCO argues that the sales manager took this action in an attempt to ensure that there would be no confusion in the information to be presented to the Commerce Department at verification. TPCO maintains that none of these modified purchase orders were ever presented to the Department. In addition, TPCO contends that the relevant sales of subject merchandise were reported to the Department complete with the "mechanical tubing" description on the original documentation.

In addition, TPCO argues that it did not withhold essential information on affiliation. TPCO claims that Petitioners' assertion demonstrates both a misunderstanding of the factual record and of Respondents' obligation for submitting information in response to the Department's questionnaire. TPCO claims that Petitioners' assertion that TPCO failed to disclose the joint

venture formed by TPCO and Customer A is wrong. TPCO claims that in its Section A Response, dated July 29,2009, it submitted to the Department a comprehensive list of all direct affiliates of TPCO (*e.g.*, affiliates in which TPCO had a direct equity interest) and all indirect affiliates of TPCO, that is, those affiliates of TPCO's affiliates in which the TPCO affiliate had an equity interest.

TPCO argues that Petitioners' second assertion underlying its argument is that TPCO failed to disclose that TPCO's joint venture partner, was the parent of Company B is wrong for multiple reasons. First, TPCO argues, the evidentiary record makes clear that TPCO's joint venture partner, is not the parent of Company B. Rather, the owner of Company B is Company D,[152] a separate company from Company C (joint venture partner). Moreover, TPCO argues that TPCO does not have an obligation to report that there might be some "distant" relationship between the joint venture partner and Company B. TPCO argues further there is no requirement that a respondent provide information about a possible relationship between parties when the respondent has zero equity relationship with either party. Furthermore, TPCO claims that it has no equity interest in either its joint venture partner or Company D, nor does the joint venture partner or Company D have any equity interest in TPCO. Moreover, TPCO argues it has no equity interest in Company B, and Company B has no equity interest in TPCO. TPCO claims that the joint venture partners, Company D and Company B, are completely separate companies from TPCO. Moreover, TPCO argues that, as a respondent answering the Department's questionnaires, TPCO is expressly prohibited from submitting any factual information that TPCO, itself, cannot verify using documents under TPCO's control. TPCO goes on to argue that even assuming that TPCO somehow knew the true nature of any possible relationship between the joint venture partner, the UK joint venture partner and Company B, its counsel would advise TPCO against giving the Department this information because the information was not under TPCO's control and TPCO is not able to verify such information using its own documents and records. TPCO claims that the Department is very clear that all information and data provided to the Commerce Department must be capable of being verified and given that TPCO does not possess any corporate ownership records for the joint venture partner, company four, or Company B, TPCO would not be able to verify any potential relationship between the joint venture partner and Company B.

Moreover, TPCO argues that because it was under no obligation to provide this information to the Department, the Department is prohibited under law from applying adverse facts available for the absence of this information.

In addition, TPCO claims that it did not engage in a pervasive pattern of defective reporting as demonstrated by the Department's verification reports. TPCO claims that the Department's verification reports demonstrate that the Department was able to verify all of the data it needs to calculate an antidumping margin for TPCO. More specifically, TPCO argues that the Department's verification reports demonstrate unequivocally that virtually all data and information submitted by TPCO was fully verified and no discrepancies were found in the information and data submitted by TPCO. Furthermore, TPCO claims that the Department's verification reports unequivocally demonstrate that the Commerce Department was able to verify

[152] Company D's name is considered to be business proprietary information; accordingly, we have used this designation throughout when referencing this party.

every significant aspect of TPCO's data needed to calculate TPCO's dumping margin. In support of its position, TPCO cites a list of data/issues it claims were successfully verified by the Department.

TPCO argues that it did not withhold any information from the Department. TPCO argues that in Petitioners' argument that TPCO withheld information, Petitioners "essentially" repeat their argument that TPCO failed to provide information regarding potential affiliations with its customers. TPCO states that it addressed these issues above and there is no basis to conclude that TPCO failed to provide information concerning its corporate affiliations.

TPCO claims that it did not fail to provide responses to the Department within established deadlines. TPCO argues that for every questionnaire issued by the Department TPCO provided its response within the timetable established by the Department. Accordingly, TPCO argues, there is zero evidentiary support for Petitioners' argument that TPCO failed to provide responses to the Department's questions within the deadlines established by the Department.

Moreover, TPCO argues that the legal support cited by Petitioners does not apply to this case. TPCO claims that, in *CWP/PRC 4/24/08* the Department learned of widespread document falsification, which included fake documents, including sales contracts, commercial invoices, packing lists, and mill test reports. TPCO argues that these documents were complete forgeries. TPCO argues that in *Pure Magnesium/PRC 12/14/09* the respondents locked Department officials out of an accounting room during the verification and literally threw adverse documentation out the window. TPCO argues that in contrast to its actions, these actions were egregious and were done in an attempt to alter the dumping margin. Furthermore, TPCO argues that in the underlying review of *Qingdao Taifa (2009)* the respondent completely lied about how it sold its merchandise. TPCO claims that in that review, the respondent claimed that it did not sell its hand trucks with wheels. During verification, however, the Department found evidence that the respondent indeed did sell its merchandise with wheels and that respondent altered its production subledger during verification and hid vital factory-out slips and production notices from the Department. TPCO claims that these actions were done in order to avoid duties under the AD order. TPCO argues that in *FMTC/PRC 3/16/09*, there were pervasive problems with many documents submitted by the respondent to the Department. TPCO argues that the respondent in *FMTC/PRC 3/16/09* faked several important documents that the Department would have otherwise relied on to determine its dumping margins.

TPCO argues that in *PSCW/PRC 6/17/97*, partial AFA was used to value labor TPCO argues that in explaining the factual scenario, US Steel claims that the AFA used were only partial because the respondent immediately admitted that it forged important labor documents after the Department obtained evidence of the forgeries. However, this explanation leaves out important aspects that led the Department to use partial AFA instead of total AFA. In that case, the forgery was limited to documents regarding labor.

TPCO argues that in *Sulfanilic Acid/Hungary 2/12/93*, another case cited by Petitioners, the Department found an altered price quote document that the respondent attempted to pass off as authentic to demonstrate that it had paid market prices for one of its inputs. TPCO argues that such a document is far more important to an antidumping case than purchase orders (which were

never even submitted to the Department) such as we have in the OCTG case. TPCO argues the price quote was altered in a clear attempt to alter dumping margins. TPCO argues that two additional cases that US Steel relies upon in its section on altered documents have essentially nothing in common with the OCTG case. TPCO argues that *Chang Tieh (1993)* involves a respondent that may have sold subject merchandise to the United States at artificially high prices. There is no mention of altered documents at all in that case. Furthermore, TPCO argues that *Honey/PRC 7/6/05* deals with backdated ownership transfer documents. TPCO claims that the only effect of the rejection of the backdated document was the Department's lack of finding of affiliation on a specific date. TPCO claims that, accordingly, neither of these cases bears any resemblance to the case at hand and they should not persuade the Department to apply AFA to TPCO.

TPCO argues that the cases cited by Petitioners and described above, are not applicable to the OCTG case. TPCO argues that its actions (a) did not involve any intent to avoid AD duties, (b) only concerned a request to amend documents to make TPCO's actual sales of subject merchandise more clear, (c) did not result in any of the altered documents being submitted to the Department, and (4) did not influence the Department's methodology.

Department's Position: The Department has determined that the application of total AFA to TPCO is not appropriate. Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if necessary information is not on the record, or an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[153]

First with respect to altered purchase orders found at verification, TPCO did not withhold information that had been requested by the Department; fail to provide requested information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; significantly impede the proceeding under the antidumping statute; or provide information that cannot be verified.

In one instance, TPCO requested that its customer provide updated (*i.e.*, altered) purchase orders in accordance with its normal business practice. As explained by company officials and verified

[153] *See SAA* at 870.

by the Department, TPCO routinely requests that customers submit revised purchase orders when changes to prices are made. TPCO then maintains the revised purchase order whose prices will be reflected in the associated commercial invoice. At verification, Department officials reviewed several revised purchase orders. The purchase orders were stamped "REVISED" and included both the original purchase order date and the revised purchase order date.[154] Company officials explained that they had requested missing revised purchase orders from their customers to perfect their records and prepare for verification. The revised purchase order prices tied to TPCO's commercial invoices and TPCO's books and records. In the second instance regarding altered purchase order, TPCO officials requested that its customers change the merchandise description on certain purchase orders from mechanical tube to coupling stock. Company officials explained this was done for VAT rebate purposes and to maintain consistent merchandise descriptions for its customers. Moreover, both the original description and the revised description cover subject merchandise. In addition, the Department officials verified that in its books and records, TPCO treats coupling stock as a type of mechanical tube. TPCO provided all documents requested at verification relating to these revised documents as requested and Department officials found these documents consistent with TPCO's reported sales information. Moreover, this document was dated outside the POI in July of 2006.[155]

Citing *Sulfanilic Acid/Hungary* 2/12/93, *FMTC/PRC 3/16/09, CWP/PRC 4/24/08, Pure Magnesium/PRC 12/14/09,* and *Honey/PRC 7/6/05,* Petitioners argue that the Department has repeatedly held that a respondent's entire response is unreliable where fabricated or altered documents have come to light. Furthermore, citing *Qingdao Taifa (2009)* and *Chang Tieh (1993)* Petitioners maintain that the CIT has upheld the Department's decisions where it deemed information provided by the respondent incomplete and unreliable where the respondent's information was withheld, altered or fabricated. However, we agree with TPCO that these cases are not applicable to the instant investigation. Respondent's actions in the above cases were egregious attempts to alter or avoid dumping margins. For example, in *Pure Magnesium/PRC 12/14/09* respondents locked Department verifiers out of a room and threw documents out of the windows. In *Sulfanilic Acid/Hungary 2/12/93* respondents altered a price quote document in an attempt to demonstrate that it paid market prices for one of its inputs. Further, the issue in *Honey/PRC 7/6/05* related to backdated ownership transfer documents altered in an attempt to affect the Department's affiliation analysis. These alterations were made to deceive the Department and avoid dumping duties. In the instant case, the altered purchase orders in question were done in accordance with TPCO's established business practice and were not done to impede or misinform the Department's investigation or to avoid dumping duties. Furthermore, the revised purchase orders were verified and tied to TPCO's reported sales. Moreover, the revised merchandise description changed only from one type of subject merchandise to another, reflecting TPCO's general business practice that it treats one description as a subset of the other. TPCO cooperated in explaining these changes and in providing supporting documents which were verified by the Department.

With respect to Petitioners claim that TPCO impeded the investigation by withholding critical information regarding its relationship with its U.S. customers, for further discussion of this topic *see* Comment 9 in this memorandum where the Department discusses application of partial AFA.

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[154] *See* TPCO Verification Report at Exhibit 10.
[155] *See* TPCO Verification Report at pages 12 and 13.

Petitioners also claim that TPCO made assertions concerning its FOPs that were contradicted by its own business records and provided information that could not be verified. Petitioners argue that TPCO claimed it self-produced all of the compressed air it used during the POI. In addition, Petitioners argue that TPCO first reported it consumed coking coal but then reversed itself and claimed that it used steam coal instead of coking coal in its production process. However, TPCO did not claim it self-produced all of the compressed air it used during the POI. TPCO stated at page 3 of TPCO's SDC-11/30/09 that "TPCO produces pressured air used in the production process of OCTG." However, TPCO changed its reporting of compressed air in its FOP database. For further discussion of this topic *see* Comment 22 in this memorandum where the Department discusses application of partial AFA to value this FOP. With respect to coking coal and steam coal, the Department has determined that evidence on the record does not contradict TPCO's claim that it used steam coal to produce subject merchandise. For further discussion of this topic *see* Comment 21 in this memorandum.

Furthermore, Petitioners claim that the Department should apply total AFA to TPCO because the Department could not verify the date of sale and completeness of TPCO's reported sales due to missing email records for all of 2008;[156] 2) the date of payment for one of TPCO's surprise EP sales;[157] 3) the percentages of purchased and self-produced billets consumed by TPCO during the POI;[158] 4) TPCO's reported coal consumption for several months of the POI;[159] 5) The distance between TPCO's coal suppliers and its production facilities;[160] 6) the composition of the protective caps and rings used for packing;[161] 7) the reported labor hours for one of TPCO's steel factories;[162] and the total production quantities for both of TPCO's steel factories.

Although we noted minor discrepancies for some of the above-mentioned items, we were able to satisfactorily verify these items as described below and in the TPCO Verification Report. With respect to the missing emails, we investigated this issue thoroughly at verification and did not find any evidence to contradict TPCO's explanation that a computer virus destroyed the emails in question. Furthermore, TPCO explained that it does not have a policy that emails must be maintained, and that, emails that are maintained on the company's servers are deleted periodically in the normal course of business.[163] Moreover, contrary to the Petitioners' assertions we were able to verify the completeness of TPCO's reported U.S. sales. We stated at page 16 of the TPCO Verification Report that "We performed several completeness checks of TPCO IET's accounting system to determine whether TPCO IET correctly reported its universe of sales of subject merchandise to the United States." We noted no discrepancies in this respect. With respect to the payment date for one of TPCO's surprise EP sales traces, we stated in the verification report that " . . . we observed a minor discrepancy in the source document regarding the pay date." This error was isolated and attributed to a bank error.[164] With respect to the

[156] FOP Verification Report at 12 (APO Version).
[157] *Id*. at 19 (Public Version).
[158] *Id.* at 23.
[159] *Id.*
[160] *Id.* at 24.
[161] *Id.* at 27.
[162] *Id.* at 28.
[163] *See* the TPCO Verification Report at pages 12 and 13.
[164] *See* the TPCO Verification Report at page 19.

percentages of purchased and self-produced billets consumed by TPCO during the POI, we verified the purchased and self-produced quantities at verification.[165] With respect to coal, the Department verified coal consumption. TPCO explained that it ". . . allocated costs 50/50 between coal use for steam and coal use for heating. For the final three months of the POI, the ratio was 55 percent steam, 45 percent heating. Company officials explained that this allocation is done in the normal course of business and that the ratios are based on the company's experience. Company officials prepared a spreadsheet comparing coal consumption figures using the allocation methodology with figures calculated using the company's cost sheets."[166] With respect to TPCO's coal supplier distance, TPCO reported the distance from the port to TPCO's facilities, because it could not confirm the distance to the coal supplier. This was a conservative reporting method, since under the *Sigma Corp (1997)* guidelines, we apply the shorter of these two distances.[167] In other words, TPCO did not benefit by not reporting the distance to the coal supplier, because if that distance was further away, we would have used the distance to the port. Conversely, if the distance from the supplier was closer than the distance from the port, by not reporting the former, TPCO may miss any benefit it would have had from reporting that shorter distance. We verified the reported distance to the port.[168] With respect to the composition of the protective caps and rings used for packing, we determined they were composed of plastic and steel.[169] With respect to labor at factory one, we stated in the verification report that "We verified the corrected labor amounts against timesheets and factory reports."[170] With respect to the total production quantities for both of TPCO's steel factories we stated in the TPCO verification report that "We observed that the total production quantities from both factories did correspond to the reported quantity of production."[171]

Furthermore, Petitioners argue that the Department should apply total AFA to TPCO because they claim that TPCO did not respond to Section E of the Department's Questionnaire for subject merchandise that was further manufactured in the United States; report U.S. sales to an affiliated company; or provide FOPs for a number of raw materials.[172] Furthermore, Petitioners claim that TPCO failed to provide numerous documents that were repeatedly requested by the Department.[173]

With respect to further manufacturing, TPCO raised this issue in its September 21, 2009 supplemental questionnaire response. TPCO stated that it reported the full cost of further manufacturing in its Section C questionnaire response. In addition, TPCO reported the

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[165] *See* TPCO Verification Report at Exhibit 1, Minor Corrections.
[166] *See* the TPCO verification report at page 24.
[167] *See Sigma Corp* (1997).
[168] *See* TPCO Verification Report at page 24.
[169] *See* page 27 of the TPCO Verification Report.
[170] *See* page 29 of the TPCO Verification Report.
[171] *See Id.*
[172] Specifically, Petitioners claim that TPCO failed to calculate FOPs for a number of raw material inputs vital to the production of the subject merchandise, including scrap processing and fluxing agents used to remove impurities from steel – *e.g.*, lime, coal particles, desulfurizers, *etc.* TPCO's Supplemental Questionnaire Response (Oct. 5, 2009) ("TPCO's Oct. 5 Response") at 12, 20, 23 (Public Version). Indeed, in the case of FOPs relating to scrap processing, the Department explicitly instructed TPCO to report these FOPs in its Supplemental Questionnaire, but TPCO failed to do so. *Id.* at 12, 23.
[173] For example, Petitioners claim that TPCO failed to provide documents and information twice requested by the Department that were essential to determine whether TPCO is eligible for a separate rate. *Id.* at 7 (Public Version).

percentage of sales, by volume that was further manufactured. Based on this information, the Department did not require that TPCO provide a section E response or additional information on further manufacturing.[174]

In the same supplemental questionnaire response TPCO reported that TPCO's downstream affiliates made sales of subject merchandise to other affiliates. Citing a high administrative burden, TPCO stated that because the total value of the sales among downstream affiliates was less than one percent of all U.S. sales made during the POI by its affiliate, it was not reporting these re-sales and requested that the Department grant an exclusion from reporting these sales. In addition, citing *Softwood Lumber/Canada 6/14/2004*, unchanged in *Softwood Lumber/Canada 12/20/2004*, TPCO stated the exclusion of these sales would have an immaterial impact on the antidumping duty deposit rate. The Department acquiesced and did not require TPCO to report these sales.

Furthermore, Petitioners claim that TPCO failed to provide requested data regarding scrap/scrap processing and failed to calculate FOPs for a number of raw material inputs, including lime, coal particles, and desulfurizers. With respect to scrap/scrap processing, *see* Comment 17, Steel By-Product Offset. With respect to materials such as lime, coal particles and desulfurizers, TPCO reported these as ancillary/overhead materials. The Department requested additional information regarding these materials but did not require TPCO to report per-unit consumption of these materials.

With respect to Petitioners' claim that TPCO failed to provide numerous documents that were requested by the Department relevant to separate rates, we note that we requested that TPCO provide financial statements of the owners of TPCO. TPCO provided certificates from some of the owners declining to provide financial statements. The Department did not make further requests for the financial statements that were not provided as the Department was able to make a separate rate decision in this case without them due to the particular ownership patterns specific to TPCO.

Furthermore, Petitioners argue that the Department should apply total AFA to TPCO because it has failed to provide accurate and reliable responses to the Department's requests in a timely fashion. Petitioners cite two examples. First Petitioners claim that shortly before the preliminary determination, TPCO submitted an unsolicited and completely revised U.S. sales database revising net quantities, product codes, product descriptions, physical characteristics, control numbers, further manufacturing costs, U.S. import duties, international freight, gross unit prices, inland freight, and indirect selling expenses.[175] Moreover, Petitioners claim that TPCO made extensive revisions to its FOP database regarding pig iron purchases, FOPs for couplings, misreported FOPs for argon, electricity, steam, coke and natural gas.[176] While we agree with Petitioners assertion that TPCO made sporadic unsolicited revisions and clarifications of its data, TPCO made these submissions within the deadline for submission of factual information. Section 351.301(b)(1) of the Department's regulations specifies that submissions of factual information by interested parties in an investigation are due no later than " . . . seven days before

[174] *See* TPCO's September 21, 2009 supplemental questionnaire response.
[175] TPCO's Additional SDQR-10/13/09 at 1-5 (Public Version).
[176] TPCO's Additional SDQR-10/13/09 at 2-5 (APO Version).

the date on which the verification of any person is scheduled to commence . . ." TPCO's verification commenced on December 7, 2009. TPCO's last submission of unsolicited factual information was made on December 1, 2009. Thus TPCO's submissions were made within the Department's regulatory deadlines.

Accordingly, the Department does not agree with Petitioners that application of total adverse facts available is warranted with respect to TPCO. Nevertheless, we do agree that partial AFA is warranted in certain circumstances, and in each case is fully discussed in the appropriate comments in this Memorandum, as discussed above.

Comment 9: Partial AFA for certain TPCO Transactions

TPCO argues that even if the Department finds that TPCO is affiliated with Company B, the Department should use neutral facts available to determine the margins for Company B's sales. TPCO argues that to use adverse facts available, the Department must find that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department. TPCO asserts that the CIT and CAFC have determined a two-part showing that the Department must make prior to using adverse facts available: "First, Commerce must make an objective showing that a reasonable and responsible {respondent} would have known that the requested information was required to be kept and maintained. And second, Commerce must then make a subjective showing that the respondent... not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation."[177] In addition, TPCO argues that the Department's regulations also make clear that any use of adverse facts available is only appropriate when a party has "failed to cooperate by not acting to the best of its ability."[178]

Furthermore, TPCO argues that the Department's regulation mirrors the statutory language and demonstrates that adverse facts available are appropriate only in egregious instances of lack of cooperation. TPCO claims that in the comments to the adoption of the regulation, the Department stated that in instances where a respondent does not report downstream sales, the Department will consider the nature of the affiliation in deciding how to apply facts available.[179] Therefore, TPCO maintains, the regulations and the statute are clear: the use of adverse facts available must be based on non-cooperation, not simply a finding that information is not available or is otherwise not on the record. Furthermore, TPCO claims that WTO panels and the Appellate Body have rejected Commerce's decision to apply adverse facts available in a very similar factual scenario in a hot-rolled steel case.[180] TPCO claims that in that case the Department used adverse facts available against a respondent that was rebuffed by its affiliate when attempting to get downstream sales information. TPCO argues that even though in that case the affiliated company was partially owned by the respondent, the Department amended its dumping margins by using neutral facts available.[181] TPCO argues that this fact makes TPCO's

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[177] *Goldlink (CIT 2006) (quoting Nippon Steel (CAFC 2003)* (internal quotations omitted). We note that the Department has upheld this language in several Issues & Decision Memoranda. *See, e.g., Antifriction Bearings/France 09/15/04* at 21.
[178] *See* 19 CFR 351.308.
[179] *See Antidumping Duties.*
[180] *Carbon-Quality Steel/Japan 12/03/03.*
[181] *Hot-Rolled Steel/Japan 12/03/02.*

inability to receive information on downstream re-sales from a company in which it has zero ownership interest even less likely to be found as a lack of cooperation.

TPCO argues that the Department's use of adverse facts available will be rejected if it is used to impose punitive margins on a respondent. TPCO argues that for example, in *Nippon Steel v. United States* the respondent failed to give a weight conversion factor that was within the respondent's disposal on the original questionnaire and one supplemental questionnaire.[182] TPCO maintains that the respondent did not even contact the factory that was under its control to get the information regarding weight. TPCO argues that such a failure to provide necessary information that was within the company's control is far more egregious than TPCO's failure to provide information that was not within its control and was refused to be turned over to TPCO by its keeper. TPCO maintains that even with a serious violation of multiple information requests from the Department, the respondent's failure to provide information in *Nippon Steel* could not lead to a finding of adverse facts available, according to the CIT, because it did not suffice for a determination that the respondent failed to cooperate by not acting to the best of its ability.[183] Furthermore, TPCO argues that given the Department's attempt to impose punitive margins on TPCO, in the face of court precedent disallowing adverse facts available in more egregious scenarios, the use of adverse facts available would not be sustained in this case. In addition, TPCO argues that in *China Steel Corp. v. United States*,[184] the respondent repeatedly ignored instructions to submit complete product characteristics and accurate downstream sales data, and never provided alternatives or reasonable explanations for why it could not report all downstream sales,[185] which led the Department to the use of adverse facts available. TPCO argues that the affiliated companies in *China Steel* had minority ownership interests, unlike the instant case, in which TPCO has no ownership interest in Company B. TPCO maintains that the CIT, however, found that this use of adverse facts available was unallowable, because respondent's actions did not fall below those of a reasonable respondent. TPCO argues that these are egregious failures to respond, as opposed to TPCO's inability to respond, based on its lack of control over the information. TPCO argues that based on these cases, in which use of adverse facts available was not lawful, TPCO's inability to produce information regarding Company B's downstream sales cannot give rise to the use of adverse facts available.

TPCO argues that it fully cooperated with the Department in this investigation. TPCO contends that it did not conceal information regarding its relationship with Company A or Company B. TPCO claims that in its Section A Response, dated July 29,2009, it submitted to the Department a comprehensive list of all direct affiliates of TPCO, *i.e.*, affiliates in which TPCO had a direct equity interest, and all indirect affiliates of TPCO, i.e., those affiliates of TPCO's affiliates in which the TPCO affiliate had an equity interest. TPCO contends that Company B is not owned by TPCO's joint venture partner as claimed by Petitioners. In addition, TPCO contends that it is under no obligation to report that there might be some "distant" relationship between its joint venture partner and Company B or to report a possible relationship between Company A and Company B.

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[182] *See Nippon Steel (CIT 2001).*
[183] *Id.*
[184] *China Steel (CIT 2003).*
[185] *Id* at 734 (internal citations omitted).

TPCO argues that there is no requirement that a respondent provide information about a possible relationship between parties when the respondent has zero equity relationship with either party. TPCO maintains that it has no equity interest in Company B and Company B has no equity interest in TPCO. Furthermore, TPCO contends that it has no equity interest in Company A and Company A has no equity interest in TPCO. In addition, TPCO argues that it is under no obligation to report a possible relationship between Company A and Company B. TPCO maintains that Company A and Company B are completely separate companies from TPCO. Moreover, TPCO argues that it is not affiliated with Company B. TPCO argues that Petitioners' argument that TPCO is affiliated with and able to exercise control over Company B through Company A makes no sense because Petitioners argue that TPCO is not affiliated with Company A. Furthermore, TPCO argues that there are two fundamental flaws in Petitioners' argument that Company A and Company B should be treated as one entity under the 19 CFR 351.401(f). TPCO argues that the first flaw is that this regulation only applies to producers of the subject merchandise. Furthermore, TPCO argues that the second flaw is that collapsing Company B and Company A does not prove anything concerning whether TPCO and Company B are affiliated under the law. In addition, TPCO argues that the only conceivable way that collapsing of Company A and Company B could have any bearing on the alleged affiliation of TPCO and Company B is if there was a factual basis to collapse TPCO and Company A. However, TPCO claims, no one has argued that the evidentiary record supports collapsing TPCO and Company A and treating them as a single entity.

Moreover, TPCO claims that, as a respondent answering the Department's questionnaires, TPCO is expressly prohibited from submitting any factual information that TPCO, itself, cannot verify using documents under TPCO's control. Consequently, even assuming that TPCO somehow knew of a corporate relationship between Company A and Company B, it would not be appropriate to give the Department this information because TPCO is not able to verify such information using its own documents and records. TPCO argues further that the Department is very clear that all information and data provided to the Department must be capable of being verified. Given that TPCO does not possess any corporate ownership records for either Company A or Company B, TPCO would not be able to verify the relationship between Company A and Company B. Furthermore, TPCO argues, because TPCO was under no obligation to provide this information to the Department, the Department is prohibited under law from applying adverse facts available when the Department did not obtain the information from TPCO.

TPCO argues that given the record in this case the Department cannot make the required two-part showing as required before using adverse facts available. First, TPCO argues that the information the Department has asked for is not under TPCO's control. The record shows that Company B's representative negotiates prices and quantities of subject merchandise purchases on behalf of Company B.[186] TPCO argues that it cannot be said to have known that the requested information was required to be kept and maintained, when it has no ability to keep or maintain records from a completely separate company. TPCO claims that no reasonable respondent would be able to keep or maintain such records for another company. Therefore,

[186] *See* TPCO's Response to the Department's November 17, 2009, Supplemental Questionnaire, dated November 30, 2009, at 4-5; TPCO's Section A Response at 25.

TPCO argues any attempt to use adverse facts available fails on the first of two required elements, based on its cooperation with the Department's investigation. TPCO maintains that it is impossible to be found non-cooperative when one does not have a method of receiving the necessary documents.

TPCO maintains that its cooperation in this matter is demonstrated by its attempt to obtain the information regarding downstream sales of its unaffiliated customer. TPCO argues that even though there is no business reason to believe that TPCO should be able to obtain such information from a completely separate company, TPCO nonetheless inquired about obtaining the records. TPCO maintains that because Company B's representative is TPCO's contact during the sales process, TPCO considers Company B's representative to be its customer, and thus requested the data from Company B's representative. TPCO claims that Company B's representative told TPCO that it would not give TPCO such information.[187] TPCO claims that the Department has several times refused to use adverse facts available under similar circumstances of cooperation by a respondent. TPCO argues that in *Certain Cut-to-Length Carbon Steel Plate from Brazil*, the Department found the use of adverse facts inappropriate because respondent attempted to obtain information from its affiliate, but the nature of the affiliation was such that compulsion was not possible.[188] TPCO argues that in that case, the respondent was found cooperative, even though it could not obtain sales data from its parent company. TPCO claims that the parent company owned 15 percent of the subsidiary and the Department used neutral facts available for the reported transfer prices for the major input. TPCO argues that given that TPCO owns zero percent of Company B or its representative, this inference is much stronger in the case at hand. TPCO claims it cooperated when it attempted, to obtain the downstream sales data, but was rebuked. In addition, TPCO claims that in *Roller Chain other Than Bicycle from Japan*, the Department refused to apply adverse facts available when a respondent did not report the home-market sales of an affiliated reseller.[189] TPCO claims that the Department found that the respondent was not in a position to compel the affiliated customer to produce the information requested by the Department. TPCO argues that given such cooperation by TPCO in an attempt to obtain information that it clearly had no business justification to obtain further demonstrates that the Department should not use adverse facts available.

Moreover, TPCO argues that the fact that it was able to obtain Company A's sales data does not prove that TPCO should also have been able to obtain Company B's sales data, as argued by Petitioners. TPCO argues that Company B and Company A are separate independent companies with different sensitivities about confidential pricing data. TPCO argues that Company A and Company B have very different levels of interest in the OCTG antidumping investigation due to differences in their sales volumes of subject merchandise during the POI. TPCO maintains that difference in sales volumes made Company A more interested in the outcome of this investigation than Company B, and this is why Company A agreed to supply its sales data and Company B did not.

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[187] TPCO's Response to the Department's November 17, 2009, Supplemental Questionnaire, dated November 30, 2009, at Exh. SS-7.
[188] *CSP/Brazil 03/16/98.*
[189] *Roller Chain/Japan 11/27/97*.

