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Investigation
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DATE: February 19, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China

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SUMMARY

The Department of Commerce (the "Department") has analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty ("AD") investigation of drawn stainless steel sinks ("drawn sinks") from the People's Republic of China ("PRC"). As a result of this analysis, we have made changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues on which we received comments and rebuttals from interested parties.

ISSUES FOR FINAL DETERMINATION

Comment 1: Adjustment Under Section 777A(f) of the Act
Comment 2: Valuation of Stainless Steel
Comment 3: Surrogate Value for Labor
Comment 4: Whether the Department Applied the Correct Treatment to Labor Line Items in Its Financial Ratio Calculations
Comment 5: Valuation of Brokerage and Handling

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[1] *See Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation*, 77 FR 60673 (October 4, 2012) ("*Preliminary Determination*").

Comment 6: Financial Statements
Comment 7: Surrogate Value for Sound Deadening Pad Input
Comment 8: Whether the Department Correctly Applied Targeted Dumping Methodology
Comment 9: Whether Superte/Zhaoshun's Scrap Offset Should be Rejected
Comment 10: Whether Superte/Zhaoshun Reported Accurate Electricity Consumption
Comment 11: Whether Superte/Zhaoshun Reported Accurate Consumption for Wooden Boxes and Polystyrene Foam
Comment 12: Whether an Invoicing Company Fees Superte Paid to Zhaoshun is an Adjustment to its U.S. Price
Comment 13: Whether Dongyuan's Reported Paint Input is Soluble in Water
Comment 14: Whether the Department Properly Rejected Kehuaxing's Quantity and Value Questionnaire and Separate Rate Application

BACKGROUND

The Department published its *Preliminary Determination* of sales at less than fair value ("LTFV") on October 4, 2012. On October 10, 2012, the Department issued post-*Preliminary Determination* supplemental questionnaires in which we requested new factual information regarding double remedies from Dongyuan and Superte/Zhaoshun[2] and received responses to these supplemental questionnaires on October 17, 2012. From October 22, through November 1, 2012, the Department conducted verifications of Dongyuan and Superte/Zhaoshun and released its verification reports for these companies on November 27 and 28, 2012, respectively.[3] Timely requests for a public hearing were filed on October 25, 2012, by Shenzen Kehuaxing Industrial Ltd. ("Kehuaxing") and on November 5, 2012, by both Elkay Manufacturing Company ("Petitioner") and Dongyuan.

On November 15, 2012, in response to a request filed by Dongyuan, the Department extended the deadline for submission of publicly available information to November 26, 2012, and the due date for rebuttal information to December 6, 2012. On November 26, 2012, Petitioner and Dongyuan submitted surrogate value ("SV") information for the record, and Petitioner, Dongyuan, and Superte submitted rebuttal comments to this information on December 6, 2012. On November 28, 2012, the Department extended the deadline for submission of case briefs to December 10, 2012, and the due date for rebuttals briefs to December 17, 2012. On December 7, 2012, in response to a request filed by Dongyuan, the Department again extended the deadline for submission of case briefs to December 13, 2012, and the due date for rebuttals briefs to

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[2] Mandatory respondents are Guangdong Dongyuan Kitchenware Industrial Co., Ltd. ("Dongyuan") and Zhongshan Superte Kitchenware Co., Ltd. ("Superte") and its invoicing company Foshan Zhaoshun Trade Co., Ltd. ("Zhaoshun") (also collectively referred to as "Superte/Zhaoshun").
[3] *See* the Department's memorandum regarding: Verification of the Sales and Factors Responses of Guangdong Dongyuan Kitchenware Industrial Co., Ltd. in the Antidumping Investigation of Drawn Stainless Steel Sinks from the People's Republic of China, dated November 27, 2012 ("Dongyuan Verification Report"); *see also* the Department's memorandum regarding: Verification of the Sales and Factors Responses of Zhongshan Superte Kitchenware Co. Ltd./Foshan Zhaoshun Trade Co., Ltd. in the Investigation of Drawn Stainless Steel Sinks from the People's Republic of China, dated November 28, 2012 ("Superte/Zhaoshun Verification Report").

December 18, 2012. On December 13, 2012, case briefs were filed by Petitioner, Dongyuan, Superte/Zhaoshun, and Kehuaxing.

On December 18, 2012, Petitioner, Dongyuan, Superte/Zhaoshun and the Government of China ("GOC"), each filed their rebuttal briefs, and on December 19, 2012, in its request to replace its case brief, the GOC submitted a corrected version of its case brief. On December 20, 2012, the Department rejected the GOC's original case brief and granted the GOC's request to correct and replace their case brief filed as an attachment to its December 19, 2012, request. We did not receive briefs or rebuttal briefs from any other interested party to the investigation. On January 30, 2013, the Department held a public hearing limited to issues raised in case and rebuttal briefs.

DISCUSSION OF THE ISSUES

Comment 1: Adjustment Under Section 777A(f) of the Act

Petitioner's Arguments

- The Department should not estimate the amount of countervailable subsidies that were passed through to the respondents' export prices because neither respondent demonstrated that input subsidies lowered export prices.
- The Bloomberg data preliminarily used by the Department are an inappropriate basis to estimate the amount of countervailable subsidies passed through to the average price of imports of the class or kind of merchandise because this data is based on PRC industry- wide data and is not specific to the class or kind of merchandise as required by section 777A(f)(l)(C) of the Tariff Act of 1930, as amended ("the Act").
- The Department's application of the preliminary pass-through estimate does not meet the statutory standard because the subsidies provided to PRC producers are not passed through to U.S. customers in the stainless steel sinks industry.

The GOC's Rebuttal Arguments

- In the GOC's view, a "double remedy" arises in all instances of concurrent imposition of countervailing duty ("CVD") and antidumping duties ("AD") calculated pursuant to an NME methodology. Moreover, the newly enacted statute (section 777A(f) of the Act) and the World Trade Organization's ("WTO") decision in DS 379[4] require that "double-counting" be adjusted in this case.
- There should be a low threshold for determining whether export prices have been reduced by a particular subsidy and there should be minimal burden on the respondents to provide evidence of the effect of the subsidy on the price of the product.

Dongyuan's Rebuttal Arguments

- There is sufficient evidence on the record to show that export prices of subject merchandise have been reduced by countervailable subsidies.

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[4] *See United States - Definitive Anti-Dumping and Countervailing Duties on Certain Products from China,* WT/DS379/AB/R (March 11, 2011) ("DS 379").

- The Department should adjust Dongyuan's margin for double remedies because the Department verified the linkage between Dongyuan's steel costs and its price of subject merchandise to the United States.

Superte's Rebuttal Arguments

- In order for the Department to continue to be in compliance with U.S. court decisions, the WTO dispute resolution process, and U.S. statute, the Department should continue to adjust for double remedies.

Department's Position: In our *Preliminary Determination*, the Department made adjustments to the AD cash deposit rate found for the respondents in this investigation, pursuant to section 777A(f) of the Act.[5] To make the adjustment, we used information for individually examined respondents in the CVD investigation to derive program-specific rates for subsidized inputs for each respondent in the AD investigation.[6] In making these adjustments, the Department stated that it had not concluded that concurrent application of nonmarket economy ("NME") ADs and CVDs necessarily and automatically results in overlapping remedies.[7] Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record in the relevant segment of the proceeding, as required by the statute.[8] We also stated that because of the timelines in an LTFV investigation, and the fact that this is only the second time that the Department applied section 777A(f) of the Act,[9] it may be necessary to continue to refine our practice, based on record evidence, in applying this statutory provision.[10]

After verifying Dongyuan's and Superte's sales and costs, we continue to find that electricity and stainless steel coil subsidies impacted both Superte's and Dongyuan's cost of manufacturing ("COM"), and that the other subsidy programs under investigation (*e.g.*, grant programs, tax programs, policy lending, *etc*.) did not.[11] We also confirmed that Superte and Dongyuan only adjust prices in response to certain changes in stainless steel coil cost, but not to changes in other subsidized costs that impact COM.[12] Additionally, at Dongyuan's verification, we confirmed that Dongyuan's cost-to-price linkage was applicable to all of its period of investigation ("POI") sales to the United States.[13] However, Superte explicitly stated at verification that it did not change price in response to reductions in stainless steel coil costs, only increases, and only on a

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[5] *See Preliminary Determination*, and accompanying Issues and Decision Memorandum at 21-23.
[6] The mandatory respondents in the CVD investigation are Zhongshan Superte Kitchenware Co., Ltd. and Guangdong Yingao Kitchen Utensils Co., Ltd. *See Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 77 FR 46717 (August 6, 2012) ("*Drawn Sinks CVD Preliminary Determination*").
[7] *See Preliminary Determination*, and accompanying Issues and Decision Memorandum at 21-23.
[8] *See id*.
[9] *See Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act: Certain New Pneumatic Off-the-Road Tires; Circular Welded Carbon Quality Steel Pipe; Laminated Woven Sacks; and Light-Walled Rectangular Pipe and Tube From the People's Republic of China*, 77 FR 52683, 52686 (August 30, 2012).
[10] *See Preliminary Determination*, and accompanying Issues and Decision Memorandum at 21.
[11] *See* Superte/Zhaoshun's Verification Report, at 25 and Dongyuan's Verification Report, at 22-23.
[12] *See id*.
[13] *See* Dongyuan's Verification Report.

limited number of sales.[14] Therefore, we find that Dongyuan demonstrated the cost-to-price linkage for its products, but that Superte did not. Accordingly, we find that both respondents provided sufficient information to demonstrate the first link between certain subsidies and COM, but that only one company, Dongyuan, demonstrated the second link -- changes in cost that were linked to changes in prices. As such, we have determined that an estimated domestic subsidy pass-through adjustment is warranted for Dongyuan, but not for Superte.

The Department has determined that record evidence does not support the calculation of a company-specific pass through rate for Dongyuan. Although Dongyuan's calculation of an estimated pass-through rate provides probative evidence that some pass-through occurred, the estimate is based only on certain sales[15]and is not consistent across the sales the Department verified. Therefore, the Department has determined to continue to apply a documented ratio of cost-price changes for the Chinese manufacturing sector as a whole, 61.01 percent[16] as the estimate of the extent of subsidy pass-through for Dongyuan.

