A-570-937
POR: 05/01/12-04/30/13
Public Document
E&C/IV: KH/MC

October 27, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2012-2013 Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from the People's Republic of China

SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the 2012-2013 administrative review of the antidumping duty order on citric acid and certain citrate salts from the People's Republic of China ("PRC"). As a result of our analysis, we made changes from the Preliminary Results[1] to the margin calculation for the final results. The issues for which we received comments are discussed below.

BACKGROUND

The Department published its Preliminary Results on April 28, 2014. The period of review ("POR") is May 1, 2012, through April 30, 2013. In accordance with 19 CFR 351.309(c)(1)(ii), we invited parties to comment on our Preliminary Results. On May 28, 2014, Petitioners[2] requested a hearing.[3] Additionally, on May 28, 2014, Yixing-Union Biochemical Co., Ltd. ("Yixing"), requested an opportunity to participate should a hearing be requested by Petitioners.[4]

[1] See Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 23322 (April 28, 2014) ("Preliminary Results"); see also Memorandum to the File from James Maeder, Director, Office II, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from the People's Republic of China," dated April 18, 2014 ("Preliminary Decision Memorandum").
[2] Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Ingredients Americas, Inc. (collectively, "Petitioners").
[3] See Letter from Petitioners to the Department regarding, "Citric Acid and Citrate Salts from the People's Republic of China: Petitioners' Hearing Request and Request for a Closed Session," dated May 28, 2014.
[4] See Letter from Yixing to the Department regarding, "Hearing Request of Yixing-Union Biochemical Co., Ltd.: Citric Acid and Certain Citrate Salts from the People's Republic of China," dated May 28, 2014.

Based on these hearing requests, on September 3, 2014, the Department held a closed hearing limited to issues raised in case briefs and rebuttal case briefs. We received case briefs from Yixing, Laiwu Taihe Biochemistry Co., Ltd. ("Taihe"), and, Petitioners on June 4, 2014.[5] Additionally, on June 12, 2014, we received rebuttal briefs from Yixing, Taihe, and Petitioners.[6] Taihe resubmitted its rebuttal case brief after redacting certain untimely arguments on June 21, 2014.[7]

SCOPE OF THE ORDER

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States ("HTSUS"), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

---

[5] See Letter from Yixing to the Department regarding, "Citric Acid and Certain Citrate Salts from the People's Republic of China (A-570-937)- Case Brief of Yixing-Union Biochemical Co., Ltd.," dated June 4, 2014; see also Letter from Taihe to the Department regarding, "Citric Acid and Citrate Salts from the People's Republic of China: Case Brief," dated June 4, 2014 ("Taihe Case Brief"); see also Letter from Petitioners to the Department regarding, "Citric Acid and Certain Citrate Salts From The People's Republic Of China/Petitioners' Case Brief," dated June 4, 2014.

[6] See Letter from Yixing to the Department regarding, "Citric Acid and Certain Citrate Salts from the People's Republic of China (A-570-937)- Rebuttal Brief of Yixing-Union Biochemical Co., Ltd.," dated June 12, 2014; see also Letter from Petitioners to the Department regarding, "Citric Acid and Certain Citrate Salts From The People's Republic Of China / Petitioners' Rebuttal Brief," dated June 12, 2014.

[7] See Letter from Taihe to the Department regarding, "Citric Acid and Citrate Salts from the People's Republic of China: Rebuttal Brief," dated July 21, 2014.

DISCUSSION OF THE ISSUES

Comment 1: Differential Pricing

Comment 1.A: Consideration of an Alternative Comparison Method in an Administrative Review

- Taihe asserts that the application of differential pricing methodology to Taihe is contrary to law and otherwise unsupported by substantial evidence on the record.
- Taihe argues that the relevant provision of the statute (i.e., 777A(d)(1)(B) of the Act) that allows the Department to deviate from the normal average-to-average ("A-A") price comparison and resort to the average-to-transaction ("A-T") comparison only applies to investigations. Taihe states that the provision concerning administrative reviews (i.e., section 777A(d)(2) of the Act) contains no such language.
- Taihe cites to Nken v. Holder and Hamdan v. Rumsfeld where the Supreme Court maintained that when particular language is included in one section of a statute but omitted in another section, it is presumed that the disparate inclusion or exclusion was intentional.[8]
- Additionally, Taihe argues that the Department cannot rely on its authority based on CFR 351.414 (b) as it was amended in February 2012. Taihe further notes that the February 2012 amendment has no effect, however, in light of the Court of International Trade's conclusion that its predecessor provision remains in force.[9]
- Petitioners assert that the Department has the statutory authority to conduct a differential pricing analysis and apply the A-T method in administrative reviews. Additionally, Petitioners cite to several decisions by the Department in arguing that Taihe's argument has been repeatedly considered and rejected.

Department's Position: We disagree with Taihe's assertion that the Department has no authority to consider the application of an alternative comparison method based on the A-T method in administrative reviews. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." By definition, a "dumping margin" requires a comparison of the normal value ("NV") and export price ("EP") or constructed export price ("CEP"). Before making the comparison required, it is necessary to determine how to make the comparison. Taihe maintains that Congress made no provision in section 777A(d)(2) of the Act for the Department to apply the A-T method in administrative reviews. Specifically, Taihe argues that because Congress only conferred power upon the Department to consider an alternative comparison method (i.e., "conduct a targeted dumping analysis") in investigations, the Department cannot consider an alternative comparison method in this or any other administrative review. Taihe argues, "{w}here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts

[8] See Nken v. Holder, 129 S. Ct. 1749, 1759 (2009); see also Hamdan v. Rumsfeld, 548 U.S. 557, 578 (2006).
[9] See Gold East Paper (Jiangsu) Co., Ltd. v. United States, 918 F.Supp. 2d 1317, 1327 (Ct. Int'l Trade 2013) ("Gold East Paper").

intentionally and purposely in the disparate inclusion or exclusion."[10] Taihe cites to Nken v. Holder and Hamdan v. Rumsfeld, and ultimately argues that these statutory principles are stated in FAG Italia v. United States.[11] However, Taihe mischaracterizes these authorities. Nken v. Holder did not involve an interpretation of an ambiguous statute under the Chevron framework by which the Department interprets the Act when the language is not clear and thus indicates a different analysis than the one the Department must apply in this proceeding.[12] Similarly, the Chevron framework was not implicated in Hamdan v. Rumsfeld, which itself was later superseded by statute.[13] Finally, Taihe's use of the Federal Circuit's holding in FAG Italia v. United States, as with Hamdan v. Rumsfeld, is inapposite here. The Department has statutory authority under section 751(a)(2)(A) to determine normal value and export price (or constructed export price) of each entry of subject merchandise and its resulting dumping margin. As explained below, the Act does not specify which method the Department must use in comparing normal value and export price in calculating dumping margins or how these comparison results should be aggregated. Accordingly, the Department has reasonably filled the gap to allow for the use of an A-T methodology when it encounters certain patterns of export prices. Taihe argues that the Department has no authority to employ such a gap-filling method; however, the Department's practice in doing so has been upheld by the Federal Circuit.[14] Moreover, the Department's position in regards to similar arguments to those raised by Taihe has been upheld by the CIT, most recently in JBF RAK v. United States.[15] The Department's practice, as explained below, is a reasonable and permissible interpretation of the statute.