In addition, TPCO claims that the Department's egregious handling of this case has contributed to the inability to obtain the missing data. TPCO argues that even if the Department finds that TPCO should have reported Company B's sales data, TPCO did not have sufficient warning of such a stance by the Department. TPCO asserts that it placed the ownership structure of its joint venture[190] on the record in its Section A response, dated July 29, 2009. TPCO claims it had no reason to believe it would be found to be affiliated with Company B based on this joint venture.

Furthermore, TPCO argues that the Department did not notify TPCO of its belief regarding the affiliation until November 17, 2009, and that TPCO had only until November 30, 2009 to respond to the Department's last-minute request for Company B's sales data, and that this time period included the Thanksgiving holiday. TPCO maintains that the Department would normally have requested information from TPCO in a supplementary questionnaire either after receipt of TPCO's section A response or after receipt of TPCO's section C response. TPCO maintains that this is normal practice and is what was done in the instant case regarding sales by TPCO to Company A. TPCO argues it received no follow-up questions related to either Company C or Company B until receiving the questionnaire on November 17, 2010, over three months after the Department was aware both that TPCO had the joint venture at issue and sold subject merchandise to Company B. TPCO argues that rather than proceed to seek clarifications to TPCO's responses in the normal manner, the Department adopted a gotcha policy of ignoring the issue for months and then acting as if it has previously asked for the information on Company B and somehow caught TPCO trying to cover something up. TPCO claims that the Department waited weeks to request additional information on Company B and then proceeded to provide TPCO one week to obtain information TPCO claims that the Department's only objective was to set TPCO up for failure to comply with its untimely and unwarranted request. Furthermore, TPCO argues, the Chinese verification took place beginning on December 17, 2009, which gave TPCO's employees, attorneys, and analysts virtually no time to prepare. TPCO claims that a similar lack of time happened in the U.S. verification, which took place beginning on December 14, 2009. TPCO claims that the Department has been roundly rejected by reviewing courts in the past for asking for voluminous data on short notice with an unreasonable deadline, and the use of adverse facts available would not be sustained.[191]

Petitioners argue that, for the reasons set forth below, the Department should, at a minimum, calculate TPCO's dumping margin using partial AFA. Petitioners argue that TPCO has withheld information from the Department and failed to act to the best of its ability with respect to its relationship with its U.S. customers and the relationships among its U.S. customers. Petitioners contend that the Department properly determined that TPCO and Company B are affiliated companies. Further, Petitioners maintain that because U.S. price cannot be based on sales to an affiliated customer,[192] the Department cannot base U.S. price on sales between TPCO and its affiliated customer. Rather, U.S. price must be based on the downstream sales made by TPCO's customer.

Furthermore, Petitioners argue that TPCO failed to report certain downstream sales by an affiliated U.S. customer – Company B, failed to report re-sales of further manufactured

[190] TPCO's Section A Response at Exh. A-II.
[191] *See, e.g., Bowe-Passat (CIT 1996).*
[192] *See* sections 772 (a) and (b) of the Act.

merchandise by another affiliated customer -- Company A, and misreported two FOPs.

With respect to downstream sales made by Company B, Petitioners argue that TPCO had the burden to show that it acted to the best of its ability to report the downstream sales by Company B, but did not come close to meeting this burden, because it did not do the maximum that it is able to do.[193] Petitioners argue that in a supplemental questionnaire dated November 17, 2009, the Department specifically requested that TPCO report these downstream sales,[194] but TPCO did not do so. Furthermore, Petitioners note that in its response submitted on November 30, 2009, TPCO provided a copy of an email in which it asked its affiliated customer to provide such information and its affiliated customer's response declining to do so and argue that TPCO made no further efforts to obtain this information. Furthermore, Petitioners argue that TPCO could have provided the U.S. sales in question because TPCO controls the U.S. customer that made the sales.

Petitioners argue that under the statute, the Department must use facts available where, as in the instant case, necessary information is not available on the record or when a respondent withholds information that has been requested by the Department.[195] Petitioners contend that the statute further provides that, in selecting from among the facts available, the Department may make an inference that is adverse to the interests of the respondent if the Department determines that the respondent has failed to cooperate by not acting to the best of its ability to comply with a request for information.[196] Furthermore, Petitioners contend that the courts have recognized that "{a}cting to the best of one's ability under the statute 'requires the respondent to do the maximum it is able to do.'"[197] Moreover, Petitioners claim that, the application of AFA has been upheld where a respondent asked its affiliate to provide requested resale data and then took a "hands-off" approach when the affiliate refused.[198]

Petitioners argue that there is no question that from the outset of the investigation TPCO failed to do the maximum it was able to do to provide the required information to the Department by withholding essential information relating to its relationship with its affiliated customer. Furthermore, Petitioners maintain that although TPCO was obviously aware of its close connection to this customer, TPCO consistently concealed the relationship from the Department. Petitioner asserts that even after the Department admonished TPCO for failing to disclose its relationship with another customer and found that TPCO had "seriously impeded the progress of the investigation,[199] TPCO still did not report its relationship with the customer in question. Moreover, Petitioners argue that not only did TPCO withhold necessary information regarding its relationship with its customer, but when the Department requested that TPCO report downstream sales made by this customer, TPCO failed to act to the best of its ability to provide such information – *i.e.*, it failed to do the maximum it was able to do and, in fact, it did only the

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[193] Petitioners cite *Nippon Steel (CAFC 2003)* and *Kawasaki Steel (CIT 2000)* (upholding the Department's determination to apply AFA in a situation in which the respondent asked its affiliate to provide data, and then took a "hands-off" approach when the affiliate refused).
[194] Nov. 17 Supplemental Questionnaire at 2.
[195] *See* 19 CFR 351.308(a). *See also* section 776(a)(2) of the Act.
[196] Section 776(a)(2) of the Act; *see* also 19 CFR 351.308(a).
[197] *See, e.g., NSK Ltd. (CAFC 2007)* (quoting *Nippon Steel (CAFC 2003).*
[198] *Kawasaki Steel (CIT 2000).*
[199] Aug. 31 Supplemental Questionnaire to TPCO at 2.

bare minimum. Petitioners claim that TPCO sent an email to its customer requesting sales information and when the customer declined to provide such data, TPCO did no more.[200] Petitioners contend that merely requesting information from an affiliate and then accepting a rejection does not constitute acting to the best of one's ability under the statute or the regulations.[201]

In addition, Petitioners argue that TPCO did not request the information from other parties that were potentially able to provide or assist in obtaining the requested sales data. Petitioners maintain that these other parties provided sales data for another affiliated customer and thus should have been able to do so for the customer in question. Petitioners argue that it "defies belief that TPCO was able to direct its customer to alter purchase orders for the purpose of this investigation but is powerless to compel its affiliated customer to provide sales data the Department specifically requested."

Moreover, Petitioners claim that in asserting its position, TPCO has repeatedly mischaracterized the applicable legal precedent. Petitioners claim that for example, TPCO cites to the decision of the CIT in *Nippon Steel v. United States* for the proposition that a respondent's failure to provide information that was within the company's control, despite repeated requests from the Department, was not sufficient to find that the respondent had failed to cooperate by acting to the best of its ability.[202] Petitioners argue that this is a completely invalid statement of the law and that TPCO fails to mention that the CIT's holding was overturned on appeal by the Court of Appeals for the Federal Circuit, which found that: (i) the CIT had applied an incorrect standard for determining what constitutes acting to the best of one's ability; (ii) the correct standard requires that a respondent do the maximum that it can do; and (iii) the Department had properly determined that Nippon failed to act to the best of its ability under the correct standard.[203]

In addition, Petitioners assert that TPCO's contention that it is actually the Department's fault that the downstream sales data are not on the record is outrageous.[204] Petitioners claim that according to TPCO, the Department failed to notify TPCO of its concern regarding TPCO's affiliation with the customer in question until November 17, 2009, which was more than three months after the Department was aware of elements of the relationship with its customer.

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[200] TPCO's Response to the Department's November 17, 2009, Supplemental Questionnaire, dated November 30, 2009, at Exh. SS-7. at Ex. SS-7.

[201] *See Kawasaki Steel (CIT 2000)* (upholding the Department's determination to apply AFA in a situation in which the respondent repeatedly requested its affiliate to provide data but did not try to exert other means of influence over the affiliate despite record evidence showing that the respondent was able to do so); *See also SCRB/Latvia 06/14/01* at Comment 2 (applying AFA where the respondent failed to identify the trading company in question as an affiliate and then, once affiliation was determined, merely relied on the affiliate's statement refusing to provide downstream sales data). *See* also *Hand Tools/PRC 09/14/06* at Comment 1 (rejecting the respondent's claim that it was not affiliated with Customer A and applying AFA for Customer A's resales notwithstanding the respondent's contention that it could not compel its affiliate to provide the downstream sales data); *Mag Metal/PRC 02/24/05* Issues and Decision Memorandum at Comment 2 (finding the respondent's contention that it was unable to compel its affiliated reseller to cooperate with the investigation unpersuasive given the "close commercial relationship" between the two companies and applying total AFA).

[202] *Id.* at 68 (citing *Nippon Steel (CIT 2001)*

[203] *Nippon Steel (CAFC 2003)* (reversing *Nippon Steel (CIT 2001)*)

[204] *Id.* at 72 ("The Department's egregious handling of this case has contributed to {TPCO's} inability to obtain the missing data").

Moreover, Petitioners claim that TPCO further claims that since verification was scheduled to commence in mid-December, this left TPCO with no time to prepare and shows that the Department has improperly adopted a "gotcha" policy.[205] Petitioners argue that these assertions by TPCO are "simply mind-boggling," that it was TPCO – not the Department – who concealed the information regarding the connection between TPCO and its customer that would have permitted the Department to request the downstream sales at an earlier stage in the case

Petitioners argue that the Department cannot allow a respondent such as TPCO to selectively pick and choose the data that it submits. Petitioners contend that TPCO provided requested sales data for other affiliated customer(s) but failed to provide it for the customer in question. Petitioners maintain that the Department cannot use a cherry-picked selection of U.S. sales because such a result would be patently distortive. Rather, Petitioners maintain, the Department must reject TPCO's entire U.S. sales database and apply total AFA.

Petitioners argue that for the reasons specified above, the Department should apply total AFA to TPCO, but if the Department does not apply total AFA to TPCO, it should, at least, apply partial AFA with respect to the issues discussed above to calculate the dumping margin for Company B. Petitioners argue that as partial AFA, the Department should apply either the highest margin from the petition or the highest transaction-specific margin calculated for TPCO's sales, whichever is greater, to all sales made through Company B.

Department's Position: We agree with Petitioners with respect to the application of partial adverse facts available to subject merchandise sold by TPCO to Company B, which the Department has determined is affiliated with TPCO.[206] Further, we do not find that the use of facts available or adverse inferences is applicable with regard to the Petitioners allegation that TPCO failed to report re-sales of further manufactured merchandise by another affiliated customer, Company A, and misreported two FOPs. For a discussion of these issues see Comment 8.

In the Department's Questionnaire issued on July 1, 2009, at item 1, the Department instructed TPCO to "State the total quantity and value of the merchandise under consideration that you sold during the period of investigation in the United States" and to "Exclude your U.S. sales to affiliated resellers. Report instead the resales to the first unaffiliated customer." In its July 29, 2009, questionnaire response TPCO reported sales to Company A and sales to Company B.[207] Information in Exhibit A-11, "Corporate Structure and Affiliations" and a list therein of "TPCO Detailed Corporate Ownership Information", indicated a relationship more extensive than that typical of a seller-customer relationship between Company A and TPCO, as these two entities appeared to be joint-venture partners in a third entity. Furthermore, in this response, TPCO unequivocally described Company A and Company B as unaffiliated customers. TPCO did not describe the relationship between TPCO and Company A in the narrative of its questionnaire response other than to refer to Company A as an unaffiliated U.S. CEP customer, nor did TPCO describe Company A's relationship with Company B, except to identify Company B as an

[205] *Id.* at 72-74.
[206] *See* Final Affiliation Memo.
[207] The names of these companies are BPI. *See* the BPI version of the TPCO Analysis Memorandum dated April 8, 2010 for the identities of these companies.

unaffiliated EP customer. TPCO stated in its Section A Response that it had "a long relationship" with each of these customers.

Upon a thorough review of TPCO's Section A questionnaire response and its August 19, 2009 Section C response, the Department issued a supplemental questionnaire to TPCO stating that the Department had "identified serious deficiencies" in these submissions. Based on Exhibit A-11 of the Section A questionnaire response, and as discussed with counsel for TPCO on August 28, 2009[208], it appears that TPCO reported U.S. constructed export price sales to an affiliated party in its U.S. sales database." Furthermore, the Department stated in its supplemental questionnaire that TPCO did not describe the relationship between TPCO and Company A in the narrative of its Section A response, did not mention it in its Section C response, and did not contact the Department about the relationship and, in fact, incorrectly identified the name of the company. Furthermore, the Department stated in its supplemental questionnaire that "these actions by TPCO have seriously impeded the progress of this investigation by prohibiting the Department from assisting TPCO in identifying the correct U.S. customer for its sales and delaying the submission of the correct U.S. sales data, thereby severely limiting the amount of time the Department has to analyze this information before the preliminary determination of this investigation." The supplemental questionnaire instructed TPCO to "... please resubmit your U.S. sales database reporting sales to the first unaffiliated customer as specified by the Department's questionnaire." Given TPCO's admitted "long relationship" with Company A and Company B it is reasonable to expect that TPCO was aware of the relationships among itself, Company A and Company B. The due date for TPCO's response was September 14, 2009. This date was extended to September 18, 2009, at TPCO's request. The final business proprietary version of this response was submitted on September 21, 2009.

In the September 21, 2009, submission, TPCO continued to impede the investigation with respect to our analysis of TPCO's relationship with Company B. TPCO purported to "provide general information" about Company A, "consistent with the reporting requirements of the Section A questionnaire." However, at pages A-15 and A-16 of the Departments Section A questionnaire, in the Corporate Structure and Affiliations section, at items c. and d., the Department requests that the respondent

> "Provide an organization chart and description of your company's legal structure. For an example of how you might design this chart, see Appendix VII. In addition to the chart, provide a list of names and addresses of all companies affiliated with your company through stock ownership or otherwise. In responding to this question, refer to the definition of affiliated person provided in the Glossary of Terms at Appendix I. Describe also the activities of each affiliated company, with particular attention to those involved with the merchandise under consideration. Specify the percentage of ownership and cross ownership among the companies listed."

In addition, the questionnaire states:

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[208] *See* August 28, 2009, Memorandum to the File: Telephone Call to Counsel for Tianjin Pipe Group Corporation and Tianjin Pipe International Economic and Trading Corporation ("collectively TPCO") Regarding TPCO's U.S. Sales Database

> "Provide a list of all third parties in which your company or its owners, either collectively or individually, own 5 percent or more in stock. Include each third party's full name and address and describe its activities. Also provide a complete list of companies or individuals that own 5 percent or more in stock in the third party which includes each owner's full name and address and specifies its percentage of ownership."

At pages C-2 and C-3 of its September 18, 2009, (Final BPI version September 21, 2009) TPCO states that Company A is actually a group of separately incorporated companies with distinct ownership structures and provides a list of the companies comprising the group. While TPCO describes each of these entities, and the ownership interest of Company A in each, TPCO never describes the fact that Company B is the other owner in certain of these companies. The Department was only able to glean this information, for one such joint venture, from the financial statements of Company A and for another joint venture from a website page submitted by Petitioners.

Given TPCO's pattern of reticence with respect to disclosure of information regarding its relationship with Company A and Company B, evidenced first by its gradual disclosure of information with respect to its relationship with Company A, and its more gradual disclosure of information regarding its relationship with Company B, on November 17, 2009, the Department issued a second supplemental questionnaire regarding TPCO's relationships with its customers and requesting that TPCO report Company B's sales of subject merchandise by December 1, 2009. Like the supplemental questionnaire issued to TPCO requesting Company A's sales data, with respect to Company B, the Department stated "Based on Exhibit A-11 of TPCO's Section A questionnaire response, it appears that TPCO may have reported U.S. export price ("EP") sales to an affiliated party in its U.S. sales database." In the supplemental questionnaire cover letter, the Department outlined BPI information regarding ownership issues, and "extensively intertwined" operations, and stated that ". . . it appears that TPCO and this customer are affiliated under section 771(33) of the Act."[209] With respect to submission of the requested sales data, TPCO responded ". . . TPCO will not be making a further filing of its unaffiliated customer's downstream sales listing on December 1, 2009."[210]

We note the time allotted for TPCO's response to this request for information was the same amount of time initially specified for TPCO to provide Company A's sales data. TPCO requested a four day extension to submit sales data for Company A, the Department granted the extension, and TPCO reported the requested data by the extended deadline. TPCO did not request an extension to respond to the Department's request for Company B's sales data, nor did it at the time object that the deadline for filing the requested information was unreasonable. Moreover, at Question 8 of the November 17, 2009, supplemental questionnaire, the Department asked that TPCO list the owners of Company B and the percentage ownership of each. TPCO once again demonstrated its reticence with respect to disclosure of information regarding its "long" relationship" with its customer by stating "TPCO is unable to provide the information requested by the Department regarding its unaffiliated U.S. Customer."[211] However, two weeks

[209] *See* the Department's November 17, 2009, the Department issued a supplemental questionnaire cover letter at page 1.
[210] *See* TPCO's December 1, 2009, supplemental questionnaire response at page 2.
[211] *See* TPCO's December 1, 2009, supplemental questionnaire response at pages 6-7.

later at the TPCO CEP verification, TPCO provided partial ownership information regarding Company B's ownership.[212]

Moreover, TPCO did not do all it could do to obtain Company B's sales data. In this case, TPCO did not even ask its customer to provide the relevant data. TPCO merely provided an email indicating that it had contacted a third party that it uses in its dealings with Customer B.[213] Moreover, TPCO earlier provided its affiliate Company A's sales data as requested by the Department, and Company A and Company B have intertwined operations such that it is reasonable to expect that TPCO would approach Customer B directly for its sales data. Moreover, TPCO did not approach the company TPCO identified on the record of this investigation as related to Company B, with which TPCO has a joint venture, for this information.

The Department gave notice that if TPCO did not supply the requested information there was a potential of adverse inferences being applied with respect to calculation of TPCO's margin calculations in this proceeding. This was clearly stated in the cover letter of the November 17, 2009, supplemental questionnaire. However, TPCO nonetheless flatly refused to provide Company B's sales data.

Section 776(a) of the Act provides that the Department will apply "facts otherwise available" if, *inter alia*, necessary information is not available on the record or an interested party: A) withholds information that has been requested by the Department; B) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; C) significantly impedes a proceeding; or D) provides such information, but the information cannot be verified.

Furthermore, according to section 776(b) of the Act, if the Department finds that an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information, the Department may use an inference that is adverse to the interests of that party in selecting from the facts otherwise available. *See also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002). Adverse inferences may be employed "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See SAA* at 870. Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." *See AD/CVD Final Rule (1997)*; *see also Nippon Steel (CAFC 2003)* at 1382-83. In *Nippon Steel (CAFC 2003)*, the Court set out two requirements for drawing an adverse inference under section 776(b) of the Act. First, the Department "must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations." Next the Department must "make a subjective showing that the respondent . . . has failed to promptly produce the requested information" and that "failure to fully respond is the result of the respondent's lack of

[212] *See* TPCO CEP Verification Report at 4.
[213] *See* TPCO's December 1, 2009, supplemental questionnaire response at Exhibit 7.

cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records." The Court clarifies further that "an adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made." *See Nippon*, at 1382-83.

In this case, TPCO did not provide critical information with respect to its relationships with its U.S. customers as clearly requested in the Department's original and supplemental questionnaires. TPCO impeded the Department's investigation by failing to disclose requested information that would have permitted the Department to ascertain that the applicable statutes, rules and regulations, as applied to the facts that TPCO was withholding from the Department, direct that TPCO and Company B are affiliated. Further, TPCO withheld U.S. sales information requested by the Department. Moreover, TPCO did not act to the best of its ability to provide this information or the downstream sales information requested by the Department. The downstream sales by TPCO's affiliated U.S. customer are necessary for the Department's dumping calculations because the statute direct the Department to rely on the price at which the subject merchandise is first sold … to unaffiliated purchasers in the United States or to an unaffiliated purchaser for exportation to the United States. The sales TPCO reported to its affiliated U.S. customer are not useable by the Department for calculating the dumping margin. Instead, the statute requires the Department to use the downstream sales made by the affiliated U.S. customer, but TPCO refused to provide such sales despite the Department's request that they be reported.

We find that TPCO withheld information and impeded this investigation by not reporting information about its affiliates, pursuant to section 776(a) (2) (A) and (C) of the Act. TPCO has admitted on the record that it withheld information regarding its affiliation with Company A because Company A refused to participate in the case.[214] TPCO stated that the Department cannot find that TPCO impeded the progress of the investigation because TPCO did not have control or access to the sales data of Company A. We do not agree. Regardless of whether TPCO had access to the data of Company A, it was obligated to report its affiliation with this company. The Department's Original Questionnaire states that the respondent must report the sales to the first unaffiliated customer. As with every submission of factual information, TPCO signed an official certification stating that the information presented is accurate, to the best of its knowledge. Yet, one month later TPCO admitted it knew that the reported sales were to an affiliate.[215] We do not agree that Company A's reluctance to assist TPCO in the Department's investigation permits TPCO to withhold from the Department the information that it was knowingly reporting sales made to an affiliate and claiming that this affiliate was not an affiliate. Providing partial information, non-responsive replies, and in the case of the reported sales to Customer A, known misinformation to the Department have characterized TPCO's responses regarding its affiliates throughout this investigation and is one basis for the Department's determination that TPCO impeded this case.

This behavior continued when the Department, based upon the information finally provided by

[214] *See* September 21, 2009 supplemental response at C-1 and C-2.
[215] *Id.*

TPCO, inquired about the relationship of TPCO to another customer. As described above, TPCO did not provide readily available information regarding ownership and management of this company, nor did it provide information regarding the activities of a joint venture company in which it has substantial ownership equity. Further, it was due to this non-responsiveness, and the resulting delay, that the Department found it necessary to ask for sales data in its November 17, 2009, supplemental questionnaire.

We do not dispute TPCO's contention that the application of neutral facts available versus facts available with adverse inferences turns on whether the respondent cooperated to the best of its ability. We find, however, that TPCO did not cooperate to the best of its ability in this investigation within the meaning of section 776(b) of the Act. The cases cited by TPCO each refer to scenarios where the respondent was unable to provide information that was not under its control. From these facts, TPCO extrapolates that the Department cannot find that it did not cooperate, because the data ultimately requested by the Department was not in its possession or control. We do not agree that the fact that TPCO itself does not have possession of the relevant sales data allows TPCO to impede this investigation by withholding information, which it does have, that would lead the Department to conclude that TPCO's reported sales were made to affiliates. Instead, to the extent that TPCO is unable to obtain information requested by the Department, TPCO is obligated to fully disclose all of the relevant circumstances and make maximum efforts to obtain the requested information. Instead, TPCO undertook a course of action to prevent the Department from obtaining and understanding all the facts and circumstances that pertained to the question of whether or not TPCO's reported sales were made to affiliated or unaffiliated customers. When the Department was finally able to obtain some of the necessary information, it concluded that TPCO had reported sales to affiliated customers that could not be used in its dumping margin calculations. Accordingly, the Department finds that TPCO impeded this investigation.

We also find that TPCO did not act to the best of its ability to obtain the requested sales data. TPCO cites several cases and states that courts have found that the application of AFA was unsupported in instances of more egregious failure to cooperate than TPCO's in the instant case. We note, as pointed out by USS, that the citation to *Nippon Steel (CIT 2001)* is unavailing, as that case was overturned on appeal and the respondent was in fact found not to have acted to the best of its ability.[216] As for *China Steel (CIT 2003)*, that case was merely remanded to the Department for further explanation, and the AFA call was ultimately upheld by the court[217].

In this case, TPCO's only effort at obtaining the requested information was a single email to the broker of its customer. TPCO did not even contact the customer itself, or avail itself of the many connections it has to Company B through common affiliates. We do not find any precedent, and TPCO cites to none, that would support a determination that this small level of effort could be construed to constitute doing the "maximum" that it could do.

Accordingly, we find that TPCO impeded this investigation and withheld information, pursuant to section 776(a) (2) (A) and (C) of the Act. We further find that, because TPCO did not provide the downstream sales of its affiliate, the information necessary to calculate margins for the

[216] *Nippon Steel (CAFC 2003)* at 1382-93.
[217] *China Steel (CIT 2003)* at 1359-60.

downstream sales of its affiliate is not on the record, and we must resort to the facts available. We further determine that, within the meaning of section 776(b) of the Act, TPCO failed to cooperate by not acting to the best of its ability to comply with the Department's request for this information. Therefore, we have determined to value the unreported downstream sales by applying the rate calculated in the petition to these transactions. This rate is corroborated in the final determination.

Comment 10: TPCO Affiliations

For a BPI discussion of all TPCO affiliation issues, *see* the Department's Final Affiliation Memo. In its comments, TPCO argues that the Department correctly found that it was affiliated with Company A, but that the Department incorrectly determined that TPCO was affiliated with Company B. TPCO further argues, however, that the Department's conclusion that TPCO and Company B are affiliated is premised upon an impermissible legal conclusion and is not supported by the evidentiary record.

TPCO contends that the record shows that a certain affiliate of Company B ("Company C") is not the owner of Company B, that there is no evidence of any exclusive relationship between TPCO and Company B, and that the joint venture that TPCO has with Company C is not located in the subject country, and according to the record, involves distribution of non-subject seamless pipe, not "foreign like product."

TPCO states that the legal precedent in support of the single-entity analysis, *NACCO (1997)*, a 1997 Court of International Trade decision, cannot support this Department conclusion because the underlying factual situation in *NACCO (1997)* is very different from the facts related to TPCO's alleged affiliation with Company B.[218] TPCO contends that in *NACCO (1997)*, the key characteristic of the two entities, which subsequently permitted the Department to treat them as a single entity, was that they were a wholly-owned importer and exporter combination with respect to U.S. sales of the subject merchandise. TPCO contends that it was due to the risk that the importer and exporter may have been shifting expenses between one another through non- arms-length transactions that the Department found the parties were a single entity. TPCO argues that the instant case is in stark contrast to the above situation because TPCO, not Company C, is the producer/exporter, and Company B is the importer, and no record evidence exists regarding any relationship between Company C and Company B.

TPCO contends that even if the Department were to ignore this fact, the TPCO Verification Report makes clear that Company C is not involved in the U.S. sales of the subject merchandise in any way because it states that Company C is a Japanese company which has a joint venture with TPCO and makes no mention of Company C dealing in U.S. sales of subject merchandise.[219] TPCO further contends that even Company B is only marginally involved in the transaction because a different entity handles all quantity and price negotiations with TPCO for OCTG sales transactions at issue.

[218] *See NACCO (1997).*
[219] *See* TPCO Verification Report at page 4.

TPCO argues that the two other previous cases cited by the Department also do not support treating Company C and Company B as a single entity. TPCO argues that in the preliminary results of *Hot-Rolled Steel/Romania 12/7/04*, the petitioner requested an administrative review of Ispat Sidex and the party readily admitted that it was affiliated with its subsidiary and both were being reviewed by the Department and the Department treated the two companies as a single entity, but such is not the case here.[220] TPCO argues that *Hot-Rolled Steel/PRC 5/3/01* also fails to justify treating Company C and Company B as a single entity because in that case the Department treated two entities as a single entity for purposes of its separate rate analysis because one entity produced the produced the subject merchandise that was sold to the United States and the other sold the subject merchandise to the United States, which is also not the case here. [221]

TPCO asserts that even if Company B could be considered a single entity with Company C, there is no basis for a finding of affiliation between TPCO and Company C because their alleged affiliated relationship does not have the potential to impact decisions concerning production, pricing or cost of the subject merchandise or the foreign like product as required by section 351.102(b) of the Department's regulations. TPCO cites to the Court of International Trade's decision in *TIJID (2005)*, stating first, there must be a finding of control, *i.e.*, that the two parties are legally or operationally in a position to exercise restraint or direction over a third party and second, the relationship with the third party must have the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.[222]

TPCO contends that, contrary to the Department's conclusion, the evidentiary record does not demonstrate that Company C is "legally or operationally in a position to exercise restraint or direction over the joint-venture company as required by the first element of the test. TPCO argues that the facts on the record concerning the extent to which Company C can exercise control over the joint-venture company are insufficient to establish control. TPCO contends that the Department confuses the overall objective of the "control" element of the two part test, and that the issue is not whether there is any business action {of the third party} over which the parties may have some influence, but rather, the control issue concerns control over those business decisions which affect production and sales of the products at issue. TPCO argues that while Company C has the ability to influence "life altering" decisions for the joint-venture company, there is no support on the record that it is legally or operationally in a position to exercise restraint or direction over its day-to-day business decisions.

TPCO further argues that the Department's conclusion that Company C is in a position to control the joint-venture company is contrary to applicable court and Department precedent. TPCO cites *TIJID (2005)*, where the Court found that Fay Candle and *TIJID (2005)* were not affiliated because Fay Candle was not legally or operationally in a position to exercise control over a shared third party where Fay Candle company had one board member on a two member board, and argues that this precedent is contrary to the Department's determination in the instant case.

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[220] *See Hot-Rolled Steel/Romania 12/7/04* at 70645.
[221] *See Hot-Rolled Steel/PRC 5/3/01* at 22187.
[222] *See TIJID (2005).*

TPCO cites *Hontex (2005)* as further support.[223] TPCO states that in that case, the Department determined that two companies, NNL and HFTC5, were affiliated under the statute due to a control relationship because Mr. Lee, a part-owner of NNL, "controlled" two companies: one through part-ownership and another because Mr. Lee controlled his agent, who in turn controlled the company. TPCO asserts that the Court overturned the Department's determination, stating "what is missing from Commerce's analysis is any evidence tending to suggest that Mr. Lee was 'legally or operationally in a position to exercise restraint or direction his agent's activities at the company.

TPCO asserts that the Department provides no evidentiary support for its conclusion that the requisite second part of the "control test" has been satisfied. TPCO argues that the relationship at issue is not located in either the United States or China, but rather in a third country, and there is no evidence that the joint venture relationship even concerns subject merchandise or like product. TPCO argues that there is no evidence that the joint venture could impact the production, pricing or cost of the subject merchandise in the United States or China. TPCO further argues that because there are several "layers" between the joint venture partner Company C and the entity responsible for negotiating the U.S. sales prices for the transactions at issue, it would be virtually impossible for Company C's participation in the joint venture with TPCO to impact U.S. sales of subject merchandise.