The Department disagrees with Petitioner that Dongyuan failed to demonstrate that the average price of imports from Dongyuan was reduced by countervailable subsidies.[17] As discussed above, the Department has determined in this proceeding that the stainless steel coil cost impacted the COM for both mandatory respondents, and that at least for one mandatory respondent, there are cost-linked export price changes. Moreover, based on the totality of the evidence, the Department also finds that price reductions occurred on imports of subject merchandise within the POI, in the two years leading up the POI and compared to imports from at least one other country.[18] Therefore, the Department finds that the subsidy-cost-linked price changes, in combination with the evidence of a reduction in the price of imports, is sufficient to satisfy section 777A(f)(B) of the Act for this investigation.

We also do not agree that input price changes that impact COM need to have taken place during the POI to be probative of Dongyuan's pricing behavior. We consider all evidence of the existence (or absence) of a linkage between changes in cost and changes in price relevant to our analysis, in large part because we recognize (1) the general nature of such linkage if it exists; (2) the fact that respondent has no control over the timing or frequency of input price changes; and (3) that increases in the price of an input tend to occur more frequently than price reductions. We would note that the team verified a cost-linked price change for stainless steel coil in the case of Dongyuan. Further, we do not agree that the fact that Dongyuan later reduced the prices that it initially increased undermines the Department's conclusions that, for Dongyuan, costs affected prices, because the fact remains that Dongyuan changed its selling prices in reaction to the change in cost.

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[14] *See* Superte/Zhaoshun's Verification Report.

[15] *See* Dongyuan's submission regarding: Drawn Stainless Steel Sinks from the People's Republic of China: Double Remedies Questionnaire Response, dated October 17, 2012, at 6-9; *see also* Dongyuan's submission regarding: Drawn Stainless Steel Sinks from the People's Republic of China: Double Remedies Questionnaire Response, dated September 17, 2012, at 2.

[16] *See* Final Determination Analysis Memorandum for Zhongshan Superte Kitchenware Co., Ltd.; *see also* Final Determination Analysis Memorandum for Guangdong Dongyuan Kitchenware Industrial Co.

[17] As noted above, we do agree that Superte/Zhaoshun failed to make this demonstration.

[18] *See id.* The Department notes that an assessment of the reduction in prices is case specific.

We disagree with Petitioner that the use of Bloomberg data is not an appropriate basis to use as a reasonable estimate of the pass-through amount of countervailable subsidies. First, as described above, the record does not support Petitioner's contention that the cost of stainless steel does not affect Dongyuan pricing. As a consequence, the record also does not support Petitioner's further contention that respondent experience in this investigation indicates clearly an exception to the pricing behavior that underlies the Bloomberg data. For these reasons, and in light of the difficulties associated with estimating a company-specific pass-through rate for Dongyuan, we continue to find that the Bloomberg data are the best means by which to satisfy the statutory requirement of making a reasonable estimate of the pass-through amount.

We do not agree with the GOC's argument that a complete "double remedy" arises in all instances of concurrent imposition of CVDs and ADs calculated pursuant to an NME methodology and that section 777A(f) of the Act and the WTO's decision in DS 379 require that an adjustment be made in this case. As discussed above, the Department examines on a case-by-case basis whether evidence supports a finding that an estimated domestic subsidy pass-through has occurred. In this case, as described above, we find that the record evidence supports finding that Dongyuan passed through changes in stainless steel costs to its selling prices and, thus, warrants an adjustment to account for estimated domestic subsidies pass-through. The Department finds that the record evidence does not support this finding for Superte/Zhaoshun.

Comment 2: Valuation of Stainless Steel

Petitioner's Argument

- In order to capture the full range of steel thicknesses used by respondents in their production of drawn sinks, the Department should value stainless steel by calculating an average unit value ("AUV") from data on the record for all 11-digit Thai classifications under Harmonized Tariff Schedule ("HTS") categories 7219.33 and 7219.34 that reflect austenitic grade steel.
- Indonesian and Philippine import data do not constitute the best available information because they are only available at the six-digit level and do not make any distinction for the grade of stainless steel coil used by respondents.
- Dongyuan has not provided any evidence that import prices into Thailand are subsidized or that the Thai market for stainless steel coils is distorted. Therefore, Thai Global Trade Atlas ("GTA") data do represent commercial quantities. Comparing Indonesian and Philippine import volumes at the six-digit level with Thai import volumes at the 11- digit level is a misleading analysis. There is no requirement for Thai import volumes to match the volumes consumed by PRC producers.
- The Thai GTA import data are more specific to the sizes, grades, and finishes of the stainless steel used by the respondents than the data from any of the other potential surrogate countries on the Department's list. The Thai tariff schedule contains 15 highly detailed 11-digit classifications for stainless steel coil under HTS categories

7219.33 and 7219.34; in contrast, Indonesian and Philippine tariff schedules for these HTS categories are broad and do not contain any sub-classifications.

- The Thai import data are not aberrational because Superte/Zhaoshun compare only Thai and Indonesian AUVs at the six-digit level. This bears no relation to the SV calculated by the Department in its *Preliminary Determination,* which was a weight-average of the Thai import data for 11-digit HTS classifications.
- Petitioner cites to *High Pressure Steel Cylinders PRC*[19] and *Steel Nails PRC*[20] to underscore the Department's practice of recognizing the nature of import AUVs as broad market averages.

Dongyuan's Argument

- In identifying SVs, the Department has a mandate to:
  - select import data based on "commercially and statistically significant quantities" (citing to *Shanghai Foreign Trade*[21]);
  - apply SVs that are representative of the situation in the NME country (citing to *Harmoni Spice*[22] and *Nation Ford*[23]);
  - select information that most accurately reflects the cost in the PRC, if the PRC were a market economy country (citing to *Rhodia*[24]*).*
- Thai GTA data do not meet these criteria because:
  - the quantity of fairly traded Thai imports is too small to be representative;
  - Thai import statistics most similar to the stainless steel used by respondents are only a fraction of the quantity of annual purchases of steel by respondents;
  - Thai statistics are flawed and unrepresentative because of the high costs of consolidated shipments that result from a low volume of steel imported each month into Thailand.
- In the companion CVD case, the Department determined that the GOC is significantly involved in the domestic stainless steel industry and that the market is distorted because at least 46 percent[25] of production is by state owned enterprises ("SOEs"). Comparatively, the AD and CVD orders in effect in Thailand distort 68 percent of the total import quantity and render Thai import prices unreliable.
- The existence of a monopoly in Thailand, where a sole domestic producer put in place AD orders and avails itself of countervailable subsidies, disqualifies Thailand as a source for valuing Dongyuan's stainless steel.

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[19] *See High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012), and accompanying Issues and Decision Memorandum ("*High Pressure Steel Cylinders/China*").

[20] *See Certain Steel Nails from the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012), and accompanying Issues and Decision Memorandum ("*Steel Nails/China*").

[21] *See Shanghai Foreign Trade v. United States*, 318 F. Supp. 2d 1339 (CIT 2004) ("*Shanghai Foreign Trade*").

[22] *See Zhengzhou Harmoni Spice Co. v. United States*, 617 F. Supp. 2d 1281 (CIT 2009) ("*Harmoni Spice*").

[23] *See Nation Ford Chemical Company v. United States*, 166 F.3d 1373, 1378 (CAFC 1999) ("*Nation Ford*").

[24] *See Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343 (CIT 2001) ("*Rhodia*").

[25] *See Drawn Sinks CVD Preliminary Determination*.

- A weight-average of Philippine and Indonesian import data under HTS 7219.33 and 7219.34 constitutes the best information available with which to calculate a SV for stainless steel.

Superte/Zhaoshun's Argument

- The Department should use the Indonesian import data to value stainless steel coil because the Indonesian data are more accurate and appropriate for SV purposes.
- Thai import data are not usable because: 1) they are not statistically or commercially significant in terms of quantity when considered alone or compared with import data from other market economies on the record, such as Indonesia and Philippines; 2) they are anomalous in terms of price when compared to the Indonesian data, and; 3) they are not representative of broad market averages.

Department's Position: The Department agrees with Petitioner and has determined to value stainless steel inputs by averaging the Thai GTA import statistics classified under HTS subcategories 7219.33.00.032, 7219.33.00.034, and 7219.33.00.033 ("Flat-Rolled Stainless Steel Products, 600 Mm Or More Wide, Cold-Rolled, Over 1 Mm But Under 3 Mm Thick") and 7219.34.00.032, 7219.34.00.033, and 7219.34.00.034 ("Flat-Rolled Stainless Steel Products, 600 Mm Or More Wide, Cold-Rolled, 0.5 Mm But Not Over 1 Mm Thick"). Section 773(c)(1) of the Act directs the Department to use "the best available information" from an appropriate market-economy country to value factors of production ("FOPs"). In selecting the most appropriate SV, the Department considers several factors including whether the SV is: publicly available, contemporaneous with the POI, representative of a broad market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input. The Department's preference is to satisfy the breadth of the aforementioned selection criteria.[26] Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis of valuing the FOPs.[27]

In the *Preliminary Determination*, we valued stainless steel by averaging the import data under the three 11-digit codes that comprise Thai HTS 7219.33 ("Flat-rolled products of stainless steel, of a width of 600 mm or more; of a thickness exceeding 1mm but less than 3mm") after excluding import data for countries in which the Department has determined general available subsidies exist (*i.e.*, Japan and Taiwan) and which are subject to a Thai AD order on stainless steel coil.[28] We are revising our calculation of an SV for stainless steel for the final determination, as explained below.

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[26] *See Steel Nails/China*, at Comment 9.
[27] *See Certain Preserved Mushrooms from the PRC: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006), and accompanying Issues and Decision Memorandum at Comment 1; *see also Freshwater Crawfish Tail Meat from the PRC; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.
[28] *See Preliminary Determination*, and accompanying Issues and Decision Memorandum at 16-17; *see also* the Department's memorandum regarding: Factor Valuation Memorandum for Preliminary Determination in the Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China, dated September 27, 2012 ("Prelim SV Memo") at 4-5.

The record shows that Dongyuan and Superte/Zhaoshun use stainless steel coil of thicknesses ranging from one millimeter ("mm") but less than three mm, and also of a thickness of one mm or less, in the production of drawn sinks.[29] These thicknesses correspond to the 11-digit Thai HTS codes enumerated above, which are more specific to the types, finishes and grades of stainless steel used by respondents in the production of drawn stainless steel sinks than any other proposed SV information on the record.