Taihe argues that the Department has no statutory authority to consider the application of an alternative comparison method in administrative reviews. Interested parties also state that Congress made no provision for the Department to apply an alternative comparison method in an administrative review under section 777A(d) of the Act. Indeed, section 777A(d)(1) of the Act applies to "Investigations" and section 777A(d)(2) of the Act applies to "Reviews." Section 777A(d)(l) of the Act discusses, for investigations, the standard comparison methods (i.e., A-A and transaction-to-transaction ("T-T")) and then provides for an alternative comparison method (i.e., A-T) that is an exception to the standard methods when certain criteria are met. Section 777A(d)(2) of the Act discusses, for reviews, the maximum length of time over which the

[10] See Taihe Case Brief at 17, citing Nken v. Holder, 129 S. Ct. 1749, 1759 (2009). Taihe also states that "the Supreme Court has described this as a 'familiar principle of statutory construction,' pursuant to which 'a negative inference may be drawn from the exclusion of language from one statutory provision that is included in other provisions of the same statute," quoting Hamdan v. Rumsfeld, 548 U.S. 557, 578 (2006), which Taihe states that the CAFC has followed in stating that "{i}t is indeed well established that the absence of a statutory prohibition cannot be the source of agency authority," quoting FAG ltalia S.p.A. v. United States, 29 1 F.3d 806, 8 16 (Fed. Cir. 2002).
[11] See, e.g., Nken v. Holder, 129 S.Ct. at 1759; Hamdan v. Rumsfeld, 548 U.S. at 578 and FAG Italia S.p.A. v. United States, 291 F.3d 806, 816 (Fed. Cir. 2002).
[12] See, Chevron U.S.A Inc. v. Natural Resources Defense Council, 467 U.S. 837 (1984) ("Chevron") ("{I}f the statue is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.").
[13] See, e.g., Hamad v. Gates, 732 F.3d 990 (Ninth Cir. 2013) (citing to Hamdan and noting that the Supreme Court's holding was later superseded by statute).
[14] See Mid Continent Nail Corp. v. United States, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010), citing US. Steel Group v. United States, 96 F.3d 1352, 1362 (CAFC 1996).
[15] See JBF RAK LLC v. U.S., 991 F.Supp.2d 1343 (CIT 2014) (citing to the Department's position in the IDM and sustaining the Department's reasoning for applying an A-T methodology "in the context of an administrative review as a permissible construction of the statute.").

Department may calculate the weighted-average NV when based on comparison market sale prices in administrative reviews when using the A-T method. Section 777A(d)(2) of the Act has no provision specifying the comparison method to be employed in administrative reviews. Thus, by Taihe's logic, because the statute makes no provision for comparison methods in administrative reviews, the Department has no authority to make comparisons in administrative reviews at all. Taken to its logical conclusion that because no comparison method is specified in the statute, Taihe's statutory interpretation leads to the absurd result that the Department would not be permitted to make a comparison of NVs and EPs or CEPs in order to calculate a dumping margins as described in section 771(35)(A) of the Act. We find that, contrary to the respondent's claim, the silence of the statute with regard to application of the A-T method, or any comparison method, in administrative reviews does not preclude the Department from applying such a practice in administrative reviews. Indeed, the Court of Appeals for the Federal Circuit ("CAFC") stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances."[16] Further, the CAFC stated that this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties in the way it believes most suitable' and courts will uphold these decisions {s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious."[17]

To fill this gap in the statute, the Department promulgated regulations to specify how comparisons between NV and EP or CEP would be made in administrative reviews. With the implementation of the Uruguay Rounds Agreements Act ("URAA"), the Department promulgated the final rule in 1997, in which 19 CFR 351.414(c)(2) stated that the Department would normally use the A-T comparison method in administrative reviews. In 2010, the Department published its Proposed Modification for Reviews[18] pursuant to section 123(g)(1) of the URAA. This proposal was in reaction to several World Trade Organization ("WTO") reports adopted by the Dispute Settlement Body which had found that the denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties. Pursuant to section 123(g)(l)(D) of the URAA, in September 2011, the USTR submitted a report to the House Ways and Means and Senate Finance Committees which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(l)(B) of the URAA. Also, in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final rule and the final modification. As a result of this

---

[16] See United States Steel Corp. v. United States, 621 F.3d 1351, 1357 (CAFC 2010).

[17] See Mid Continent Nail Corp. v. United States, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010), citing United States Steel Group v. United States, 96 F.3d 1352, 1362 (CAFC 1996).

[18] See Antidumping Proceedings: Calculation of Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Proposed Rule; Proposed Modification; Request for Comment, 75 FR 81533 (December 28, 2010) ("Proposed Modification for Reviews").

process, the Department published the Final Modification for Reviews.[19] These revisions were effective for all preliminary results of review issued after April 16, 2012, as is the situation for this administrative review.

The Department's regulations at 19 CFR 351.414 (b) (2012) describe the methods by which NV can be compared to EP and CEP in less-than-fair-value investigations and antidumping duty administrative reviews (i.e., A-A, T-T, and A-T). These comparison methods are distinct from each other. When using the T-T or A-T methods, a comparison is made based on the price for each export transaction to the United States. When using the A-A method, a comparison is made based on the weighted-average U.S. sale price for each group of comparable export transactions for which the EPs, or CEPs, have been grouped together (i.e., for an averaging group). The Department does not interpret the Act or the SAA to prohibit the use of the A-A comparison method in administrative reviews, nor does the Act or the SAA mandate the use of the A-T comparison method in administrative reviews; 19 CFR 351.414(c)(l) (2012) fills the gap in the statute concerning the choice of a comparison method in the context of administrative reviews. Because Congress did not specify the comparison method for administrative reviews, the Department has great discretion in selecting the appropriate comparison method in administrative reviews. Therefore, the Department finds that it has authority to consider the application of the A-T method as an alternative comparison methodology in administrative reviews, which the CIT has affirmed.[20]

Comment 1.B: Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Less-Than-Fair-Value Investigations

- Taihe argues that the Department abruptly withdrew the set of regulations related to targeted dumping, which the Court of International trade found contrary to law. Taihe states that the Department's request for comments on its new methodology demonstrates that it has not yet gone through all the necessary steps to replace the original methodology and procedure. Taihe argues that for this separate reason, the Department must treat 19 CFR 351.414(f)(l)(ii) and (2) (2008) as if they were still in effect. Specifically, Taihe states that since Petitioners did not file a timely allegation of targeted dumping against Taihe Biochemistry, and as the Department has not followed other procedural or substantive requirements of this rule, the Department should refrain entirely from engaging in any type of targeted dumping or differential pricing analysis for the final results.
- Petitioners assert that although Gold East Paper held that those regulations had been improperly withdrawn in 2008, the Department continues to take the position that such withdrawal was proper, and even if it had not been, the withdrawal became effective with the 2012 Final Modification.
- Petitioners assert that Taihe does not explain how the application of differential pricing violated any "procedural or substantive requirements" of the former rules. Petitioners note that under the former regulations (19 CFR 351.301(d)(5) (2008)), which only

[19] See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews").
[20] See CP Kelco Oy and CP Kelco US, Inc. v. United States, 978 F.Supp. 2d 1315 (CIT 2014).

applied to antidumping investigations, targeted dumping allegations were due within 30 days of the preliminary determination. Petitioners argue that their targeting dumping allegation was timely filed because it was filed more than three months before the Preliminary Results.

Department's Position: We disagree with Taihe and find that its arguments fail as a matter of law in several respects. The targeted dumping regulations withdrawn in the 2008 Withdrawal[21] are no longer in effect and, when they were in effect, applied only to investigations, not administrative reviews. Likewise, Gold East Paper involves a less-than-fair-value investigation, not an administrative review, and the Gold East Paper decision is not final. Furthermore, the currently effective 19 CFR 351.414 (2012) specifically fills the statutory gap regarding the selection of an appropriate comparison method in the context of administrative reviews.[22] This process was done with proper notice and opportunity to comment, and no party could reasonably have been left with the impression that the Department would be bound by the withdrawn targeted dumping regulations in administrative reviews.