TPCO asserts that this lack of evidence is important because in previous cases the Commerce Department has required substantial evidence that the third party relationship created a potential to impact decisions over the subject merchandise during the applicable period under investigation (or review). TPCO states that an example of this is in *Candles/PRC 3/15/04*, where the Department rejected Petitioners claim that evidentiary record demonstrated the requisite elements for finding affiliation under section 771(33)(F), despite the fact that the record suggested that the third party joint venture was actually involved in some sales of the subject merchandise. TPCO contends that, nonetheless, the Department refused to find that the impact criterion had been satisfied because "there was no evidence of potential to impact decisions over subject merchandise during the POR."[224] TPCO notes that the Department's decision was affirmed by the Court of International Trade.[225] TPCO maintains that in the instant case there no evidence that Company C's participation in the joint venture has the potential to impact any decisions relating to subject merchandise.

In its March 9, 2010, comments, Maverick states that it does not believe that TPCO is affiliated with either Company A or Company B. In its March 15, 2010, rebuttal comments, however, Maverick asserts if TPCO is affiliated with Company A, then it is affiliated with Company B because the relationships are analogous to each other. Maverick argues that further that the joint-venture relationship with Company C has the potential to impact decisions concerning the sale of subject merchandise in the United States.

Maverick also argues that there is substantial evidence to collapse Company C and Company B as the Company A's website shows that Company B is a subsidiary of Company C, and as the

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[223] *See Hontex (2005).*
[224] *See Candles/PRC 3/15/04* IDM at Comment 1.
[225] *See TIJID (2005). See Candles/PRC 3/15/04.*

parent of its subsidiary, Company C has direct control over Company B. Maverick further contends that evidence obtained at the verification of Changbao, the other mandatory respondent in this investigation, further indicates that Company B and Company C should be considered a single entity.[226]

Maverick contends that Company C is in position to control Company B, and that the evidence shows that the TPCO and Company C relationship has a direct impact on TPCO, and these parties would not have entered into a joint venture if there was no benefit. Finally, Maverick contends that when the Department requested that TPCO provide Company B's resale data, TPCO could have compelled Company B to provide it.

In its March 15, 2010, rebuttal comments, USS asserts that the Department properly concluded that TPCO is affiliated with Company B. USS states that the law on affiliation is clear: two parties must be legally or operationally in a position to exercise restraint or direction over a third party; and the relationship with the third party must have the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.[227] USS asserts that, in analyzing both elements, the courts and the Department have emphasized that evidence showing that control has been exercised is not required; instead, it is the ability to control that is at issue.[228]

USS contends that, with respect to the first part of the affiliation test, the evidence shows that TPCO and Company C are each legally and operationally in a position to exercise restraint or direction over a third person, the joint-venture company. As to the second element of the affiliation test, USS argues that that the joint-venture company is in the business of selling and distributing OCTG, so it is clear that the relationship between the relevant parties through has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. USS concludes that, thus, affiliation is properly established.

USS also argues that it is clear that Company B and Company C are properly considered to be a single entity. USS further argues that the record establishes that TPCO is also affiliated with Company B because TPCO's affiliate, Company A, and Company B's ownership and operations are so intertwined that they should be considered a single entity.[229] USS argues that, moreover, TPCO's exercise of control over Company B is evidenced by its ability to direct Company B, as evidence in the verification report.[230] By virtue of TPCO's control over Company B, argues

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[226] *See* Final Affiliation Memo at 13 for a BPI discussion of this issue.
[227] *See, e.g., Mitsubishi (CIT 1999).*
[228] *See, e.g., China Steel (2003)* at 1351-1353; *HFHTs/PRC 9/14/06* IDM at Comment 10; *EMD/Japan 9/15/09* at Comment 2; *OCTG/Japan 3/22/00*; *Pipes and Tubes/Thailand 10/16/97* at 55582-83. These determinations are consistent with the Preamble to the Department's regulations which states in relevant part as follows: "{i}n general … we focus on relationships that have the potential to impact decisions concerning production, pricing or cost. This does not mean however, that proof is required that a relationship in fact has had an impact." *AD/CVD Final Rule (1997)* at 27296-27247.
[229] *See, e.g., Oil Country Tubular Goods from Japan*, 64 FR 48589, 48591 (Sept. 7, 1999) (prelim. results) (the Department "is compelled to examine all indicia {of control}, in light of business and economic reality, to determine whether they are evidence of control") unchanged in final results, 65 FR 15305 (March 22, 2000) (final results).
[230] TPCO Verification Report at 13.

USS, affiliation is also established under section 771(33)(G) of the Act, which provides that a person is affiliated with any other person whom it controls.

USS argues that TPCO's contention that the test for affiliation based on the control of a third person is whether the joint venture partners are in a position to exercise restraint or direction over a third party's "day-to-day business decisions" is baseless, and that the test is whether the joint venture partners are "legally or operationally in a position to exercise restraint or direction over a third party." USS further contends that, in any event, the record shows that Company C is in a position to restrain or direct the joint-venture company's day-to-day operations.

USS also argues that TPCO is also mistaken when it argues that the Department's finding in this case that Company C has the ability to exercise control over the joint-venture company is contrary to "directly applicable" precedent. USS contends that TPCO citation to *TIJID (2005)* for the proposition that control cannot be found in the instant case is misplaced. USS argues that, in *TIJID (2005)*, the evidence showed that the two Hong Kong companies were exclusively owned by TIJID's majority shareholder and that Fay Candle's involvement was limited solely to the fact that its CEO had been designated to sit on the board.[231] USS contends that the Department rejected affiliation, concluding that Fay Candle was not in a position to exercise control over these two companies, and the CIT affirmed, based on these facts. USS argues that thus, *TIJID (2005)* stands for the proposition that the Department will analyze the totality of the facts in each case instead of applying a bright line test,[232] and that here, unlike the situation in *TIJID (2005)*, the record is clear that even though Company C has a minority ownership interest in the joint-venture company, the totality of the facts showed that it was plainly in a position to exercise restraint or direction over the joint-venture company.

USS argues that there is likewise no merit to TPCO's claim that the second part of the affiliation, a finding that "the relationship has the potential to impact decisions concerning the production, pricing or cost of the subject merchandise or the foreign like product." is not met. USS contends that, contrary to TPCO's assertions, the record establishes that the joint-venture company is in the business of distributing seamless pipe "to the oil industry," *i.e.*, products that would include OCTG, and there also is no evidence that its distribution is limited geographically. USS argues further, that the Department has recognized that even though the controlled third party is engaged in a business that is related "directly to another product or another type of commercial activity," the control of such party "could affect decisions involving the production, pricing or cost of the merchandise under consideration."[233]

On March 23, 2010, the Department put on the record a Dunn & Bradstreet report regarding the direct owner of Company B and invited interested parties to comment. On March 23, 2010, TPCO commented on the Dunn & Bradstreet report, arguing that it confirms that Company B and Company C should not be considered a single entity. In its rebuttal to TPCO's comments on the Dunn & Bradstreet report, USS contends that the report clearly established that Company C

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[231] *TIJID (2005)*.
[232] *See Candles/PRC 3/15/04* IDM at Comment 1 (rejecting notion that Section 771(33)(F) of the Act creates a "bright line" test for affiliation).
[233] *AD/CVD Final Rule (1997)* at 27296-27298.

is the parent of the direct owner of Company B. Additionally, USS submitted a Dunn & Bradstreet report for Company B. This report states that Company B's parent is Company C.

Department's Position[234]**:**

Whether TPCO and Company A are Affiliated Through Their Joint Venture

In the Preliminary Affiliation Memo, we found that TPCO is affiliated with Company A through a joint venture pursuant to 771(33), and section 351.102(b) of the regulations.[235] In its case brief, Maverick asserted that it did not believe that TPCO is affiliated with Company A, but it did not present further argument on this issue. Accordingly, because no party has presented argument we continue to find that TPCO is affiliated with Company A for the reasons stated in the Preliminary Affiliation Memo.

Whether TPCO is Affiliated with Company B through TPCO's Joint Venture with Company C

A finding of affiliation under section 771(33)(F) of the Act requires the Department to find that there is "control" in the context of a variety of relationships described by the statutory provision. For these purposes, "control" means that a person is legally or operationally in a position to exercise restraint or direction over another person. Actual exercise of control is not required, merely the ability to exercise restraint or direction. One of the relationships identified in section 771(33) is where two or more persons are legally or operationally in a position to exercise restraint or direction over a third person. The Department's regulation, 19 CFR 351.102(b)(3), explains that with respect to certain relationships, including joint venture agreements, "control" will not be found unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.

Control of the Joint Venture

In the Preliminary Affiliation Memo, we stated that the record evidence supports a finding that TPCO and Company C each controls their joint-venture company through equity ownership and its ability to make appointments. The Department also found that the record evidence supports a finding that Company C controls the joint venture company, within the meaning of section 771(33) of the Act. We based this on Company C's ownership interest, appointment ability, and certain governance provisions of the joint venture company. We noted that the legislative history of the Act makes clear that the statute does not require majority ownership for a finding of control, and determined that Company C is in a position to exercise control over the joint venture company within the meaning of section 771(33)(F) of the Act.

We do not agree with TPCO's assertion that the first element of a finding of control must be a finding that the party is legally or operationally in a position to exercise restraint or direction over the day to day business activities of the company. We find no precedent, and indeed TPCO

[234] The Department's full analysis of this comment involves extensive examination of BPI, and therefore, is contained in the TPCO Final Affiliation Memo which is incorporated herein by reference, and summarized in a form that may be publicly released below.
[235] *See* Preliminary Affiliation Memo.

cites to none, for TPCO's argument that affiliation requires that control must apply specifically to "day to day business decisions." The Act clearly states that the analysis is whether the two or more persons are "legally or operationally in a position to exercise restraint or direction over the other person." Under the statutory standard, we continue to find that Company C has control over the joint venture company because it is in a position to exercise restraint or direction as demonstrated by the above analysis of the record evidence.

We also disagree with TPCO's argument that the Department's decision is contrary to court and Department precedent. We do not agree that *TIJID (2005)* can be construed to stand for the proposition that having the ability to appoint one board member on a board of directors is somehow dispositive of lack of control. Rather, in this regard, the ruling in *TIJID (2005)* shows that one board member, absent any other considerations, may not in itself constitute control.

We agree with Petitioner that *TIJID (2005)* is more reasonably construed to stand for the proposition that the Department will analyze the totality of the facts in each case instead of applying a bright line test.[236] In the instant case, Company C, unlike the company in *TIJID (2005)*, has an equity interest in the company at issue. This, in conjunction with other BPI facts on record, leads us to determine that it was in a position to exercise restraint or direction over the joint-venture company.

We disagree that the Department's determination in this case is contrary to *Hontex (2005)*.[237] As noted by TPCO, in *Hontex (2005)* the Department had determined that two companies were affiliated because Mr. Lee, a part-owner of one of the companies, "controlled" both companies because Mr. Lee controlled one company through part-ownership and the other through his agent. The Court in reviewing this determination disagreed and stated that the Department had failed to show that Mr. Lee was "legally or operationally in a position to exercise restraint or direction" over his agent's activities at the second company. The facts of the present case are distinguishable from *Hontex (2005)*. In *Hontex (2005)*, the sole proposed element of control over the second company was through control of an agent who was said to have control at the company. In the present case, Company C has direct ownership interests in the joint-venture company, in addition to other elements of control.[238] This type of evidence was not present in *Hontex (2005)*, and distinguishes the instant case from that case.

Potential to impact decisions concerning the production, pricing, or cost of the subject merchandise

We stated in the Preliminary Affiliation Memo that due to their ownership interests and other aspects of control over the joint-venture company, a distributor of seamless pipe in the oil industry, the relationship of TPCO and Company C through the joint venture has the potential to impact decisions concerning the production, pricing or cost of the subject merchandise or the foreign like product. TPCO argues that the relationship does not have the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise because the joint

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[236] *See Candles/PRC 3/15/04* IDM at Comment 1 (rejecting notion that Section 771(33)(F) of the Act creates a "bright line" test for affiliation).
[237] *Hontex (2005)*.
[238] *See* TPCO Final Affiliation Memo for a BPI discussion of these elements.

venture company is not located in United States or China, and there is no evidence that the joint venture relationship even concerns subject merchandise sales in the United States or foreign like product sales in China.

We disagree and maintain that the record shows that the joint-venture company is involved in products that would include OCTG. In a supplemental questionnaire we made clear to TPCO that it appeared to us that TPCO may be affiliated with its U.S. customer through this joint venture company, and we requested that TPCO describe the operations and functions of the joint venture, to which TPCO merely repeated a vague response from its earlier questionnaire response which fails to support a conclusion that OCTG is not among the products in which the joint venture is involved. Nor did TPCO's responses to the Department's questions specify that sales of the joint venture were limited to any particular region. Accordingly, we find that the evidentiary record does not establish that the joint venture sales activities are limited geographically. [239]

Furthermore, the Department disagrees with TPCO's characterization of foreign like product as only encompassing in-scope merchandise which is sold to customers in the domestic market of the respondent. The definition of foreign like product, under section 771(16) of the Act, includes "merchandise … produced in the same country by the same person as" the subject merchandise. This definition does not necessarily limit the foreign like product to such merchandise sold in the PRC. Nor does section 771(16) necessarily exclude non-identical merchandise from the foreign like product. Moreover, in some cases, foreign like product may include merchandise that is like the subject merchandise "in component materials and the purposes for which used," or even "of the same general class or kind" as the subject merchandise. Section 771(16)(A) & (B) of the Act.

Further, as discussed below, we find that Company C and Company B constitute a single entity. Accordingly, the relationship of TPCO to Company B is that of an exporter and an affiliated importer. Thus we feel there is significant potential to impact decisions concerning the pricing of the OCTG sold by TPCO to Company B in the United States, and that these pricing decisions could be compensated for through the sales or other interactions between TPCO and Company C through the joint-venture company

Moreover, as argued by Petitioners, there is no basis for TPCO's contention that affiliation requires that the controlled third party be directly connected to the subject merchandise. To the contrary, the Department has recognized that even though the controlled third party is engaged in a business that is related "directly to another product or another type of commercial activity," the control of such party "could affect decisions involving the production, pricing or cost of the merchandise under consideration."[240]

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[239] We note that, after refusing to provide additional information concerning TPCO's activities in its supplemental response, TPCO now attempts to add new information regarding TPCO's activities in its case brief, by stating that TPCO's activities are limited to certain countries, and then rely on this information in its arguments. Because we previously specifically requested information regarding the joint-venture company's operations and TPCO provided no information stating that the company's activities were thus limited, and because this is new non-public information and we have no means to verify its accuracy, nor to ask the respondent for proof of this statement, we do not consider this information sufficient to demonstrate that this company's operations are thus limited.

[240] *AD/CVD Final Rule (1997)* at 27296-27298.

In addition, we do not agree with TPCO that the several "layers" between the Company C and the entity responsible for negotiating the U.S. sales prices for the transactions at issue, made it impossible for Company C's participation in the joint venture with TPCO to impact U.S. sales of subject merchandise. First, we note that TPCO itself stated at verification that "the joint venture was formed with Company C because of its experience in trading seamless steel pipe and its access to customers and markets." This appears to contradict TPCO's present argument that their joint venture cannot impact sales of subject merchandise. Further, while TPCO provided several emails in its submission to show that price negotiation for Company B's sales took place between TCPO and a certain entity, at verification the Department was limited in its ability to verify this information due to a computer virus that TPCO alleged erased the e-mails showing this negotiation.[241] However evidence obtained at the verification in this investigation, brings into question TPCO's description of the negotiation process.[242]

Finally, we do not agree with TPCO's assertions that the Department's practice in previous cases has required more evidence than that on the record of the instant case to demonstrate that the third party relationship created a potential to impact decisions over the subject merchandise during the applicable period of review or investigation. TPCO cites to *Candles/PRC 3/15/04*, and claims that the Department rejected Petitioners claim that the evidentiary record demonstrated the requisite elements for finding affiliation under Section 771(33)(F) even where the record suggested that the third party joint venture was actually involved in some sales of the subject merchandise.[243] We contend that TPCO mischaracterizes the facts of *Candles/PRC 3/15/04* and the basis for the determination by the Department and the Court. In *Candles/PRC 3/15/04*, the Department found that there was no potential to impact decisions concerning the subject merchandise through two joint ventures because one of the companies at issue was dormant during the POR, and the other was not involved in the sale of subject merchandise.[244] Specifically, the Department argued that "neither of the Hong Kong Companies was involved in sales of subject merchandise" and "… one of the Hong Kong Companies may have been involved in sales of subject merchandise outside the United States after the period of review."[245] The Department stated that "even disregarding possible inconsistencies on the record, at best, the two Hong Kong companies were involved in sales outside the United States after the {POR}," and determined that, accordingly, there was no potential to impact decisions regarding subject merchandise.[246] This is far different from TPCO's characterization that the Department found that there was no potential to impact decisions regarding the subject merchandise despite the fact that "the record suggested that the third party joint venture was actually involved in some sales of the subject merchandise." As well, in the instant case, as discussed above, we find that the record evidence is sufficient to show that the relationship of TPCO and the Company C/Company B single entity with the joint venture company has the potential to impact decisions concerning the price, production or cost of the subject merchandise or foreign like product.

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[241] *See* TPCO Verification Report at page 12.
[242] *See* Final Affiliation Memo at 13 for a BPI discussion of this issue.
[243] *See Candles/PRC 3/15/04* IDM at Comment 1.
[244] *See Candles IDM-3/8/04* at Comment 1
[245] *See id.*
[246] *See id.*

Company C and Company B as a Single Entity

In the Preliminary Affiliation Memo, we stated that Company C and Company B may be regarded as a single entity. Citing *NACCO (1997)*, we noted that the Department treats affiliated entities as a single entity where the parent company owns or controls directly or indirectly its subsidiary company or its subsidiary's subsidiary.[247] We stated that this ownership requirement is satisfied in this case through Company C's direct stock ownership of Company B, and accordingly the Department regards the companies as a single entity.

After the Preliminary Affiliation Memo was written, the Department put on the record a certain Dunn & Bradstreet report, and the Petitioners put on the record the Company B Dunn & Bradstreet report. We determine that these reports further confirm that Company B is part of a single entity with Company C through a complete identity of corporate ownership between these entities and their affiliates.

We do not agree with TPCO that *NACCO (1997)* is inapplicable to the present case because *NACCO (1997)* involved affiliation between an importer and an exporter. There is no indication that the Department or the Court relied upon the importer/exporter relationship as the basis for finding affiliation in that case. Rather, the Department treated three companies as a single entity because "TMC directly owns 100 percent of TMS and indirectly owns, through TMS 100 percent of TMCC." Similarly, as explained above, the ownership structure indicates that Company B is properly considered to be a single entity with Company C.

Accordingly, based on the evidence available on the record, as discussed above, we continue to find that TPCO is affiliated with Company A and Company B within the meaning of Section 771(33) (F) of the Act.

III. CREDIT EXPENSE

Comment 11: Credit Expense

Petitioner notes that, TPCO reported that it calculated the number of credit days as the difference between the shipment date and each payment date, and that, for the shipment date, TPCO used the reported date of the bill of lading.[248] Petitioner contends that the Department's normal practice is to base the number of credit days on the date of shipment from the plant, not the port,[249] and accordingly, in the final determination, the Department should determine the number of credit days based on the difference between the date of shipment from the plant and each payment date.

Petitioner states that TPCO reported that it does not track the date on which the merchandise leaves the factory for the port, but that the average time between shipment and departure is four to 11 days, or 7.5 days on average and, therefore, the Department should add 7.5 days to the

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[247] *See NACCO (1997). See also, e.g., Hot-Rolled Steel/Romania 12/7/07*; *Hot-Rolled Steel/PRC 5/3/01*.
[248] TPCO CQR 8/19/09 at page C-11.
[249] *Silicon Metal-Brazil 2/12/02* IDM at Comment 9.

number of credit days to determine credit expense in the final determination.
TPCO asserts that the Department should continue to calculate credit using the standard formula, which incorporates the reported and verified shipment date. TPCO further claims that, because the Department verified its reported shipment date as accurate, and there is no record information reflecting the first date on which any pre-shipment or pre-sale movement occurred, the Department has no basis to increase its credit days beyond those reported in the U.S. sales database.

Department's Position: The Department has determined not to adjust the reported credit expense reported by TPCO. TPCO reported shipment date based on bill of lading date, but did not specify the point in time that determines the date of the bill of lading. Examination of the warehouse document in the sales trace packages from verification, however, indicates that the merchandise left the warehouse on the same date that TPCO reported as shipment date for these sales. TPCO's statement, cited by Petitioner, that the time between when the merchandise leaves the factory and the time of departure from the port is four to 11 days does not contradict the fact that the bill of lading (*i.e.*, date of loading on the ship) was dated on the same date the merchandise left the factory. Accordingly, we find that the record evidence indicates that the bill of lading date corresponds to the date the merchandise leaves the factory, and, therefore, we will continue to use TPCO's reported shipment date as the basis for computing credit expense.

IV. U.S. PRICE DEDUCTIONS

Comment 12: Certain Deduction from U.S. Price

Petitioners note that after the preliminary determination, TPCO reported a new field, *i.e*., Gross Unit Price Tax ("GRSUPRTAXU") in its U.S. sales database. Petitioners argue that the Department's normal practice is to calculate "tax-neutral" dumping margins by deducting taxes from U.S. price.[250] Accordingly, petitioners argue that the Department should deduct GRSUPRTAXU from U.S. price in the final determination.

TPCO argues that it is appropriate to allocate these tax receipts to gross unit price because section 772 of the Act limits constructed export price adjustments to expenses "incurred by or for the account of the producer or exporter, or the affiliated seller in the United States," and that there is no provision in U.S. law that allows for the deduction of expenses paid directly by the downstream U.S. customer from U.S. price for constructed export price sales. Furthermore, TPCO argues that the sales tax is incurred by the customer, and therefore, it should not be deducted from U.S. price.

Department's Position: At verification, the Department found that the per unit price on certain sales invoices differed slightly from the price reported in the U.S. sales database. Company officials explained that these sales included tax fees in the invoice price. At verification, for the relevant sales, we subtracted the tax fees from the values in field GRSUPRU and arrived at the per unit prices listed on the invoice.[251] For the final determination, we are subtracting

[250] *See, e.g., Steel Wire Rod-Mexico 03/13/08* at Comment 2.
[251] *See* TPCO Verification Report.

GRSUPRTAXU from GRSUPRU for all sales where a value was reported in the U.S. sales database for GRSUPRTAXU. This is simply a correction to U.S. gross unit price, it is not an adjustment made pursuant to section 772 of the Act. It is not the Department's practice to include a SV for sales taxes in the calculation of normal value; therefore, including sales taxes in U.S. price would not result in an "apples-to-apples" comparison of normal value and U.S. price in calculating dumping margins. In determining what constitutes the best available information for valuing a factor of production, the Department normally considers whether each potential SV is, among other things, tax exclusive.[252] No interested party has argued that any of the SVs used by the Department to calculate normal value in this investigation are tax inclusive, nor is there any evidence on the record that any surrogate value is tax inclusive. Therefore, for the final determination the Department will subtract reported per-unit sales taxes from TPCO's reported gross unit price to achieve an apples-to-apples normal value U.S. price comparison in the calculation of TPCO's dumping margin.

V. SURROGATE FINANCIAL STATEMENTS

Comment 13: Financial Statements for Surrogate Ratios

TPCO argues that the use of Tata's[253] financial statement to calculate the manufacturing overhead, SG&A expenses, and profit ratios for TPCO is improper and unlawful. TPCO states that the Department never articulated the reason for dismissing the ISMT[254] financial statement in its *Preliminary Determination*. TPCO states that the Department has well-established criteria for selecting surrogate financial statements. TPCO argues that a producer of the subject merchandise is always preferred as a surrogate company to a producer of comparable merchandise and cites *CVP-PRC 11/17/04* at Comment 1.[255] TPCO argues that the Department's previous practice as stated seems to imply that potential surrogate producers with a substantially different product range than the respondent non-market producer are not preferred over potential surrogate producers that have a similar or nearly identical product range.[256] TPCO further argues that the actual or potential receipt of subsidies by the surrogate company does not automatically mean that a company's financial ratios cannot be used and that if there are no unsubsidized potential surrogate companies, then the Department must decide among the subsidized surrogates based on its other criteria.[257] Thus, TPCO argues, the Department should choose as the surrogate company the Indian company which: (1) produces merchandise identical to the subject merchandise; (2) has a similar product range as the NME respondent; and (3) has not been investigated and found to have substantial subsidies.

TPCO argues that ISMT is clearly the more appropriate choice under the Department's first selection criteria since it produces identical merchandise to that produced by TPCO while Tata

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[252] *See, e.g., Fresh Garlic-PRC 10/2/09* IDM at Comment 5; *see also Shrimp-PRC 9/10/09* IDM at Comment 3.
[253] *See* Petitioners' 9/11/09 SV Comments at Attachment A-1.
[254] *See* TPCO's September 11, 2009, Surrogate Value Submission ("TPCO's SV Comments), at Attachment SV-10.
[255] *See, e.g., CVP-India-CVD 11/17/04*; *CTL Plate-PRC 08/10/09*; and *Persulfates-PRC 02/10/03*.
[256] *See, e.g., Nails - PRC 06/16/08*; *CWP-PRC 3/31/09*; and *LWTP-PRC 10/2/08*.
[257] *See, e.g., Rebar-PRC 06/22/01*; *CWP-PRC 3/31/09*.

does not produce either identical or reasonably comparable merchandise. Additionally, TPCO asserts that Tata's operations are more integrated and diverse than TPCO's, whereas ISMT's operations are identical to TPCO's. TPCO contends that Tata's production experience in producing finished steel mill products is vastly different than the experience of TPCO.

TPCO also argues that Tata was found to be a recipient of countervailable subsidies in *HR Carbon Flat Products-India 7/14/08*, but ISMT has never been found to be the recipient of countervailable subsidies.[258] TPCO further argues that Petitioners' claim that ISMT's financial statements indicate that it may have received benefits from advanced licensing for imported materials and could, therefore, be receiving subsidies, is entirely speculative and inconsequential.

TPCO argues that ISMT is the only vertically integrated producer of subject merchandise - seamless oil country tubular goods - in India for which information on financial ratios is publicly available to the Department. Further, ISMT has never been subject to a countervailing duty investigation by the Department and never been found to have received countervailable subsidies. Indeed, TPCO argues, the ISMT financial statements do not state that ISMT actually received advance licenses or utilized those licenses and, thus, the record is not clear that ISMT either used the advance license program or did not receive normal duty drawback in its operations. Furthermore, TPCO argues, regardless of whether the advanced licensing program continues to be a countervailable subsidy, it has been treated by the Department as an export subsidy linked to specific transactions. Therefore, TPCO argues, it is difficult to see how this could have any effect on financial ratios.

Nevertheless, TPCO argues, the Department has frequently used companies that have been investigated and found to have received countervailable subsidies as surrogate companies, most recently using the Indian steel producer Essar despite a determination in 2008 of a subsidy rate of 17.50%.[259] However, TPCO argues, it is not aware of a single case in which the Department has chosen a company proven to have subsidies in a countervailing duty investigation which neither produced the subject merchandise nor is at the same level of integration as the Chinese respondent over a company that produces subject merchandise, is at the same level of integration, and has never been actually found to be subsidized.

Maverick argues that the type of steel production process is critical to accurately reflecting the respondent's production experience. Maverick argues that given the enormous differences in overhead and expenses associated with integrated steel production, if the choice is between another integrated producer and a non-integrated producer, the degree of integration between the integrated producers is simply not relevant, regardless of whether Tata or TPCO purchase a portion of their raw material inputs. What is significant is the similarity in scale of their integrated production process. Maverick asserts that TPCO and Tata are ore-based steel producers, or integrated producers. USS also argues that ISMT is not nearly as integrated as TPCO. Maverick argues that the overwhelming differences between integrated and non-integrated producers in capital costs, facility scale, and manpower have a profound effect on a company's manufacturing overhead, SG&A expenses, and profit, all of which are used in the surrogate value ratios.

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[258] *See HR Carbon Flat Products-India 7/14/08.*
[259] *See CTL Plate-PRC 11/13/08.*

Petitioners argue that unlike TPCO and Tata, ISMT is not an integrated steel producer and does not self-produce any raw material inputs, but rather is principally a scrap-based steel producer. Petitioners further argue that scrap-based steel production allows producers to avoid the enormous capital and operational costs associated with ore-based steel production. Petitioners argue that the assertion that ISMT is somehow an appropriate surrogate because it operates at the same level of integration as TPCO is simply wrong. According to Petitioners, while ISMT may indeed produce its own steel from purchased inputs, its inputs are limited, *e.g.*, absent from its list of raw materials are items such as iron ore, iron fines, iron pellets, coal or coke. Petitioners argue that iron ore production and coke production – found in Tata's production models – are hallmarks of integrated production, and are cost and labor intensive steps which materially affect not only variable and fixed overhead, but also the long term capital expenditures of the company. Petitioners state that ISMT does not incur any of these expenses, while TPCO and Tata do. Petitioners also state that simply because TPCO may purchase some of inputs at a latter stage of processing, does not alter the fact that TPCO and Tata are truly integrated steel producers. Therefore, Petitioners conclude that Tata's production process is comparable to TPCO's production process, while ISMT's is not.

Petitioners argue that Tata's current financial statement does not indicate the presence of any countervailable subsidies but, by contrast, ISMT's financial statement clearly indicates that ISMT is receiving subsidies. Petitioners argue that ISMT's financial statement clearly indicates that ISMT participates in the advanced licensing program which the Department has previously found to be countervailable. Petitioners state that the auditor's notes indicates that advanced licenses are issued to ISMT and goes into great detail to describe how the program works and how the company incurs credits under the program. Petitioners argue that if the company was not using the program, there would be no need to explain the program in such detail in the statement. Therefore, Petitioners argue, ISMT participated in the Advance License program and its participation distorts ISMT's financial data such that it cannot be used in the instant investigation.

Petitioners further argue that it is the Department's practice to reject financial statements of surrogate producers "who are not profitable or are designated as 'sick' by the surrogate-country government."[260] Petitioners further argue that the Department has specifically rejected data from companies that have participated in CDRs because of their distortive impact on a company's financial ratios.[261] Petitioners allege that ISMT participates in a CDR program and, therefore, ISMT's data cannot be used by the Department in this investigation.