We disagree with Dongyuan's claim that the Thai import data under HTS 7219.33 and 7219.34 are aberrational. While the Department has disregarded import data in cases where record evidence demonstrated the per-unit values were aberrational with respect to the product at issue or the time period in question, the determination whether data are aberrational must be made on a case-by-case basis after considering the totality of the circumstances. In making a determination as to whether data are aberrational, the Department has found the existence of higher prices alone does not necessarily indicate the price data are distorted or unrepresentative, and thus is not sufficient to exclude a particular surrogate value.[30] In addition, when import statistics data comprise only a small quantity, it is the Department's practice to examine whether the value for those imports is aberrational.[31] Contrary to Dongyuan's assertion, where the quantity is small, but there is no indication that the value is aberrational, the Department will continue to rely on that statistic for use as an SV.[32] Further, we compared the AUV for Thai imports under the 11-digit HTS subcategories specified above net of imports from Japan, Korea, and Taiwan, with the calculated AUV for these commodities in all other potential surrogate countries in this case and did not find the Thai AUV to be aberrational.

Although Dongyuan argues that the Thai market for stainless steel is distorted by subsidies and, therefore, is not representative of a broad market average, our analysis has demonstrated that

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[29] *See* Dongyuan Verification Report, at 17; *see also* Zhaoshun's submission regarding: Drawn Stainless Steel Sinks from China: First Supplemental Section D Questionnaire Response, dated August 20, 2012, at SQ1-13.

[30] *See, e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010), and accompanying Issues and Decision Memorandum at Comment 2.

[31] *See, e.g., Shanghai Foreign Trade,* 318 F. Supp. 2d at 1350 ("{I}f the import statistics are based on a small quantity of imports for the period of investigation, Commerce's practice is to determine if the price for those imports is aberrational."); *see also Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 59 F. Supp. 2d 1354, 1360 (CIT 1999) (explaining that Department's practice is to exclude "small-quantity data when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other countries") (quoting *Heavy Forged Hand Tools, Finished or Unfinished With or Without Handles, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 16758, 16761 (April 6, 1998))).

[32] *See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 57329 (October 2, 2008), and accompanying Issues and Decision Memorandum at Comment 10; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009), and accompanying Issues and Decision Memorandum at Comment 6 (where the Department states that, "{t}he 8-digit Indian HTS category more closely reflects the factor input used by the respondent in the production of TRBs than the 6-digit categories from the other countries. As stated in Hangers, the Department finds that 'specificity is a compelling reason that supports using... data to value the steel wire rod input.'" (quoting *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 47587 (August 14, 2008), and accompanying Issues and Decision Memorandum at Comment 4))

excluding subsidized and dumped stainless steel in Thailand results in quantities that are commercially and statistically significant, with an AUV that is not aberrational when compared with Indonesia, the Philippines and every other potential surrogate country on the Department's list.[33]

We do not agree with Dongyuan's argument that Thai import prices are unreliable because of generally-available subsidies in the Thai market. We find that Dongyuan has provided no evidence that the import prices used to calculate the SV have been subsidized, such that the Department cannot rely upon Thai import statistics. We agree with Petitioner that this same argument was raised and rejected in *Nation Ford*, where the Court of Appeals for the Federal Circuit ("CAFC") held that despite the possible existence of domestic subsidies, the Indian import statistics represented the best available information.[34] Similarly, we find no evidence on the record that would support a finding that Thai government subsidies to domestic producers, *i.e.*, POSCO Thainox, render import prices unreliable. For these reasons, we continue to use Thai import data to calculate an SV for stainless steel.

We agree with Petitioner that the Department regards GTA import data as a broad market average,[35] and the six Thai HTS subcategories at issue satisfy our remaining SV criteria because they are publicly available, contemporaneous with the POI, from an approved surrogate country, tax- and duty-exclusive, and specific to the respondents' inputs. Therefore, we find that Thai HTS subcategories 7219.33.00.032, 7219.33.00.034, 7219.33.00.033, 7219.34.00.032, 7219.34.00.033, and 7219.34.00.034 are the best available information for calculating an SV for stainless steel. Accordingly, we have determined to value Dongyuan's and Superte's stainless steel inputs by calculating an AUV based on the 11-digit Thai HTS subcategories noted above that correspond to austenitic series stainless steel.

Comment 3: Surrogate Value for Labor

Dongyuan's Argument

- Thailand ILO 2005 Chapter 6A data are not the best available information on the record. Instead, the Department should use the "2007 Industrial Census" data published by Thailand's National Statistics Office (the "2007 NSO data") because they are more specific, more contemporaneous, and provide a broader market average than the ILO data.
- The Department should not rely on the ILO 2005 Chapter 6A data because the data may be aberrant, based on two indicators: 1) the total manufacturing industry wage rate in Thailand in 2005 (116.78 Thai baht per hour ("THB/HR")) is significantly (and inexplicably) higher than the total manufacturing industry wage rate from the very next year, and 2) the fact that there was a slight increase in the average hourly wage rate reported by the Thailand Yearbooks of Welfare and Labor Statistics from 2005 to 2006 suggests that Thai workers did not actually experience a significant reduction in their wages and benefits from 2005 to 2006.

[33] *See* the Department's memorandum regarding: Request for a List of Surrogate Countries for and Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China, dated May 29, 2012.
[34] *See Nation Ford*, 166 F.3d at 1378.
[35] *See High Pressure Steel Cylinders/PRC,* at Comment 1; *see also Steel Nails/PRC*, at Comment 9.

- The Department must correct its SV calculation for hourly labor cost, based on the schedule outlined in the ILO Yearbook for Thai workers (*i.e.*, 51 working hours per week, 26 working days per month, 5.958 working days per week, and 8.56 working hours per day).

Petitioner's Rebuttal Arguments

- The ILO 2005 Chapter 6A data are superior to the 2007 NSO data because the former includes all labor costs and expenditures incurred by an employer.
- The 2007 NSO data submitted by Dongyuan are merely the basis for ILO 5B data, which the Department has determined, in *Solar Panels from the PRC*,[36] do not capture as much labor cost as ILO Chapter 6A data.
- The Department should convert the monthly labor cost to an hourly labor cost, as described in *Labor Methodologies*.[37]

Department's Position: We have determined that the 2007 NSO data for labor cost of "manufacturing of other fabricated metal products" (ISIC Rev.3 Code: 2899) is the best information available on the record to calculate the labor cost of the two respondents in the final determination. This is because the 2007 NSO data are the most product-specific and contemporaneous, and provide a broader market average among all the data parties placed on the record.

At the *Preliminary Determination*, the Department selected a labor rate based on Thai total cost for all manufacturing from ILO 2005 Chapter 6A data over both another labor rate proposed by Petitioner, which was based on "manufacturing of other fabricated metal products" from ILO 2000 Chapter 6A data, and a labor rate proposed by Dongyuan, which was based on Thailand average wage in manufacturing sector in 2011 from the Report of the Labor Force Survey published by National Statistics Office, Ministry of Information and Communication Technology. The Department determined that the labor rate derived from ILO 2005 Chapter 6A was the best SV on the record at that time because it was more contemporaneous with the POI than the labor rate derived from ILO 2000 Chapter 6A, even when the latter was more product-specific. The information covering the Report of the Labor Force Survey was not shown to capture the same labor costs as the ILO 6A data and, therefore, was not the best information available for valuing labor in the *Preliminary Determination*. After the *Preliminary Determination*, Dongyuan placed on the record extensive labor costs from the 2007 NSO data.[38]

In selecting SVs for inputs, section 773(c)(1) of the Act directs the Department to use the "best information available." In determining the "best available information," it is the Department's

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[36] *See Crystalline Silicon Photvoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part,* 77 FR 63791, (October 17, 2012) ("*Solar Panels from the PRC*").

[37] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, June 21, 2011 ("*Labor Methodologies*").

[38] *See* Dongyuan's submission regarding: Stainless Steel Sinks: from the People's Republic of China—Surrogate Value Comments—Final Determination, dated November 26, 2012 ("Dongyuan's Post-Prelim SV Submission") at Exhibits SV-2 and SV-4.

practice to consider five factors: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.[39] Both the 2005 ILO and 2007 NSO datasets satisfy the criteria of public availability and tax and duty exclusivity equally, but the 2007 NSO data are superior with regard to the remaining criteria.

First, record evidence of this investigation shows that the 2007 NSO data are more product specific than the ILO 2005 Chapter 6A data. The NSO, as an authorized Thai government agency, is responsible for collecting and compiling economic and social data for various fields and conducts the Industrial Census to this end.[40] In conducting the 2007 Industrial Census, manufacturing industry activities were classified according to the International Standard Industrial Classification of All Economic Activities[41] (ISIC - : Rev.3) category D: Manufacturing,[42] the same classification used by ILO Chapter 6A.[43] In this case, in both the 2007 NSO data and the ILO Chapter 6A data, manufacturing of sinks is classified under ISIC Rev.3 code 2899 ("manufacturing of other fabricated metal products n.e.c.[44]").[45] According to the 2007 NSO data, the hourly labor cost for manufacturing of fabricated metal products (including "sinks") in the reporting year was 54.61 THB/HR.[46] In contrast, the ILO 2005 Chapter 6A data do not report the labor cost for manufacturing of fabricated metal products; instead, they only report the total labor cost for all twenty-three different manufacturing industries covered by the ISIC codes.[47]

Second, the NSO data are more contemporaneous than the ILO Chapter 6A data. The NSO data reports manufacturing labor cost in 2006, while the ILO reports manufacturing labor cost in 2005.[48]

Third, the record shows that the 2007 NSO data represent a broader market average than the ILO data in sampling with regard to the employment size of establishment[49] and the number of establishments. For instance, the 2007 NSO data represent six employment sizes of establishment and 88,411 establishments, whereas the Thai ILO data only represent four employment sizes of establishment and 3,500 establishments. Thus, information on the record supports that the 2007 NSO data provide a broader market average.