In any event, the targeted dumping regulation was properly withdrawn pursuant to the APA. During the withdrawal process, the Department engaged the public to participate in its rulemaking process. In fact, the Department's withdrawal of its regulations in 2008 came after two rounds of soliciting public comments on the appropriate targeted dumping analysis. The Department solicited the first round of comments in October 2007, more than one year before it withdrew the regulations, by posting a notice in the Federal Register seeking public comments on what guidelines, thresholds, and tests it should use in conducting an analysis under section 777A(d)(l)(B) of the Act.[23] As the notice explained, because the Department had received very few targeted dumping allegations under the regulations then in effect, it solicited comments from the public to determine how best to implement the remedy provided under the statute to address masked dumping. The notice posed specific questions, and allowed the public 30 days to submit comments. Various parties submitted comments in response to the Department's request.[24] Taihe provided no comments in response to the Department's request.[25]

After considering those comments, the Department published a proposed new methodology in May 2008 and again requested public comment.[26] Among other things, the Department specifically sought comments "on what standards, if any, {it} should adopt for accepting an allegation of targeted dumping."[27] Several of the submissions[28] received from parties explained

[21] See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations, 73 FR 74930 (December 10, 2008) ("2008 Withdrawal").
[22] See Final Modification for Reviews, 77 FR 8101.
[23] See Targeted Dumping in Antidumping Investigations; Request for Comment, 72 FR 60651 (October 25, 2007) (Targeted Dumping).
[24] See Public Comments Received December 10, 2007, available at http://enforcement.trade.gov/download/targeted-dumping/comments-20071210/td-cmt-20071210-index.html (listing the entities that commented).
[25] Id.
[26] See Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations, 73 FR 26371, 26372 (May 9, 2008).
[27] Id.
[28] The public comments received by June 23, 2008, and submitted on behalf of several domestic parties can be accessed at http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html.

that the Department's proposed methodology was inconsistent with the statute and should not be adopted.[29] Moreover, several entities explicitly stated that the Department should not establish minimum thresholds for accepting allegations of targeted dumping because the statute contains no such requirements.[30] Once again, Taihe did not comment on the Department's proposed methodology.[31]

After considering the parties' comments the Department explained that because "the provisions were promulgated without the benefit of any experience on the issue of targeted dumping, the Department may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping."[32] For this reason, the Department determined that the regulation had to be withdrawn.[33] Although this withdrawal was effective immediately, the Department again invited parties to submit comments, and gave them a full 30 days to do so.[34] The comment period ended on January 9, 2009, with several parties submitting comments.[35] As before, Taihe failed to participate and did not submit comments in response to the Department's request.[36]

The course of the Department's decision-making process demonstrates that it sought to actively engage the public. This type of public participation is fully consistent with the APA's notice-and-comment requirement.[37] Moreover, various courts have rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.[38] Rather, where the public is given the opportunity to comment meaningfully, consistent with the statute, the APA's requirements are satisfied. The touchstone of any APA analysis is whether the agency, as a whole, acted in a way that is consistent with the statute's purpose.[39] Here, similar to the agency in Fed. Express Corp., the Department provided the parties more than one opportunity to submit comments before issuing the final rule. As in Fed. Express Corp., the Department also considered the comments submitted and based its final decision, at least in part,

---

[29] See, e.g., letter from Domestic Producers entitled "Comments on Targeted Dumping Methodology" ("Domestic Party Comments") (June 23, 2008), at 2, available at http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html.

[30] See, e.g., letter from Committee to Support U.S. Trade Laws entitled "Comments on Targeted Dumping Methodology" (June 23, 2008), at 25, available at http://enforcement.trade.gov/download/targeted-dumping/comments-20080623/td-cmt-20080623-index.html; see also Domestic Party Comments at 29.

[31] *See* Public Comments received June 23, 2008, available at http:/Ienforcement.trade.gov/downloadltargeted-dumping'comments-20080623/td-cmt-20080623-index.html (June 23, 2008) (listing the entities that commented).

[32] See 2008 Withdrawal, 73 FR 74930.

[33] Id.

[34] Id.

[35] See Public Comments Received January 23, 2009, Department of Commerce, (January 23, 2009), available at http://enforcement.trade.gov/download/targeted-dumping/comments-20090 1 23/td-cmt-20090 1 23-index.html (Jan. 23, 2009) (listing the entities that commented).

[36] Id.

[37] See, e.g., Arizona Pub. Serv. Co. v. EPA, 211 F.3d 1280, 1299-1300 (D.C. Cir. 2000) (holding that the EPA's decision to not implement a rule upon which it had sought comments did not violate the APA's notice and comment requirements because the parties should have understood that the agency was in the process of deciding what rule would be proper).

[38] See Fed. Express Corp. v. Mineta, 373 F.3d 112, 120 (D.C. Cir. 2004) ("Fed. Express Corp.") (holding that the Department of Transportation's promulgation of four rules, each with immediate effect, only after the issuance of which the public was given the opportunity to comment, afforded proper notice and comment).

[39] Id.

upon those comments. Just as the court in Fed. Express Corp. found all of those facts to indicate that the agency's actions were consistent with the APA, so too the Department's actions here demonstrate that it fulfilled the notice and comment requirements of the APA.

The APA does not require that a final rule that the agency promulgates must be identical to the rule that it proposed and upon which it solicited comments.[40] Here, the Department actively engaged the public in its rulemaking process; it solicited comments and considered the submissions it received. In fact, that the numerous comments prompted the Department to withdraw the regulation (and solicit comments on the withdrawal) demonstrates that the Department provided the public with an adequate opportunity to participate. In doing so, the Department fully complied with the APA.

Further, even if the rounds of comments that the Department solicited before and at the withdrawal of the regulation were insufficient to satisfy the APA's requirements, the Department was not required to solicit further comments pursuant to the APA's "good cause" exception. This exception provides that an agency is not required to engage in notice and comment if it determines that doing so would be "impracticable, unnecessary, or contrary to the public interest."[41] The Federal Circuit recognized that this exception can relieve an agency from issuing notice and soliciting comment where doing so would delay the relief that Congress intended to provide. In National Customs Brokers, the Federal Circuit rejected a plaintiff's argument that the U.S. Customs Service failed to follow properly the APA in promulgating certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment. Moreover, although the U.S. Customs Service solicited comments on the published regulations, it stated that it "would not consider substantive comments until after it implemented the regulations and reviewed the comments in light of experience" administering those regulations.[42] The U.S. Customs Service explained that "good cause" existed because the new requirements did not impose new obligations on parties, and emphasized its belief that the regulations should "become effective as soon as possible" so that the public could benefit from "the relief that Congress intended."[43] The court recognized that this explanation was a proper invocation of the "good cause" exception and explained that soliciting and considering comments was *both* unnecessary (because Congress had passed a statute that superseded the regulation) "*and* contrary to the public interest because the public would benefit from the amended regulations."[44] For this reason, the court affirmed the regulation against the plaintiff's challenge.[45]

In short, the regulation at issue may have had the unintended effect of preventing the Department from employing an appropriate remedy to consider whether the A-A method is the appropriate tool with which to measure each respondent's amount of dumping. Such effect would have been contrary to congressional intent. Notwithstanding that we satisfied the APA's requirements as discussed above, the Department's revocation of such a regulation without additional notice and

---

40 See, e.g., First Am. Discount Corp. v. CFTC, 222 F.3d 1008, 1015 (D.C. Cir. 2000).
41 See 5 USC 553(b)(B).
42 See National Customs Brokers v. U.S., 59 F.3d 1219 (Fed. Cir. 1995) ("National Customs Brokers").
43 Id., at 1223.
44 Id., at 1224 (emphasis added).
45 Id.

comment was based upon a recognized invocation of the "public interest" exception because good cause existed to waive the notice and comment period.

Finally, Taihe does not address, and the Gold East Paper did not analyze, the question of harmless error, which is critical because a lack of prior notice and comment is not sufficient to invalidate a regulation where the error is harmless.[46] Indeed, the Court of International Trade recently held that, under nearly identical facts, a party was not harmed by the 2008 Withdrawal, such that the Department was not bound by the withdrawn regulations.[47] Similarly, Taihe's failure to (1) submit any comments before or after the 2008 Withdrawal or (2) identify any arguments not already presented by other interested parties demonstrates that, if not properly withdrawn, the Department's withdrawal of the targeted dumping regulations was harmless with respect to Taihe.