Petitioners also argue that TPCO's claim that Tata's financial statements should be rejected based on the Department's determination in a countervailing duty administrative review in *HR Carbon Flat Products-India 7/14/08*, is misplaced, because that decision reflected activity in a completely different period, *i.e.*, the calendar year 2006.[262] Petitioners state that because the POI here is October 1, 2008, through March 31, 2009, and because Tata Steel's 2008-2009 fiscal year does not overlap at all with the POR from *HR Carbon Flat Products-India 7/14/08*, the

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[260] *See, e.g., Mag Metal-PRC 7/14/08*; and *HR Carbon Flat Products-India 1/7/04*; and *STR-PRC 2/27/09.*
[261] *See Pencils-PRC 5/21/04*; and *Rebar-Belarus 06/22/01*.
[262] *HR Carbon Flat Products-India 7/14/08*.

Department's decision in that administrative review is irrelevant. Petitioners argue that the financial statements show that Tata did not receive benefits under a countervailable subsidy program during the POI.

Department's Position: Before the *Preliminary Determination*, parties placed three financial statements on the record, for ISMT, OCTL[263] and Tata, each covering the FY 2008-2009. We found all three financial statements to be complete, legible, publicly-available, contemporaneous with the POI, and from producers of either identical or comparable merchandise.[264] In the *Preliminary Determination*, the Department also found that ISMT's financial statement stated that it is entitled to import duty free raw material under Advance Licenses and that it adjusts the higher cost of domestic raw materials actually consumed for export/production by accruing the value of the company's entitlement to import duty-free material.[265] The Department has found the Advance Licenses program to be countervailable in the past.[266] Therefore, the Department did not use ISMT's audited financial statement to calculate surrogate financial ratios for the *Preliminary Determination*.

In analyzing the remaining two financial statements, the Department preliminarily determined that Tata is an integrated steel producer with captive mines.[267] The Department further found that OCTL, like Changbao, is a non-integrated producer of identical and comparable merchandise.[268] Based on this analysis, the Department found that with regard to these two financial statements, Tata's level of integration is more similar to TPCO's and OCTL's level of integration is more similar to Changbao's. Therefore, the Department preliminarily determined Tata and OCTL's financial statements sufficiently representative to value the surrogate financial ratios for TPCO and Changbao, respectively.[269]

No party placed any additional financial statements on the record subsequent to the *Preliminary Determination*. Accordingly, based on the arguments raised by the parties regarding the appropriate surrogate financial statements with which to value manufacturing overhead, SG&A expenses and profit, the Department has evaluated the appropriateness of using each of the three record financial statements addressed by the parties for the final determination, below. Because the Department is applying a margin based on total AFA to Changbao, we have evaluated this issue only with respect to TPCO.

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[263] *See* Petitioners' 9/11/09 SV Comments at Attachment A-2. *See also* Changbao's SV Comments at Attachment 1.
[264] There were an additional five financial statements that had been placed on the record prior to the initiation of this investigation. These were from MSL (FY 2007-2008); RMT (FY 2007-2008); SAIL (FY 2007-2008); Tata (FY 2007-2008); and Welspun (FY 2007-2008). We disregarded the statements of MSL, RMT, SAIL, Tata (FY 2007-2008) and Welspun for purposes of the *Preliminary Determination* because they were not contemporaneous with the POI and, additionally, several of them are producers of welded pipe. The production processes for welded and seamless pipe are very different; accordingly, these statements do not provide an appropriate source with which to value TPCO's financial ratios. We note that no party raised these five statements for consideration for purposes of the final determination and we have not considered them herein for that purpose.
[265] *See* Prelim SV Memo, at page 9.
[266] *See, e.g.*, *Steel Wire Strand/PRC 7/8/03*, affirmed in the final determination, *Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India*, 68 FR 68356 (December 8, 2003).
[267] *See* TPCO 7/29/09 AQR at pages 19-20.
[268] *See id*. at 7.
[269] *See* Prelim SV Memo, at page 8.

For the reasons discussed below, for the final determination, the Department is calculating the surrogate financial ratios for TPCO using the financial statements of ISMT, OCTL and Tata (FY 2008-2009). The statute directs the Department to base the valuation of the factors of production on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate . . ."[270] Moreover, in valuing such factors, Congress further directed the Department to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices."[271]

Section 351.408(c)(4) of the Department's regulations further stipulates that the Department normally will value manufacturing overhead, SG&A expenses and profit using "non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country." In complying with the statute and the regulations, the Department calculates the financial ratios based on contemporaneous financial statements of companies producing comparable merchandise from the surrogate country, some of which may contain evidence of subsidization. However, where the Department has a reason to believe or suspect that the company producing comparable merchandise may have received actionable subsidies, it may consider that the financial ratios derived from that company's financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements that do not contain evidence of subsidization. Consequently, the Department does not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios.[272]

In choosing surrogate financial ratios, it is the Department's policy to use data from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[273] Guidance regarding surrogate values for manufacturing overhead, general expenses, and profit is provided by section 351.408(c)(4) of the Department's regulations, which states that these values will normally be based on public information from companies that are in the surrogate country and that produce merchandise that is identical or comparable to the subject merchandise.[274] While the statute does not define "comparable merchandise," it is the Department's practice, where appropriate, to apply a three-prong test that considers: 1) physical characteristics; 2) end uses; and 3) production processes.[275] In the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producers' experience.[276] The Courts have held that the Department is neither required to "duplicate the exact production experience of the Chinese manufacturers," nor undergo "an item-by-item analysis in calculating factory overhead."[277]

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[270] *See* section 773(c)(1) of the Act.
[271] *See OTCA 1988* at 590; and *see, e.g., Shrimp-PRC 9/10/09* IDM at Comment 3b.
[272] *See Shrimp-PRC 09/12/07* IDM at Comment 2, citing *Crawfish-PRC 04/17/07* IDM at Comment 1, where the Department determined that the financial statements of several companies that had received countervailable subsidies did not constitute the best available information to value the surrogate financial ratios and, consequently, did not use them.
[273] *See CLPP-PRC 9/8/06* IDM at Comment 1.
[274] *See, e.g., CLPP-PRC 9/8/06* IDM at Comment 1.
[275] *See Pencils-PRC 7/25/02* IDM at Comment 5.
[276] *See Rhodia (2002)* at 1250.
[277] *See Nation Ford (1999)* at 1377 and *Magnesium Corp. (1999)* at 1372.

Accordingly, in light of the parties' arguments, the Department has re-examined the 2008/09 financial statements of ISMT, OCTL and Tata for purposes of identifying the best available information to value TPCO's overhead, SG&A expenses and profit for purposes of this final determination and find the following.

Contemporaneity

All three financial statements cover the fiscal period April 1, 2008 through March 31, 2009 and so fully overlap with the POI, which is October 1, 1008 through March 31, 2009.

Specificity: Identical/Comparable Merchandise

The Department has reviewed the financial statements of all three companies and has determined that both ISMT and OCTL produce seamless OCTG, *i.e.*, identical merchandise to that covered by this investigation, while Tata produces comparable merchandise, *e.g.*, other seamless pipe. Further, the Department determined that both Tata and ISMT produce a broad range of additional products. For example, Tata also produces hot-rolled, cold-rolled, and galvanized steel products; steel rebar, bearings, and wires; high-precision equipment, and agricultural implements,[278] while ISMT also produces steel bars, cold-drawn precision seamless tubes, hollow bars, tubes for mining; automotive air bag canisters, transmission shafts, and clutch parts; bearing rings and tubes; hydraulic cylinders; construction equipment; and energy.[279] Conversely, OCTL, as a processor and reconditioner of OCTG products, *e.g.*, drill pipe, tubing, OCTL DS connection, and casing pipe,[280] has a much narrower product line than the other two Indian producers.

Level of Integration

In re-examining the financial statements on the record of this investigation, the Department finds that the potential surrogate companies are extremely varied in their respective levels of integration. First there is Tata, a fully integrated company whose operations begin with mining (*i.e.*, iron ore and coal), and continue with steelmaking all the way through to finished product production (*e.g.*, seamless pipe and the other products identified above), at one end of the spectrum.[281] At the other end of the spectrum is OCTL who is a processor of already formed pipe, rather than an integrated steel and pipe producer.[282] In other words, OCTL's primary raw materials consumption is limited to casing pipes, production tubing and drill pipes.[283] Finally there is ISMT somewhere in the middle. ISMT's primary input is steel and steel scrap, from which it forms seamless pipe and the other products identified above.

Subsidies

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[278] *See* page 187 of Tata's financial statement contained in Petitioners' 9/11/09 SV Comments at Attachment A-1.
[279] *See* pages 5-6 of ISMT's financial statement contained in TPCO's 9/11/09 SV Comments at Attachment SV-10.
[280] *See* page 42 of OCTL's financial statement contained in Petitioners' 9/11/09 SV Comments at Attachment A-2.
[281] *See* page 127 of Tata's financial statement contained in Petitioners' 9/11/09 SV Comments at Attachment A-1.
[282] *See* page 42 of OCTL's financial statements contained in Petitioners' 9/11/09 SV Comments at Attachment A-2.
[283] *See id.*

The Department has carefully reviewed each of the three financial statements in question and finds that two of them provide evidence of having benefitted from subsidies the Department has previously found to be countervailable. As discussed above with regard to the *Preliminary Determination* findings, record evidence continues to support a finding that ISMT benefitted from the Advance Licenses program, which the Department has previously found to confer a countervailable subsidy. However, the Department does not agree with Petitioners that the record supports a conclusion that ISMT participated in a CDR program. In addition, the Department further finds that Tata also benefitted from a subsidy program, the DEPB Scheme, which the Department has previously found to be countervailable.[284] Accordingly, the Department does not need to address TPCO's argument regarding subsidies found for Tata in another, non-contemporaneous period, because the financial statements from the 2008-2009 FY already provide evidence of subsidies. Finally, the Department continues to find, as in the *Preliminary Determination*, that OCTL's financial statement does not provide any evidence that it benefitted from subsidies the Department has previously found to be countervailable.

Selection of Surrogate Statements

In examining the three financial statements at issue to determine which best meet the statutory directive to base the valuation of the FOPs on the best available information, the Department determined that while all three of the financial statements at issue are contemporaneous, none of them meet all of the Department's remaining criteria. First, with regard to specificity, the Department finds that TPCO has a mix of merchandise that it produces including line pipe, drill pipe, casing, tubing, pressure cylinders, and couplings. While there is some overlap in the product mix between TPCO and each of the three potential surrogates, none of them produce an identical product mix to TPCO. For example, ISMT and TPCO both produce finished seamless OCTG. However, unlike TPCO, ISMT also produces construction equipment or automotive air bag canisters. Similarly, both TPCO and Tata produce seamless pipe products but Tata, unlike TPCO, also produces bearing rings and agricultural implements. OCTL, on the other hand, has a much more similar product line to TPCO's than the other two companies as it is primarily a finisher of pipe and pipe-related products.

In this case, ISMT, OCTL and Tata each produce merchandise that is identical and/or comparable to the subject merchandise. Thus their financial statements are all representative of, though not identical to, the experience of TPCO in this regard. While, OCTL's product line is generally more similar to TPCO's the discussion below indicates that this does not necessarily translate to OCTL having a more similar production experience to TPCO than the other Indian producers. Accordingly, there is no compelling reason, on this basis alone, to either include or exclude any one, or more, of the producers from the calculation of the surrogate financial ratios.[285]

Next, after considering all available information on the record, the Department determines that

[284] *See, e.g., CVP-India-CVD 11/17/04* IDM at Comment IV.A.1.b; and *Iron-Metal Castings- India 11/12/99* (unchanged in final results), where we found the DEPB Scheme to constitute a countervailable program.
[285] *See, e.g., FMTC-PRC 12/17/*07 IDM at Comment 1.

none of the Indian producers reflect the same degree of integration as TPCO. TPCO is an integrated producer that purchases some billets, but also has extensive purchases of coal, ore, steel scrap and other raw material inputs to produce its own steel which it then further processes into formed steel products such as seamless steel OCTG, casing, tubing, line pipe, boiler tubes, high-pressure cylinder tube, and hydraulic support tubes.[286] While TPCO is not as integrated as Tata in that it does not conduct its own mining, it is much more integrated than ISMT, which does not produce its own steel from mined raw materials but purchases steel bars, steel scrap, and various irons as its primary production inputs. Finally, TPCO is significantly more integrated than OCTL, a processor of pipe, whose primary input is formed pipes and tubes.[287]

As a general matter, the Department agrees with Petitioners that the degree of integration is a relevant factor that can affect overhead rates, as a fully integrated producer will have an overhead to raw material input ratio that is higher than the same ratio for a non-integrated producer, other things being equal. Accordingly, the Department has previously found the level of integration to be an important distinction among the potential surrogate steel companies' financial statements.[288] After considering all available information on the record, as discussed above, the Department determines that none of the Indian producers reflect the degree of integration represented by TPCO in this investigation.

Consequently, application of the overhead ratio based solely on ISMT or OCTL's data results in understating the overhead expense because the ratio does not reflect the expenses incurred to produce steel, the major input into OCTG as experienced by TPCO. Conversely, as argued by TPCO, application of the overhead ratio based solely on Tata's data results in overstating the overhead expense because TPCO does not incur the costs of mining, as does Tata. Therefore, for the final determination, to capture an appropriate level of overhead expense incurred by TPCO, it is appropriate to apply an overhead ratio based on the average of the three Indian producers, ISMT, OCTL and Tata.[289]

With respect to subsidies, as discussed in detail above, two of the three potential surrogate companies, ISMT and Tata, benefitted from actionable subsidies during this period. In *Crawfish-PRC 04/17/07* IDM at Comment 1, the Department noted that where it has reason to believe or suspect that a company may have received countervailable subsidies, financial ratios derived from that company's financial statements may not constitute the best available information with which to calculate surrogate financial ratios.

Nevertheless, the Department has used financial statements with some evidence of subsidies when the circumstances of the particular case warranted. For example, the Department determined, in *Fish-Vietnam 03/21/07*, that it was appropriate to use a financial statement where there was insufficient information on the record regarding the subsidy program to warrant

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[286] *See* TPCO Verification Report at pages 22-24.
[287] *See, e.g.*, page 189 of Tata's financial statement contained in Petitioners' 9/11/09 SV Comments at Attachment A-1; page 39 of ISMT's financial statement contained in TPCO's 9/11/09 SV Comments at Attachment SV-10; and page 43 of OCTL's financial statement contained in Petitioners' 9/11/09 SV Comments at Attachment A-2.
[288] *See e.g., Carbon Steel Plate-PRC 2/24/10* at Comment 8, *Circular Welded Steel Pipe-PRC 5/24/02* at Comment 5, and *EMD-PRC 8/18/08* at Comment 3.
[289] *See, e.g., Aspirin/PRC 5/25/00* IDM at Comment 4.

disregarding the financial statement.[290] The Department also has previously accepted the financial statement of a surrogate producer (Pidilite Industries Limited) which contained evidence that the company received a subsidy that the Department had found to be countervailable.[291] In that case, the only other reliable alternative was the Reserve Bank of India data, which was not industry-specific and comprised two sets of data, one based on 997 selected public limited companies based in India and the other based on 2,204 selected public limited companies based in India.[292] Consequently, the Department found, in that case, that the financial ratios of Pidilite, a producer of identical merchandise, represented the best available information on the record in comparison to the extremely broad-based data from the Reserve Bank of India, notwithstanding that the company had benefitted from actionable subsidies.[293]

In this case, applying surrogate financial ratios on the sole basis of the single contemporaneous financial statement that does not evidence actionable subsidies would result in significantly understating those ratios with respect to TPCO. Accordingly, in this case, the antidumping statute's mandate to rely on the best available information in selecting surrogate values means relying on all three producers' statements, including those with subsidies.

Based on this overall analysis, the Department determines that none of the three Indian producers in question are fully representative of the production experience of TPCO. The Department also determines that relying on any single one of those producers' financial statements would significantly understate or overstate TPCO's financial ratios. Therefore, given the Department's preference for using multiple financial statements in order to determine surrogate financial ratios for manufacturing overhead, SG&A expenses, and profit,[294] the Department has used the average of the audited financial statements of all three Indian producers, ISMT, OCTL and Tata, to calculate surrogate financial ratios for TPCO in the final determination.

VI. TRANSPORTATION COSTS

Comment 14: Water Transportation Costs

TPCO argues that the Department incorrectly assessed a transportation cost for water consumption in its *Preliminary Determination*,[295] because the Department verified that no such transport cost was incurred by TPCO during the POI. Specifically, TPCO asserts that at verification, it submitted a correction to its supplier mode and transport listing and that neither the correction nor the initial listing had a mode of transport associated with water consumption because none was used. According to TPCO, the Department noted no discrepancies with respect to the supplier listing and that this specific issue was discussed during the verification. Furthermore, TPCO argues that the volume of water required to produce subject merchandise renders the costs of transport uneconomical. TPCO concludes that the Department, therefore,

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[290] *See Fish-Vietnam 03/21/07* IDM at Comment 9.
[291] *See CVP-India-CVD 11/17/04* IDM at Comment IV.A.1.b.
[292] *See CVP-India-AD 11/17/04* IDM at Comment 1 (summary of parties' comments).
[293] *See Id.* IDM at Comment 1 (Department's Position).
[294] S*ee, e.g.*, *WBF-PRC 11/17/04* IDM at Comment 3; and *Mushrooms-PRC 8/27/01* IDM at Comment 1.
[295] *See OCTG Preliminary Determination (November 17, 2009).*

should not assess any transport costs on TPCO's consumption of water in its final margin calculation.

USS argues that the Department should continue to add transportation costs to the surrogate value for water, stating that TPCO listed a mode of transportation and a transportation distance for water in all of its FOP databases.[296] USS contends that TPCO's claims regarding minor corrections and supplier mode transport during verification have no basis in the facts on the record. USS submits that there is no evidence of discussions between TPCO and the Department regarding water anywhere in either the verification report or the verification exhibits.[297] Accordingly, in the final determination, USS argues that the Department should continue to calculate a SV for water and to add a SV for truck freight for the transportation distances reported by TPCO.

Department's Position: Upon review of the record, the Department finds that TPCO's pig iron and sinter cost sheets indicate that TPCO obtains water from a water utility company.[298] Further, the Department reviewed these documents at verification and found nothing that would indicate that water is not delivered by pipeline.[299] Notwithstanding this evidence, TPCO incorrectly continued to include a freight distance in its FOP databases. However, the Department has determined not to assess water transportation costs for TPCO's water consumption for purposes of the final determination, because the Department finds, based on the record evidence, that the water is delivered by pipeline. There is no indication on the record that TPCO incurs additional costs for use of these pipelines.

Comment 15: Addition of Freight Costs to ME Purchases

Maverick and USS argue that the Department should add freight costs to the valuation of TPCO's ME purchases where such costs were not included in the purchase price, consistent with Department practice and its regulations. Maverick and USS state that in valuing ME input purchases, the Department's practice is to include the freight costs actually incurred in transporting the input to the respondent and cites *Certain Polyester Staple Fiber-PRC 4/19/07* at Comment 2, where the Department "added foreign inland freight based on a surrogate value for truck freight to the market economy purchases" after concluding that there was "record evidence, based on delivery terms, that foreign inland freight is not included in the market economy price."

Referencing Exhibit D-9 of TPCO SDQR-8/21/09 as evidence of ME purchases, Maverick contends that in calculating TPCO's weighted-average ME input price for mine powder, the Department did not include the relevant freight costs incurred in transporting the input to TPCO. Accordingly, Maverick contends, to the extent that TPCO incurred transportation expenses not already included in its ME purchase prices, the Department should add a surrogate value for such transportation costs.

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[296] *See* Preliminary Analysis Determination Memo for TPCO (Nov. 4, 2009).
[297] *See* Tianjin Pipe Group Co., FOP Verification Report and Verification Exhibits (Dec. 23, 2009).
[298] *See* TPCO's FOP Submission, Pig Iron Cost Sheet for October 2008, submitted October 13, 2009 and 168-Pipe Rolling Production Line FOP Data spreadsheet, submitted October 13, 2009.
[299] TPCO's Verification Exhibit 1.

In addition, USS argues that the Department should continue to include in its calculation of the value for TPCO's mine powder a purchase from a ME supplier which entered China during the POI, even though the invoice date predates the POI. USS states that the Department's normal practice is to consider when the import in question entered the country, as evidenced by its treatment of WTA data, *i.e.*, when using WTA data to calculate surrogate values, the Department does not consider the invoice date but the entry dates to determine applicable data.

TPCO rebuts Maverick and USS's assertions, arguing that including a ME purchase value based solely on its import date would be inconsistent with the Department's established methodology of not including purchases made outside the POI and cites to *Antidumping Methodologies*. TPCO also notes that while Petitioners requested inclusion of transactions made outside the POI in the valuation of this input, they did not make a similar argument with respect to other inputs sourced from MEs. Finally, TPCO argues that since all other purchases of mine powder during the POI were made inclusive of international freight, the Department should not include marine freight in the calculation of TPCO's average ME purchase price for mine powder.

TPCO did not comment on the addition of foreign inland freight to certain ME purchases of mine powder.

Department's Position: It is the Department's practice not to adjust ME purchases for inland freight in the country covered by the proceeding if the ME purchase price is a delivered price because such terms indicate all freight/transportation costs are already in the price. Conversely, the Department will include separate freight or transportation costs where they are not already included in the ME purchase price if the purchase price is not on a delivered basis, as in the instant case. *See Certain Polyester Staple Fiber-PRC 4/19/07* at Comment 2 and *Carrier Bags-PRC 03/19/07* at Comment 8. As Maverick notes, in this investigation, there is record evidence, based on the reported delivery terms, that certain foreign inland freight costs are not included in certain ME purchase prices. Thus, where appropriate, we have added foreign inland freight based on a surrogate value for truck freight to ME purchases of mine powder. *See* Final SV Memo.

With regards to ocean freight, the mine powder purchases for which Petitioners allege that marine freight costs were not included in the purchase prices, were made outside of the POI. *See* TPCO Verification Report at Exhibit 11. In valuing the ME inputs, it is the Department's practice to value factors of production based on the respondent's total volume of ME purchases, not imports, of the input during the POI. *See Antidumping Methodologies*. Petitioners' argument on this issue is misplaced. While Petitioners are correct that when using WTA data to calculate surrogate values, the Department uses data based on the entry dates during a specific period to determine applicable values, rather than invoice dates during that same period because that is the way country-wide import statistics are reported internationally by the governmental authorities. However, when valuing ME purchases made by a respondent, the relevant invoice data (*i.e.*, purchase data) are available. This information provides the best indication of the respondent's actual market-based costs for that input during the period in question. Therefore, because all of TPCO's ME purchases of mine powder during the POI already include the international freight costs, we will not add marine freight to these purchase values. *See* TPCO Final Analysis Memo for a BPI discussion of this issue.

VII. CERTAIN CONVERSION FACTOR ISSUES

Comment 16: Conversion Factors for Argon, Nitrogen and Oxygen

USS argues that the Department incorrectly applied the conversion factors for argon, nitrogen, and oxygen in its *Preliminary Determination*. USS states that the Department multiplied the unit value of the three gases in USD per Kg by the conversion factor of Kg per cubic meter to arrive at a surrogate value in USD per cubic meter. USS argues that the conversion factors for the gases are for converting quantity into volume, not unit values. USS asserts that the Department should first convert the quantity of gas from Kg to cubic meter by multiplying the total quantity by the corresponding conversion factor; and that the per unit value should then be calculated by dividing the total USD value by the number of cubic meters. USS notes that, alternatively, the same result can be achieved by dividing the per-unit USD per Kg value by the conversion factor. TPCO did not comment on this issue.

Department's Position: We agree with USS that in the *Preliminary Determination*, the Department inadvertently applied the conversion factors for argon, nitrogen, and oxygen incorrectly. For the final determination, the Department will first convert the quantity of gas from Kgs to cubic meters and then divide the total USD value by the number of cubic meters to derive a per-cubic meter unit value. *See* Final SV Memo.

VIII. BY-PRODUCT OFFSETS

Comment 17: By-product Offset for Steel Scrap

USS claims that the Department should deny TPCO's by-product offset for steel scrap. To support their claim, Petitioners rely on *Mushrooms-PRC 07/21/05*, which declares that the Department may deny offsets where the by-product is further processed and the factors related to the processing have not been provided. USS argues that similarly, TPCO did not report factors of production for further processing even though they were requested by the Department in a supplemental questionnaire. However, USS argues, if the Department decided to grant TPCO a by-product offset for steel scrap, it should use a SV not only for the scrap by-product offset, but also for the factor of production for scrap, rather than valuing TPCO's scrap input using respondent's ME purchase price.

TPCO argues that the Petitioners' reading of *Mushrooms-PRC 07/21/05* is incorrect in that the Department denied the respondent's by-product offset because the respondent failed to show that the post-production scrap in question was in fact sold or reused, which is not the case for TPCO.[300] TPCO asserts that in its original Section D questionnaire response, TPCO provided information regarding its reintroduction of steel scrap into the production process, and the Department verified this information. TPCO states that although the Department requested information regarding the further processing of its scrap, the Department expressed no dissatisfaction when TPCO did not provide the information and claimed the data was immaterial. Therefore, the Department cannot now decide not to grant TPCO's by-product offset request.

[300] *Mushrooms-PRC 07/21/05* at 42037.

TPCO argues that denial of the by-product offset now would be similar to applying FA, and the Department may only resort to FA when it has given the respondent adequate opportunities to supply the requested information and the respondent repeatedly fails to do so. TPCO further argues that the Department should continue to value its steel scrap factor of production and steel scrap by-product with different values because there is a clear distinction between these products.

Department's Position: The Department has determined to allow, in part, the scrap by-product offset requested by TPCO. We have determined to grant TPCO a by-product offset for the steel scrap it reported that did not require further processing. We further determine, however, to deny a by-product offset for the steel scrap that required further processing, but for which TPCO did not report the factors of production for further processing. Further, we are continuing to value TPCO' scrap factor of production with its ME purchase price, and have applied an appropriate SV to its scrap by-product offset.

In our initial questionnaire we instructed that if a claimed by-product is further processed, the material inputs used in that further processing be reported. In our 9/18/09 SQ to TPCO, the Department reiterated this request, directing TPCO to "please explain any further processing of by-products or co-products, and list the factors and quantities used in the further processing, if applicable." In TPCO's SDQR 10/5/09, TPCO stated that a certain amount of its steel scrap by-product underwent further processing before being re-introduced into production, but TPCO failed to provide the factors and quantities used in the further processing, as requested.

USS's citation to *Mushrooms-PRC 07/21/05* for the proposition that the Department will deny a request for a by-product offset if the party requesting a by-product offset does not report the factors of production required for reintroduction to production is correct. We do not agree with TPCO's assertion that the sole reason the Department denied the by-product offset in *Mushrooms-PRC 07/21/05* was because the respondent failed to show the scrap in question was sold or re-used. *Mushrooms-PRC 07/21/05* clearly states that the by-product offset was denied both because the respondent did "not provide evidence that post-production copper wire scrap was sold or re-used" and "did not provide either the complete set of factors necessary for the reworking of the scrap copper wire into a useable form, nor did it provide an attempt at a valuation for such factors."[301]

We disagree with TPCO's statements that it provided information regarding its reintroduction of steel scrap, that the information was verified, and that the Department never questioned the appropriateness of TPCO's offset. TPCO did not provide relevant information regarding the re-introduction of its steel scrap. The Department's request for this information in its 9/18/09 SQ to TPCO shows that the Department did not believe that TPCO had provided all the necessary information and that the Department questioned aspects of the offset. TPCO's statement is tantamount to an assertion that it is the Department's responsibility to track down every incomplete answer provided by respondents and provide limitless opportunities for them to respond. If such were the case, the Department would never be able to complete an investigation or administrative review within the proscribed statutory deadlines. In this case, the Department

[301] *Id.*

requested this information twice from TPCO. Further, TPCO's citation to the verification report merely points to the sections of the report covering material inputs with no specific reference to the by-product offsets or factors of production for reintroduction of the scrap.

We further disagree with TPCO's assertions that the Department cannot deny TPCO's request for a by-product offset because it would be tantamount to applying FA to TPCO, and the Department cannot apply FA unless "it has given a respondent adequate opportunities to supply the requested information and the respondent repeatedly fails to comply …" As an initial matter, we consider the Original Questionnaire and the supplemental questionnaire adequate opportunity for TPCO to supply the requested information. Further, it is established Departmental practice that the interested party that is in possession of the relevant information has the burden of establishing the amount and nature of a particular adjustment to normal value. *See* 19 CFR 351.401(b) and *Carrier Bags/PRC 3/17/08* IDM at Comment 7. Accordingly, unlike other situations referred to by TPCO, where, as here, the respondent is requesting a by-product offset and it is in control of the relevant information, the burden to provide information related to a request for a by-product offset is on the respondent.[302] Accordingly, TPCO's failure to provide the requested information means that TPCO did not meet its burden to demonstrate eligibility for a by-product offset for the steel scrap which required further processing for re-introduction to production.

Finally, USS has put forward no reason for the Department to value TPCO's scrap input with a SV rather than with its ME purchase price, which represents more than 33 percent of its purchases of scrap. Accordingly, we have continued to use that ME price for the scrap SV. Further, with regard to the partial scrap by-product offset that we are granting, we have continued to value the offset using an appropriate SV for this material.[303]

IX. GENERAL SURROGATE VALUE ISSUES

Comment 18: Value of Ancillary Materials

Petitioner argues that the Department should reject TPCO's classification of certain materials as manufacturing overhead. USS argues that none of these inputs should be treated as overhead because they are either physically incorporated into the subject merchandise or regularly replaced during the production of subject merchandise, and the Department should treat these materials as direct material inputs and calculate corresponding factors of production for the final determination.[304] USS contends that the Department also examines the significance of the input in the production process,[305] and how the item in question is typically classified – *i.e.*, as a material input or as overhead – by the industry,[306] and that TPCO's own books and records confirm the fact that the materials at issue here were consumed in the production of the subject merchandise and, record them as other than manufacturing overhead.

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[302] *See Mushrooms-PRC 07/21/05* at 42037; *see also FSVs-PRC 3/13/09* at Comment 10g.
[303] *See* Final SV Memo.
[304] *See Threaded Rod-PRC 2/27/09* at Comment 2; *see also Garment Hangers-PRC 8/14/08* at Comment 9D.
[305] *Glycine-PRC 1/31/10* at Comment 3 (classifying significant items as FOPs and insignificant items as overhead).
[306] *Silicon Metal-PRC 1/12/10* IDM at Comment 12.