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39 *See Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346, (June 11, 2012), and accompanying Issues and Decision Memorandum at Comment 4.
40 *See* Dongyuan's Post-Prelim SV Submission, at Exhibits SV-2 and SV-4.
41 *See id.*, at Exhibit SV-5.
42 *See id.*, at Exhibit S-2.
43 *See id.*
44 The term "n.e.c." stands for "not elsewhere classified."
45 *See* Dongyuan's Post-Prelim SV Submission, at Exhibits SV-1 and SV-4.
46 *See id.*, at Exhibit SV-1.
47 These twenty-three manufacturing industries include manufacturing of food products and beverages; tobacco; apparel; wood and products of wood; coke, refined petroleum products and nuclear fuel; chemicals and chemical products; rubber and plastics products; radio, television and communication equipment and apparatus; motor vehicles; recycling, to name a few. *See id.*, at Exhibit SV-5 for a complete list of these industries.
48 *See* Dongyuan's Post-Prelim SV Submission, at Exhibits SV-3 and SV-5.
49 An establishment is defined as the sampling and reporting unit, and the ultimate unit of observation is the individual employee in each sampled establishment; *see id.*

Petitioner claims that, following *Labor Methodologies,* for the Department to consider a labor source other than ILO 6A data, the record must present incontrovertible evidence that the alternative is so superior that the Department is compelled to abandon its established practice. Petitioner further claims that the 2007 NSO data placed by Dongyuan in this case are identical to the 2007 NSO data placed on the record of *Solar Panels from the PRC*, where the Department rejected them on the ground that record evidence did not support that the labor data include all labor costs.[50] According to Petitioner, the 2007 NSO data submitted by Dongyuan are merely the basis for ILO Chapter 5B data, and because ILO Chapter 5B data do not include all labor costs, the 2007 NSO data do not capture as much labor cost as Chapter 6A data.[51]
We disagree with Petitioner's characterization of *Labor Methodologies* and the NSO data placed on the record in this case. In *Labor Methodologies*, the Department decided to change to the use of ILO Chapter 6A data from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.[52] The Department did not, however, preclude all other sources for evaluating labor costs in NME antidumping proceedings. Rather, we continue to follow our practice of selecting the "best information available" to determine SVs for inputs such as labor.

While the record indicates that data underlying the ILO Chapter 5B is provided by the Thai NSO, it is clear that the 2007 NSO data on this record are not equivalent to the ILO Chapter 5B data. Unlike in *Solar Panels from the PRC*, where record evidence did not show what the 2007 NSO data consisted of, the record of this case shows that the 2007 NSO data include (1) wages/salaries; (2) overtime payment, bonus, special payment, cost of living allowance and commission; (3) fringe benefits such as "food, beverages, lodgings, rent, medical care, transportation recreational and entertainment services, *etc*.;" and (4) employers' contribution to social security, *e.g.*, "social security fund, workmen's compensation fund and health insurance, *etc*."[53]

In comparison, ILO Chapter 5B data include only two types of compensation: (1) direct wages and salaries data ("wages") and (2) earnings data, which include wages plus bonuses and gratuities ("earnings").[54] The ILO defines the Chapter 5B wages and earnings data[55] to include the following, respectively:

> Wages:
>
> > Basic wages, cost-of-living allowances and other guaranteed and regularly paid allowances, but *exclude* <u>overtime</u> payments, bonuses and gratuities, family

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[50] *See Solar Panels from the PRC*, and accompanying Issues and Decision Memorandum at Comment 5.
[51] *See* Petitioner's submission regarding: Drawn Stainless Steel Sinks from the People's Republic of China – Petitioner's Rebuttal Brief, dated December 18, 2012.
[52] *See Labor Methodologies,* 76 FR at 36093.
[53] *See* Dongyuan's Post-Prelim SV Submission, at Exhibit SV-2.
[54] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*; *Request for Comment*, 76 FR 9544, (February 18, 2011) ("*Request for Comment on Labor Methodologies*").
[55] At the time of releasing *Request for Comment on Labor Methodologies,* 76 FR at 9545, where the Department relied on "earnings" data over "wages" data to calculate the SV for labor.

> allowances and other social security payments made by employers…(underlying added).[56]

Earnings:

> Remuneration in cash and in kind paid to employees, as a rule at regular intervals, for time worked or work done together with remuneration for time not worked, such as for annual vacation, other paid leave or holidays. Earnings *exclude* employers' contribution in respect of their employees paid to social security and pension schemes and also the benefits received by employees under these schemes…(underlying added).[57]

As explained above, the 2007 NSO data include allowances and additional payments (*e.g*, overtime payments; fringe benefits such as food, beverages, lodgings, rent, medical care, transportation recreational and entertainment services; and employers' contribution to social security) that are excluded in the ILO Chapter 5B data; hence the record does not support Petitioner's assertion that the NSO data are merely the basis for ILO Chapter 5B and do not include all labor costs. Rather, the record of this case shows that the 2007 NSO data include at least as many costs as the ILO Chapter 6A data.[58]

Accordingly, for reasons listed above, the Department has determined that the 2007 NSO data are the best information available to value labor costs in the final determination. Since we are no longer relying on the ILO Chapter 6A data, Dongyuan's argument regarding the conversion of a monthly labor cost to an hourly labor cost based on assumptions made by the ILO data collection survey are moot.

Comment 4: Whether the Department Applied the Correct Treatment to the Labor Line Items in Its Financial Ratio Calculations

Dongyuan's Argument

- The Department should treat selling, general and administrative ("SG&A") labor line items (sales, administrative and managerial staff and directors' salaries) in the surrogate financial statements as manufacturing labor, not SG&A labor, in its financial ratio calculations because the underlying ILO Chapter 6A data and the NSO Industrial Census data include these expenses.

Petitioner's Argument

- The Department should make no revisions to its financial ratio calculations because the Department's determination to categorize the expenses that reflect labor costs for

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56 *See id.*

57 *See id.*

58 According to the ILO, the Chapter 6A data comprise "remuneration for work performed, payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drinks and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocation training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment." *See* Dongyuan's Post-Prelim SV Submission, at Exhibit SV-8.

administrative and sales staff as SG&A and overhead is consistent with its intent as expressed in the *Preliminary Determination* and is in accordance with *Labor Methodologies.*

- Dongyuan overlooks the fact that its labor FOPs do not reflect non-production labor and, if the Department were to make the adjustment proposed by Dongyuan, it would eliminate from normal value all of Dongyuan's non-production related labor expenses.

Department's Position: As discussed above, the Department has determined to value labor using NSO labor statistics. After examining the record, we agree with Dongyuan that the NSO data include total labor costs (*i.e.*, manufacturing and SG&A), including wages, earnings, overtime, bonuses, special payments, cost of living allowances and commissions, as well as, fringe benefits such as, beverages, lodgings, rent, medical care, transportation, recreational and entertainment services, *etc*.[59] The NSO data excludes managers or directors paid solely for their attendance at meetings of the board of directors.[60]

In deriving surrogate financial ratios, "it is the Department's longstanding practice to avoid double-counting costs *where the requisite data are available to do so*."[61] (Emphasis added). Furthermore, in *Labor Methodologies*, we said that "the Department will adjust the surrogate financial ratios when the available record information - in the form of itemized indirect labor costs - demonstrates that labor costs are overstated." Here, because the NSO data include all labor costs, the Department has treated itemized SG&A labor costs in the surrogate financial statements as a labor expense rather than an SG&A expense, and we have excluded those costs from the surrogate financial ratios.

Petitioner comments that making this adjustment eliminates from normal value all of Dongyuan's non-production related labor expenses because Dongyuan's labor FOPs do not reflect non-production labor. Although we agree that Dongyuan's labor FOPs do not include SG&A labor hours, the surrogate labor rate that we are applying to those FOPs accounts for SG&A expenses. Using a surrogate financial ratio that includes SG&A labor costs in addition to the NSO-based surrogate labor rate would double-count those costs in normal value because both include an amount for SG&A labor. Therefore, to avoid double-counting SG&A labor, we have determined to exclude labor costs from the SG&A surrogate financial ratios for the final determination.

Comment 5: Valuation of Brokerage and Handling

Petitioner's Argument

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[59] *See* Dongyuan's letter to the Department regarding: Stainless Steel Sinks from the People's Republic of China – Surrogate Value Comments—Final Determination, dated November 26, 2012 at SV-2, Item 8., "Remuneration."
[60] *See id.*, Item 7.3, "Other employees."
[61] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011), and accompanying Issues and Decision Memorandum at Comment 5.B. (citing *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007), and accompanying Issues and Decision Memorandum at Comment 2.

- The Department should correct its SAS programming in Dongyuan's margin program because in the *Preliminary Determination* the Department incorrectly converted a U.S. dollar ("USD") per kilogram ("Kg") brokerage and handling ("B&H") cost to U.S. dollars.

Dongyuan's Rebuttal Argument

- In its surrogate B&H calculation, the Department should correct the basis for calculating two line items. For "customs clearance and technical control," the Department should adjust the basis from that of a 20-foot ("ft") container to a 40-ft container because Dongyuan exported its merchandise in 40-ft containers, not 20-ft containers. In addition, "document preparation" costs include an amount for procuring and paying for a letter of credit ("L/C") and Dongyuan did not procure or pay for L/Cs during the POI.
- The Department is double counting L/C costs in its surrogate B&H expense because this type of expense is captured in the surrogate financial ratio calculations.[62]

Department's Position: In selecting an SV, section 773(c)(1) of the Act directs the Department to use the "best available information" from the appropriate surrogate country. In determining the "best available information," the Department normally considers five factors: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.[63] For the final determination, we find that the World Bank/International Finance Corporation ("IFC")'s publication "Doing Business 2012: Economy Profile Thailand," ("*Doing Business 2012 Thailand*") offers the best source for valuing B&H in this investigation because the data are based on broad market averages, are publicly available, are tax and duty exclusive, and are contemporaneous.

With regard to specificity, we have evaluated Dongyuan's claim regarding the inclusion of L/C costs in the *Doing Business 2012 Thailand's* ("Trading Across Borders") source. The document preparation data in this source was based on the results of a survey sent to companies that import and export in Thailand.[64] Examination of the survey methodology shows that L/C costs are one potential cost among many that could be reported by the responding companies, *e.g.*, customs clearance documents costs, port and terminal handling documents costs, and transport documents costs.[65] We also found that the "Trading Across Borders" survey information is an aggregate of data points that are not broken down below the survey summary

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[62] Citing to *Hand Trucks and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 29314 (May 25, 2010) ("*Hand Trucks*"), and accompanying Issues and Decision Memorandum at Comment 1; *see also Certain Cut-to-Length Carbon Steel Plate From Romania: Final Results of Antidumping Duty Administrative Review*, 66 FR 2879 (January 12, 2001) ("*Plate From Romania*"), and accompanying Issues and Decision Memorandum at Comment 7b.