Therefore, we have no basis to use the withdrawn targeted dumping regulations for the final results of this review.

Comment 1.C: Denial of Offsets for Non-Dumped Sales When Using the Alternative Average-to-Transaction Comparison Methodology

- Taihe asserts that the Union Steel[48] litigation that ultimately led to the CAFC's approval of zeroing in reviews (prior to the formal elimination of zeroing in reviews to comply with WTO rulings) arose from the Department's determination in CORE from Korea.[49]
- Taihe argues that the Department's A-T methodology utilized in administrative reviews imposed on merchandise from market-economy countries differs significantly from the methodology employed in administrative reviews of antidumping duty orders issued for NME countries. Specifically, the calculation of "average" normal value is a monthly average in market-economy reviews, but a period average (i.e., a single average cost) in NME reviews. Consequently, as a result of using a single, period-wide normal value for the calculation of dumping margins in NME proceedings rather than monthly average normal values in ME proceedings, Taihe argues that the Department should not deny offsets (i.e., zero) the comparison results for non-dumped sales.
- Petitioners argue that the Department has determined in past cases that the Court of Appeal's decision Union Steel was not restricted to market economy proceedings, and, thus, have applied the A-T method to respondents' sales.

Department's Position: The Department disagrees with Taihe's claim that it is inappropriate to deny offsets for non-dumped sales when using the alternative A-T method in a non-market economy proceeding. Taihe misrepresents the issue that was being addressed by the CAFC and

---

[46] See Intercargo Ins. Co. v. United States, 83 F.3d 391, 394 (Fed. Cir. 1996).
[47] See Beijing Tianhai Indus. Co., Ltd. v. United States, No. 12-00203, 2014 WL 4436334, at *10-14 (Ct. Int'l Trade Sept. 9, 2014) ("BTIC") (explaining that where plaintiff, like Taihe, did not (1) submit any comments before or after the 2008 Withdrawal and (2) identify any arguments not already presented, the Department's failure to invite notice and comment prior to issuing 2008 Withdrawal constituted harmless error).
[48] See Union Steel v. United States, 713 F.3d 1 101 (Fed. Cir. 2013) ("Union Steel").
[49] See Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review, 76 FR 15291 (March 21, 2011) ("CORE from Korea").

in the underlying litigation[50] at the Court of International Trade (CIT). The question at issue was whether the Department could interpret the terms "dumping margin" and "weighted average dumping margin," as provided in section 771(35) of the Act, differently in less-than-fair-value investigations and in antidumping administrative reviews. This question was also a part of a number of other actions before the CIT and CAFC. As part of the Department's explanation for its different treatment of non-dumped sales between investigations and administrative reviews, it stated that in investigations it typically uses the average-to-average method to evaluate a producer's or exporter's overall pricing behavior to determine whether it is appropriate to impose an antidumping duty order on that producer or exporter. Once an antidumping duty order is in place, though, the Department, in administrative reviews, uses the average-to-transaction method[51] "which **permits greater specificity** to determine the pricing behavior for individual transactions."[52] This "greater specificity" refers to the use of transaction-specific U.S. prices with the A-T method rather than weighted-average U.S. prices (by averaging groups) with the A-A method. As the CAFC went on to explain

> When calculating the average export price or constructed export price, Commerce calculates a comparison result for each averaging group, and averages together high and low export prices within the group. Thus, those export prices above normal value offset those below normal value within the averaging group. Commerce then aggregates the results of the comparison for each averaging group to calculate a weighted average dumping margin. Accordingly, this comparison methodology masks individual transaction prices below normal value with other above normal value prices within the same averaging group.
>
> In contrast, when Commerce uses the average-to-transaction comparison method, as it did in this administrative review, Commerce compares the export price (or constructed export price) for a particular export transaction with an average normal value for the comparable sales of foreign like products within the averaging group. For specific export transactions, Commerce calculates a comparison result which establishes the amount that transaction is priced at less than its normal value. Id. Using this methodology, Commerce does not average export transaction prices before comparing the export price (or constructed export price) to normal value. Instead, Commerce uses a single export transaction price and aggregates the transaction-specific comparison result.
> The average-to-transaction comparison methodology thus reveals individual dumping.
>
> Commerce's decision to use or not use the zeroing methodology reasonably reflects unique goals in differing comparison methodologies. In average-to-average comparisons, as used in investigations, Commerce examines average export prices; zeroing is not necessary because high prices offset low prices within each averaging group. When

[50] See Union Steel v. United States, 823 F.Supp.2d 1346 (CIT 2012) ("Union Steel CIT").
[51] At the time of the underlying administrative review, the Department had not yet revised its practice to use the average-to-average method as the standard method to calculate a respondent's weighted-average dumping margins. See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012) and 19 CFR 351.414(c)(1) (2012).
[52] See Taihe Case Brief at 25, quoting Union Steel (emphasis added by Taihe) which cites to the Department's remand results.

> examining individual export transactions, using the average-to-transaction comparison methodology, prices are not averaged and zeroing reveals masked dumping. This ensures the amount of antidumping duties assessed better reflect the results of each average-to-transaction comparison. Commerce's differing interpretation is reasonable because the comparison methodologies compute dumping margins in different ways and are used for different reasons.[53]

Taihe's insistence that the CAFC's reasoning for "greater specificity" is based only on the fact that normal values, when based on comparison market sales, are limited to a maximum of one month,[54] is misplaced. As described above, the CAFC's decision based its finding that the "greater specificity" afforded by the A-T method is predicated on the use of transaction-specific prices, rather than a weighted-average price of the A-A method, to compare with normal values to calculate dumping margins. When using the A-A method where a comparison is based on the weighted-average U.S. price, higher prices may offset lower prices which may mask dumping. Likewise, when aggregating the comparison results with the A-A method, offsets are granted for non-dumped sales which may also mask dumping. However, with the A-T method, transaction-specific U.S. prices are used in comparison with average normal values, which do not have the potential to mask dumping implicitly within the averaging group. Likewise, when aggregating the comparison results under the A-T method, offsets are not granted for non-dumped sales with the result that the potential for explicit masked dumping is also eliminated. This is the "greater specificity" acknowledged and affirmed by the CAFC in Union Steel.

Since the completion of the underlying administrative review in Union Steel, the Department has modified its practice with regards to administrative reviews in which the standard comparison method used to calculate a respondent's weighted-average dumping margin is based on the A-A method.[55] It is under the revised regulation promulgated by the Final Modification for Reviews, 19 CFR 351.414 (2012), that this review has been conducted. Although the Department practice has changed with regards to the standard comparison methodology between Union Steel and the instant review, the concepts in Union Steel are still valid, namely, that the A-T method, as an alternative to the standard A-A method, reasonably and appropriately denies offsets for non-dumped sales to reveal possible masked dumping. This "greater specificity" is necessary because the standard A-A method is unable to account for the pricing behavior of the respondent as identified by the existence of a pattern of prices that differ significantly.[56]

The Department acknowledges that normal values based on monthly weighted-average comparison market sale prices may be more specific than normal values based on period-wide weighted-average comparison market prices. However, normal values based on shorter or longer periods is not the purpose behind section 777A(d)(1)(B) of the Act and the application of the A-T method under this provision. The purpose of this provision is to determine whether the A-A method is appropriate for examining a respondent's pricing behavior in calculating a weighted-average dumping margin.[57] The need for this provision was created by the change in the

[53] See Union Steel v. U.S., 713 F.3d 1101, 1108-9 (Fed. Cir. 2013) (internal citations omitted).
[54] See section 777A(d)(2) of the Act.
[55] See Final Modification for Reviews.
[56] See, generally, section 777A(d)(1)(B) of the Act.
[57] See 19 CFR 351.414(c) (2012).