Lastly, USS argues that publicly available information from the AISI shows that a number of the items thus classified by TPCO are either physically incorporated into the subject merchandise or regularly replaced. For these reasons, USS concludes that the Department should calculate factors of production for these materials.[307]

TPCO submits that there is no basis for the Department to reject its classification of the specific items in question, and further there are no means to meaningfully assign a value to these items other than as manufacturing overhead. TPCO further argues that the Department has made no findings to suggest its reporting was inaccurate during the two-week verification, which confirms the accuracy of its factor of production reporting.

Department's Position: For the final determination the Department will continue to consider the materials in question as overhead items rather than direct factors of production. In 9/18/09 SQ to TPCO, the Department specifically requested information regarding 25 material inputs described by TPCO as ancillary/overhead materials. Descriptions of the uses of these materials listed at pages 18 through 22 of TPCO's SDQR 10/6/09 indicated that they were not direct materials and were used in the production process of subject merchandise rather than being incorporated into subject merchandise. For example, materials classified by TPCO as ancillary materials were used "to line the trough at the base of the furnace," as an "insulation agent," as "plugs," as "protectant materials," to "conduct electricity," as "liner/insulation," to "remove impurities," to "absorb oxygen," to "prevent oxidization," "to remove impurities," and as lubrication, *etc*. Further, at page 22 of TPCO's SDQR 10/6/09 TPCO states that consistent with its own accounting standards it calculates cost of production using the cost of direct materials and the cost of materials not classified as direct materials, "such as tools (e.g., mandrils, push rod heads), insulation (*e.g*., Insulation agent, fire retardant materials), and other materials used in the production process, rather than the production of the material. TPCO tracks these materials separately in its monthly cost sheets. The Department found no information at verification to contradict TPCO's described use and classification of these materials. Furthermore, TPCO has not submitted per unit consumption data with respect to these raw materials and the Department has not requested that it do so. While Petitioners have cited cases in which the Department has individually valued some materials classified by TPCO as ancillary materials as direct material inputs, each case must be evaluated based on the record data of that case. For example, the issue in *Rotors-PRC 2/28/97* cited by Petitioners supports the classification of the item in question in that case, as indirect materials because ". . . although these inputs are used to produce the subject merchandise, these inputs are not incorporated into the final product and are also categorized as 'stores and spares consumed' based on Indian accounting standards, demonstrating that the analysis must be based on the specific record of each case.[308]

[307] The Department has already determined that a number of the items in question are raw material inputs rather than overhead. *See, e.g., CTL Plate-PRC 2/24/10* at Comment 12; *Steel Wire Strand-PRC 12/23/09*; *Rotors-PRC 2/28/97*; *Pure Magnesium-PRC 9/27/01* at Comment 6; *Silicon Metal-Russian Federation 2/11/03* at Comment 25.
[308] *Rotors-PRC 2/28/97* at Comment 8.

Comment 19: FOPs Purchased through a Distributor

USS argues that the Department should add a surrogate mark-up value to all factors of production purchased by TPCO through distributers, because, as noted in *OTR Tires/PRC 07/15/08*, distributors mark-up the merchandise to sell it at a profit.[309] According to USS, such an adjustment would be consistent with the Department's adjustments to SVs, which it increases to reflect expenses incurred between receipt of the material at the port and receipt by the end-user of the input.[310] USS argues that for factors of production that TPCO acquired through a distributor, the expenses incurred by TPCO would include a mark-up to account for the NME distributor's role in the transaction, and this mark-up would also be reflected in TPCO's corresponding SG&A expenses and profit. USS states that the denominator in the surrogate financial ratios includes the cost of raw materials and, therefore, captures any distributor mark-up charged on the sale of such raw materials to the company serving as the source of the surrogate financial data. USS asserts that because distributor mark-ups are captured in the denominator of the surrogate financial ratios, distributor mark-ups paid by TPCO should be accounted for in the COM calculation to ensure that the financial ratios and COM are on an apples-to-apples basis.

TPCO objects to USS's request to add a distributor mark-up to the surrogate used to value TPCO's factors of production in this investigation, arguing that there is no statutory provision directing such an adjustment. TPCO also contests USS' assertion that such an adjustment is tantamount to a movement expense adjustment. Specifically, TPCO notes that freight adjustments in SV calculations are direct movement expenses that are captured as part of the NV calculation and that these adjustments are authorized under section 773 of the Act. TPCO emphasizes that there is no statutory provision that allows the Department to increase NV by adding profit twice (once to SVs and once when NV is increased by the surrogate financial ratios). TPCO contends it has demonstrated that such an adjustment would be unfairly punitive and, therefore, asserts that the Department should deny this request in the final determination.

Department's Position: The Department agrees with TPCO that there is no basis to add a distributor mark-up to the SVs used for TPCO in this investigation. As an initial matter, there is no way for the Department to ascertain whether the SVs include a distributor mark-up in their prices. USS cites to no regulatory or statutory basis for adding a surrogate mark-up to factors of production purchased from an NME distributor. In addition, USS' citation to *OTR Tires/PRC* 07/15/08[311] is unpersuasive, as the citation refers to an issue about whether to value certain inputs as ME or NME inputs, and says nothing on the subject of adding a mark-up to SVs because the inputs were sourced through an NME distributor. Regarding USS' citation to *Tapered Roller Bearings*, the Department finds that this case refers to the addition of freight costs to the value of certain factors of production where freight was not included in the SV or MEP price. Section 773 of the Act requires that all movement costs associated with transporting the input to the producer be accounted for in the NV calculation. However, the Department has examined the record and determined that while a distributor mark-up may have been incurred for certain of TPCO's purchases, such a distributor mark-up is not a charge that is necessarily incurred with

[309] *See OTR Tires/PRC 07/15/08* at Comment 70.
[310] *See TRBs/PRC 07/08/09*, unchanged in *TRBs/PRC 01/06/10*.
[311] *See OTR Tires/PRC 07/15/08* at Comment 70.

transporting the input to the producer. Accordingly, the Department finds that it is not appropriate to treat the distributor mark-up as a movement cost under section 773 of the Act. Therefore, the Department finds no basis in section 773 of the Act nor in the cases cited by USS that justifies adding a distributor mark-up to the SV for those factors of production that TPCO purchased from a distributor.[312]

Comment 20: Surrogate Value for Billet

Maverick argues that TPCO's proposed billet SV, WTA data for Indian HTS 7207.20.90, does not reflect the actual cost of OCTG quality billets and is, therefore, aberrational. First, Maverick seeks to determine TPCO's direct cost for the production of billets using the factors of production submitted by TPCO. Maverick then argues that the price discrepancy between TPCO's cost of purchasing raw materials to produce its own billets, as calculated by Maverick, versus purchasing billets outright, demonstrates the aberrational value, *i.e.*, that TPCO would not self-produce its own billets based on the acquisition cost yielded by Indian HTS 7207.20.90.[313] USS, while not attempting to determine TPCO's cost of producing its billets, reaches the same conclusion arguing that, under the Indian HTS, the price of sponge iron, used to produce billets, is 14.81 rupees per kg more than billets under 7207.20.90.

Second, Maverick cites to the comparative differences between Indian export unit values under the same HTS category (*i.e.*, $1,148.34 versus the Indian import value of $509.34). Maverick also references import values for "carbon billets" from Indonesia, the United States, and the PRC with values of $1,201.01, $1,141.23, and $1,719.04, respectively.[314] Maverick concludes that the Department cannot use Indian HTS 7207.20.90 for the final determination, as it is clear from the above that the value is aberrational.

Third, Maverick argues that Infodrive India India Pvt. Ltd. ("InfodriveIndia") reveals that entries under Indian HTS 7207.20.90 include needle blanks, ductile iron bars, and seamless cold drawn tubes—none of which are suitable for OCTG production—and that only two percent of entries "might be considered" OCTG although "non-prime billets."[315] USS also cites to Infodrive India and draws the same conclusions labeling Indian HTS 7207.20.90 as "a grab bag of miscellaneous odds and ends."

With respect to the Department's use of Infodrive India, Maverick cites to *Activated Carbon from/PRC 11/10/2009* at Comment 3(c) and (g), arguing that the Department will use InfodriveIndia to determine whether a proposed SV is aberrational, but only if the Infodrive India data encompasses at least 80 percent of the subject entries. Maverick claims that the Infodrive India data that TPCO put on the record does not satisfy the Department's standards for use in evaluating the WTA data for the same HTS category.

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[312] *See Nation Ford (CIT 1997).*
[313] Whether TPCO's cost of purchasing raw materials to produce its own billets, as calculated by Maverick, is higher or lower than Indian HTS 7207.20.90 is subject to the investigation's administrative protective order.
[314] *Id*. Maverick also cites to actual trading prices quoted in the affidavit submitted in the Petitioners Surrogate Values Submission (September 11, 2009). The trading prices in the affidavit are subject to the investigation's administrative protective order. (USS offers the same price quotations. *See* USS Case Brief at 42-44).
[315] *Id* at 44. Maverick cites to their Surrogate Values Submission (March 1, 2010) for definition of the products.

In support of its suggested Indian HTS 7207.20.30, Maverick argues that it is more specific than TPCO's suggested HTS as it identifies "seamless tube quality billets" for OCTG production, whereas TPCO's includes "other" categories. In addition, according to Maverick, OCTG production requires a higher quality billet… which commands a corresponding significant price premium.[316] Maverick argues that this premium is not reflected in Indian HTS 7207.20.90. Under the same argument, USS draws the same conclusions.

Lastly, Maverick argues that should the Department find its suggested Indian HTS 7207.20.30 to also be aberrational like Indian HTS 7207.20.90, the Department should use the SV for billets from the Republic of Indonesia ("Indonesia"), *i.e.*, HTS 7207.20.100. According to Maverick, Indonesia is an appropriate alternative in accordance with 19 CFR 351.408(c). Maverick adds that Indonesian billets are better reflective of OCTG-quality billets and actual cost than TPCO's suggested HTS and that there are numerous appropriate pipe/tube producers in Indonesia. USS concurs with Maverick on the use of Indonesia HTS 7207.20.100 and further clarifies that, along with the more exacting description of the OCTG-quality billets, Indonesia HTS 7207.20.100 specifies a higher carbon content, equal to or greater than 0.25 percent versus Indian HTS 7207.20.90 of equal to or greater than 0.20 percent.[317] The carbon content of equal to or greater than 0.20 percent also applies to the Petitioners' suggested HTS.

TPCO rebuts the Petitioners' arguments by conceding that although Indian HTS 7207.20.90 is imperfect, the Petitioners have failed to suggest a more accurate alternative that, in fact, reflects TPCO's billet input or which can be considered the "best available" SV for the billets used by TPCO. With respect to Indian HTS 7207.20.30, TPCO first argues that Infodrive India indicates that the HTS is used for "stainless steel tube" and not carbon/alloy billets. With respect to Indonesia HTS 7207.20.100, TPCO argues that this alternative is also flawed as first, it is a basket category, no more specific than Indian HTS 7207.20.90, with a price spread of $991.20 to $51,869.56 per-AUV. [318] Second, TPCO argues that Petitioners falling back to Indonesia solely as the surrogate country for billets is tantamount to "third-country surrogates shopping." Third, TPCO asserts that the Department and interested parties have limited experience using Indonesian import data such that determining the import data's reliability at this late stage in the proceeding is not feasible.

Accordingly, TPCO argues that due to the alleged deficiencies in Indonesia HTS 7207.20.100 Indian HTS 7207.20.90 provides the best available SV because: (1) it includes billets per Infodrive India; (2) the billets enter under the HTS category TPCO believes is appropriate; (3) the price spread is not as large as Indonesia's; and (4) using the Indian HTS would be consistent with the other SVs being derived from Indian data. TPCO, however, expresses its approval of separating the billets from non-billets in Indian HTS 7207.20.90 which, according to TPCO, would yield a unit price of $390 per metric ton.

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[316] Maverick cites to the affidavit submitted in the Petitioners Surrogate Values Submission (September 11, 2009), subject to an administrative protective order, in support of their proposition that OCTG production requires a premium billet.

[317] The precise level of the carbon content in the billets used by TPCO is business proprietary information.

[318] *Id* at 41.

As an alternative, TPCO argues that ISMT's billet prices are a suitable SV.[319] According to TPCO, ISMT has not been the subject of any CVD investigation nor has it been found to have received subsides. TPCO adds that, although the "advanced licensing program" may be found to provide ISMT a subsidy, that subsidy would not affect its billet purchase prices. TPCO also adds that while the Petitioners have cited to a possible subsidy related to an ISMT expansion project, that observation is moot as the record financial statements for ISMT do not reflect that subsidy. TPCO cites to *Hot-Rolled Steel/PRC 09/28/01* and IDM at Comment 2; *Sebacic Acid/PRC 08/14/00* and IDM at Comment 4; *Manganese Metal/PRC 5/10/00*, IDM at Comment 7; and *CTL Plate/PRC* (November 20, 1997), IDM at Comment 7 in support of the Department's use of ISMT to value TPCO's billet purchases.

Department's Position: For the final determination, the Department determines that WTA data for Indonesian HTS category 7207.20.100 provides the best available information for valuing TPCO's billet inputs.

First, we determine that Indian HTS 7207.20.90 is not an appropriate SV source for TPCO's purchased billets. In the *Preliminary Determination*, we stated that "Changbao and TPCO are the parties with access to their respective technical specifications and mill test certifications, and so have access to the most specific information possible to correctly determine the surrogate value most specific to their own billets. Accordingly, we preliminarily determine to use TPCO and Changbao's respective HTS subheading suggestions, but intend to pursue this issue at verification."[320] With respect to the Indian tariff schedule, we note that HTS subheading for 7207.20.30 describes the product as "seamless steel tube quality" whereas Indian HTS 7207.20.90 describes the product as "Other." During verification, TPCO did not proffer a reason as to why the Department should conclude that TPCO's purchased billets are not "seamless steel tube quality" and thus better described as "other." During the plant tour at the electric arc furnace, for example, we observed that all of TPCO's billets were pierced, *i.e.* rather than rolled and welded.[321] From a product-specific perspective, based on the Indian HTS descriptions, we agree with Petitioners that the Indian HTS category 7207.20.30 is more specific to TPCO's billet input than TPCO's suggested Indian HTS category 7207.20.90. Thus, we agree with the Petitioners that Indian HTS 7207.20.90 is a basket category insofar as billets for the production of OCTG is concerned. As Petitioners have noted, we do not use a basket category HTS when we have alternative data from a more product-specific HTS category on the record.

With respect to using Infodrive India either as a corroborative tool or price benchmark, the Department's reservations are well-established.[322] In this case, we are unable to find a reliable link between the Infodrive India and the WTA import data for India HTS 7207.20.90 due to either conflicting units of measurement and/or under-over inclusiveness with regard to country-specific data. The Department has stated that it will consider InfodriveIndia to further evaluate import data, provided: (1) there is direct and substantial evidence from Infodrive India reflecting

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[319] Although TPCO does not outright claim the use of ISMT's billet purchase costs as an "alternative", our reading is that that's what TPCO would have us do should we decline their invitation to continue using Indian HTS 7207.20.90.
[320] *See OCTG Preliminary Determination* (November 17, 2009) at 59,129.
[321] *See* TPCO Verification Report at 15.
[322] *Activated Carbon/PRC 11/10/09* and IDM at Comment 3(c) and (g).

the imports from a particular country; (2) a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive India; and (3) distortions of the AUV in question can be demonstrated by the Infodrive India;[323] but that the Department will not use Infodrive India when it does not account for a significant portion of the imports which fall under a particular HTS subheading.[324] In the instant case, the Department conducted a comparative analysis of WTA and Infodrive India and found significant discrepancies between the two data sets. Specifically, we found that the units of measure are inconsistent, with InfodriveIndia listing "KGS," "PCS," "NOS," "MTS," and "MTR," while WTA lists exclusively in "kgs." In such cases, where we do not have the data to convert the multitude of different measurements in the Infodrive India data to the measurement used by the WTA, we are unable to identify a significant correlation between the two data sets. In addition, the country designation of the imports varies greatly between the two data sets. Accordingly, the above listed discrepancies demonstrate that the Infodrive India data do not provide an adequate representation of the WTA data and, thus, cannot be used as a corroborative tool to question the reliability of the WTA. For this reason, we also decline to consider TPCO's alternate argument for Indian HTS 7207.20.90 which would entail separating the billets from non-billets according to Infodrive India.

As we have determined that Indian HTS 7207.20.90 is not an appropriate SV source for TPCO's purchased billets for the reasons stated above, we find it unnecessary to address Maverick's acquisition cost argument, benchmark argument, and USS' argument that sponge iron is valued higher than the values contained in the Indian HTS category 7207.20.90 data.

Second, we find that the Petitioners' suggested Indian HTS 7207.20.30 is also not the best available SV for TPCO's billets. While we agree with the Petitioners that the Indian HTS subheading for 7207.20.30 is more exacting for TPCO's purchased billets, *i.e.* "seamless steel tube quality," the WTA import data for India, encompassing the POI, shows that there were two imports of the product from Sweden totaling only 15 MT. Accordingly, in keeping with our practice to select a SV that is, *inter alia*, representative of a range of prices within the POI[325] and thus statistically and commercially significant,[326] we find that Indian HTS 7207.20.30 does not meet these criteria insofar as it may not be representative of global market prices. As with Indian HTS 7207.20.90, we were unable to find a reliable link between the Infodrive India and the WTA import data for Indian HTS 7207.20.30 due to conflicting units of measurement. As a result, we find that the use of Infodrive India to analyze Indian HTS 7207.20.30 is also not appropriate.

Third, we disagree with TPCO's contention that ISMT's billet prices are a suitable SV for TPCO's purchased billets. Here, it is unclear whether the reference in ISMT's financial statements to "steel bars" is in fact billets. Further, TPCO would have us compare ISMT's sales prices to TPCO's surrogate import purchase prices. This comparison would be akin to disregarding the Department's preference for using prices that are tax-exclusive.[327] The use of

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[323] *See LWTP/PRC* (October 2, 2008) at Comment 9.
[324] *Id.* at Comment 10; *see also TRBs-PRC 01/06/10*.
[325] *See Carbazole/PRC 11/17/04*.
[326] *See Shanghai Foreign Trade (CIT 2004*) (remanding to the Department in order to address whether the price for pig iron obtained from the Indian Import Statistics is based on a statistically or commercially insignificant quantity).
[327] See *WBF-PRC* 11/17/04 IDM at Comment 3.

ISMT's sales prices would also disregard the Department's preference for broad-market averages as discussed above. We additionally determine to not use ISMT's billet prices to value TPCO's purchased billets for the reasons explained in Comment 13, *i.e.,* because ISMT's financial statements contain evidence of countervailable subsidies which we determine could affect ISMT's sales prices.

Finally, with respect to Indonesia's HTS 7207.20.100, in the course of verification, TPCO provided us with "quality inspection reports" for its purchased billets.[328] Those quality inspection reports, in conjunction with the findings above, including the narrative description of the merchandise covered by this category, demonstrate that Indonesia's HTS category 7207.20.100 is the best available and most specific information to value TPCO's purchased billets. To begin with, the Indonesian HTS subheading for 7207.20.100 identifies billets containing equal to or more than 0.25 percent carbon which we find more closely reflects the actual chemical composition of billets TPCO used in the production of subject merchandise.[329] Next, while our preference is to use a single surrogate country for consistency and predictability, we will, in the interest of achieving greater accuracy, look to a secondary surrogate country.[330] Here, we find that Indonesia, as a surrogate country, comports with the requirements of section 773(c) of the Act and, contrary to TPCO's assertion, the Department is not limited in its experience in the use of Indonesia as a surrogate country.[331] In addition, we find it significant, and in line with our established practice, that Indonesia is a "substantial producer of comparable merchandise", *i.e.*, OCTG.[332] We are unpersuaded by TPCO's assertion that Indonesia HTS category 7207.20.100 is a basket category based on the AUV spread of $991.20 to $51,869.56 in and of itself. In fact, closer examination of the data in this HTS category reveals that the extreme outlier of $51,869.56 accounts for only .00046 percent of the total imports from MEs whereas the AUV $991.20 accounts for 16.96 percent. Moreover, we note that, unlike the Petitioners' suggested Indian HTS, the AUV derived from this Indonesia data encompasses data from nine ME countries and is, thereby, more broad-based and representative.[333] For these reasons, as compared to other available information on the record, the Department finds that WTA data for Indonesian HTS category 7207.20.100 provides the best available information for valuing TPCO's billet inputs.

Comment 21: Value for Coal

Petitioners argue that the Department should use Indian import data for coking coal to value all coal used by TPCO during the POI. Petitioners argue that TPCO originally reported that it used coking coal to produce the subject merchandise during the POI,[334] and reported only one variable for "COAL" in its FOP database. Based on this information, Petitioner and TPCO both

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[328] *See* TPCO Verification Report at Exhibits 23 and 29.
[329] *Id*.
[330] See *Industrial Nitrocellulose/PRC 12/15/97, WBF-PRC* 08/20/08 and IMD at 1.D, and *Fish-Vietnam* 06/30/08 and IMD at 3.
[331] *See e.g.*, Industrial Nitrocellulose/PRC 12/15/97 and *Shop Towels/PRC 02/01/91* (not choosing Indonesia but finding it comparable to the PRC in terms of overall economic development, based on per capita GNP, the distribution of labor between the agricultural and non-agricultural sectors, and growth rate in per capital GNP).
[332] *See Fish-Vietnam* 06/30/08. *See* also UUS Case Brief at 40.
[333] *See Certain Polyester Staple Fiber/*PRC 4/19/07 and IDM at Comment 3 and *Carbazole/PRC 11/17/04*.
[334] TPCO's Coal Clarification at 2.

submitted data from the WTA for Indian imports of coking coal to be used to calculate the unit factor cost for COAL.[335] According to Petitioners, TPCO subsequently claimed that it had discovered that it used steam coal, rather than coking coal, in its production process.[336] However, Petitioners argue that, as an initial matter, TPCO's claim that it discovered that it used steam coal in its production process after it had already submitted its Section D Response and proposed SVs strains credulity.

Petitioners argue that as shown below, the record evidence here clearly establishes that TPCO used coking coal in the production of the subject merchandise yet failed to report separate usage rates for coking versus steam coal, and therefore, as partial AFA, the Department should value all of TPCO's coal using Indian import data for coking coal.

First, Petitioners claim that TPCO tracks coking coal prices and reports developments specific to coking coal on its corporate web page.[337] For example, Petitioners claim that TPCO reported during the POI that "Two Large Australian Mining Corporations Substantially Reduced Coking Coal Prices,"[338] and conclude that the only reason that TPCO would track and report on Australian coking coal prices is if it used coking coal in its production process.

Moreover, Petitioners claim that data from the China Coal Resource ("CCR") shows that TPCO purchases large amounts of coking coal.[339] Specifically, according to Petitioners, CCR began tracking metallurgical – *i.e.*, coking – coal purchases in China on a steel mill-specific basis on November 23, 2009 and has been releasing its coking coal reports on a nearly weekly basis since then.[340] Furthermore, Petitioners claim that perhaps the best evidence of TPCO's use of coking coal is provided by the documents obtained by the Department at verification, which they claim demonstrate that TPCO purchases and used coking coal during the POI.[341] Petitioners assert that by failing to report a usage rate for coking coal, and claiming not to have used it when evidence points to the contrary, TPCO has failed to act to the best of its ability. Therefore, Petitioners argue that the Department should apply partial AFA for this FOP. Specifically, Petitioners argue that at a minimum, as partial AFA, the Department should use WTA data for coking coal to value all of TPCO's coal. Petitioners argue that otherwise, TPCO will benefit from its lack of cooperation if a SV based on a lesser-grade of coal is used.

Petitioners argue that, if the Department does not apply partial AFA, in the alternative, it should value TPCO's coal using WTA data from HTS subheading 2701.19.90, which is the basket category for coal, because TPCO has failed to establish that the Department should use the TERI data. Petitioners argue that in addition to the information discussed above regarding TPCO's use of coking coal, the Department also discovered at verification that TPCO's steel factory one used lime-coal during the POI.[342] Petitioners maintain that lime-coal, which is a special type of coal used to burn lime, is an entirely distinct product from the steam coal that TPCO has claimed that

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[335] Petitioners' Prelim SV Submission at Ex. E and SV-3.
[336] TPCO's Coal Clarification.
[337] Petitioner's New Facts Submission 11/30/09.
[338] *Id.*
[339] Petitioners' Surrogate Values Rebuttal 3/1/10 at Ex. V.
[340] *Id.* at Ex. U and Ex. V.
[341] TPCO Verification Report at exhibit 32.
[342] TPCO Verification Report at 23.

it used.[343] In other words, TCPO used both coking coal and lime-coal during the POI, yet has not reported a factor of production for either of these inputs.

Petitioners claim that because the coal variable includes both coking coal and lime-coal, the Department should not use TERI data to value this factor of production. Petitioners claim that the Department will only use TERI data when it can match the specific type and UHVs of the coal used by the respondent to the TERI data.[344] Petitioners claim that when the Department cannot match the specific type and UHV of the coal in question, there is no advantage to using TERI data and the Department will instead use data from the WTA.[345] Here, Petitioners argue, the Department cannot match the coal used by TPCO to the TERI data because it does not have UHVs or ash values for TPCO's coking coal or lime-coal. Moreover, Petitioners argue that TPCO has also failed to accurately link its coal type to the TERI data. Petitioners claim that according to TPCO, its coal met standard DB12/106-1999.[346] However, the test results from the Tianjin Quality Supervision and Testing Station (provided by TPCO) clearly show that the coal in question did not meet standard DB12/106-1999 due to its non-standard ash content.[347] For this reason as well, the TERI data should be rejected.

Furthermore, Petitioners argue that the Department also should not use the TERI data provided by TPCO because they are not contemporaneous with the POI.[348] Specifically, Petitioners argue that the TERI data represent 2007 prices.[349] Moreover, Petitioners claim that even if the TERI data were more specific than the Indian import data, the Department must weigh the relative importance of the specificity of the data with the contemporaneity of the data. Here, Petitioners claim that the contemporaneity is more important than specificity because of the vast swings in coal prices, including the price for steam coal. Accordingly, Petitioners argue, in this case, the Department should use the contemporaneous data from the WTA rather than the TERI data.

Finally, Petitioners argue that if the Department nonetheless uses the TERI data in the final determination, it should add freight to place the data on a delivered basis because the TERI data reflect a "pithead," rather than delivered, amount.[350] Moreover, Petitioners claim, because the TERI data do not represent import prices, the *Sigma*[351] cap – *i.e.*, the distance between the respondent and the nearest port – on freight expenses for SVs does not apply. Furthermore, Petitioners claim that at verification, TPCO was unable to document the distance from the coal yards to its facilities.[352] As partial AFA, the Department should use the greatest distance between TPCO and any of its raw material input suppliers to calculate the freight for coal.

TPCO argues that Petitioners' contention that the Department should use Indian import data for coking coal to value all coal used by TPCO during the POI is without merit and should be

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[343] Petitioners' Surrogate Values Rebuttal 3/1/10 at Exs. S and T.
[344] *OTR Tires/PRC 07/15/08* IDM at Comment 13.
[345] *Id.*
[346] *See* TPCO's Final Surrogate Value Submission 3/2/10 at page 5.
[347] *See id.* at Ex. 3
[348] TPCO's Coal Clarification at Ex. 3 (Public Version).
[349] *Id.*
[350] *See id.* at Ex. 3, p. 59.
[351] *See Sigma Corp (1997).*
[352] *See* TPCO Verification Report at 24.

dismissed by the Department. TPCO argues that the record demonstrates that the Department has fully verified that the type and grade of coal used by TPCO is steam coal, which is consistent with the SVs utilized in the *Preliminary Determination*, and, therefore, there is no basis for applying a SV for coking coal to TPCO's consumption of steam coal. TPCO argues that, during investigations, respondents have minimal time to prepare and submit responses on their entire production process, and as a result, occasionally respondents discover additional facts about various inputs after their first response. Furthermore, TPCO argues that the Department requires respondents to provide complete and accurate responses, necessitating that respondents correct the record when errors are found, which is what happened with respect to TPCO's classification of the type of coal consumed in the production of OCTG. TPCO argues that, as noted in its October 19, 2009, submission to the Department, TPCO provided SV comments for coal. TPCO claims that it discovered that the coal input should be classified as steam coal, and provided the Department with documentary evidence from a third party, demonstrating that the coal it consumed in the production of OCTG was steam coal with a UHV consistent with that of steam coal. In addition, TPCO claims that the Department verified the coal input and examined testing reports showing that the coal consumed by TPCO was steam coal with a UHV consistent with that of steam coal. More specifically, TPCO claims that the Department "verified that the coal purchased and consumed by the company is consistently listed as "energy coal" in the company's records.[353] Therefore, TPCO contends that Petitioners' assertion that the variable COAL includes coking coal is unsupported by the evidentiary record and the Department's own conclusions. TPCO argues that Petitioners' argument is predicated on their new translation of Exhibit 32 of the Verification Report, which Petitioners attempt to use to demonstrate that there is an additional type of coal included in TPCO's reported coal. TPCO claims however, that Petitioners' translation must be rejected for two reasons.

First, TPCO argues that Petitioners' translation is erroneous and constitutes new information, and requests that the Department reject this argument by Petitioners and exclude this information from the record. Second, TPCO argues, Petitioners' translation is wrong. Furthermore, TPCO claims that the verification report clearly identifies Exhibit 32 as relating to coke and tying to the consumption of coke reported by TPCO, whereas Exhibit 33 relates to coal.[354] Furthermore, TPCO argues that it separately reported a variable for coke consumed in the production process at the iron factory, which the Department valued using WTA data in the *Preliminary Determination*. Further, TPCO argues that, it is clear from the evidentiary record and the Department's own verification report that TPCO's coal consumption was properly reported and identified as steam coal. Furthermore, TPCO refutes Petitioners suggestion regarding lime-coal, arguing that lime-coal is not included in the reported coal consumption, as it is an input to an unrelated process and not a raw material used in the making of OCTG. TPCO argues that because lime was not a direct raw material input into the production of OCTG, the lime-coal used to burn it was properly excluded from the consumption of coal. TPCO maintains that the record demonstrates that reported coal consumption includes only the steam coal used to produce the steam that was a direct energy input in the production of the subject merchandise.

[353] *See* TPCO Verification Report at 23.
[354] *Id.* at 23-24 and Exhibits 32 and 33.