[63] *See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 3; *see also Allied Pacific Food (Dalian) Co. Ltd. v. United States,* 716 F., Supp. 2d 1339, 1343 (CIT 2010).

[64] *See* Dongyuan's filing titled "Stainless Steel Sinks from the People's Republic of China – Surrogate Country and Value Comments," (August 13, 2012) ("Dongyuan SV Comments"), at Exhibit SV-11.

[65] *See id.*

description, *i.e.*, "documents preparation."[66] Because we are unable to go behind the "Trading Across Borders" summary data to determine how many companies reported L/C costs, how high in relation to other costs these costs were, or the total amount of L/C costs, we cannot determine the appropriateness of excluding L/C costs from the B&H calculation. The Department normally makes adjustments to data when we can determine whether an item's amount is clearly identified.[67] For example, in the B&H calculation used in this investigation, we removed from the calculation an "inland transportation and handling" cost because it was clearly identified and we have already accounted for this expense elsewhere.[68] The L/C cost is not clearly identified in the source data in the same manner.[69] Further, while the record indicates that the "Trading Across Borders" survey assumes the "payment is made by letter of credit," because we cannot go behind the data, the Department is unable to draw any definitive conclusion as to how much of the "documents preparation" cost consists of L/C costs, or whether it is at all similar to the costs included in the surrogate financial ratios. Therefore, we have determined not to adjust the SV for B&H for a L/C cost.

We find Dongyuan's reliance on *Hand Trucks* and *Plate From Romania* to be unpersuasive on this issue. In both cases, parties argued that bank charges incurred by the respondent should be treated as an adjustment to either U.S. price or normal value and, in both cases, we did not make an additional deduction for bank charges because we stated that the "bank charge at issue was a selling expense . . . accounted for . . . in the calculation of SG&A included in NV."[70] The reasoning articulated in *Hand Trucks* and *Plate from Romania* differs from the facts in this case because the bank charges in those cases were direct costs incurred by the respondent and easily identifiable.[71] In the instant case, as discussed above, because we cannot go behind the World Bank's costs, we are unable to draw any definitive conclusion as to whether, or to what extent, the "documents preparation" costs actually include an amount for L/C costs.

Similarly, because we are unable to go behind the World Bank's costs in determining the appropriateness of an adjustment to the B&H calculation, we have not changed the basis for the "customs clearance and technical control" expense line item from a 20-ft container to a 40-ft container. Because the B&H cost elements for a 20-ft container are based on an aggregated cost specific to a 20-ft container, making adjustments to specific cost elements and not others would distort the underlying data. Therefore, we have determined not to adjust the "customs clearance and technical control" line item in our B&H SV calculation.[72] Moreover, Dongyuan does not point to any record evidence to support its claim that it uses a 40-ft container.

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[66] *See id.*
[67] *See* Dongyuan SV Comments, at Exhibit SV-9, *Trading Across Borders* report, at 82 (where inland transportation and handling expense is not included in the B&H surrogate value calculation); *see also* Prelim SV Memo, at Exhibit 9.
[68] *See* Prelim SV Memo.
[69] *See* Dongyuan SV Comments.
[70] *See Hand Trucks*, and accompanying Issues and Decision Memorandum at Comment 1 and *Plate From Romania*, and accompanying Issues and Decision Memorandum at Comment 7b.
[71] *See id.*
[72] *See* Dongyuan SV Comments, at Exhibit SV-9, *Trading Across Borders* report, at 80.

Finally, we agree with Petitioner that in Dongyuan's preliminary margin program we incorrectly converted a USD/Kg B&H cost to U.S. dollars, and we have corrected this error in our final results.[73]

Comment 6: Financial Statements

Dongyuan's Arguments

- The Department should not use the Thai financial statements of Siam that Petitioner placed on the record after the *Preliminary Determination* because there is no information on the record that indicates Siam manufactures stainless steel sinks in Thailand.
- The Department should not use the Indonesian and Peruvian financial statements that Petitioner placed on the record after the *Preliminary Determination* to calculate surrogate financial ratios because the Department has no reason to select financial statements from companies that are not located in the primary surrogate country.

No other party commented on this issue.

Department's Position: In the *Preliminary Determination*, the Department determined that the financial statements of Advanced Stainless Steel Co., Ltd. ("Advanced Stainless"), Diamond Brand Co., Ltd. ("Diamond Brand"), and Stainless Steel Home Equipment Manufacturing Co., Ltd. ("SS Home Equipment"), covering the 12 month period ending December 31, 2011, were the best available information on the record to calculate the surrogate financial ratios because each of these financial statements is contemporaneous with the POI, complete and reliable, and from producers that each manufacture products identical to drawn stainless steel sinks together with other products.[74] For the final determination, we continue to find that the 2011 audited financial statements of Advance Stainless, Diamond Brand, and SS Home Equipment, are the best available information on the record to calculate surrogate financial ratios.

After the *Preliminary Determination*, parties placed three additional financial statements on the record: Siam Sanitary Fitting Co., Ltd. ("Siam"), Manufactura Metales y Aluminio ("Metales y Aluminio"), and PT Surya Toto ("Toto"). After examining these financial statements, and taking into account the Department's criteria for considering whether to use financial statements for calculating surrogate financial ratios, we concluded that the financial statements of Siam, Metales y Aluminio, and Toto were not suitable for use in deriving the surrogate financial ratios for purposes of the final determination, as discussed below.

The statute directs the Department to base the valuation of the FOPs on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate. . . ." *See* section 773(c)(1) of the Act. 19 CFR 351.408(c)(4) 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

[73] *See* Dongyuan's Final Analysis Memorandum.
[74] *See Preliminary Determination*, and accompanying Issues and Decision Memorandum at 19; *see also* Prelim SV Memo, at 7-8.

regulations, it is the Department's policy to use data from market-economy surrogate companies in the primary surrogate country based on the "specificity, contemporaneity, and quality of the data."[75]

In our examination of Siam's 2011 Thai financial statements, we found that they are not suitable for use in deriving the surrogate financial ratios because Siam's financial statements indicate that it is not a producer of identical or comparable merchandise. Specifically, Siam's financial statements indicate that it is a distributor of faucets, bath & shower fittings, flush valves, and tank trim. Therefore, we determined based on the above, that Siam is not a producer of merchandise that is comparable to drawn sinks.[76]

Although the 2011 Indonesian and Peruvian financial statements of Metales y Aluminio and Toto, respectively, are contemporaneous with the POI, we have determined that these statements are not the best available information for use in deriving the surrogate financial ratios because the Department already has contemporaneous financial statements of companies producing identical and comparable merchandise from the primary surrogate country.[77] Finally, although Petitioners placed the financial statements for Siam, Metales y Aluminio, and Toto on the record, no party has argued in its administrative case brief that the Department should use them in the final determination.

Thus, we have determined that the 2011 Thai financial statements of Advanced Stainless, Diamond Brand, and SS Home Equipment, which were used in the *Preliminary Determination*, are the best available information on the record to calculate the surrogate financial ratios because each of these financial statements is contemporaneous with the POI, complete and reliable, and is of a producer of stainless steel sinks and other products.

Comment 7: Surrogate Value for Sound Deadening Pad Input

Petitioner's Argument and Rebuttal Argument

- The Thai AUV of the GTA data under HTS subheading 4008.11 (plates, sheets and strip of vulcanized rubber, except hard rubber, of cellular rubber) is no longer appropriate for the SV for sound deadening pad in light of the evidence placed on the record by Dongyuan.
- HTS subheading 4006.90 is most appropriate for deriving the SV for this input, but the GTA data for the Thai AUV for this subheading is aberrational based on the following

[75] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 1.
[76] *See* Petitioner's SV Submission, at Exhibit 2.
[77] *See e.g., Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Result s and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012), and accompanying Issues and Decision Memorandum at Comment 2A; *see also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Fifth New Shipper Review*, 75 FR 38985 (July 7, 2010), and accompanying Issues and Decision Memorandum at Comment 2B; *see also Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

benchmark data: (1) GTA Data for the PRC's AUV, (2) GTA data for the AUV for the other potential surrogate countries identified in this investigation, and (3) an advertised price of sound deadening pads.

- Because the Thai data are aberrational, the Department should value Dongyuan's sound deadening pad inputs by calculating a weighted-average AUV using GTA import statistics under HTS subheading 4006.90 from Indonesia, South Africa, and Ukraine.
- Even though Superte/Zhaoshun have not detailed the exact nature of their sound deadening pads as has Dongyuan, the Department should continue to apply the same SV that it applies to Dongyuan's sound deadening pads to Superte/Zhaoshun's in the final determination.

Dongyuan's Argument & Rebuttal Argument

- The Department should use GTA data for Thai import statistics under HTS subheading 4{0}05.10[78] to value Dongyuan's sound deadening pad input because this subheading's definition fits the description of Dongyuan's sound deadening pad input (*i.e.*, unvulcanized rubber, "compounded with carbon black" and in primary forms).
- Alternatively, the Thai HTS subheading 4005.10.90, appears to be even more specific to Dongyuan's input. However, since there is no POI import data available, the Department should use data from January-June 2012 instead.
- Petitioner's proposed classification under Thai HTS 4006.90 is incorrect because products under this subheading (*e.g.*, profiles, tubes, *etc.*) require additional equipment and production processes than the sound deadening pads Dongyuan uses in its production of drawn sinks.
- The Department's verification report finding that the pads have an adhesive on one side does not change the classification of the pads as "primary forms."
- The Department should not benchmark Thai import statistics against PRC import statistics under HTS subheading 4006.90, as requested by Petitioner, because the diversity of the merchandise under this basket subheading makes an exact comparison between the actual imports between the countries impossible.
- Petitioner's proposed use of a retail quote does not corroborate the reasonableness of Petitioner's proposed alternative data sources for sound deadening pads.