Department's practice as a result of the implementation by the United States of the Uruguay Round Agreements Act (URAA) in which the United States abandoned the use of the A-T method in investigations in favor of the A-A method (or the T-T method in certain situations). The Statement of Administrative Action ("SAA")[58] which accompanied the URAA states

> Section 229 of the bill adds new section 777A(d) {19 U.S.C. § 1677f-1(d)} to implement the provisions of the Agreement regarding the use of average normal values and export prices for purposes of calculating dumping margins. Although current U.S. law permits the use of averages on both sides of the dumping equation, Commerce's preferred practice has been to compare an average normal value to individual export prices in investigations and reviews. In part, the reluctance to use an average-to-average methodology has been based on a concern that such a methodology could conceal "targeted dumping." In such situations, an export may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.[59]

Clearly, the purpose of the Department's consideration of an alternative comparison methodology is to gain "greater specificity," where appropriate, to evaluate a respondent's pricing behavior, which may include "targeted" or masked dumping. This increase in precision is due to the use of individual U.S. sales prices rather than average U.S. sales prices to eliminate the potential for implicitly masked dumping within the averaging of higher and lower prices within each averaging group. This also pertains to the aggregation of the A-T comparison results, in which offsets for non-dumped sales are not granted in order to eliminate the potential for explicitly masked dumping. This is the same situation as presented to the court in Union Steel except that the question revolved around the use of the A-A method in less-than-fair-value investigations and the A-T method in antidumping administrative reviews, as was then the Department's practice. Therefore, even though the Department has revised its practice in administrative reviews, the concern still exists about whether the A-A method is appropriate in certain situations, and when appropriate, the Department may use the A-T method to gain "greater specificity" to evaluate a respondent's pricing behavior and to calculate that respondent's corresponding weighted-average dumping margin.

The Department also finds unconvincing Taihe's argument that the Department's practice in non-market economy proceedings is somehow unique from its practice in market economy proceedings which would invalidate the Department's denial of offsets for non-dumped sales as described above. Taihe claims that because normal values in non-market economy proceedings are based on period-wide factors of production,[60] that this lack of "greater specificity" negates the appropriateness of denying offsets for non-dumped sales. Taihe only includes half of the story with respect to the calculation of normal values in a market economy proceeding. Certainly, normal values are first based upon the sale prices in a home or a third-country market; however, if such calculations are not possible, then the Department will determine the normal value based on the constructed value of the product sold in the U.S. market.[61] The constructed

[58] See SAA, H.R. Doc. No. 103-316, 103rd Cong., 2d Session, Vol. 1 at 842-3 (1994).
[59] Id. at 842.
[60] See section 773(c) of the Act.
[61] See section 773(a)(4) of the Act.

value generally is based on the period-wide cost of production for this product with appropriate adjustments. Accordingly, normal values calculated in an administrative review under a market economy order may be based on period-wide averages just as normal values calculated in an administrative review under a non-market economy order may also be based on period-wide averages. Therefore, the distinction claimed by Taihe does not exist and does not support a different finding in this case.

Furthermore, these various methods of calculating normal values were acknowledged by the CIT in its decision on Union Steel CIT:

> The court is not going to distinguish among all the various ways of establishing a normal value, for which the paradigm is a price in the exporting/producing country, and some of which are not price based, or among the various ways of establishing the dumped price to the United States, either as export price or a constructed export price. For these purposes, the terms "normal value" and "export price" suffice to describe what is being compared.[62]

Here, the CIT recognizes the differences in the methods for calculating normal values, and states that these are not distinguishable for its analysis. Therefore, we find that Taihe's arguments to distinguish non-market economy proceedings from the facts underlying the CAFC's decision in Union Steel to be unpersuasive. Accordingly, the Department has continued to deny offsets for non-dumped U.S. sales when using the A-T method in the final results of this review.

Comment 1.D: Differential Pricing Analysis: Taihe

- Taihe argues that the Department has failed to properly or fully disclose its new differential pricing methodology, and has not divulged the historical context, purpose of the test, or related mathematical formulas, nor has it justified how and where the Department's methodology diverges from its original formulas. Additionally, Taihe notes that the programming language that the Department has divulged is woefully deficient.
- Taihe argues that the Department's calculation of the Cohen's *d* coefficient is incorrect, with potential for distortive results, because the pooled standard deviation is a simple average of the variances for the test and comparison groups rather than a weighted average of these two variances based on the number of observations in each group.
- Taihe states that the Cohen's *d* coefficient is being applied in situations where there are too few observations in the test and comparison groups to produce accurate results. Taihe claims that the reliance on too few observations when calculating the Cohen's *d* coefficient introduces a "bias" into the calculated Cohen's *d* coefficient, an "estimator for the true effect size," which will be larger than the value of the "true effect size." This may result in some sales passing the Cohen's *d* test when they should not.
- Taihe argues that Cohen's *d* coefficient is a standardized measure of the difference between two means, and is not a test of statistical significance. Taihe explains that it is possible for the difference between the means of two groups to not be statistically

[62] See Union Steel v. United States, 823 F.Supp.2d (CIT 2012) at footnote 3.

significant, but for the Cohen's *d* coefficient to be greater than 0.8. Taihe explains that it is unreasonable to conclude from the result of a Cohen's *d* test alone that there is a statistically-significant difference between the means of the test and comparison groups. Taihe states that there are additional flaws to the Department's differential pricing methodology. Specifically, Taihe asserts that the Department's practice to count sales at prices above the mean as passing the test makes no sense because sales at above average prices cannot be reasonably be characterized as targeted dumped sales. Similarly, the Department should exclude sales whose prices are below the mean that are also not dumped.

- Petitioners state that Taihe's criticisms against the Cohen's *d* test have been rejected in several recent final results of administrative reviews.

Department's Position: As an initial matter, we note that Taihe' arguments do not rely on the language of the statute. Taihe does not argue that the Department's reliance on the Cohen's *d* test violates the statutory language. Rather, Taihe puts forth several reasons unrelated to the statutory language why it believes that the Department should modify its approach from the Preliminary Results. However, there is nothing in the statute that mandates how the Department measures whether there is a pattern of prices that differs significantly. On the contrary, the Department has reasonably exercised its discretion as conferred by Congress on this matter. As explained in the Preliminary Results and as explained below, the Department's differential pricing analysis is reasonable, and the use of Cohen's *d* test as a component in this analysis is in no way contrary to law.

The Department disagrees with Taihe's assertion that it has not fully disclosed or described the differential pricing analysis used in the Preliminary Results. The Preliminary Decision Memorandum[63] fully describes the Department's differential pricing analysis for examining the two requirements under section 777A(d)(1)(B) of the Act for Taihe. Further, the Department disagrees with Taihe that the mathematical formulas have not been disclosed or that the programming language is "woefully inadequate" that serves as the basis for the Department's dumping analysis. The computer program used to examine Taihe's sales and cost data and to calculate Taihe's weighted-average dumping margin[64] includes each and every calculation used by the Department for the Preliminary Results, including the Department's examination of whether there exists a pattern of prices that differ significantly and whether the A-A method can account for such differences. This information was disclosed by the Department to Taihe via IA ACCESS after the release of the Preliminary Results. Accordingly, Taihe's claims are not supported by the record.