Accordingly, TPCO argues that as the Department has verified that TPCO's consumption of energy coal (reported in field COAL) is in fact steam coal with a specified UHV, the Department should, in accordance with its well established practice, value TPCO's consumption of coal using the TERI data. Furthermore, TPCO argues that Petitioners' claim that the test provided by the third party shows that the coal did not meet the standard is patently false, as Exhibit 1 page 5 of TPCO's Coal SV Comments clearly states "the sample meets the standard as listed in standard DB12/l06-1999," and noted a UHV that is consistent with grade B steam coal. Therefore, TPCO claims that the appropriate SV is Grade B coal from the TERI data in order for the Department to calculate accurate margins consistent with its mandate pursuant to section 773(c)(1) of the Act.[355] TPCO claims that using a basket category covering a vast array of types of coal when a more specific, India-wide surrogate is on the record would be contrary to the law and Department practice.[356] In addition, TPCO claims, the Department's inflator methodology is meant precisely for this scenario when more appropriate SVs exist that are prior to the POI. TPCO argues that Petitioners have placed no evidence on the record to support their claim that there is a vast swing in coal prices, making the TERI data unreliable. TPCO maintains that the, TERI data is specific, representative, and accurate.

Moreover, TPCO argues that Petitioners' claim that the Department should apply AFA to TPCO's distance from the factory to the coal supplier is an incorrect conclusion leading from a misreading of the record. TPCO argues it did not report the distance to the coal yard, but the distance to the actual supplier, per the Department's standard practice.[357] TPCO argues that the verification report clearly states that the Department verified the distance between TPCO Iron and its suppliers, but that company officials noted that the coal yards were closer than the reported distances.[358] Therefore, TPCO maintains that the Department has no grounds for the application of AFA for the final determination. Furthermore, TPCO argues that if the Department does not use the distance to the port reported in the field COALDIS because it is using TERI data, the Department should instead use the weighted average of the distances shown in TPCO's supplier spreadsheet for coal.

Department's Position: For the final determination, the Department will value TPCO's reported coal consumption, as reported by TPCO in its revised factor of production database, using Teri data for steam coal because we found no information at verification that contradicts TPCO's claims that it used steam coal to produce subject merchandise. The Department reviewed numerous accounting and production records at verification covering energy and coal consumption and noted no evidence that contradicted TPCO's claim that it used steam coal to

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[355] *See, e.g., Jinan Yipin (2009)* (stating that the Department must "calculate dumping margins as accurately as possible").

[356] *See, e.g., Kitchen Racks-PRC 3/5/09* (rejecting the use of overly broad WTA data in favor of a more specific surrogate by stating, "Wireking stated that we should use the WTA data for valuing all inputs even though the WTA data available for wire rod represents a basket category consisting of wire rod 14mm or less in diameter. This data, however, is less specific to the reported inputs than the JPC price data."); *Mushrooms-PRC 7/17/06* IDM at Comment 1 ("Therefore, in calculating the surrogate value for straw for these fma1 results of review, we have used the Agro Dutch 2003-2004 & 2004-2005 financial statements rather than WTA or the Flex and Premier financial statements, as Agro Dutch is a mushroom producer and, consequently, the straw it uses is likely to be more similar to the straw used by Raoping Yucun").

[357] *See* TPCO Verification Report at Exhibit 1.

[358] *Id.* at 23.

produce OCTG. Rather, documents reviewed at verification consistently referred to the type of coal consumed by TPCO as "energy coal," which the Department has found to be steam coal in other proceedings.[359] Furthermore, the third-party lab test and corresponding invoice from TPCO's supplier submitted to the Department by TPCO prior to verification identifies the tested coal as steam coal. While Petitioners have cited evidence that TPCO purchased coking coal or lime-coal, we do not agree that this information demonstrates that TPCO used these types of coal in the production of subject merchandise. Accordingly, for the final determination the Department will value TPCO's reported coal consumption using TERI data for steam coal. The use of TERI data over import statistics is evaluated on a case-by-case basis and has been upheld by the CIT. *See Wuhan Bee Healthy Co., Ltd. v. United States, Slip Op. 05-142 at 5-6 (November 2, 2005).* Although, in the past, the Department has noted some concerns about the monopolistic structure of the coal industry in India,[360] for this investigation, the Department determines that the TERI Grade A non-coking coal pricing data are the best available information on the record because not only are they published, publicly available data, but they are also representative of the coal industry throughout India.[361] TERI data are categorized by major types of coal and the UHV value, whereas WTA import data are listed under "steam coal" irrespective of UHV.[362] Since TPCO reported the UHV value of the coal it consumed to produce subject merchandise, as evidenced by lab reports on the record of this proceeding, the Department is able to derive a SV more specific to the actual coal consumed by TPCO using the TERI data. Furthermore, we agree with TPCO that Petitioners have not provided specific evidence on the record that demonstrates swings in coal prices render the TERI data unreliable.

With respect to Petitioners' argument about the application of *Sigma*[363] cap, it is the Department's practice to add to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. Initially, TPCO reported *Sigma* distances for all material inputs supplier distances. However, at verification, TPCO officials noted that they believed that the coal yards were closer to TPCO's facilities than the reported *Sigma* supplier distance, but could not substantiate the shorter distance to the coal yards. The Department verified, instead, the reported *Sigma* distance. Therefore, the Department will continue to apply the reported *Sigma* distance as the coal supplier distance in the final determination.

Comment 22: Value for Compressed Air

Maverick argues that TPCO failed to disclose to the Department the fact that only a portion of the compressed air consumed by TPCO was self-produced. Maverick and USS state that TPCO's narrative and revised FOP database indicate that all the compressed air it consumed was self-produced, and TPCO subsequently removed the AIR variable from the FOP database after claiming that it self-produced compressed air. Further, Maverick states that nowhere in TPCO's

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[359] *See Activated Carbon/PRC 11/10/09* (where the Department used HTS category 2701.19.20: "Steam Coal" to value coal reported by the respondent as energy coal).
[360] *See Final Results of Redetermination Pursuant to Remand; Wuhan Bee Healthy Co., Ltd. v United States,* Consol. Court No. 03-00806, Slip Op. 05-65 (June 10, 2005), *available at* <http://ia.ita.doc.gov/remands/05-65.pdf>.
[361] *See Saccharin/PRC 9/11/07* IDM at Comment 3.
[362] *See Pencils-PRC-AD 7/13/09.*
[363] *Sigma Corp 1997).*

SDC-11/30/09 submission did TPCO reference Exhibit 6d, which it refers to as "Pressured Air Details" wherein TPCO clearly identifies the amount of compressed air that was self-produced and the amount that was purchased from its Chinese supplier. Furthermore, Maverick states that there was no basis for TPCO to completely remove the proportion of purchased compressed air from the FOP database.

Maverick and USS argue that TPCO's verification exhibits confirm the fact that TPCO purchases a significant portion of its compressed air: Exhibit 20 provides the "December 2008 TPCO Group Energy Allocation Report" with pages 19 through 24 detailing certain energy purchases. Maverick and USS state that the translation to Exhibit 20 reveals that this exhibit provides the detailed build-up of all of TPCO's purchased compressed air for the period on a monthly basis. Maverick and USS also state that the translated Chinese characters on those pages of Exhibit 20 identify "compressed air" and the quantity of compressed air purchased for each month of the POI; and that each of the monthly purchased quantities reported in this exhibit tie directly to TPCO's monthly purchased quantities reported in Exhibit 6d of its TPCO's SDC-11/30/09 submission. Maverick and USS argue that this clearly shows that TPCO purchased a significant portion of the compressed air that it consumed from local Chinese suppliers.

Maverick contends that due to TPCO's purposeful misrepresentation of its consumption of compressed air, the Department's previous practice of calculating a weighted-average between the self-produced FOP values and surrogate value of the purchased input to value the FOP should not be applied in this case.[364] USS argues that TPCO has failed to act to the best of its ability because it has misrepresented the facts regarding its compressed air purchases. Maverick states that TPCO's misrepresentation calls into question the veracity of its statements regarding self-produced and purchased compressed air. Maverick and USS argue that, accordingly, as partial AFA, the Department should apply the highest usage rate AIR FOP in TPCO's Additional SDQR-10/13/09 and the surrogate value WTA data provided by Petitioners for compressed air, which has been used by the Department in other proceedings to value this FOP, across all CONNUMs. Maverick argues that in the alternative, if the Department does not believe that TPCO's misrepresentations warrant the application of AFA, the Department should at least apply the AIR variable in TPCO SDQR-8/21/09 and use the Petitioners' proposed WTA surrogate data to value this FOP (*i.e.*, Indian HTS subheading 2853.00.30).

TPCO rebuts Petitioners' assertion that it misrepresented its purchases of compressed air. TPCO states that, as Petitioners themselves note, in TPCO SDQR-8/21/09, TPCO specifically stated that it consumed pressured air and purchased compressed air during the POI and reported an FOP for air in its Section D database. TPCO states that it further clarified that it also self-produced pressured air and provided detailed spreadsheets showing that TPCO both self produced and purchased air during the POI in TPCO's SDC-11/30/09 submission. TPCO states that at verification, it submitted a revised supplier spreadsheet as part of its minor corrections which specifically listed "pressured air" as one of the raw materials purchased by TPCO during the POI. Therefore, TPCO asserts, there is no basis for the Department to apply AFA to TPCO with respect to compressed air.

TPCO states that the Department's standard methodology for determining whether to use a SV is

[364] *Mushrooms/PRC 09/14/05* IDM at Comment 4.

to value a respondent's input based on the actual cost "when the quantity purchased is more than 33 percent of the total quantity purchased."[365] Therefore, TPCO argues, as TPCO's quantity of self-produced air is above the 33 percent threshold set by the Department, the Department should use the actual cost of TPCO's production experience (the sole element of which is electricity) as a surrogate for TPCO's quantity of purchased pressured air.

Department's Position: The Department agrees with Maverick and USS that we should apply partial AFA to TPCO's unreported purchases of compressed air. The Department finds that there is evidence on the record of this investigation that substantiates the fact that TPCO both purchased and self-produced compressed air for consumption in the production of subject merchandise. In TPCO's SDC-11/30/09 submission to the Department, and previous submissions, the Department finds that TPCO reported that it self-produced compressed air to produce subject merchandise. While in subsequent submissions, without explanation or notice to the Department, TPCO deleted consumption of compressed air from its FOP database, the Department verified that TPCO did purchase compressed air and TPCO does not dispute this fact on the record.

Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if the necessary information is not on the record, or an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act also provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative form in which such party is able to submit the information," the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[366]

Because TPCO withheld data regarding its per-unit consumption of compressed air, *i.e.*, by deleting previously reported consumption data for purchased compressed air from its FOP database without explanation or instructions from the Department, the Department finds that TPCO significantly impeded the investigation with regard to this input, pursuant to section 776(a)(2)(C) of the Act. In doing so, TPCO failed to cooperate to the best of its ability. Therefore, the Department finds that the use of facts available, and application of adverse inferences, is warranted in accordance with sections 776(a)(2)(C) and 776(b) of the Act.

Accordingly, the Department has determined to apply partial AFA with regard to this factor

[365] TPCO cites *AD Methodologies- NME Wages (2006)* to support this proposition.
[366] *See SAA* at 870.

input. Specifically, the Department has applied a per-unit consumption amount for purchased compressed air based on the highest consumption rate of compressed air reported to the Department by TPCO from the latest FOP database in which TPCO reported compressed air consumption.[367]

With regard to the value to apply to TPCO's consumption, the Department determines that TPCO's argument that because more than 33 percent of compressed air was self-produced, the Department should value all compressed air based on electricity consumption used to produce compressed air is misplaced. As described in the *AD Methodologies- NME Wages (2006)*, the 33 percent standard relates to valuation of inputs where more than 33 percent of a particular material input purchases were from MEs in ME currency. That is not the case here where the issue is how the Department should value TPCO's compressed air consumption.

The Department has determined that the best available information for valuing all of TPCO's consumption of compressed air is based on the value of electricity required to produce the amount of compressed air consumed in the production of subject merchandise. The Department finds that the value of electricity represents the best available information because electricity is the main input required to produce compressed air, and in this case, the consumption quantity of electricity required to produce one unit of compressed air is on the record of this investigation.

Additionally, while Maverick and USS suggest that the Department should value compressed air with WTA data, the Department finds that the WTA data for air does not typically cover imports of air conveyed by pipeline, which is how TPCO's air is transported.[368] The Department finds that the WTA data is not as representative of TPCO's production cost for compressed air as is the cost of electricity used to produce the air that is delivered by pipeline. Accordingly, the Department has disregarded the WTA data and thus, finds that the best available information for valuing TPCO's consumption of compressed air is based on TPCO's cost of electricity used to produce the compressed air.

Comment 23: Value for Scrap Input

Maverick and USS argue that the Department should use a surrogate value based on WTA data to determine a unit factor cost for steel scrap. Citing *Antidumping Methodologies*, Maverick and USS argue that in an antidumping proceeding involving an NME, the Department's general practice is to use ME purchase prices to value inputs where the volume of the input purchased from a ME source exceeds 33 percent of the total volume of the input purchased from all sources during the POI. Maverick and USS contend that TPCO has failed to show that it met this threshold and, because TPCO has not established whether its steel scrap purchases from ME suppliers exceed 33 percent of its total purchases of this input, the Department has no basis to determine whether TPCO's ME purchases are significant. Citing *Carrier Bags-PRC 7/29/09*, USS argues that it is TPCO's burden to show that it obtained more than 33 percent of its steel scrap from ME sources.

Moreover, according to Maverick and USS, TPCO's reported proportions of steel scrap

[367] TPCO's SDC-11/30/09 (submitted in electronic FOP database).
[368] *See TPCO SDQR-8/21/09*; and TPCO's Additional SDQR-10/13/09 at Exhibit 6d.

purchases from 1) ME sources and 2) domestic sources do not add up to 100 percent (even as corrected in the minor corrections presented at verification). They assert that not only are the data clearly flawed, but that the Department has no way of determining where the flaws occur, rendering the data completely unreliable. Citing *Antidumping Methodologies*, USS states that when a respondent cannot show that its ME purchases of an input constitute the best available information for valuing the input, the Department will disregard the purchases and, instead, rely on a surrogate value – *e.g.*, WTA data. Accordingly, Maverick and USS argue, because the Department cannot rely on TPCO's data sets on the record, the Department should use the Indian import data from the WTA proposed by Petitioners to value all of TPCO's steel scrap purchases.

TPCO argues that the record evidence demonstrates, and the Department verified, that the TPCO Group purchased more than 33 percent of its steel scrap from ME sources in ME currencies. Citing *Antidumping Methodologies*, TPCO asserts that the Department's practice is to compare the volume that the producer purchased from ME sources during the period of investigation or review with the respondent's total purchases during the same period to determine whether a respondent's quantity of ME purchases results in the ME price constituting the best available information for valuing the entire input.

TPCO argues the Department not only conducted a full review of TPCO's purchases of steel scrap, but furthermore "noted no discrepancies." *See* TPCO Verification Report at 25. TPCO states that the Department specifically examined the inventory and accounting records for steel scrap and tied TPCO's records to the reported figures on TPCO's supplier spreadsheet, verifying the total quantity of steel scrap purchased by TPCO during the POI and noted no discrepancies. *See* TPCO Verification Report at 21 and accompanying Exhibits 1 and 18. Therefore, TPCO argues, Petitioners' allegation that there is a discrepancy in TPCO's reported data is irreconcilable with the evidentiary record in this case. Thus, TPCO argues, consistent with the Department's policy and practice, the Department must continue to value TPCO's purchases of steel scrap using the ME price for the final determination.

Department's Position: We have continued to value TPCO's total consumption of steel scrap using its ME purchase prices, as we did in the *Preliminary Determination*. In accordance with the Department's practice, as outlined in *Antidumping Methodologies*, where at least 33 percent of an input was sourced from ME suppliers and purchased in a ME currency, the Department will use the actual weighted-average ME purchase prices to value the entire input. Where the quantity of the input purchased from ME suppliers during the period was below 33 percent of its total volume of purchases of the input during the period, the Department will weight average the weighted-average ME purchase price with an appropriate surrogate value. *See, e.g.*, *FMTC-PRC 12/28/09* at Comment 2. In the instant case, TPCO has provided sufficient documentation to substantiate its ME purchase of steel scrap by providing invoices and sales contracts demonstrating that it purchased at least 33 percent of the input from an ME supplier in a ME currency. *See* TPCO Verification Report at Exhibits 1and 18.

With respect to Petitioners' arguments that TPCO submitted flawed and unreliable data, the Department was able to verify the necessary documents specific to TPCO's ME purchases of steel scrap and, from those documents, determine that it met the 33 percent threshold. In *Carrier Bags-PRC 12/4/2009*, the Department determined that due to partially translated invoices, and

the inconclusive and contradicting translations of the product description of the input at issue, the respondent was unable to meet its burden of providing sufficient documentation to substantiate its ME purchases. Further, in *Carrier Bags-PRC-12/4/09* there was record evidence that contradicted the respondent's claim that the ME purchase was actually the input claimed. In the instant case, we did not find similar problems with the underlying records. Petitioners' claim that the ME purchases of steel scrap and the NME purchases of steel scrap do not add to 100 percent is explained by the fact that Petitioners are comparing documents based on two different types of records. The "TPCO Group & Iron Supplier List Purchases" worksheet is based on accounting records for purchases by the TPCO Group from TPCO International. The ME Purchases spreadsheet is based on final invoice dates of the ME purchases by TPCO International from the ME suppliers and clearly demonstrates that that the percentage of ME purchases of steel scrap was above 33 percent. Accordingly, while one document tracks the actual ME purchases, the other tracks the paper recording the internal transfer of the materials within the TPCO single entity, (*i.e.*, from TPCO International to the TPCO Group). Both of these documents were examined at verification and we found no discrepancies. *See* TPCO Verification Report at 25 and accompanying Exhibits 1 and 18. Thus, for the final determination, the Department will continue to value TPCO's consumption of steel scrap using its ME purchase prices, as we did in the *Preliminary Determination*.

Comment 24: Value for Iron Ore Pellets[369]

USS notes that in its *Preliminary Determination*, the Department valued iron ore pellets based on Indian import data.[370] USS asserts that pursuant to a minor correction at verification, TPCO now reports that it obtained more than 33 percent of its supply of iron ore pellets from ME sources during the POI.[371] USS argues that, accordingly, the Department should use these ME purchases to value iron ore pellets in the final determination, and that the Department should adjust the value to account for all of the movement expenses incurred by TPCO in transporting the material to its factory, consistent with the Department's practice to adjust input prices in NME cases so that they are on a delivered basis.[372]

Department's Position: In the *Preliminary Determination*, the Department relied on Indian import data to value iron ore pellets, using HTS subheading 2601.1210, because the record showed that TPCO did not have ME purchases exceeding 33 percent for this input.[373] In its final determination, the Department has determined to value iron ore pellets using ME purchase prices for TPCO during the POI because the record now shows that TPCO sourced more than 33 percent of these inputs from ME suppliers.[374] In addition, the Department has determined to adjust this purchase price to include all movement expenses incurred by TPCO for the transport of the purchased iron ore pellets to TPCO's factory, as per the Department's practice to adjust such prices to reflect delivered prices.[375]

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[369] For a BPI discussion of this issue, *see* TPCO Final Analysis Memo.
[370] Surrogate Values Memo at Attachment 1.
[371] TPCO Verification Report at Exhibit 1.
[372] *Tables and Chairs/PRC 12/28/09*
[373] *See Antidumping Methodologies*
[374] *See* TPCO Verification Report at Exhibit 1.
[375] *See Tables and Chairs/PRC 12/28/09.*

Comment 25: Value of Natural Gas

USS argues that the Department should not use data from the 2005 financial statements of the Gas Authority of India, Ltd. ("GAIL") to calculate an SV for natural gas. Petitioners argue that although these data were used in the *Preliminary Determination*, they are not contemporaneous with the POI, and are not broad and representative. Petitioner argues that, instead, the Department should use contemporaneous data from WTA to calculate an SV for natural gas in the final determination.

USS asserts that the Department's normal practice is to value FOPs such as natural gas by using import data from the WTA rather than information from a single company.[376] In *Pure Magnesium/PRC 12/16/08*, for example, the Department used data from the WTA rather than information from a single company to value natural gas because the latter was "specific to only one company and therefore not broad and representative" of prices in the surrogate country.[377] In the instant case, Petitioner argues that the data submitted by TPCO, from the financial statements of GAIL, do not represent a broad range of prices in India. Instead of GAIL, Petitioner submits that the Department should use Indian import data for natural gas in the final determination, arguing that these data are contemporaneous with the POI and are the best available information to value natural gas.

TPCO states that the Department has a standard practice of using prices from the GAIL as the basis of the SV for natural gas. Examples cited by the respondent include *Certain Polyester Staple Fiber- PRC 12/26/06* and *OCTG-PRC 11/17/09*.[378] TPCO contends that the basis of this practice has been that this information is more specific to the input than the WTA data. TPCO notes that Petitioners have not provided any evidence to the contrary in this investigation.

TPCO states that the Department should not favor WTA data; instead, it should evaluate which information on the record is the best information available. TPCO asserts that this evaluation must consider: 1) descriptions of the actual imported product in each of the HTS categories; 2) whether the prices appear representative in view of other publicly available price information, and; 3) availability of alternative SVs which are both more accurate from a product standpoint and from what is known about prices in the market. TPCO cites *Hot-Rolled Steel-PRC 09/28/01* and *Manganese Metal-PRC 05/10/00* as cases in which the Department used a single domestic company to value a particular input.[379] In conclusion, TPCO states that a single company not only can be representative, but can also represent a more accurate SV than WTA or other data.

Department's Position: For the final determination, the Department has based the SV for natural gas on an average of the GAIL floor and ceiling prices, inflated to reflect the POI. In considering the SV for natural gas, the Department is mindful of section 773(c) of the Act, which instructs the Department to use "the best available information" from the appropriate ME

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[376] *See Coated Paper/Indonesia and PRC 10/20/09*; *see* also *Pure Magnesium/PRC 12/16/08* at Comment 4.
[377] *See Pure Magnesium/PRC 12/16/08* at Comment 4.
[378] *See* also *Carbon Steel/PRC 09/28/01* at Comment 2; *see* also *Sebacic Acid/PRC 08/14/00* at Comment 4; *see also Manganese Metal/PRC 05/10/00* at Comment 7.
[379] *See Hot-Rolled Steel/PRC, 09/28/01* at Comment 2; *see* also *Manganese Metal/PRC 05/10/00* at Comment 7.

country. The Department considers several factors when choosing the best available information to use as SVs, including the specificity, contemporaneity, and quality of the data. After reviewing the possible SV sources for natural gas, the Department has determined that in this case, GAIL data best meet these factors.

We have determined that GAIL is the best available information to value natural gas because its pricing information is more specific to the type of product consumed by TPCO in the production of OCTG. The record evidence indicates that TPCO's natural gas is delivered to TPCO by a large public state-owned utility company by pipeline.[380] In comparing the GAIL data with the proposed WTA data, the Department concluded that the GAIL data are most specific to TPCO's natural gas input because they represent natural gas from a large public utility company delivered by pipeline. In contrast, the WTA data represent values for products that, as imports, must be delivered in cylinders or canisters, and are, therefore, not as specific to TPCO's reported input. In addition to the specificity criterion, we find that GAIL data are of high quality. Specifically, the Department notes that GAIL is the largest organization in India handling natural gas distribution and marketing. As such, we find that GAIL represents a broad range of market prices across India.

The Department acknowledges Petitioner's argument that WTA data have been used to value natural gas in previous reviews, for example, *Pure Magnesium/PRC 12/16/08*. We note that in that particular case, the Department determined that the two other sources on the record for valuing natural gas were not usable for various reasons, and that the only complete and usable data on that record was the WTA data. Accordingly, we do not maintain that WTA data for gas is not usable in any circumstance, but only that it is not the best available data source in the instant case.

We also acknowledge Petitioners' argument that the GAIL data, unlike the WTA data, are not contemporaneous with the POI. However, in choosing between these two sources in this instance, we determine that the superior specificity of this source makes it a better source than the WTA data. To be contemporaneous with the POR, the Department inflated this factor value using the POI wholesale WPI for India.

Comment 26: Value of Mid-Chromium and Micro-Chromium

USS asserts that for two types of ferrochromium used by TPCO in the production of the subject merchandise – *i.e.*, micro-chromium ("MICROCHROM") and mid-chromium ("MIDCHROM") – the Department inadvertently used WTA data for imports into India under HTS subheading 7204.21.90[381] to calculate a SV in the *Preliminary Determination*.[382] USS notes that TPCO also contends that the Department should not continue to use the *Preliminary Determination* WTA data to value MICROCHROM and MIDCHROM in the final determination.

In the final determination, USS argues the Department should instead use a value for

[380] TPCO Supplier Purchases spreadsheet, FOP Submission, October 13, 2009.
[381] *I.e.*, "ferrous waste and scrap; of stainless steel; other."
[382] *See* Surrogate Values Memo at Attachment 1.

ferrochromium using Indian import data under HS subheading 7202.49.00[383] to value MICROCHROM and MIDCHROM. USS notes that the Department already used these data to value ferrochromium ("FECHRO") in the *Preliminary Determination*, and because MICROCHROM and MIDCHROM are both types of ferrochromium, the Department should continue to use the same data to calculate SVs for these factors of production in the final determination.

USS states that TPCO has changed its position from the *Preliminary Determination* and argued that FECHRO and MIDCHROM should be valued based on data for Indian imports under HTS subheading 7202.41.00, which is ferrochromium with a higher carbon content than HTS subheading 7202.49.00. USS argues that the Department should reject this argument for two reasons. First, TPCO has cited no evidence to support its argument that it classifies ferrochromium by carbon content or that its various ferrochromiums differ by carbon content. Second, TPCO's re-classification of its ferrochromiums was made well after verification and, therefore, cannot be verified by the Department.

In its rebuttal brief, TPCO concurs that the Department should use the WTA data for ferrochromium, but should ensure that it applies the proper HTS for high- and medium- carbon and low- carbon ferrochromium. While TPCO refers to its March 2, 2010, SV submission, it neglected to include its argument on this issue in both its case and rebuttal briefs. Nevertheless, the Department addresses the referenced statement below.

Department's Position: At the outset, the Department notes that, in its FOP database, TPCO provided a consumption quantity of zero for mid-chromium. Accordingly, the Department did not value this input in the *Preliminary Determination* and has determined to not value this input in the final determination.

With respect to micro-chromium, in the *Preliminary Determination*, the Department used HTS subcategory 7204.2190,[384] based on TPCO's proposed SV worksheet.[385] In its March 2, 2010, Tianjin Pipe (Group) Corporation SV submission, TPCO stated that it had "inadvertently reversed" its proposed HTS numbers suggested for micro-chromium and mid-chromium, and argued that in the final determination the Department should apply the appropriate HTS numbers to micro-chromium and mid-chromium based on the carbon content of each input.

It is the Department's practice to carefully consider the evidence in light of the particular facts of each case when valuing factors of production and to value them on a case-by-case basis in accordance with section 773(c)(1) of the Act which states ("…the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country…").[386]

For purposes of the final determination, the Department has determined to value micro-chromium (trace chromium) and ferrochromium (high carbon content chromium) using Indian

[383] *I.e.*, "ferro-alloys; ferrochromium; other."
[384] *I.e.*, "ferrous waste and scrap; of stainless steel; other."
[385] *See* Surrogate Values Memo at Attachment 1.
[386] *See Mushrooms/PRC* 07/17/06 at Comment 1.

WTA data for HTS subheadings 7202.4900 and 7202.4100, respectively. The Department finds that the record supports making a distinction between these two inputs according to the descriptions provided in TPCO's proposed SV worksheet. In that submission, TPCO indicated that it consumed "high carbon ferrochromium." Accordingly, the Department will apply HTS subheading 7202.4100,[387] because this HTS subheading represents the ferrochromium with the higher carbon content of the two subheadings for ferrochromium. Because the record evidence does not support a finding that the micro-chromium at issue has a similarly high carbon content, the Department will use HTS subheading 7202.4900,[388] which represents ferrochromium with a low carbon content.

Comment 27: Value of Iron Ore and Iron Powder

TPCO argues that the factual information on the record of this case demonstrates that its iron powder, valued in the *Preliminary Determination* using Indian HTS number 2601.1190—*i.e.*, "iron ores and concentrates; including iron pyrites; iron ores and concentrates, other than roasted iron pyrites; non-agglomerated; other"—is dramatically different from the types of imports classified under this subheading.[389] TPCO emphasizes that iron powder is sold based on iron content, and that Chinese iron ore tends to have low iron content at or sometimes below the iron ore content of imported ores. Specifically, TPCO placed a lab test on the record to demonstrate the purported low iron content of its iron powder. Nevertheless, TPCO stated, however, that it also uses higher content ore. TPCO further states that neither the HTS subcategory, nor information available directly from Indian companies, categorizes iron powder according to iron content. TPCO argues that, consequently, it is difficult to obtain a public source for iron powder prices based on iron ore content.

TPCO rejects the use of WTA for iron ore to value its iron powder, stating that iron ore prices in the WTA import statistics (under HTS number 2601.1190) are both limited and incorrect. TPCO submits that they are incorrect because they include not only iron ore, but also iron oxide and pulverized underground rock, and because some of the imported material is specifically stated to be for purposes of "testing."[390] TPCO asserts that the WTA data are limited because total imports during the POI comprised only 11 tons, which TPCO argues is not a commercial quantity. TPCO further contends that the WTA iron ore import prices are much higher than domestic prices of iron ore in India and placed on the record "spot prices" of Indian ore to make this distinction. Instead of WTA data, TPCO contends that the financial statements of two Indian companies that purchase iron ore to produce pig iron in the process of making steel, provide a more appropriate surrogate value source.

USS disputes TPCO's contention that the WTA data under HTS subheading 2601.1190 are not applicable to the iron ore that TPCO consumes to produce the subject merchandise. Petitioner

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[387] *I.e.*, "ferrochromium; containing by weight more than 4% carbon."
[388] *I.e.*, "ferrochromium; other."
[389] Although TPCO combines iron ore and iron powder in its case brief, the HTS subheading 2601.1190, which was used in the *OCTG Preliminary Determination* to value iron powder, does not include iron ore. Record evidence demonstrates that TPCO's iron ore is a market economy purchase and, therefore, the Department valued it as such in the *OCTG Preliminary Determination* and the final determination. The Department's position for Comment 27, therefore, relates solely to iron powder.
[390] *See* TPCO's Surrogate Value Submission at Exhibit SY-25.

disagrees with TPCO's assertion that the WTA data are aberrant because they are comprised of "many multiples of international prices" and notes that, to show an aberration in price, TPCO must compare the price in question with import prices in other possible surrogate countries. Petitioner states that TPCO failed to meet this burden and has not analyzed the price of iron ore imports into India vis-à-vis the other potential surrogate countries.