Department's Position: We agree with Petitioner that the SV that the Department used for the preliminary results, *i.e.*, HTS subheading 4008, is no longer appropriate to value the input of sound deadening pads in the final determination in light of the additional record evidence. We, however, disagree with Petitioner that HTS 4006.90 is more appropriate to value Dongyuan's and Superte's sound deadening pads. Record evidence of this case (*i.e.*, Dongyuan's supplier certification) indicates that the physical characteristics of the sound deadening pads Dongyuan used during the POI are unvulcanized butyl rubber compounded with carbon black.[79] The Thai subheading recommended by Petitioner, HTS 4006.90 "unvulcanized rubber forms (including

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[78] Dongyuan inadvertently refers to HTS number as "4405.10" in its briefs. *See* the transcript of the January 30, 2013, public hearing where Dongyuan states that this was an error, and it meant "4005.10."

[79] *See* Dongyuan's submission, "Drawn Stainless Steel Sinks from the People's Republic of China: Rebuttal to Petitioner's Pre-Preliminary Determination Comments," dated September 12, 2012, at Exhibit 3.

rods, tubes and profile shapes) and unvulcanized rubber articles (including rings, discs and washers)" is not specific to respondent's input because butyl rubber or carbon black is not listed as one of the category's characteristics. In comparison, the Thai subheading recommended by Dongyuan, HTS 4005.10 "unvulcanized, compounded with carbon black or silica, in primary forms or in plates, sheets, or strip" is more specific to Dongyuan's input because compounded with carbon black is listed as one of the category's characteristics. At verification, the Department found Dongyuan's sound deadening pads to be rubber pads with adhesive on one side, and confirmed in the verification report that the Department officials' discussion with Dongyuan's officials regarding its raw materials supported the information previously placed on the record by Dongyuan.[80]

Further, we agree with Dongyuan that HTS 4005.10.90 may be more specific to Dongyuan's sound deadening pads. Specifically, HTS 4005.10 is further divided into two sub-categories: (1) rubber made of natural gum (4005.10.1000) and (2) rubber made of other than natural gum (4005.10.9000). Record evidence indicates that Dongyuan's sound deadening pads are butyl rubber, a synthetic rubber, and thus are not made of natural gum. Therefore, HTS 4005.10.9000 may be more specific to Dongyuan's input. However, contemporaneous Thai import statistics data for 4005.10.9000 for the POI are not available. Thus, if the Department were to use GTA data for Thai HTS 4005.10.9000, it would have to use non-contemporaneous data from January to June 2012.

In determining the best available information to value inputs, the Department considers numerous factors: (1) public availability; (2) product specificity; (3) broad market average; (4) contemporaneity; and (5) tax exclusivity of the data.[81] All factors rank equally and are considered in the context of the facts of the case. In this particular case, the Department has determined that the fact that HTS 4005.10 is both inclusive of the input and contemporaneous outweighs the potential that HTS 4005.10.9000 may be more specific to the input.

Lastly, because the record evidence shows that Thai HTS 4005.10 is the best information available to value Dongyuan's sound deadening pads, and given that there is no record evidence to suggest that Superte/Zhaoshun use a different input for their sound deadening pads, we have determined to value Superte/Zhaosun's sound deadening pads with this same source.

Comment 8: Whether the Department Correctly Applied Targeted Dumping Methodology

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[80] *See* Dongyuan's Verification Report, XIII.A and XIII.F.

[81] *See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment. 3; *see also Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012), and accompanying Issues and Decision Memorandum at Comment 4; *see also Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 77 FR 74644 (December 17, 2012), and accompanying Issue and Decision Memorandum at Comment 3.

Dongyuan's Argument

- The Department should continue to find that the average-to-average methodology ("A-to-A method") did not mask differences between the targeted and non-targeted groups and apply its A-to-A method for the final determination.
- If the Department applies the average-to-transaction comparison methodology ("A-to-T method") at all, it should limit its application only to the sales of the particular control numbers to the particular customer for which its targeted dumping criteria were satisfied, and not expand its A-to-T method to sales to non-targeted customers in the region.
- Dongyuan claims that the Department unlawfully withdrew the regulation on targeted dumping, which "normally will limit the application of the average-to-transaction to those sales that constitute targeted dumping under paragraph (f)(1)(i) of this section," when it did not provide advance notice of the decision of withdrawing its targeted dumping regulation. Dongyuan argues that the statute (*i.e.*, section 771(35) of the Act) does not authorize the Department to set comparison results to zero under the A-to-T method.

Petitioner's Rebuttal's Argument

- The Department should continue to find targeting and, if appropriate, calculate the weighted-average dumping margins using the A-to-T method for all sales.
- The *Steel Nails* test would authorize use of the A-to-T method whenever there exists a pattern of export prices that differ significantly among purchasers, regions, or period of time and the fact that some sales may be targeted on more than one of these bases does not invalidate the methodology for any of these bases.
- Petitioner asserts that the Department did not unlawfully withdraw its former targeted dumping regulation, and that the Department has consistently rejected this argument.
- Zeroing should be used when applying an alternative comparison methodology, citing *Circular Welded Carbon-Quality Steel Pipe from the Arab Emirates*.

Department's Position: For the final determination, for Superte, we have found that there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among purchasers, regions, and time periods. With respect to Dongyuan, we continue to find that there is a pattern of prices for U.S. sales of comparable merchandise that differ significantly among certain purchasers and regions, but not by time periods. As in the *Preliminary Determination*, however, for both respondents, the criteria established in section 777A(d)(1)(B)(ii) of the Act have not been met, thus, we continue to apply the standard average-to-average methodology to all sales.[82] The Department has thus continued to apply the A-to-A method for the final determination.

Because the Department is not applying the A-to-T method to either of the respondents, we have not considered Dongyuan's remaining arguments regarding application of the A-to-T method for all transactions and the lawfulness of setting margins to zero under the A-to-T method.

[82] *See* Dongyuan's and Superte's Analysis Memos for more detail.

Comment 9: Whether Superte/Zhaoshun's Scrap Offset Should be Rejected

Petitioner's Arguments

- A respondent must substantiate the quantity of scrap generated in the production of subject merchandise during the POI and provide evidence that the scrap was sold, in order to receive an offset. If a respondent cannot report the quantity of scrap generated during production, an offset is only granted if the respondent demonstrates that the amount of scrap sold is related to the amount of scrap generated.
- Superte/Zhaoshun should not receive a scrap offset in the final determination because its claimed scrap offset is based only on the amount of scrap sold in the POI and Superte/Zhaoshun failed to demonstrate that its scrap sales were linked to the production of subject merchandise.
- In *Wood Flooring*/*China*,[83] the Department granted an offset to a respondent that based its scrap on the quantity sold because that respondent demonstrated that its scrap sales were related to POI production. Superte/Zhaoshun has not met this standard.
- The circumstances in this case are more similar to *Silicon Metal*/*China*,[84] in which the Department denied a scrap offset because a respondent was unable to demonstrate the link between scrap sold and scrap produced during the period of review. Similarly, Superte/Zhaoshun did not demonstrate a link between the claimed scrap sales and the production of subject merchandise during the POI.

Superte/Zhaoshun's Arguments

- Information on the record demonstrates that Superte/Zhaoshun's claimed scrap offset has been sufficiently linked to POI production; it is not necessary for the scrap offset to directly link to POI scrap generation.
- Superte/Zhaoshun has demonstrated that its scrap offset was based on scrap sales during the POI and that the total sold amount is a reasonable percentage of the total POI consumption of stainless steel.
- Superte/Zhaoshun draws a parallel between the circumstances in this case and *Wood Flooring*/*China*, explaining that the Department will accept the use of sales quantity for the scrap offset if the reported data are reasonably tied to POI production.

Department's Position: The Department has determined to grant Superte/Zhaoshun's claimed scrap offset in the final determination. It is the Department's practice to allow respondents an offset to the reported FOPs for scrap generated during the production of the merchandise under

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

[84] *See Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012) ("*Silicon Metal/China*"), and accompanying Issues and Decision Memorandum.

consideration if evidence is provided that such scrap has commercial value.[85] In the instant case, the record evidence supports that Superte/Zhaoshun's claimed scrap offsets were related to the production of the merchandise under consideration (*i.e.*, the quantity claimed was reasonably tied to the production of stainless steel sinks during the POI) and that the scrap claimed as an offset has commercial value.

In its questionnaire response, Superte explained that it does not track scrap generation in its books and records and, therefore, based its scrap offset on the ratio of the total weight of stainless steel grades 304 and 201 scrap sold during the POI divided by the total POI consumption of stainless steel grades 304 and 201.[86]

At verification, Superte explained the formula it uses to determine how much stainless steel coil it needed to withdraw from the warehouse to produce a certain number of sinks and provided warehouse out-slips that supported this formula.[87] We also reviewed the basis for Superte's reported consumption calculations, which is control number specific, that showed Superte produced to production order and not stock. Specifically, we reviewed warehouse out-slips for certain production orders that showed the amount of stainless steel coil withdrawn for these orders exceeded the amount represented by the number of sinks in that order by a ratio that substantially supports the rate of scrap production claimed by Superte.[88]

The Department also verified that the scrap had commercial value.[89] We reviewed stock-out slips for all of Superte's scrap sales during the POI and tied the quantities sold to the value added tax invoices issued by Superte for these sales. We tied the total kgs of scrap sold during the POI to payment receipts received by Superte.[90]

The Department finds Petitioner's reference to *Silicon Metal/China* as a basis to deny Superte/Zhaoshun's claimed scrap offset unpersuasive. In that case, the respondent was denied a by-product offset because there was no record evidence that the by-product had commercial value.[91] Further, the respondent provided an estimate of the quantity of by-product generated based on the production experience of an unaffiliated producer that did not maintain any records sufficient to link the quantity of by-product claimed with production during the period.[92] Here, Superte has relied upon its accounting and inventory systems to reasonably link the quantity of scrap sold with its POI production and to demonstrate that its scrap has commercial value.

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[85] *See, e.g., Wood Flooring/China,* and accompanying Issues and Decision Memorandum at Comment 23; *see also Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 41808 (July 19, 2010), and accompanying Issues and Decision Memorandum at Comment 2; *see also Frontseating Service Valves From the People's Republic of China; 2010-2011 Antidumping Duty Administrative Review; Final Results,* 77 FR 67334 (November 9, 2012), and accompanying Issues and Decision Memorandum at Comment 7.
[86] *See* Superte/Zhaoshun's submission regarding: Drawn Stainless Steel Sinks from China: First Supplemental Section D Questionnaire Response, dated August 20, 2012 ("Superte/Zhaoshun's SDQR"), at 24 and Exhibit SQ1-9.
[87] *See* Superte/Zhaoshun's Verification Report, at 20.
[88] *See id.*
[89] *See* Superte/Zhaoshun Verification Report, at 24-25.
[90] *See id.*, at Exhibit 24.
[91] *See Silicon Metal/China*, and accompanying Issues and Decision Memorandum at Comment 3.
[92] *See id.*

Comment 10: Whether Superte/Zhaoshun Reported Accurate Electricity Consumption

Petitioner's Argument

- Petitioner notes that Superte/Zhaoshun reported electricity consumption for the months of June through November, rather than the POI months of July through December. To address this inaccuracy, Petitioner urges the Department to revise the monthly consumption figures by replacing July 2011, which represents June 2011 consumption, with the revised December 2011 total identified at verification.