The Department disagrees with Taihe that the use of a simple average of the variances of the test and comparison groups, when calculating the pooled standard deviation, creates distortive results. Taihe claims that it is a "crucial aspect of the formula for calculating the pooled standard deviation" to use a weighted-average, based on the frequency of observations, and that to do

[63] See Preliminary Decision Memorandum at 9-11.
[64] See Memorandum to the File regarding, "Fourth Administrative Review of the Antidumping Duty Order on Citric Acid and Certain Citrate Salts from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Laiwu Taihe Biochemistry Co., Ltd.," dated April 18, 2014 at Attachments II and III.

otherwise would be "fundamentally incorrect."[65] As explained above, there is no statutory directive with respect to how the Department should determine whether a pattern of prices that differ significantly exists, let alone how to calculate the pooled standard deviation of the Cohen's *d* coefficient. Furthermore, Taihe has provided no support for its argument that the Department's use of a simple average is incorrect or inappropriate. The Department's intent is to rely on a reasonable approach that affords predictability. The Department finds here that the best way to accomplish this goal is to use a simple average (i.e., giving equal weight to the test and comparison groups) when determining the pooled standard deviation. By using a simple average, the respondent's pricing practices to each group will be weighted equally, and the magnitude of the sales to one group does not skew the outcome.. The Department finds that this approach is reasonable, and that it does not conflict with the statute or fail to address the requirements of section 777A(d)(1)(B)(i) of the Act.

The Department disagrees with Taihe's claim that the Department's calculation of the Cohen's *d* coefficient with as few as two observations in each of the test and/or comparison groups introduces a "bias" into the "estimator of the true effect size" which exaggerates the "true effect size" of the differences in the U.S. sale prices. The Department's use of the Cohen's *d* test is based on the entire population of U.S. sales by Taihe, and, therefore, there are no estimates involved in the results and "statistical significance" is not a relevant consideration. Moreover, for the Department's application of the Cohen's *d* test, it is unnecessary to consider sampling size, randomness of the sample, or to include a measure of the statistical significance of its results, as this analysis includes all of the respondent's sales in the U.S. market. The Cohen's *d* test "is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group."[66] Within the Cohen's *d* test, the Cohen's *d* coefficient is calculated based on the means and variances of the test group and the comparison group. The test and comparison groups include all of the U.S. sales of comparable merchandise reported by the respondent. As such, the means and variances calculated for these two groups are the actual values for both the test and comparison groups, and are not estimates which include sampling errors. Statistical significance is used to evaluate whether the results of an analysis rises above sampling error (i.e., noise) present in the analysis and is dependent on the sampling technique and sample size. The Department's application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of the respondent's sales in the U.S. market and, therefore, these values contain no sampling error. Accordingly, sampling technique, sample size, and statistical significance are not a relevant consideration in this context.

Furthermore, the Department disagrees with Taihe that its analysis is "fundamentally flawed" in that "statistical significance" has not been included in its analysis. If Congress intended to require a particular result be obtained to ensure the "statistical significance" of price differences that mask dumping as a condition for applying an alternative comparison method, then Congress presumably would have used language more precise than "differ significantly." The Department, tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, reasonably does not agree with Taihe that the term "differ significantly" in the statute must mean "statistically significant." The statutory provision includes no such directive.

---

[65] See Taihe Case Brief at 20 and 21.
[66] See Preliminary Decision Memorandum at 10.

The analysis employed by the Department, including the use of the Cohen's *d* test, reasonably fills the statutory gap as to how to determine whether there exists a pattern of prices that "differ significantly." Further, the consideration of "statistical significance" is to determine, from a sample of a larger population, an estimate of what the actual values (e.g., the mean or variance) of the larger population may be with a "statistical significance" attached to that estimate. As discussed above, the Department's use of the Cohen's *d* test is based on the entire population of U.S. sales by Taihe, and, therefore, there are no estimates involved in the results and accordingly "statistical significance" is not a relevant consideration. The Department's application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of the respondent's sales in the U.S. market, and, therefore, these values contain no sampling error. Therefore, Taihe's argument that the statute requires the Department to include statistical significance in its analysis is meritless and the complete sales data submitted by Taihe for the period under review make its argument inapposite.

The Department disagrees with Taihe's argument that "{s}ales at above average prices cannot reasonably be characterized as targeted."[67] Contrary to Taihe's claim, the statute does not require that the Department consider only lower priced sales in the differential pricing analysis. The Department has the discretion to consider sales information on the record in its analysis and to draw reasonable inferences as to what the data show. It is reasonable for the Department to consider both lower-priced and higher-priced sales in the Cohen's *d* analysis because higher-priced sales are equally capable as lower-priced sales to create a pattern of prices that differ significantly. Further, higher-priced sales will offset lower-priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets for non-dumped sales that can mask dumping. The statute states that the Department may apply the A-to-T method if "there is a *pattern of export prices* . . . for comparable merchandise that *differ* significantly among purchasers, regions, or periods of time," and the Department "explains why *such differences* cannot be taken into account" using the A-to-A comparison method.[68] Further, the SAA states with reference to section 777A(d) of the Act, and "targeted dumping" that

> In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.[69]

The SAA further states that

> New section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods, *i.e.*, where targeted dumping may be occurring.[70]

[67] See Taihe Case Brief at 23.
[68] See section 777A(d)(1)(B) of the Act (emphasis added).
[69] See SAA at 842.
[70] See SAA at 843.

Therefore, the concept of the pattern of prices that differ significantly is clearly linked to prices that are higher than other prices that may be dumped (i.e., lower prices) as well as to lower prices.

The statute directs the Department to consider whether there exists a pattern of prices that differ significantly. The statutory language references prices that "differ" and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute does not require the Department to consider only higher-priced sales or only lower-priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. The Department has explained that higher-priced sales and lower-priced sales do not operate independently; all sales are relevant to the analysis.[71] By considering all sales, higher priced sales and lower priced sales, the Department is able to analyze an exporter's pricing practice and to identify whether there exists a pattern of prices that differ significantly. Moreover, if the Department finds that such a pattern of prices that differ significantly among purchasers, regions, or periods of time does exist, then this signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in discriminating pricing behavior, there is cause to continue with the analysis to determine whether the A-to-A method or the T-to-T method can account for such pricing behavior. Accordingly, both higher and lower priced sales are relevant to the Department's analysis of the exporter's pricing behavior when examining the requirement under section 777A(d)(1)(B)(i) of the Act.

Furthermore, the Department further disagrees that it should exclude sales that are priced below the average prices which are also not dumped. Lower or higher priced sales could be dumped or could be masking other dumped sales – this is not relevant in answering the question of whether there exists a pattern of prices that differ significantly because this analysis includes no comparisons with normal values, and section 777A(d)(1)(B)(i) of the Act contemplates no such comparisons. Section 777A(d)(1)(B)(i) of the Act specifies a "pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions or periods of time." Such a pattern is strictly between the sale prices in the U.S. market, and has no relationship with the comparable normal values for these U.S. sales. Accordingly, consideration of whether these U.S. sales are dumped is not part of fulfilling this requirement. Indeed, the lower-priced U.S. sales could be below their normal value, the high-priced U.S. sales could also be below their normal value, or none of the U.S. sales could be below their normal value. Such a determination is not part of this statutory requirement. Therefore, the Cohen's *d* test, in its application to determine whether there exists a pattern of prices that differ significantly, is not required to consider whether these sales are also "dumped" as asserted by Taihe.

Comment 1.E: Differential Pricing Analysis: Yixing

- Yixing asserts that the reason for any differences in its net U.S. prices which the Department has identified in the Cohen's *d* test are due solely to differences in the

[71] See Multilayered Wood Flooring Final Results of Antidumping Duty Administrative Review; 2011- 2012, 79 FR 26712 (May 9, 2014) ("MLWF from China") and accompanying IDM at Comment 1.C.

Indonesian rupiah/U.S. dollar exchange rate. Thus, Yixing argues that to find such small differences to be "significant" is a misuse of the Cohen's *d* test to evaluate Yixing's pricing behavior.