Maverick rejects TPCO's argument that record evidence shows WTA data to be unusable for valuing iron ore. Maverick contends that TPCO has not shown that iron ore imports from the WTA are not commercial quantities and that TPCO has failed to show how these prices are aberrational. Maverick notes that the PRC import spot prices submitted by TPCO to discredit the validity of the WTA data are tax-inclusive and most are export prices. Maverick also argues that TPCO's proposed financial statements are distorted because one of the Indian producers is a government-owned company.

Department's Position: The Department's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, tax exclusive, and contemporaneous with the POI. While there is no hierarchy for applying the SV selection criteria, "the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" SV is for each input."[391]

In the *Preliminary Determination*, the Department valued iron ore and iron powder using WTA import data for India under subheading 2601.1190 because we had insufficient evidence to conclude that respondent's iron powder was materially different than the iron ore products imported into India under this HTS category.

For the final determination, the Department compared the WTA data with the InfoDrive data TPCO placed on the record to determine whether the Infodrive data would provide any insight into whether the WTA data are the appropriate source for valuing iron powder. Upon examination, the Department determined that there is no correlation between these two data sets and thus, in this case, the Infodrive data do not provide a sufficient source for benchmarking the appropriateness of the WTA data. There was no correlation between WTA and Infodrive because the quantities and line item descriptions varied significantly. The units were also problematic because WTA contained kgs while Infodrive indicated "units" or "MT". The data sets were just too divergent to offer any compelling reasons to reject WTA. Nevertheless, the total quantity of iron ore imported during the POI is low—a total of 59 MT, according to the WTA-- and comprised of only two entries. When comparing the AUVs of these two entries, the Department determined that the range in prices was too broad to indicate a reasonable value for this particular input. Consequently, the Department has determined not to use the WTA data to value TPCO's iron powder.

The Department also examined the Indian spot prices that were placed on the record by TPCO and found that these spot prices, while representing a wide range of prices, are tax-inclusive

[391] *See PT Film-PRC 09/24/08* at Comment 2; *see* also *CVP 23-PRC 11/17/04* at Comment 3; *see* also *CTL Plate-PRC 02/24/10*.

prices in a non-market economy currency. Accordingly, the Department concluded that these spot prices are not an appropriate source for valuing iron powder because they do not meet the criteria articulated in section 773(c)(1) of the Act.

Finally, the Department reviewed the two sets of Indian financial statements placed on the record by TPCO. We found both sets of financial statements to be product-specific, representative of a broad market average, publicly available and contemporaneous with the POI. Although Petitioners note that one of these companies is government owned, they did not offer an analysis of how this fact would distort market prices for iron ore. The Department has, thus, determined that government ownership is not a sufficient reason to reject the proposed financial statements for valuing iron powder. In the final determination, the Department has determined to value TPCO's iron powder using a simple average of the two financial statements for pig iron producers in India. We find this to be the best available information on the record for valuing TPCO's consumption of iron powder.[392]

Comment 28: Values of Oxygen and Nitrogen

TPCO asserts that section 773(c)(1) of the Act directs the Department to select the best available information for purposes of valuing a respondent's factor inputs in an NME proceeding in order to calculate margins as accurately as possible. According to TPCO, the type of nitrogen imported into India under HTS category 2804.3000 and the type of oxygen imported under HTS category 2804.4090 are dramatically different from the nitrogen and oxygen that TPCO consumes in its production process to manufacture the subject OCTG, and, therefore, do not meet this statutory mandate. TPCO argues, therefore, that the Department should use information from the financial statements of Bombay Oxygen as an SV source for nitrogen and oxygen. TPCO maintains that the evidentiary record now before the Department demonstrates that the industrial nitrogen and oxygen that TPCO consumes is provided by a third-party "on-site" supplier who specializes in supplying industrial gases for use in manufacturing. Specifically, TPCO contends that the supplier contract on the record of this proceeding demonstrates that the nitrogen and oxygen it purchases are made by Yingde at an air separation plant located on TPCO's premises. TPCO argues that it is also clear that the types of nitrogen and oxygen that TPCO purchases from this supplier, are industrial grade nitrogen for steelmaking (*i.e.*, the nitrogen has a purity level of less-than-or-equal to 10 ppm oxygen, and the oxygen has a purity level of 99.5 percent) which renders them significantly different from the types of nitrogen and oxygen reflected in the WTA Indian import data.

TPCO argues that HTS categories 2804.3000 and 2804.4090 are "basket" categories respectively reflecting numerous types of nitrogen and oxygen with multiple different end uses. TPCO states that there are several key facts which demonstrate that the nitrogen and oxygen imported into India are very different from the nitrogen and oxygen consumed by TPCO in its production process. First, TPCO argues, there is a dramatic difference in method of transmission. Whereas TPCO purchases industrial nitrogen and oxygen that is transmitted via a pipeline directly from an air-separation plant, all of the nitrogen and oxygen imported into India are contained in smaller cylinders containing compressed gas. TPCO maintains that this is evident from information obtained from InfoDrive India, which makes clear that all of the nitrogen and oxygen imported

[392] *See CTL Plate-PRC 02/24/10* at Comment 6. *See* also *Pure Mag-PRC 06/08/09.*

into India was contained in cylinders or bottles and many of the cylinders of compressed nitrogen imported into India were transmitted via air delivery. TPCO argues that cylinders of compressed nitrogen or oxygen gas or liquid nitrogen or oxygen shipped by air are very different from the industrial gasses, such as those it consumes, that are supplied via a pipeline.

Second, TPCO asserts there is a dramatic difference in the end use. TPCO states that the types of nitrogen imported into India were for such uses as "aircraft" or for "kitchen hood detection" and the types of oxygen were for uses such as "propane" or "portable oxygen." TPCO contrasts these uses with its consumption for steelmaking. Third, TPCO argues, the differences between the nitrogen and oxygen consumed by TPCO and the nitrogen and oxygen imported into India under HTS categories 2804.3000 and 2804.4090, respectively, are evident by the dramatic difference in selling prices. TPCO states that the WTA values for nitrogen and oxygen imported into India are substantially above the normal price for industrial nitrogen and oxygen, as demonstrated by the fact that the WTA price data are significantly higher than its own costs to purchase the inputs, to further support its contention. TPCO then compares the WTA values to those contained in a University of Florida pricing list (for which it finds price differences ranging up to 21,000 percent). According to TPCO, such an enormous disconnect between the WTA prices and all other price information related to nitrogen and oxygen prices can only mean that the WTA prices are for products other than industrial nitrogen and oxygen. TPCO further argues that this is quite logical as nitrogen and oxygen in industrial quantities are normally supplied within a relatively small area through a pipeline or by an on-site facility and are never imported due to the costs associated with long distance transport of these items.

TPCO concludes that the Department should use the Bombay Oxygen financial statements as the appropriate source for the surrogate values of nitrogen and oxygen. TPCO states that Bombay Oxygen is representative of prices in India, is publicly available, contemporaneous with the POI, and it has supplied a steel facility in the past, demonstrating that it serves large steel customers. Further, TPCO argues, nearly 85 percent of Bombay Oxygen's sales are oxygen, nitrogen, and argon. TPCO states that while the prices likely include higher-priced liquid gas and may also include higher-priced gas which is shipped by truck or sold in containers, the unit prices are, nevertheless, reasonable surrogates for the industrial nitrogen and oxygen used by TPCO.

USS asserts that TPCO has not successfully supported its claim that the AUVs for Indian imports of oxygen and nitrogen are aberrant because the comparison data used by TPCO are themselves flawed and do not constitute proper benchmarks under the Department's practice.[393] First, USS contends that among other things, the price series data from the University of Florida represent 2006 prices, not contemporaneous with the POI.[394] Second, USS argues that TPCO's supply contract with Yingde should also be rejected because it represents an NME transaction and, therefore, cannot serve as a valid benchmark. Third, in determining whether SV data are aberrant, USS states that the Department seeks to make an apples-to-apples comparison and will not compare the SV data at issue to data from a different source.[395] Because here, not one of

[393] *TRBs-PRC 01/06/10* at Comment 2 (determining that when a party claims that a particular surrogate value is inappropriate to value a FOP, that party has the burden to show that the surrogate value is aberrant or that another surrogate value is preferable).
[394] *TPCO's Submission of Rebuttal Information Relating to Surrogate Values* (Mar. 1, 2010) at Ex. 8.
[395] *CVP 23-PRC 11/17/04* at Comment 6.

TPCO's proposed benchmarks constitutes an apples-to-apples comparison vis-à-vis the WTA data for Indian imports of oxygen and nitrogen, USS concludes that TPCO has not provided any valid basis to demonstrate that the AUVs in question are aberrant.

USS and Maverick contend that not only has TPCO failed to meet its burden to demonstrate why the WTA import data for oxygen and nitrogen should be rejected, but TPCO's alternative proposed SVs for oxygen and nitrogen are flawed. USS notes that TPCO's proposed SVs for oxygen and nitrogen are per-unit values based on Bombay Oxygen's sales of those gases; however, Bombay Oxygen sold industrial gases at a loss during the 2008-2009 fiscal year and, therefore, its data cannot be used as the basis for SVs. Specifically, Bombay Oxygen's annual report indicates a loss of 12,311,000 rupees in its industrial gas division.[396] USS argues that the Department's normal practice is to reject a SV based on a company's financial data when there is evidence that the company did not make a profit. On this basis alone, USS contends that Bombay Oxygen's financial statements should be rejected as a source of SVs for oxygen and nitrogen.

USS and Maverick further assert that TPCO's argument that the Bombay Oxygen values are more specific than the WTA data because the Indian import data include oxygen and nitrogen shipped in cylinders and not by pipeline, does not comport with the facts. Both Petitioners emphasize that Bombay Oxygen, TPCO's recommended SV source, also sells industrial gasses in cylinders. TPCO further argues that the WTA data for nitrogen are not specific because they include specialized nitrogen gases which are not used to produce steel. However, USS counters that Bombay Oxygen likewise sells specialized nitrogen and oxygen (*e.g.*, medical oxygen) and, accordingly, TPCO's proposed SVs are not more specific than the WTA import data. Maverick adds that reliance on Infodrive India data to support TPCO's contention that the WTA data include specialized nitrogen and oxygen is misplaced because the Infodrive India data does not fully reflect the WTA data.

USS further contends that TPCO's proposed SVs for nitrogen and oxygen should be rejected because they are derived from a single company's data, contrary to the Department's normal practice of valuing factors of production using import data from the WTA because they represent a broad-based data source. USS cites to *Pure Magnesium-PRC 12/16/08* to note that the Department used data from the WTA rather than information from a single company to value a factor of production because the latter was "specific to only one company and therefore not broad and representative" of prices in the surrogate country.[397]

Maverick argues that, in its final determination, the Department should continue to value TPCO's purchased nitrogen and oxygen using Indian HTS subheading 2804.3000 for nitrogen and Indian HTS subheading 2804.4090 for oxygen. According to Maverick, these values are publicly available, contemporaneous with the POI, represent broad market averages, are from an approved surrogate country, are tax and duty-exclusive, and are specific to the inputs in question. Moreover, Maverick asserts that the imports of nitrogen and oxygen into India were made in commercial quantities, and the Department's use of WTA data is consistent with its general practice of preferring WTA data over single company financial statements.

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[396] TPCO's Final Surrogate Value Submission at Ex. SV-40.
[397] *Pure Magnesium- PRC 12/16/08* at Comment 4.

Department's Position: The Department's practice when selecting the best available information for valuing factors of production, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, tax exclusive, and contemporaneous with the POI. While there is no hierarchy for applying the SV selection criteria, "the Department must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the "best" surrogate value is for each input."[398]

For the final determination, the Department examined the sources on the record to identify the best available information to derive SVs for nitrogen and oxygen. As a starting point, we agree with Petitioners that TPCO's proposed benchmarking data are inappropriate for benchmarking purposes. Specifically, Department precedent holds that values from countries at different levels of economic development from the PRC are not suitable comparative price benchmarks to test the validity of selected SVs.[399]

In the instant case, TPCO submitted Infodrive data as a price benchmark and as a corroborative tool to support its claim that the WTA SV data are distorted. The Department has stated that it will consider Infodrive data to further evaluate import data, provided: 1) there is direct and substantial evidence from Infodrive reflecting the imports from a particular country; 2) a significant portion of the overall imports under the relevant HTS category is represented by the Infodrive India data; and 3) distortions of the AUV in question can be demonstrated by the Infodrive data;[400] but that the Department will not use Infodrive data when it does not account for a significant portion of the imports which fall under a particular HTS subheading.[401] In the instant case, the Department conducted a comparative analysis of WTA and Infodrive data and found significant discrepancies between the two data sets. Specifically, we found that the units of measure are inconsistent, with Infodrive listing "kgs," "unt," "pcs," "nos" and "ltr," while WTA lists exclusively in "kgs." In addition, the country designation of the imports varies greatly between the two data sets. Accordingly, the above listed discrepancies demonstrate that the Infodrive data as submitted by USS, does not provide an adequate representation of the WTA data and, thus, cannot be used as a corroborative tool to question the reliability of the WTA nitrogen and oxygen import data as used in the *Preliminary Determination*.[402]

With regard to TPCO's request that the Department utilize its purchase invoices to benchmark the WTA values for oxygen and nitrogen, we find the invoices also to be an inappropriate source against which to benchmark the WTA data. Specifically, these invoices reflect internal transactions conducted in an NME country.[403] The Department has a clear and established practice of not relying on NME transaction prices because they do not represent prices that are

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[398] *See PT Film-PRC 09/24/08* at Comment 2; *see* also *CVP 23-PRC 11/17/04* at Comment 3; *see* also *CTL Plate-PRC 02/24/10*.
[399] *See* Section 773(c)(4) of the Act. *See* also *Woven Ribbons- PRC 02/18/10.*
[400] *See LWTP/PRC* (October 2, 2008) at Comment 9.
[401] *Id.* at Comment 10; *see* also *TRBs-PRC 01/06/10*.
[402] *See TRBs-PRC 01/06/10*. *See also Silicon Metal/PRC 10/16/07* at Comment 5; *Laminated Sacs- PRC 06/24/08* at Comment 2; *ISOs-PRC 05/10/05* at Comment 10.
[403] *Brake Rotors-PRC 11/14/06.*

driven by market factors. Accordingly, we have not considered TPCO's NME prices in this analysis.

TPCO also submitted a University of Florida price list for nitrogen and oxygen to support its contention that WTA prices reflect materials that are not comparable to the types of nitrogen and oxygen that TPCO uses. The Department reviewed these price lists and concluded that, because they are U.S. data, they are not from an economically comparable country to the PRC. In addition, because we do not have any of the supporting data for these prices we do not know if they represent actual transaction prices.

Finally, TPCO submitted pricing information from Bombay Oxygen, an Indian supplier of industrial gases, and suggested these data as an alternative SV source to the WTA data. However, the Department does not find this information, or TPCO's arguments regarding these data, compelling for the reasons outlined below. After a careful review of the Bombay Oxygen financial statements, we agree with Petitioners that there is clear evidence that the industrial gases division operated at a loss during the 2008-2009 fiscal year, indicating that the prices for nitrogen and oxygen, as reported in this financial statement, may not reflect appropriate market-based prices in India. Accordingly, we determine that this is not the best available information on the record of this proceeding with which to value nitrogen and oxygen.

Nevertheless, in considering the Department's past practice, we recognize that the WTA Indian data for nitrogen and oxygen are not specific to TPCO's inputs. In valuing nitrogen and oxygen in other AD cases, we selected Indian financial statements in favor of WTA data because we found that WTA data do not distinguish industrial from other, higher grades of nitrogen and oxygen.[404] In this case, the record shows that TPCO uses industrial grade nitrogen and oxygen. Accordingly, we examined the only remaining potential SV data source on the record, publicly available information from Bhoruka Gas, to ascertain whether it meets the Department's SV criteria. This information was placed on the record during the initiation phase of this proceeding[405] and we used it to value oxygen for purposes of initiating this investigation.[406] Because Bhoruka Gas manufactures not only oxygen, but also nitrogen and other industrial gasses, and we have used these data in other AD proceedings, we determined that the information on the record of the initiation is a reliable SV source for valuing oxygen and nitrogen.[407] Although the Bhoruka data are not contemporaneous with the POI, we find; 1) no indication that the data are faulty; 2) they are from the primary surrogate country; 3) they are from a reliable data source that the Department has used in other AD proceedings; and 4) they provide a wide set of data points distinguishing oxygen prices depending on the type (*e.g.*, high grade pure oxygen versus commercial or industrial gas oxygen) and similar information for nitrogen. Significantly, we find that this data source is very specific to the input we are valuing and does not exhibit some of the defects identified for other SV sources on the record for these inputs.

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[404] *See*, e.g., *Diamond Sawblades/PRC 05/22/06*.
[405] *OCTG Initiation/PRC 05/05/09.*
[406] We did not value nitrogen for purposes of calculating the initiation margin in this investigation.
[407] ***Id.*** In *Diamond Sawblades/PRC 05/22/06*, the Department valued oxygen using Bhoruka Gas financial statements in the final determination and, in the *Preliminary Determination*, used these same financials to value hydrogen.

Although the data are not contemporaneous with the POI, the specificity of these data, along with the fact that they represent values from the primary surrogate country, makes them the best available information for valuing oxygen on the record of this proceeding. In the final determination, we will inflate the Bhoruka Gas prices to be contemporaneous with the POI.

Comment 29: Value of Pig Iron

TPCO argues that record evidence demonstrates that the type of pig iron imported into India under HTS number 7201.10[408] is different from the type of pig iron that it consumes in its production process to manufacture the subject merchandise. TPCO contends that the Department should reject the use of WTA to value pig iron, on the basis that pig iron can be classified into two broad categories: 1) pig iron for steelmaking (such as that used by TPCO); and 2) foundry grade pig iron (which is further classified into five sub-categories). TPCO states that it has presented evidence that its pig iron is similar in content to steelmaking pig iron and differs dramatically from both foundry-grade pig iron and sorelmetal pig iron. Specifically, TPCO asserts it placed on the record: 1) a copy of TPCO's lab test showing the chemical composition of pig iron it purchased during the period of investigation; and 2) a comparison of the chemical composition of the pig iron used by TPCO with regard to a) the chemical composition of steelmaking grade pig iron, b) foundry grade pig iron, and c) the chemical composition of sorelmetal.

TPCO further rejects the use of WTA data, stating that India is a massive producer and exporter of pig iron, and that, in comparison, the small quantity of pig iron imported into India during the POI is not in commercial quantities that normally would be purchased for steel making. TPCO further contends that approximately 90 percent of the product imported into India as pig iron is sorelmetal pig iron. TPCO argues that this is evident from the descriptions of the imported products as being pig iron for "sorelmetal" or "grade RF-10." TPCO contends it is further evident by the high price of the imports, which it compares to prices from other countries for what it claims is non-sorelmetal pig iron.

TPCO argues that alternative information for valuing pig iron is already on the record of this case in the form of financial statements from Indian producers and sellers of steelmaking grade pig iron. TPCO contends that the Department should use these Indian market prices to value pig iron for the final determination.

USS disputes TPCO's argument that the Department should use pig iron sales of three Indian producers, instead of WTA data to value pig iron, arguing that TPCO's proposed SVs are no more specific than WTA data and, therefore, inappropriate for valuing pig iron in the final determination. USS contends that TPCO has failed to meet its burden to show that the WTA data are aberrant within the Department's normal practice because it has not compared these data to benchmarks regularly used by the Department.

Further, USS rejects TPCO's argument that the presence of sorelmetal imports in the WTA data for HTS subheading 7201.10 renders these data invalid as a source of SVs for the type of pig

[408] *I.e.*, "pig iron and spiegeleisen in pigs, blocks or other primary forms; non-alloy pig iron containing by weight 0.5% or less of phosphorus"

iron that TPCO uses. USS opposes TPCO's argument that sorelmetal is distinct from both foundry grade and steel grade pig iron and should not be included in any SV calculation for the pig iron used by the company. Citing *Longkou Haimeng* (CIT 2009), USS asserts that the Department has previously rejected an argument to distinguish sorelmetal from other foundry grades of pig iron[409] and determined that sorelmetal is not fundamentally different than other types of foundry grade pig iron. USS states that the Department also found that sorelmetal was properly classified with foundry grade and steel grade pig iron under HTS subheading 7201.10.

Finally, USS further asserts that TPCO's proposed pig iron SVs are not tax-exclusive and are partly derived from non-contemporaneous data. USS urges the Department to reject TPCO's arguments and continue to rely on WTA data to value pig iron in the final determination.

Department's Position: With respect to factor valuation, the Department is obligated to calculate an accurate dumping margin by using the best available information.[410] The Department selects the best available information based on the quality, specificity, and contemporaneity of the data. Normally, the Department will use publicly available information to value factors of production.[411] With respect to the Department's selection of SVs, "it is the Department's stated practice to use investigation or review period-wide averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the period of investigation or review, and publicly available data."[412] With that in mind, the Department first attempts to find publicly available SVs from the primary surrogate country that are contemporaneous and representative of the factors being valued. In applying the Department's SV selection criteria as mentioned above, the Department has found in numerous NME cases that the import data from WTA represents the best available information for valuation purposes because they represent an average of multiple price points within a contemporaneous period, are specific to the input being valued, and are tax-exclusive.[413]

In this case, the Department selected India as our primary surrogate country. Thus, the Department's preference in selecting SV data for this investigation is to utilize publicly available prices within India. Notwithstanding TPCO's claims, the Department does not agree that the WTA category that the Department relied on reflected aberrant or inappropriate SV data. Accordingly, for the reasons outlined below, the Department has determined to continue using HTS subheading 7201.10 to value TPCO's pig iron inputs because the Department finds this to be the best available data on the record for purposes of the final determination.

With respect to TPCO's argument that the type of pig iron it consumes is fundamentally different from the type represented by this WTA India category because the latter includes sorelmetal, the Department considered this argument in another case, and determined that the steel grade, foundry grade and sorelmetal pig iron are not significantly dissimilar and that all are properly classified in Indian HTS 7201.10. In *Brake Rotors/PRC* 08/02/07, the respondent argued that WTA Indian import statistics used by the Department were not representative of the type of pig

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[409] *See Longkou Haimeng* (CIT 2009).
[410] *See* section 773(c)(1) of the Act*; Honey/PRC*, 11/03/04 at Comment 4.
[411] *See* 19 CFR 351.408(c)(1).
[412] *See* NME Surrogate Selection Policy Bulletin at page 4.
[413] *See Diamond Sawblades/PRC* (May 22, 2006) at Comment 11.

iron consumed to produce subject merchandise.[414] Specifically, the respondent argued that the existence of sorelmetal in most Indian imports of pig iron was a distinguishing characteristic that invalidated the use of HTS subcategory 7201.10 to value pig iron in those final results of review. Upon remand, the Department undertook an extensive examination of the record with regard to pig iron imports into India. During the course of the remand, the Department re-evaluated the record evidence with respect to the metallurgical properties of sorelmetal, concluding that sorelmetal is a non-alloy pig iron and does not possess any qualities that would fundamentally distinguish it from the pig iron properly classified in HTS subheading 7201.10.[415] Thus, based on this precedent, the Department has determined that Indian HTS category 7201.10, generally, is an appropriate SV for foundry grade and steelmaking grade pig iron and, thus, is sufficiently specific to TPCO's input. Further, upon examining the data in the HTS category for the period subject to this investigation, the Department finds no reason to deem the data unusable. Additionally, the Department finds that this source is superior to the sources proposed by TPCO because it is a broad-based value, contemporaneous with the POI, net of taxes and publicly available, while the sources suggested by TPCO are not broad-based, and are not tax exclusive.

X. CHANGBAO RELATED ISSUES

Comment 30: Total AFA to Changbao

Petitioners urge that the Department apply total AFA to Changbao for purposes of the final determination. According to Petitioners, evidence on the record demonstrates that Changbao provided misleading, false and unreliable information to the Department regarding the chemical composition of the billets it uses in the production of OCTG for sale to the United States. Maverick further asserts that the record evidence calls into question the validity and credibility of all of Changbao's submitted information. Specifically, Petitioners argue, information on the record directly contradicts Changbao's claims that it used alloy steel in its production of OCTG for the U.S. market.

TMK further contends that Changbao's explanations regarding why it would use alloy billets in the production of its OCTG are not credible for several reasons. According to TMK, notwithstanding Changbao's claims, it did not explain in a satisfactory manner how Changbao's cited research supported its contention that it is beneficial to use alloy steel for the production of OCTG. With this backdrop, TMK cites to the Nucor affidavit in Maverick's October 21, 2009, submission which concluded that, in order for boron to have any beneficial attributes, other factors such as the presence of complimenting alloys in specific amounts, must also be added to the steel. According to TMK, the MTCs provided at verification do not demonstrate the inclusion of these other factors in Changbao's steel billets. Moreover, TMK cites to the Preliminary Analysis Memorandum for *CTL Plate, Circumvention – PRC* 7/14/2009, where the Department previously determined that small amounts of boron have neither commercial or metallurgical consequence to support its point that Changbao's claim regarding the chemical composition of its billets is not credible.

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[414] *See Brake Rotors/PRC* 08/02/07 at Comment 1.
[415] *Longkou Haimeng* (CIT 2009) (affirming the Department's Remand Determination).

Department's Position[416]**:** We find that reliable information, necessary to calculate a margin is not available on the record with respect to Changbao for the final determination in this investigation. As the Department finds that necessary information is not on the record, and that Changbao withheld information that had been requested, significantly impeded this proceeding, and provided information that could not be verified, pursuant to sections 776(a)(1) and (2)(A), (C) and (D) of the Act, the Department is using the facts otherwise available. Further, because the Department finds that Changbao failed to cooperate to the best of its ability, pursuant to Section 776(b) of the Act, the Department has determined to use an adverse inference when applying facts available in this investigation. In addition, we have concluded that the nature of these unreliable submissions calls into question the reliability of the questionnaire responses submitted by Changbao in this investigation including Changbao's claim of eligibility for separate rate status. Thus, we find that Changbao is part of the PRC-wide entity for purposes of this investigation.

Section 776(a)(1) and (a)(2)(A), (C) and (D) of the Act provides that the Department shall apply "facts otherwise available" if necessary information is not on the record, or if an interested party: withholds information that has been requested by the Department, significantly impedes a proceeding under the antidumping statute, or provides information but the information cannot be verified. The determination to use facts otherwise available is subject to section 782(d) of the Act.

We find that Changbao withheld material information requested by the Department within the meaning of section 776(a)(2)(A) of the Act. The issue of the chemical specifications of the billets used by Changbao to produce the subject merchandise has been a focal point in the instant investigation as far as Changbao's participation is concerned. To that end, we note that Changbao initially reported using both alloy billets and billets they argued were properly identified as mild steel billets but later recanted reporting, that it used alloy billets exclusively.[417] Since that point, Changbao maintained throughout the remainder of the proceeding that it used only alloy steel for the production of its subject merchandise. In light of this significant contradiction, the Department committed considerable time and resources to the issue of Changbao's actual billet consumption during the verification. For example, the Department conducted in depth discussions on this topic with company officials, collected various sample MTCs, compared multiple hard copy MTCs to Changbao's electronic records, and inspected Changbao's testing laboratories.[418] At no point during the verification, or in any of its submissions to the Department (until after release of CBP Data, almost two months after verification had been completed) did Changbao acknowledge that it maintained two versions of its OCTG-related MTCs.

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[416] The Department's full analysis of this comment involves extensive examination of BPI, and therefore, is contained in the Changbao AFA Memo, which is incorporated herein by reference, and summarized in a form that may be publicly released below.

[417] *See* Changbao letter, Antidumping Duty Investigation: Certain Oil Country Tubular Goods from the People's Republic of China (A-570-943) – Pre-Preliminary Comments of Changbao, dated October 28, 2009, at 2.

[418] *See* Changbao Verification Report at 14, 18, 26, and 27-29.

During the Changbao verification, we asked company officials about certain information contained on the Customs Form 7501, provided by the respondent at verification, that related to a sales observation in its U.S. sales database, as completed by the importer when the merchandise entered the U.S. Customs Territory.[419] Company officials stated that the U.S. customer, not Changbao, completes the form, so they could not explain the discrepancy.[420] In other words, Changbao did not at that point acknowledge that it had provided documentation to this customer indicating that the product was produced from non-alloy steel.

As the issue of Changbao's billets' chemical composition was raised at almost the outset of this proceeding, and is a crucial issue in this investigation, it is not credible for Changbao to now claim that its maintenance of two sets of contradictory documents regarding this exact issue was irrelevant to the investigation and that is why it did not divulge their existence to the Department. Furthermore, Changbao's argument regarding why it did not reveal the existence of two sets of MTCs is also not credible, as this information, along with other business proprietary information would be subject to the investigation's administrative protective order, had it been included in the record.

Accordingly, because it was clear that the chemical composition of Changbao's steel inputs, and the MTCs supporting the chemical composition, were central issues in this case, and Changbao withheld from the Department the MTCs provided to its customers with its sales of OCTG, and the information in the MTCs it provided to the Department differed, we conclude that Changbao withheld material information requested within the meaning of section 776(a)(2)(A) of the Act.

We also find that Changbao failed to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act. Changbao was in possession of this material information, which we requested, throughout the course of this investigation and could have provided it to the Department in a timely fashion if it had chosen. As Changbao did not notify the Department of any difficulty in submitting this information, and there was no indication of any difficulty in submitting the information, we do not find that sections 782(c)(1) or (2) are applicable. Indeed, Changbao's prompt response to our release of the CBP Data indicates that there were indeed no impediments to Changbao supplying this information. Also, the Department had no reason to think that the factors of production data provided by Changbao throughout the investigation were deficient, imperfect, or vulnerable until we obtained the CBP Data and Changbao's comments regarding its content.

Lastly, with respect to section 782(e) of the Act, the MTCs submitted by Changbao in response to the CBP Data, and the purported results of tests conducted by its customers cannot be verified due to their submission this late in the investigation. As such, Changbao has failed to demonstrate that it acted to the best of its ability to provide this information (*i.e.*, Changbao did not inform the Department of this specific information until after the Department placed the CBP data on the record), and the information cannot be used due to undue difficulties (*i.e.*, contradicting evidence already on the record such that the Department is unable to determine

[419] *See* Changbao Verification Report at 29 and accompanying Exhibit 8.
[420] *Id.*; Changbao AFA Memo.

which set of conflicting information is the correct information regarding the material content of the billets used by Changbao in its production of OCTG. *See* relevant discussions above and below.