No other party commented on this issue.

Department's Position: We agree with Petitioner that Superte/Zhaoshun did not accurately report electricity consumption in its response and, therefore, we are adjusting Superte/Zhaoshun's electricity consumption for the final determination.[93] At verification, we observed that the invoices issued by Superte/Zhaoshun's electricity utility are dated mid-month and cover usage in the prior month.[94] In its response, Superte/Zhaoshun reported POI electricity consumption based on invoices dated July 2011 through December 2011, which cover electricity usage for June through November 2011.[95] For the final determination, we have, therefore, adjusted Superte/Zhaoshun's electricity consumption to cover the POI months of July through December 2011, using information obtained at verification.[96]

Comment 11: Whether Superte/Zhaoshun Reported Accurate Consumption for Wooden Boxes and Polystyrene Foam

Petitioner's Arguments

- Based on information found at verification, the Department should revise the consumption factor for two of Superte's reported packing material inputs (*i.e.*, wooden boxes and polystyrene foam).

No other party commented on this issue.

Department's Position: We agree with Petitioner that the Department should revise Superte/Zhaoshun's packing consumption for wooden boxes and polystyrene because the consumption for these inputs is not accurately reported. Accordingly, we have revised wooden boxes and polystyrene consumption related to packing in Superte/Zhaoshun's margin calculation to reflect consumption based on total production of drawn undermount sinks as verified. In its August 20, 2012 supplemental questionnaire response, Zhaoshun reported wooden boxes and polystyrene foam FOPs based on allocations over total sink

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[93] *See* Superte/Zhaoshun's SDQR, at SQ1-8.
[94] *See* Superte/Zhaoshun Verification Report, at 21-22.
[95] *See* Superte/Zhaoshun's SDQR, at SQ1-8.
[96] *See* Superte/Zhaoshun Verification Report*; see also* Final Determination Analysis Memorandum for Zhongshan Superte Kitchenware Co., Ltd.

production and drawn sink production, respectively.[97] However, during our verification of Superte/Zhaoshun, we found that Superte only used these inputs when packing drawn undermount sinks.[98] Therefore, in this final determination, we have revised Superte's consumption calculation for wooden boxes and polystyrene foam by dividing total consumption for these inputs by total consumption of drawn undermount sinks. The Department considers this allocation methodology to be a reasonable estimate of Superte's consumption of wooden boxes and polystyrene. For further discussion, due to the proprietary nature of this issue, *see* Superte/Zhaoshun's Final Analysis Memo.

Comment 12: Whether an Invoicing Company Fees Superte Paid to Zhaoshun is an Adjustment to its U.S. Price

Petitioner's Arguments

- The Department should treat the invoicing company fees Superte paid to Zhaoshun during the POI in the same manner it treats other fees from service providers in the PRC that are paid for in Renminbi ("RMB"), *i.e.*, derive a per-kg SV specific to "document handling" and apply that value to Superte/Zhaoshun's margin calculations in the same manner as B&H.

Superte's Arguments

- The Thai SV for B&H that the Department deducted from Superte's U.S. selling price included an amount for document preparation.

Department's Position: We disagree with Petitioner that we should derive and apply an SV for the invoicing company fees Superte paid to Zhaoshun during the POI because we find that these fees are an administrative expense related to the sale of the product generated during the normal course of respondent's business, which in NME methodology is captured in the surrogate financial ratio calculation for SG&A expenses.[99] Furthermore, we also disagree with Superte that this expense is captured in the Thai SV for B&H as a document preparation fee.

In this investigation, the record shows that the sales process procedure for preparing export invoices for Superte's POI sales of drawn sinks to the United States was shared by Zhaoshun.[100] Specifically, at verification, we confirmed that Zhaoshun's sales department, in conjunction with Superte's sales department, prepared export sales invoices, and that these invoices were the basis for recording POI sales of drawn sinks invoiced under Zhaoshun's letterhead in Zhaoshun's books and records.[101] The record also shows that Zhaoshun provides Superte's PRC forwarding company with the necessary export documents, which includes the export invoice, and that the PRC forwarding company sends the approved PRC Customs declaration forms and bills of lading

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[97] *See* Zhaoshun's Letter titled, "Drawn Stainless Steel Sinks from China: First Supplemental Section D Questionnaire Response," dated August 20, 2012, at Exhibit SQ1-10.
[98] *See* Superte/Zhaoshun's Verification Report, at 21-22.
[99] *See*, *e.g.*, this investigation's financial ratio calculations where we treated "accounting consulting expense" as SG&A in Advanced Stainless' surrogate financial ratio calculations.
[100] *See* Superte/Zhaoshun's Verification Report.
[101] *See id*.

to Superte, not Zhaoshun.[102] Based on the above information, we find that the invoice processing fee is an administrative expense for Superte incurred as part of its sales invoice process. Therefore, consistent with our NME methodology, we have determined that these administrative expenses are properly valued by the SG&A surrogate financial ratio.

19 CFR 351.408(c)(4) stipulates that the Department normally will value SG&A expenses 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. In this investigation, we calculated a surrogate SG&A expense using 2011 financial statements of three Thai producers of stainless steel sinks and other products.[103] Therefore, Superte's invoicing company fees, which we have determined are an SG&A expense, are captured in the surrogate financial ratios calculated for this investigation.

For the reasons provided above, we also disagree with Superte's contention that its invoice processing fee is a B&H expense captured in the Thai SV for B&H as a document preparation fee. We will continue to value the invoice processing fee as part of SG&A.

Comment 13: Whether Dongyuan's Reported Paint Input is Soluble in Water

Dongyuan's Argument

- The Department should value Dongyuan's paint input based on the SV that was used to value Superte's paint input because record evidence shows that Dongyuan's paint is a paint soluble in water, similar to the paint Superte used in its production of drawn sinks.
- Prior to the *Preliminary Determination*, Dongyuan submitted a certification from its paint supplier clarifying that the paint that Dongyuan purchased during the POI is water soluble.
- In its verification report, the Department stated that it "found no discrepancies with the information Dongyuan's {sic} previously placed on the record."

Petitioner's Rebuttal Argument

- There is no evidence on the record that the Department confirmed at verification that Dongyuan's paint should be classified under HTS subheading 3209.10.
- The Department should not revise its valuation of Dongyuan's paint FOP because if the nature of Dongyuan's paint was at issue, the Department would have taken the time to specifically verify and discuss this input in Dongyuan's verification report.

Department's Position: We have determined to value Dongyuan's paint input with Thai GTA data for HTS subheading 3209.10 in the final determination. Thai HTS subheading 3209.10 is

[102] *See* Zhaoshun/Superte supplemental questionnaire response titled, "Drawn Stainless Steel Sinks from China; First Supplemental Sections A and C Questionnaire Response," dated August 10, 2012, at 5; *see also* Superte/Zhaoshun Verification Report.
[103] *See* Prelim SV Memo, dated September 27, 2012.

described as "paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in an aqueous medium: based on acrylic or vinyl polymers." Prior to verification, Dongyuan placed on the record a certificate from its supplier showing that Dongyuan's paint input is water soluble.[104] The Department subsequently verified Dongyuan's raw materials and noted any discrepancies in the verification report. The Department noted no discrepancy regarding the nature of Dongyuan's paint input.[105]

Comment 14: Whether the Department Properly Rejected Kehuaxing's Quantity and Value Questionnaire and Separate Rate Application

Kehuaxing's Arguments

- The Department should reverse its *Preliminary Determination* and grant separate rate status to Kehuaxing. Although its Quantity and Value ("Q&V") response was submitted 16 hours after the filing deadline, this did not impose any administrative burden on the proceeding because the response was filed before business hours commenced on the day after the deadline.
- Six days after the Department rejected Kehuaxing's Q&V response, Capstone International Development Corporation ("Capstone") was afforded an opportunity to correct and resubmit its improperly filed Q&V response; Kehuaxing was offered no such opportunity.
- Kehuaxing filed its separate rate application ("SRA") four days prior to the submission deadline and, therefore, did not hinder the progression of the investigation. Kehuaxing notes that, on multiple occasions, it indicated that it would provide any additional information necessary for the Department to complete its separate rate analysis.
- Kehuaxing submits that the Department has the authority to accept its Q&V response and its SRA and that failure to exercise this authority may constitute an abuse of discretion. Kehuaxing cites to *Usinor Sacilor,*[106] *Grobest*[107] and *NTN Bearing*[108] as judicial precedents.

Petitioner's Arguments

- The Department should sustain its *Preliminary Determination* by continuing to find Kehuaxing ineligible for separate rate status in the final determination. Petitioner states that Kehuaxing was informed of the filing deadline in the Department's SRA and was also notified of the consequences for failing to respond to the Q&V.
- The Department has broad discretion to set and enforce its own deadlines, citing *Reiner Brach*[109] and *Yantai Timken*[110].

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[104] *See* Dongyuan's submission, "Drawn Stainless Steel Sinks from the People's Republic of China: Rebuttal to Petitioner's Pre-Preliminary Determination Comments," dated September 12, 2012, at Exhibit 4.
[105] *See* Dongyuan's Verification Report, at Sections XIII.A and XIII.F.
[106] *See Usinor Sacilor v. United States,* 872 F. Supp. 1000 (CIT 1994) ("*Usinor Sacilor*").
[107] *See Grobest & I-Mei Industrial (Vietnam) Co., Ltd. v. United States*, 815 F. Supp. 2d 1342 (CIT 2012) ("*Grobest*").
[108] *See NTN Bearing Corp. v. United States*, 74 F. 3d 1204 (CAFC 1995) ("*NTN Bearing*").
[109] *See Reiner Brach GmbH & Co. KG v. United States*, 206 F. Supp. 2d 1323 (CIT 2002) ("*Reiner Brach*").