- Yixing suggests that the Department could use an average exchange rate for the differential pricing analysis while still using daily exchange rates for the margin calculations.
- Petitioners argue that differential pricing should be found for Yixing. Further, Petitioners argue that if the Department makes certain calculation changes to Yixing's margin program, <u>e.g.</u>, change the surrogate value for cartons, then application of the average-to-transaction methodology would result in a meaningful difference to Yixing's margin calculation. Therefore, Petitioners argue that if the Department does not apply total AFA to Yixing's margin, then the Department should use the average-to-transaction methodology.

Department's Position: For these final results, as for the <u>Preliminary Results</u>, the Department has applied the A-A method to calculate Yixing-Union's weighted-average dumping margin. Therefore, this issue is moot. In addition, the Department made no calculation changes to Yixing's margin calculation. Therefore, the A-A method still applies.

Comment 2: Surrogate Value for Packing Material

- Petitioners state that cartons should be categorized under the Harmonized Tariff Schedule ("HTS") category 4819.10, since cartons are a downstream product of paperboard.
- Petitioners note that the HTS category 4805 used in the <u>Preliminary Results</u> is inaccurate because this category is for paper and paperboard "in rolls or sheets, not further worked or processed."
- Petitioners cite to <u>Activated Carbon from China</u>[72] in stating that it is common practice to value cartons using HTS category 4819.10.
- Taihe cites to its third supplemental questionnaire response which states that Taihe used paperboard made of corrugated paper, not cartons, in the packing of subject merchandise.[73]

Department's Position: In the <u>Preliminary Results</u>, we valued Taihe's paperboard and Yixing's cartons using HTS category 4805.92.90.00. In their February 6, 2014, surrogate value comments,[74] Taihe and Yixing both selected HTS category 4805.92.90.00 ("Paper &

---

[72] <u>See</u> <u>Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012</u>, 78 FR 70533 (November 26, 2013) and accompanying Issues and Decision Memorandum ("IDM") at Comment 8.

[73] <u>See</u> Letter from Taihe to the Department regarding, "Citric Acid and Citrate Salts from the People's Republic of China: Third Supplemental Response," dated March 25, 2014 ("Taihe Third Supplemental Questionnaire Response") at 4; <u>see</u> <u>also</u> Letter from Taihe to the Department regarding, "Citric Acid and Citrate Salt from the People's Republic of China: Surrogate Values for Preliminary Results," dated February 6, 2014 ("Taihe SV Comments") at Exhibits SV-1 and SV-2.

[74] <u>See</u> Letter from Taihe to the Department regarding, "Citric Acid and Citrate Salt from the People's Republic of China: Surrogate Values for Preliminary Results," dated February 6, 2014; <u>see</u> <u>also</u> Letter from Yixing to the Department regarding, "Antidumping Duty Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China – Response of Yixing-Union Biochemical Co., Ltd. To Request Comments Regarding

Paperboard, Uncoated, In Rolls/Sheets, Weighting More Than 150 But Less Than 225 G/M2, Nesoi: Uncoated Paper&Paperboard Of Oth 150") to value their paperboard and carton packing material.

Taihe's list of materials used in the production of subject merchandise does not indicate that Taihe used cartons. In Taihe's third supplemental questionnaire response, when asked to provide a detailed description of Taihe's paperboard with respect to its physical characteristics, Taihe stated that its paperboard ". . . is made from corrugated paper which was used for packing to prevent the products from damage in the transport."[75] Therefore, we disagree with Petitioners that Taihe used cartons.

However, after a careful review of record information, we find that HTS category 4819.10 ("Cartons, Boxes And Cases Of Corrugated Paper And Paperboard Used In Offices, Shops, Or The Like") is the best available information to value Taihe's paperboard. Specifically, Taihe describes its paperboard as corrugated, and HTS category 4819.10 likewise comprises corrugated items. We find that HTS category 4819.10 is not exclusive to cartons, boxes, and cases, as the subheading also includes paperboard. In comparison, the description of HTS category 4805.92.90.00 does not contain corrugated items. It is also the Department's past practice to value corrugated paperboard using HTS category 4819.10.[76] Accordingly, for the final results, we valued Taihe's paperboard using HTS 4819.10.[77]

We made no changes with respect to Yixing's surrogate value for cartons, as Yixing did not describe its cartons as corrugated. Thus, we will continue to value Yixing's cartons using HTS category 4805.92.90.00. We note that this valuation is consistent with the Department's past practice in cases where cartons have not been specified as corrugated.[78]

Comment 3: Surrogate Value for International Freight

- Petitioners assert that the "maximum payload" of 28,880 kilograms used as the denominator in the international freight expense calculation is distortive.
- Petitioners note that information submitted by Taihe includes actual quantities for a full container load of merchandise. Petitioners assert that per-kilogram international freight expense is more accurately calculated using Taihe's reported actual container weight rather than the surrogate source used in the Preliminary Results.
- Specifically, Petitioners state that a "maximum payload" of 28,880 kilograms overstates the denominator and understates the actual per-kilogram international freight value.

Surrogate Values," dated February 6, 2014.

[75] See Taihe Third Supplemental Questionnaire Response at 4.

[76] See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011-2012, 79 FR 31298 (June 2, 2014) and accompanying IDM at Comment 11.

[77] See Memorandum to the File regarding, "Final Results of the Fourth Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum," dated October 27, 2014.

[78] See Citric Acid and Certain Citrate Salts From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 23322 (June 10, 2013) ("Preliminary Results"), and accompanying Preliminary Decision Memorandum (no change in the final results).

- Taihe argues that the Department made a reasonable inference that Descartes Carrier Rate Retrieval Database ("Descartes") shipping fees used in the Preliminary Results would be for the most heavily loaded 40-foot container.
- Taihe states that if the Department adjusts the denominator as Petitioners recommended, it must also adjust the numerator. Taihe explains that it used 20-foot containers, and that the Descartes data used in the Preliminary Results reflect shipping fees for 40-foot containers. Taihe argues that the shipping fee (i.e., denoted under the numerator), must be reduced by half to correspond to the 50 percent reduction in the size of the container being shipped (i.e., denoted under the denominator).
- Taihe states that PET Film from China,[79] which used Descartes data for 20-foot containers, supports the premise that the Department should reduce the international freight fees for 40-foot containers used in the Preliminary Results by 50 percent. Taihe notes that the base freight rate in PET Film from China is approximately half of the base freight rate for the 40-foot containers in the Descartes data in this instant review.
- Taihe notes that the maximum load for a 20-foot container in Maersk Line ("Maersk") is 28,200 kilograms; Taihe argues that this further proves that the "cargo weight of a standard 20 foot container" of 10,000 kilograms in the *Doing Business* report used in the calculation of B&H costs is impractical.

Department's Position: In the Preliminary Results, we used Descartes for international freight fees (i.e., numerator) and Maersk for container capacity (i.e., denominator) to calculate per-unit international freight expense. Both data reflect international freight fees and maximum payload container capacity for a 40-foot container. In the instant segment, Taihe submitted sales documentation for three different sales which includes bills of lading or e-mail negotiations indicating that Taihe shipped in 20-foot containers.[80] Petitioners in their case brief recommend that the Department use Taihe's actual container weight, rather than Maersk, but failed to note that Taihe ships in 20-foot containers. Subsequently in its rebuttal brief, Taihe argues that if the Department follows Petitioners' recommendation, shipping fees must be reduced by half to correspond to the 50 percent reduction in container size. As an initial matter, we note that it is the Department's preference to use international freight SV data which reflects the container size used by the respondent. However, at the Preliminary Results, we could not determine whether the Descartes data available for carriers shipping with 20-foot container, with all remaining criteria being the same as the 40-foot container (i.e., commodity, origin, destination, shipping

[79] See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR78333 (December 26, 2013) and accompanying IDM at 17-18; see also Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of the 2009-2010 Antidumping Duty Administrative Review, 76 FR 68140 (November 3, 2011) unchanged in Final; see also Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 77 FR 14493 (March 12, 2012) (collectively, "PET Film from China"). See also Letter from Petitioners to the Department regarding, "Citric Acid And Certain Citrate Salt from the People's Republic of China: Submission Of Surrogate Value Information," dated February 6, 2014 ("Petitioners SV Comments") at Exhibit 4.