We additionally find that Changbao significantly impeded this proceeding, within the meaning of section 776(a)(2)(C) of the Act. Notwithstanding which set of MTCs might be accurate, Changbao failed to inform the Department throughout this proceeding that it maintained two sets of contradictory MTCs, and that the MTCs it provided the Department did not correspond to MTCs Changbao provided to its U.S. customers with its sales of subject merchandise. Changbao further impeded this proceeding by taking specific actions to cover up the fact that the MTCs it provided to the Department were not the same ones accompanying its sales of subject merchandise. In particular, for the "sales trace" portion of the verification, we requested and were provided with what we were informed were the sales documentation, including MTCs, that accompanied the invoices associated with the pre-select and surprise sales observations, as identified in the verification agenda.[421] Changbao has now reported that, during the verification of Changbao, the Department was not provided with the actual MTCs included in the sales to its customers, but rather alternate MTCs. In other words, not only did Changbao not divulge the existence of the two sets of contradictory MTCs, at verification, it actively substituted one set of MTCs for another and, then, directly misrepresented the nature of the information it was providing to the Department. Further, Changbao officials failed to disclose that the company had in fact furnished its customers with MTCs indicating something other than what it was claiming before the Department. Accordingly, we determine that Changbao's withholding of this information, and its affirmative actions to conceal the dual sets of conflicting MTCs significantly impeded this proceeding with the meaning of section 776(a)(2)(C) of the Act.

We determine that Changbao provided information that cannot be verified by the Department within the meaning of section 776(a)(2)(D) of the Act. By discovering the existence of a second set of MTCs at this late stage of the proceeding, the Department is effectively deprived from any meaningful opportunity to verify any of the factual information Changbao submitted in response to the CBP Data. The Department cannot now begin to discern which MTCs are accurate in order to properly value Changbao's major input for producing OCTG and thus construct an accurate and reliable margin. Moreover, Changbao's recent admission that it maintains two sets of contradictory MTCs in its computer system, a fact the Department was unable to discern at verification, even when reviewing the electronic files with Changbao officials, now calls into question the veracity of the remaining information the Department viewed at verification that was based on this electronic data system. Accordingly, Changbao's recent information regarding its MTCs is information that cannot be verified within the meaning of section 776(a)(2)(D) of the Act.

Accordingly, we find that necessary information is not on the record to calculate a margin within the meaning of section 776(a)(1) of the Act. The deficiencies and irregularities arising from the discrepancies in the CBP Data and the record up to the receipt of the CBP Data, taken together with Changbao's failure to report these discrepancies, establish a pattern of behavior that undermines the reliability and credibility of Changbao's entire set of questionnaire responses. In addition to bringing into question the authenticity of Changbao's claimed chemical specifications

[421] *See* Changbao Verification Report at 18 and Exhibit 8.

for its billets and the MTCs submitted at verification, Changbao's entire computer system is now suspect because we verified the MTCs submitted at verification utilizing this software. Accordingly, the Department is unable to rely on any of the factors of production ("FOP") or other data supplied by Changbao, and thus there is no reasonable basis upon which to calculate a margin. As a result, we find that necessary information is not available on the record within the meaning of section 776(a)(1) of the Act.

Based on the analysis above, we determine that the information submitted by Changbao cannot be verified. Specifically, Changbao's actions at verification and its recent admissions that it maintains dual sets of inconsistent production documentation have rendered the reported cost of production data totally unverifiable. In addition, we determine that Changbao did not act to the best of its ability to cooperate when it substituted one set of documents for another at verification, and did not disclose the existence of its dual-record keeping system. Further, we determine that the information submitted by Changbao to the record of this investigation cannot be used without undue difficulties because we are unable to determine at this point the level of inaccuracy of the data provided or which set of documentation represents the actual billet content consumed by Changbao in its production of OCTG. Finally, because it is not possible to determine normal value using information on the record of this investigation in accordance with section 751(a)(2) of the Act, the Department is unable to perform any comparisons to U.S. prices. The Department's practice in such situations is to resort to a total facts available methodology.[422]

In accordance with section 776(b) of the Act, the Department determines that Changbao has failed to cooperate by not acting to the best of its ability to comply with our requests for information. To examine whether an interested party cooperated by acting to the best of its ability under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the interested party has hindered the calculation of accurate dumping margins.[423] Compliance with the "best of its ability" standard is determined by assessing whether the interested party has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.[424] To conclude that a party has not cooperated to the best of its ability and to draw an adverse inference under section 776(b) of the Act, the Department examines two factors: (1) that a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations; and (2) that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to respond fully is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records.[425] While intentional conduct, such as deliberate concealment or inaccurate reporting, surely evinces a

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[422] *See Notice of Final Determination at Less Than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30329 (June 14, 1996), *Hand Trucks/PRC 7/28/08* at Comment 1, and Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 66089 (December 14, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

[423] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil*, 65 FR 5554, 5567 (February 4, 2000).

[424] *See Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed.Cir. 2003).

[425] *Id.*

failure to cooperate, the statute does not contain an intent element.[426]

The Department finds that Changbao failed to cooperate to the best of its ability in accordance with section 776(b) of the Act, for all the reasons enumerated above. First, it impeded the investigation by not acknowledging the existence of its dual-record keeping system with respect to its MTCs and by substituting one set of records for another during the verification. Second, it withheld required information that would have allowed the Department to determine the actual content of the major input to the subject merchandise (*i.e.*, alloy or non-alloy billets) used in its OCTG production. Without knowing which type of steel was used in its production, the Department is unable to calculate an accurate normal value for the merchandise Changbao sold to the United States.

Thus, we find that application of facts available with an adverse inference is warranted. In cases where all factors of production are found to be unusable because the producer failed to cooperate to the best of its ability, and thus normal value cannot be reasonably determined, the Department's practice is to apply total adverse facts available.[427] Moreover, Changbao's actions and omissions at the verification do not permit the Department to treat any of Changbao's submitted information as verified.

Furthermore, in our *Initiation Notice*, we informed PRC companies exporting OCTG to the U.S. of the requirements for completion of the separate rate application required to receive consideration for separate rate status. We have concluded that the nature of Changbao's unreliable submissions and failure to cooperate by not acting to the best of its ability to comply with our requests for information, calls into question the reliability of the questionnaire responses submitted by Changbao in this investigation including Changbao's claim of eligibility for separate rate status. As stated above, Changbao acknowledged, at a late stage and not until the Department released the CBP Data, that it maintained two versions of its MTCs which it failed to divulge to the Department on its own despite several opportune moments and knowledge of its material nature. Because of Changbao's failure to divulge the information on its own or when requested by the Department (*e.g.*, during our sales trace at verification), Changbao effectively deprived the Department of the opportunity to verify the new information. Changbao's actions and omissions impeded this investigation, as further highlighted by their taking specific actions

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[426] *Id*.

[427] *See, e.g., Hand Trucks/PRC 7/28/08* at Comment 1 (determining that Taifa's behavior at verification of refusing to answer the Department's questions, withholding documents, altering documents, and preventing the Department from conducting a full verification warranted the application of total adverse facts available); *Polyethylene Retail Carrier Bags from Thailand*, 72 FR 1982 (Jan. 17, 2007) (final results), and accompanying Issues and Decision Memorandum at Comment 7 (explaining that multiple revisions and contradictory explanations at verification resulted in a finding that information on the record was unreliable and the application of total adverse facts available was warranted); *Porcelain-on-Steel Cooking Ware from the People's Republic of China*, 71 Fed. Reg. 24641 (Apr. 26, 2006) (final results), and accompanying Issues and Decision Memorandum at Comment 2 (finding that total adverse facts available were warranted because the respondent failed to cooperate to the best of its ability by failing to disclose information regarding its affiliate, and the Department discovered the unreported affiliate by finding the company's license during verification); *Heavy Forged Hand Tools from the People's Republic of China*, 70 Fed. Reg. 54897 (Sept. 6, 2005) (final results) ("*Hand Tools*"), and accompanying Issues and Decision Memorandum at Comment 9 (determining that the respondent failed to act to the best of its ability when it did not timely notify the Department of verification issues involving its supplier and failed to supply an alternative, verifiable methodology which justified resort to total adverse facts available).

to cover up the fact that the MTCs it provided to the Department were not the same ones accompanying its sales of subject merchandise. As we conclude above, Changbao's pattern of behavior calls into question the reliability of all Changbao's submitted data, and consequently compels the Department to treat none of Changbao's information as verified. Accordingly, we find that Changbao is part of the PRC-wide entity for purposes of this investigation as Changbao, by its action (and inaction) has failed to demonstrate that it operates free of government control. Thus, the Department finds that Changbao is not entitled to a separate rate.[428]

Accordingly, the Department must now apply adverse facts available to the PRC entity, which includes Changbao. In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. The Federal Circuit and the Court of International Trade have consistently upheld the Department's practice.[429]

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner."[430] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[431] In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin "reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less."[432] Consistent with the Department's practice and the purposes of section 776(b) of the Act, the Department is applying 99.14 percent, the highest margin from the *Initiation* of this investigation, as AFA to the PRC entity, which includes Changbao.

Comment 31: Changbao's Sales to Unaffiliated PRC Trading Companies

TMK notes that in Changbao's quantity and value ("Q&V") data submission, Changbao reported both the sales it exported to the United States and sales it made to unaffiliated trading companies,

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[428] *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 11085 (March 16, 2009).
[429] *See Rhone Poulenc, Inc. v. United States*, 899 F. 2d 1185, 1190 (Fed. Cir. 1990) ("*Rhone Poulenc*"); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55% total AFA rate, the highest available dumping margin from a different respondent in a less than fair value investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16% total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); *Shanghai Taoen International Trading Co., Ltd. v. United States*, 2005 Ct. Int'l. Trade 23 *23; Slip Op. 05-22 (February 17, 2005) (upholding a 223.01% total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).
[430] *See Static Random Access Memory Semiconductors from Taiwan: Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).
[431] *See SAA* at 890. *See also Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004); *See also D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997).
[432] *Rhone Poulenc*, 899 F. 2d at 1190.

located in the PRC, which were exported to the United States. TMK asserts that Changbao did not initially report the sales to these unaffiliated PRC trading companies in its U.S. sales database, but subsequently added them to the database after being questioned by the Department regarding the discrepancy between its Q&V response and U.S. sales database. TMK adds that Changbao also reported knowing that these sales would be exported to the United States when these sales were made. Lastly, TMK states that Changbao subsequently amended its total sales to the United States by excluding the sales to the PRC-based unaffiliated trading companies and that, for the *Preliminary Determination*, the Department excluded those sales from Changbao's margin calculation.

TMK argues that, for the final determination, the Department should calculate a margin for these sales to the unaffiliated PRC trading companies. According to TMK, section 772(a) of the Act and the SAA, direct the Department to examine sales made by producers to unaffiliated foreign-trading companies, with knowledge of exportation the United States ("knowledge test"). TMK adds that this practice applies even when the producer and exporter are located in either MEs or NMEs because section 772(a) of the Act and the SAA do not distinguish between MEs and NMEs. Accordingly, TMK submits that the Department's determinations in *Pure Magnesium/*PRC 09/27/01, *HSLW*/PRC 05/18/99, and *LWR/P*RC 06/24/08, where we stated that we do not apply a knowledge test in NME cases but rather assign separate rates only to exporting entities, are contrary to section 772(a) of the Act and the SAA. Within this scheme, TMK also submits that Changbao's sales to PRC-based unaffiliated trading companies should be considered to be Changbao's export sales to the United States due to Changbao's knowledge of the subject merchandise's U.S. destination.

TMK asserts that the Department's rational for disregarding PRC-domestic sales in NMEs is based on the assumption that the entities are under common control of the NME government. Accordingly, TMK argues that the Department's rationale is flawed as Changbao has received a separate rate, *i.e.* has been shown to be free from government control. Lastly, TMK argues that the Department's practice of not examining the sales between NME producers and exporters frustrates the SAA's intent by denying U.S. petitioners antidumping relief. According to TMK, NME producers allegedly evade antidumping margins by selling through NME exporters that have lower rates. TMK further argues that the names, addresses, and other identifying information of the NME trading companies are often indiscernible by U.S. petitioners.

No other party commented on this issue.

Department's Position: Although we have determined that Changbao is part of the PRC-wide entity for purposes of this investigation, we are addressing the instant issue as it is relevant to the cash deposit and assessment rates that will be applied to these entries.

We determine to continue our practice of not applying a knowledge test in NME cases, assigning separate rates only to exporting entities, and thus basing our U.S. sales price on these exporting entities' export prices. Section 772(a) of the Act defines "export price" as the "price at which the subject merchandise is first sold…before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States." As TMK has stated,

in determining when the first sale for exportation to the United States occurs in ME cases, the Department applies the knowledge test. This test requires that a supplier have knowledge that the ultimate destination of its goods is the United States before the supplier's prices are considered export prices.

In NME proceedings, we do not conduct a knowledge test; rather our practice is to choose, as the respondent, the exporter of subject merchandise, provided that the exporter concluded the essential terms of the transaction with the U.S. customer. Specifically, with respect to NME AD proceedings, we disregard sales prices between NME entities, *i.e.* transaction prices between an NME producer of subject merchandise and the NME exporter of subject merchandise, as NME countries are presumed to "not operate on market principles of cost or pricing structures so that the sales of merchandise in such country do not reflect the fair value of the merchandise".[433]

Accordingly, non-exporting NME producers of subject merchandise are not eligible for examination as respondents. Only: 1) the NME exporter of subject merchandise; 2) the NME reseller (where it and not the exporter concluded the essential terms of sale with the U.S. customer; and 3) any third-country reseller may be considered respondents, and, in all three cases, only the transaction prices outside the NME may be examined as the export price.[434] Our practice of basing our U.S. sales prices solely on the exporting entities in NMEs has been upheld by the CIT.[435] Additionally, in order for the exporter to be considered as a respondent, it must demonstrate eligibility for separate-rate status by satisfying our separate-rate test. By doing so, the entity can obtain its own individual rate.

Further, we disagree with TMK's assertion that we are required to look to transaction prices between an NME producer of subject merchandise and the NME exporter of subject merchandise because section 772(a) of the Act and the SAA do not distinguish between MEs and NMEs. First, while the SAA may not distinguish between MEs and NMEs, it also does not explicitly disallow us from incorporating section 771(18) of the Act in our interpretation of the SAA. Second, as stated, our practice of disregarding NME transaction prices has been upheld by the CIT.[436] Third, we determine that TMK's reference to *Wonderful Chem. Indus. v. United States*[437] for the proposition that Changbao's sales are export sales to United States is inapplicable.[438] *Wonderful Chem. Indus. v. United States* involved a PRC-based producer and a Hong Kong-based exporter, *i.e.* not an NME (*i.e.*, PRC) sale, as we do not consider Hong Kong entities to be NME entities.[439]

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[433] *See* Section 771(18) of the Act.

[434] *See Pure Magnesium/PRC 09/27/01* and IDM at comment 2; *Manganese Metal/PRC 03/13/98* and IDM at 14; and *AD/CVD Final Rule (1997)* at 27303, 27305.

[435] *See Laizhou City (CIT 2002)* (stating that "When Commerce reviews export sales from a nonmarket economy country such as China that are made through a trading company, it reviews the trading company, not the producer that supplies the subject merchandise to the trading company"). TMK cites to *Laizhou City (CIT 2002)* for the misplaced proposition that the Department must look to the in-home transactions between the NME producer and NME exporter despite the former's lack of negotiation with the U.S. purchaser.

[436] *See Laizhou City (CIT 2002).*

[437] *See Wonderful Chem. (CIT 2003).*

[438] *See* TMK letter, Certain Oil Country Tubular Goods from the People's Republic of China, dated March 11, 2010, at 39.

[439] *See Application of U.S. Antidumping and Countervailing Duty Laws to Hong Kong*, 62 FR 42965 and *Multi-Agency Business Development Infrastructure Mission to China and Hong Kong, and Business Development Mission*

We also disagree with TMK's argument that our rationale for disregarding PRC-domestic sales in NMEs is based on an assumption of control by the NME government. As stated *supra*, in accordance with section 771(18) of the Act, we disregard internal NME sales as an NME country is presumed to "not operate on market principles of cost or pricing structures so that the sales of merchandise in such country do not reflect the fair value of the merchandise." Accordingly, government control, in this instance, is secondary to accurate cost and/or pricing structures which are reflective of such factors, *e.g.*, the extent to which wage rates in the NME country are determined by a freely-operating labor market.

Lastly, we also disagree with TMK' assertion that our disregard for domestic sales in NMEs frustrates the SAA's intent by denying U.S. petitioners antidumping relief. First, notwithstanding our practice of disregarding domestic sales in NMEs, the NME producer's cost of production is still analyzed by the Department. In our questionnaires, we ask entities to forward our Section D to the subject merchandise-producing entity for completion of the questionnaire. When appropriate, we proceed to verify that supplier's factors of production.[440] Second, it is not the case that where the names, addresses, and other identifying information of the NME trading companies are indiscernible by U.S. petitioners, the petitioners are harmed. In NME proceedings, a respondent is required to submit extensive information to demonstrate eligibility for separate rates status in order to qualify for either a firm-specific rate if it is subject to individual examination, or the "average" separate rate if it is not individually examined. Entities that have any NME ownership must undergo the full separate rates test, even if the exporter itself is located in a third-country ME.[441] Accordingly, exporters will be examined by the Department as either mandatory respondents or separate rate applicants, and all other exporting parties who do not receive a separate rate will be subject to the NME-wide entity rate for the relevant proceeding.

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to Korea, 64 FR 477.

[440] *See, e.g., Pure Magnesium/PRC 12/14/09* and IDM at Comment 1 (applying total adverse facts available in an NME domestic sales to the exporter's suppliers thus affecting the exporter's antidumping margin).

[441] *See Policy Bulletin 5.1, Separate Rates and Combination Rates in Antidumping Investigations*, dated April 21, 2005, at http://www.trade.gov/ia/decisions_data.asp. Consistent with the Department's practice in NME proceedings, third country resellers that demonstrate ME ownership will obtain an individual, company-specific rate if they are individually examined or the average of the company-specific rate if they are not individually examined. *See Certain Cut-to-Length Carbon Steel Plate From Romania: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 48581, 48582 (September 7, 1999), *Porcelain-on-Steel Cooking Ware From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 27262-01, 27263 (May 18, 1998), *Notice of Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products From the People's Republic of China*, 62 FR 1708, 1709 (January 13, 1997), and *Final Results of Antidumping Duty Administrative Review: Potassium permanganate from the People's Republic of China*, 56 FR 19640 (April 29, 1991).

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.

_____ _____

Agree Disagree

_____

Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

_____

Date

APPENDIX I: LIST OF ABBREVIATIONS AND ACRONYMS

Acronym/Abbreviation	Full Name
Act	Tariff Act of 1930, as amended
AD	Antidumping
AFA	Adverse Facts Available
AISI	American Iron and Steel Institute
BPI	Business Proprietary Information
CAFC	Court of Appeals for the Federal Circuit
CCR	China Coal Resource
CEP	Constructed export price
Changbao	Jiangsu Changbao Steel Tube Co., Ltd, and Jiangsu Changbao Precision Steel Tube Co., Ltd.
Changbao Prelim SV Memo	Changbao's Preliminary Surrogate Value Memo
CIT	United States Court of International Trade
COALDIS	Coal Distance Variable Name
COM	Cost of manufacturing
Company A	Company A's name is considered to be business proprietary information; accordingly we have used this designation throughout when referencing this party. The company's full name is identified in the April 8, 2010 memorandum regarding: Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation Affiliations – Final Determination
Company B	Company B's name is considered to be business proprietary information; accordingly we have used this designation throughout when referencing this party. The company's full name is identified in the April 8, 2010 memorandum regarding: Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation Affiliations – Final Determination
Company C	Company C's name is considered to be business proprietary information; accordingly we have used this designation throughout when referencing this party. The company's full name is identified in the April 8, 2010 memorandum regarding: Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation Affiliations – Final Determination
Company D	Company D's name is considered to be business proprietary information; accordingly we have used this designation throughout when referencing this party. The company's full name is identified in the April 8, 2010 memorandum regarding: Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation Affiliations – Final Determination
CONNUM	Control number

Acronym/Abbreviation	Full Name
CVD	Countervailing duty
FA	Facts available
FOP	Factor of production
FY	Fiscal Year
ISMT	Indian Seamless Metal Tubes Limited
GATT	General Agreement on Tariffs and Trade
GOC	Government of China
GRSUPRTAXU	Gross Unit Price Tax
GRSUPRU	Gross Unit Price
GTIS	Global Trade Information Services
HS	Harmonized System
HTS	Harmonized Tariff System
Maverick	Maverick Tube Corporation
ME	Market economy
MSL	Maharashtra Seamless Ltd.
MTC	Mill test certificate
NME	Non market economy
NV	Normal value
OCTL	Oil Country Tubular Ltd.
OCTG	Oil Country Tubular Goods
P/2	Preponderance at 2 Percent
Petition	Petition for the Imposition of Antidumping and Countervailing Duties on Certain Oil Country Tubular Goods from the People's Republic of China, filed on April 8, 2009
Petitioner(s)	USS, Maverick, TMK IPSCO, V&M Star, Wheatland Tube Corp., Evraz Rocky Mountain Steel, AFL-CIO-CLC
PCI	Pulverized coal for a pulverized coal injector
POI	Period of Investigation
RMT	Ratnamani Metals and Tubes Ltd
SAA	Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
SAIL	Steel Authority of India Ltd.
SG&A	Selling, general and administrative
SV	Surrogate Value
Tata	Tata Steel Limited
TERI	The Energy and Resource Institute
TMK	TMK IPSCO, V&M Star, Wheatland Tube Corp., Evraz Rocky Mountain Steel, AFL-CIO-CLC
TPCO	Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation
TPCO CQR	TPCO's Section C Questionnaire Response
TPCO Group	Tianjin Pipe (Group) Corporation
TPCO International	Tianjin Pipe International Economic and Trading Corporation
TPCO Prelim SV Memo	TPCO's Preliminary Surrogate Value Memo

Acronym/Abbreviation	Full Name
TPCO Revised CQR	TPCO's Revised Section C Questionnaire Response
TPCO SDQR 8/21/09	TPCO's Section D Questionnaire Response, dated August 21, 2009
TPCO SDQR 10/5/09	TPCO's Response to Supplemental Antidumping Questionnaire for Section D, dated October 5, 2009
UHV	Useful Heat Value
URAA	Uruguay Round Agreements Act
USS	United States Steel Corporation (Petitioner Member)
VAT	Value Added Tax
Welspun	Welspun Gujarat Stahl Rohen Ltd.
WTA	World Trade Atlas
WTO	World Trade Organization
9/18/09 SQ to TPCO	TPCO's Supplemental Questionnaire, September 18, 2009

APPENDIX II: CITATIONS

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table ***All cites in this table are listed alphabetically by short cite***	
Where references in the body of the document include the accompanying Issues and Decision Memorandum, the cite will contain the phrase "IDM at Comment X" to identify the reference.	Cases are listed alphabetically by product (with the exception that if the product name begins with "Certain" we have left off the word for purposes of alphabetizing the cases.
Short Cite	**Administrative Case Determinations**
Activated Carbon/PRC 11/10/09	*Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review for First Administrative Review*, 74 FR 57995 (November 10, 2009)
Antifriction Bearings/France 09/15/04	*Antifriction Bearings and Parts Thereof From France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574 (September 15, 2004)
Aspirin/PRC 5/25/00	*Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China***,** 65 FR 33805 (May 25, 2000)
Brake Rotors/PRC 11/14/06	*Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the 2004/2005 Administrative Review and Notice of Rescission of 2004/2005 New Shipper Review,* 71 FR 66304 (November 14, 2006)
Brake Rotors/PRC 08/02/07	*Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review,* 74 FR 42386 (August 2, 2007)
Candles/PRC 3/15/04	*Notice of Final Results and Rescission, in Part, of the Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China,* 69 FR 12121 (March 15, 2004)
Carbazole/PRC 11/17/04	*Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigments 23 from the People's Republic of China*, 36 FR 67304 (November 17, 2004)
Carbon-Quality Steel/Japan 12/03/03	*Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 67 FR 71936 (December 3, 2003)

Antidumping/Countervailing Duty Proceeding Federal Register Cite Table ***All cites in this table are listed alphabetically by short cite***	
Carrier Bags-PRC 03/19/07	*Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 12762 (March 19, 2007)
Carrier Bags/PRC 3/17/08	*Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 73 FR 14216 (March 17, 2008)
Carrier Bags-PRC 7/29/09	*Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 37694 (July 29, 2009)
Carrier Bags-PRC 12/4/09	*Polyethylene Retail Carrier Bags From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 63718 (December 4, 2009)
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Antidumping/Countervailing Duty Proceeding Federal Register Cite Table ***All cites in this table are listed alphabetically by short cite***	
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Antidumping/Countervailing Duty Proceeding Federal Register Cite Table ***All cites in this table are listed alphabetically by short cite***	
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Antidumping/Countervailing Duty Proceeding Federal Register Cite Table ***All cites in this table are listed alphabetically by short cite***	
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Antidumping/Countervailing Duty Proceeding Federal Register Cite Table ***All cites in this table are listed alphabetically by short cite***	
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Antidumping/Countervailing Duty Proceeding Federal Register Cite Table ***All cites in this table are listed alphabetically by short cite***	
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2007 Expected Wage Rate (May 14, 2008)	*2007 Calculation of Expected Non-Market Economy Wages*, 73 Fed. Reg. 27795 (May 14, 2008)

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9/18/09 SQ to TPCO	Department's Supplemental questionnaire to TPCO, dated September 18, 2009
Act	Tariff Act of 1930, *as amended*
Activated Carbon SV Memo	Memorandum to the File, First Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Final Result, dated November 3, 2009
AD/CVD Final Rule (1997)	*Antidumping Duties; Countervailing Duties*; Final Rule, 62 FR 27296 (May 19, 1997)
Antidumping Methodologies	*Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716 (October 19, 2006)
Aug. 31, 2009 Supplemental Questionnaire	The Department's Supplemental Questionnaire, dated August 31, 2009
Candles IDM-3/8/04	Memorandum from Joe Spetrini regarding Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review of Petroleum Wax Candles from the People's Republic of China, dated March 8, 2004. (decision memorandum for *Candles/PRC 3/15/04*)
Changbao AFA Memo	Memorandum regarding: Application of Total Adverse Facts Available for Changbao Steel Tube Co. and Jiangsu Changbao Precision Steel Tube Co., Ltd. in the Antidumping Duty Investigation of Oil Country Tubular Goods from the People's Republic of China, dated April 8, 2010.
Changbao's SV Comments	Changbao's September 11, 2009, Surrogate Values Submission
Final Affiliation Memo	Memorandum from Eugene Degnan regarding: Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation Affiliations – Final Determination, dated April 8, 2010
Final Modification	*Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722 (Dec. 27, 2006)

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GAO Report (June 2005)	U.S.-China Trade: Commerce Faces Practical and Legal Challenges in Applying Countervailing Duties, GAO-05-474 (June 2005)
Nov. 17, 2009 Supplemental Questionnaire	The Department's Supplemental Questionnaire to TPCO, dated November 17, 2009
OTCA 1988	Omnibus Trade and Competitiveness Act of 1988, H.R. Conf. Rep. No. 76 100th Cong., 2nd Session (1988)
Petitioners' Prelim SV Submission aka Petitioners' 9/11/09 SV Comments	*Petitioners' Preliminary Surrogate Value Submission*, dated September 14, 2009
Petitioners' New Facts Submission 11/30/09	Petitioners' Submission of New Factual Information, dated November 30, 2009
Petitioners' Prelim SV Submission 9/11/09	Petitioners' Surrogate Value Calculations and Data, dated September 11, 2009
Petitioners' SV Rebuttal 3/1/10	Petitioners' Submission of Rebuttal Information Relating to Surrogate Values, dated March 1, 2010
Preliminary Affiliation Memo	Memorandum from Eugene Degnan regarding: Tianjin Pipe (Group) Co. Affiliations, dated March 2, 2010
Preliminary Targeted Dumping Memorandum	Memorandum regarding: Targeted Dumping - Jiangsu Changbao Steel Tube Co., Ltd. and Jiangsu Changbao Precision Steel Tube Co., Ltd. (collectively, "Changbao") and Tianjin Pipe (Group) Co. ("TPCO"), dated March 2, 2010.
Prelim SV Memo	Investigation of Certain Oil Country Tubular Goods from the People's Republic of China: Surrogate Values Memorandum for the Preliminary Results, dated November 4, 2009
Proposed Targeted Dumping Methodology (May 9, 2008)	*Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment,* 73 FR 26371 (May 9, 2008)
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. 1 (1994), reprinted in 1994 U.S.C.C.A.N. 4040

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TPCO's Additional SDQR-10/13/09	TPCO's Additional Response to Supplemental Antidumping Questionnaire for Section D, dated October 13, 2009
TPCO's Clarification and Corrections Section D, aka TPCO's SDC-11/30/09	TPCO's Clarification and Corrections to Section D Response, dated November 30, 2009
TPCO's Coal Clarification	TPCO's Surrogate Value Comments Regarding Coal, dated October 19, 2009
TPCO's Final Surrogate Value Submission 3/2/10	TPCO's Final Surrogate Value Submission, dated March 2, 2010
TPCO's SDQR 10/5/09	TPCO's Response to Supplemental Antidumping Questionnaire for Section D, dated October 6, 2009
TPCO's Section A Response	TPCO's Response to Section A of the Department's Questionnaire, dated July 29, 2009
TPCO's Section D Response	TPCO's Response to Section D of the Department's Questionnaire, dated August 21, 2009
TPCO CQR 8/19/09	TPCO's Section C Response, dated August 19, 2009
TPCO Final Analysis Memo	Memorandum regarding: Final Determination Analysis Memorandum for Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation (collectively "TPCO"), dated April 8, 2010
TPCO Revised CQR	TPCO's Revised Section C Questionnaire Response
TPCO SDQR-8/21/09	TPCO's Section D Questionnaire Response, dated August 21, 2009
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TPCO Verification Report	Memorandum regarding: Verification Report of the Sales and Factors of Production Responses of Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation in the Antidumping Duty Investigation of Oil Country Tubular Goods from the People's Republic of China, dated February 16, 2010
USCSC Testimony (April 4, 2006)	Testimony Before the U.S. China Economic and Security Review Commission, GAO-06-608T, at 18 (April 4, 2006)
USS Case Brief	Case Brief on Behalf of the Petitioners TMK Ipsco, V&M Star LP, Wheatland Tube Corp., Evraz Rocky Mountian Steel, and the United Steelworkers, dated March 9, 2010

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