- There is no information on the record to demonstrate that Kehauxing is eligible for a separate rate and, therefore, Petitioner did not have an opportunity to comment on Kehuaxing's SRA.

Department's Position: Consistent with the *Preliminary Determination,* the Department continues to find Kehuaxing's Q&V response untimely. Adherence to the Department's administrative deadlines is necessary for the Department to provide all interested parties with a reasonable timeframe in which to submit information and to complete the investigation within the statutory deadline specified in section 751(a)(3)(A) of the Act, and, importantly, to assure impartiality in its procedures. Indeed, the Court has held that the Department's authority to enforce its deadlines is within its discretion.[111]

In the instant case, Kehuaxing was informed of the requisite dates and procedures for consideration of separate-rate status in this investigation. In the *Initiation Notice*, the Department stated that respondents are required to submit a response to both the Q&V questionnaire responses and the SRA by the respective deadlines in order to receive consideration for separate-rate status.[112] The Department reiterated this requirement in its Q&V questionnaire.[113] All firms participating in this investigation were on notice that Q&V responses must be submitted no later than April 11, 2012.[114] On April 12, 2012, Kehuaxing filed a Q&V response with the Department. On April 20, 2012, the Department rejected Kehuaxing's Q&V response, consistent with 19 CFR 351.301(c)(2), because the filing was untimely.[115, 116]

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110 *See Yantai Timken Co. v. United States*, 521 F. Supp. 2d 1356 (CIT 2007) ("*Yantai Timken*").

111 *See, e.g., National Steel Corp. v. United States*, 870 F. Supp. 1130, 1134 (CIT 1994) ("*National Steel Corp.*"), in which the CIT explained that a respondent "failed to meet clear deadlines for submitting new information….{o}nce such deadlines have passed, whether Commerce accepts the late submissions is within its discretion;" *see also* Hyosung Corporation v. United States, Slip Op. No. 11-34, Court No. 10-00114 (CIT) May 13, 2011 (Hyosung) in which the CIT sustained the Department's determination to reject an untimely filed Q&V response in *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 75 FR 10207 (March 5, 2010).

112 *See Drawn Stainless Steel Sinks From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 77 FR 18207, 18210 (March 27, 2012) ("*Initiation Notice*").

113 *See* the Department's Quantity and Value Questionnaire ("Q&V") at 1, available at: http://ia.ita.doc.gov/questionnaires/nme/qvq/20121022/qvq-inv-20121022.pdf, requiring that "...all firms that wish to qualify for separate-rate status in this investigation to complete a separate-rate status application, in addition to submitting a response to this Q&V questionnaire... The Department will not give consideration to any separate-rate status application made by parties that fail to timely respond to the Quantity and Value Questionnaire or fail to timely submit the requisite separate-rate status application; *see also* the Department's Separate Rate Application ("SRA") at 3, available at: http://ia.ita.doc.gov/nme/sep-rate-files/20121031/prc-sr-app-20121031.pdf, explaining that "{i}n addition to submitting a complete application, if your firm is participating in an investigation, your firm must also respond to the Department's Q&V questionnaire as discussed in the initiation notice to receive consideration for a separate rate. Responses to the Q&V questionnaire from all participating respondents are necessary to ensure that the Department has the requisite information to appropriately select mandatory respondents."

114 *See Initiation Notice,* 77 FR at 18210.

115 *See* the Department's letter regarding: Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Rejection of Submission, dated April 20, 2012 ("Kehuaxing Q&V Rejection").

We do not agree with Kehuaxing's characterization of its participation in this proceeding as analogous to that of Capstone. On April 10 and 11, 2012, Capstone, a *pro se* party, timely filed its Q&V response.[117] The Department issued Capstone a supplemental questionnaire, affording the firm two weeks to correct the bracketing in the information it had placed on the record. This was consistent with section 782(d) of the Act, 19 CFR 351.304(d), and the Department's practice of sending deficiency and/or supplemental questionnaires to interested parties that timely file documents with the Department.[118] The Department notes that Capstone, unlike Kehuaxing, timely filed a Q&V response, thereby maintaining its eligibility for separate-rate status in this proceeding.

Although Kehuaxing cites to *Grobest* to argue that the Department's rejection of its Q&V response in this proceeding was an abuse of discretion, we differentiate the facts in the instant case. In *Grobest*, the Department reversed its decision on remand, under protest, to reject Amanda Foods' SRA in *Vietnam Shrimp*.[119,120,121] The Court explained that "Amanda Foods received separate-rate status in the initial investigation and has maintained that status in each subsequent review…thus, it appears likely that, but for the untimeliness of its submission, Amanda Foods would have received a separate rate in the fourth administrative review…"[122] The underlying investigation is distinguishable from *Grobest* because, here, no inferences can be made based on information placed on the record of prior segments. Further, and importantly, in this case, consideration must be given to the possibility of manipulation of the record and inequity among other interested parties. A party filing an untimely Q&V response has the opportunity to review the timely filed Q&V responses from other interested parties and amend its own Q&V response based on this information; such manipulation would allow it to report just enough quantity to qualify as a mandatory respondent, or just little enough not to qualify. Affording an opportunity for such action would seriously jeopardize the integrity of the record. Indeed, the possibility of manipulation is one reason why the Department regularly makes extensions for information from all parties, applicable to all parties, even when only one party

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116 On May 29, 2012, Kehuaxing also filed an SRA, which the Department rejected and removed from the record on June 6, 2012, in accordance with 19 CFR 351.302(d) and 19 CFR 351.104(a)(2), because Kehuaxing had not timely filed a Q&V response. *See* the Department's letter regarding: Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Rejecting Shenzhen Kehuaxing Industrial Ltd.'s Separate Rate Application, dated June 6, 2012 ("Kehuaxing SRA Rejection").

117 *See* Capstone's letter to the Department regarding: Response to Quantity & Value questionnaire, dated April 9, 2012.

118 *See* the Department's letter to Capstone International Development Corporation regarding: Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Rejecting Incorrectly Filed Quantity and Value Questionnaire Responses, dated April 26, 2012 ("Capstone Q&V Supplemental Questionnaire").

119 *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010), and accompanying Issues and Decision Memorandum at Comment 11.

120 *See* the Department's "Final Results of Redetermination Pursuant to Court Remand," December 2, 2010, available at: http://ia.ita.doc.gov/remands/10-69.pdf.

121 *See Grobest*, 815 F. Supp. 2d at 1367.

122 *See id.*, 815 F. Supp. 2d at 1366.

requests the extension.[123] This also is a distinguishing factor with respect to the timely filed submission by Capstone, where the Department afforded Capstone an opportunity to remedy certain bracketing deficiencies because it timely submitted Q&V data. Capstone was not afforded an opportunity to revise the specific Q&V data it had submitted on a timely basis.

We also distinguish the facts surrounding Kehuaxing's Q&V and SRA submissions in this proceeding from those in *Usinor Sacilor* and *NTN Bearing*. In *Usinor Sacilor,* the Department rejected a mandatory respondent's revised product concordance as unsolicited and untimely new factual information.[124] Similarly, in *NTN Bearing*, the Department rejected a mandatory respondent's submission establishing the clerical nature of errors it made before the preliminary determination.[125] In both cases, the court ordered the Department to reverse its decision and accept the revised information. However, it is important to note that the facts underlying *Usinor Sacilor* and *NTN Bearing* demonstrate that fairness to the respondents is an important principle in determining whether the Department properly rejected untimely information.[126] Here, we find that fairness to all of the respondents who submitted Q&V responses on time requires that we reject the late filing of Kehuaxing.

Petitioner cites to *Reiner Brach* and *Yantai Timken* to affirm the Department's authority to enforce its deadlines. In both of these proceedings, the Department rejected as untimely new factual information submitted by a respondent after the stated deadline.[127] The Court sustained the Department's decision to enforce its time limitations in these cases wherein the facts indicate that a respondent might gain an advantage by untimely filing information on the record.[128] As discussed above, we find that the instant case is analogous in that Kehuaxing (or a similarly situated party) could gain an unfair advantage over the other parties if the Department accepted its submission.

Based on the facts underlying this case and the importance of maintaining impartiality among all interested parties, the Department maintains that it properly enforced its deadline by rejecting

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[123] *See, e.g.,* the Department's memorandum regarding: Antidumping Duty LTFV Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Surrogate Country Comments and Surrogate Values, dated July 3, 2012 (wherein the Department extended the deadline for submission of comments on surrogate country selection and publicly available information to all parties, even though only Petitioner requested an extension); *see also* the Department's memorandum regarding: Antidumping Duty LTFV Investigation of Drawn Stainless Steel Sinks from the People's Republic of China: Surrogate Country Comments, Surrogate Values & Targeted Dumping, dated July 19, 2013 (wherein the Department further extended the deadline for of comments on surrogate country selection and publicly available information to all parties, even though only Petitioner requested an extension.)

[124] *See Usinor Sacilor,* 872 F. Supp. at 1010.

[125] *See NTN Bearing,* 74 F. 3d at 1208-1209.

[126] *See Usinor Sacilor,* 872 F. Supp. at 1008 where the Court explains that, "the interests of accuracy and fairness outweigh the burden imposed upon the agency;" *see also NTN Bearing,* 74 F. 3d at 1207-1208 (where the Court supports NTN Bearing's efforts to submit documentation that would establish the clerical nature of its reporting errors.)

[127] *See Reiner Brach,* 206 F. Supp. 2d at 1326 and *Yantai Timken,* 521 F. Supp. 2d at 1371.

[128] *See, e.g., Reiner Brach,* 206 F. Supp. 2d at 1334 (where the Court explains that rejection of Reiner Brach's submission was warranted because it did not relate to minor adjustments to or corroboration or clarification of information already on the record); *see also Yantai Timken,* 521 F. Supp. 2d at 1371, (where the Court explains that the untimely filed information, "directly related to issues that the Department determined to be unverified.")

Kehuaxing's Q&V response because it was untimely filed. Subsequently, the Department properly rejected Kehuaxing's SRA submission because it did not timely file a Q&V as directed in the *Initiation Notice*. For the final determination, the Department continues to find that Kehuaxing is not eligible for a separate rate.

<u>RECOMMENDATION</u>

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

Agree ___ Disagree ___

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Paul Piquado
Assistant Secretary
for Import Administration

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Date