[80] See Letter from Taihe to the Department regarding, "Citric Acid and Citrate Salts from the People's Republic of China: Section A Response," dated August 26, 2013 ("Taihe Section A Response") at Exhibit A-3; see also Letter from Taihe to the Department regarding, "Citric Acid and Citrate Salts from the People's Republic of China: Supplemental Response," dated December 20, 2013 ("Taihe First Supplemental Response") at Exhibits S-7 and S-8. Although Taihe also provided sales documentation for a fourth sale (i.e., Exhibit S-9 of Taihe First Supplemental Response), we note that this documentation does not indicate the type of container used.

date) are market-economy carriers. Additionally, the record does not contain international freight pricing data for 20-foot containers for subject merchandise.

We agree with Taihe that both the international freight fees and container capacity should reflect the same container size. Specifically, if we follow Petitioners' recommendation, we would calculate per-unit international freight expense by using Descartes international freight fees, which are based on a 40-foot container, and Taihe's actual container capacity, which is based on a 20-foot container. Since the Descartes' international freight fees (i.e., numerator) and Taihe's actual container capacity (i.e., denominator) in this calculation are not based on the same container size, we find this calculation distortive.

Further, we find that the record lacks sufficient information necessary to base international freight expense on Taihe's actual container capacity for a 20-ft container. We disagree with Taihe that if the Department follows Petitioners' recommendation, international freight fees must be reduced by half. Citing to the surrogate value memorandum for PET Film from China,[81] Taihe points out that the base freight fee to the same U.S. port is approximately half when comparing the 20-foot container in PET Film from China to the 40-foot container in the instant segment. We do not find Taihe's argument persuasive. We note that the fact patterns for PET Film from China and the instant segment are different. First, the products in both cases are not comparable, and the merchandise in PET Film from China is shipped from different Chinese ports. Also, we note that the POR for PET Film from China (i.e., November 1, 2011 to October 31, 2012) only overlaps the instant segment by six months, and that the shipping dates are also not indicated in the rate details. Additionally, since we do not have freight rates for 40-foot containers for PET Film from China, with all remaining criteria being the same as the 20-foot container (i.e., commodity, origin, destination, shipping date) which Taihe referenced, we cannot make an appropriate comparison and determine that the freight fees for the 20-foot container are approximately half of that for the 40-foot container. Because the products are incomparable and the departure ports are different, we find Taihe's comparison inappropriate. Therefore, we find that the record contains no support for a 50 percent reduction in the Descartes fees used in the instant segment, or any other percentage amount (e.g., 40 percent, 30 percent, etc.), should the Department base international freight expense on Taihe's actual container capacity. We note that the Department has relied on Descartes and Maersk in past cases to calculate per-unit international freight expense.[82] Accordingly, because the record contains insufficient information to base international freight expense on Taihe's actual container capacity for a 20-foot container, for the final results, we will make no changes from the Preliminary Results and will continue to use Descartes and Maersk data for a 40-foot container.

Comment 4: Surrogate Value for Brokerage and Handling

- Taihe argues that the World Bank's Doing Business: Indonesia 2013 ("DBI") report is an inappropriate source to base Taihe's brokerage and handling ("B&H") costs because the DBI report neither reflects a broad market average nor is it representative of B&H costs

[81] See Petitioners SV Comments at Exhibit 4.
[82] See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 78333 (December 26, 2013) and accompanying IDM at 17-18.

in Indonesia. Taihe asserts that the Department should use B&H costs published by Hapag-Lloyd, which are contemporaneous, country-wide, and broadly based.

- Taihe argues that, contrary to the Department's assumption, the basis for B&H costs in the Doing Business country reports is only one city, and the only city covered in Indonesia is Jakarta.
- Additionally, Taihe argues that the Department's assumption that B&H costs quoted in the Doing Business reports reflect quotes provided from hundreds of contributors is incorrect. Citing to a list of contributors for the DBI report,[83] Taihe states that it is impossible to determine which contributors supplied B&H costs, as this list reveals that the majority of contributors are law or accounting firms. None of these contributors can be identified as freight forwarders or shipping agents. Taihe notes that the list does not indicate which contributors provided information for which section of the report.
- Taihe argues that the Department ignores the policy reform purpose of the Doing Business reports, and fails to consider the limitations of the data. Taihe cites to the following passage in the DBI report: "{t}he collected data refer to businesses in the economy's largest business city (which in some economies differs from the capital and may not be representative of regulation in other parts of the economy) . . . Second, the data often focus on a specific business form – generally a limited liability company (or its legal equivalent) of a specified size – and may not be representative of the regulation on other businesses . . . Third, transactions described in a standardized case scenario refer to a specific set of issues and may not represent the full set of issues a business encounters."[84]
- Taihe asserts that the B&H costs are based on a survey submitted to potential contributors, and that neither the individual results of the surveys nor the names of contributors to the Trading Across Borders section are publicly available. Taihe refers to Garlic from China[85] in asserting that the Department has rejected data when the underlying surveys are not available.
- Citing to the preliminary decision from WBF from China and final decision from MLWF from China, Taihe states that the respective Doing Business sources were rejected for truck freight expense because competing sources were more broadly representative of country wide expenses and represented best available information.[86]
- Taihe argues that the Hapag-Lloyd rates reveal that B&H pricing is not dependent on specific kilograms or volume loaded inside a container, and that the many of the B&H costs remain the same for 20-ft and 40-ft containers.[87] Taihe explains the Hapag-Lloyd costs are set per container, percentage, or per bill of lading, not on kilograms or cubic meters inside the container.

---

[83] See Taihe SV Comments at Exhibit
SV-4.
[84] See Taihe SV Comments at Exhibit SV-3, page 113 (data notes).
[85] 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 IDM at 27.
[86] See Wooden Bedroom Furniture Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2012, 79 FR 10768 (February 26, 2014) ("WBF from China") and accompanying IDM at 23; see also MLWF from China and accompanying IDM at Comment 23.
[87] See Taihe SV Comments at Exhibit SV-8.

- Taihe refers to Since Hardware which found that no evidence exists that container costs presented by Doing Business are dependent on the kilograms inside the container.[88] Taihe notes that the Court of International Trade ultimately suggested that the Department could use the respondent's actual container weight.
- Taihe contends that should the Department continue to use the DBI report, it can use the current numerator cost of $434 and a denominator of 18 metric tons ("MT") (i.e., the average of Taihe's actual container weights for 20-ft containers).
- Taihe asserts that the Department must take into consideration the economic and commercial realities when calculating respondents' antidumping margins. Citing to Sigma,[89] Taihe explains that a manufacturer would minimize its material and freight expenses and, accordingly, a rational exporter would not pay the DBI rate in the instant segment.
- Petitioners cite to Steel Wire Garment Hangers from China in stating that the Department found that even though Doing Business is based only on the single largest industrial city in each country (in that case, Bangkok), and even though there were only five contributors to the survey for Thailand, the source should still be considered reflective of a "broad market average."[90]
- Citing to Certain Steel Threaded Rod from China, Petitioners assert that the Department has found that Doing Business is superior to Hapag-Lloyd for B&H information.[91]
- Citing to MLWF from China, Petitioners state that Taihe's claim that the survey participants appear to be mostly law and accounting firms without first-hand experience in B&H costs is speculative at best.[92]
- Petitioners note that Taihe's references to the preliminary decision from WBF from China and final decision from MLWF from China in claiming that a competing source for data was used instead of Doing Business are irrelevant because these references refer to truck freight valuation. Petitioners note that the Department valued B&H using Doing Business in both cases.
- Petitioners maintain that the Department should continue to use 10 MT for container weight because the B&H values in DBI are premised on containers bearing quantities of 10 MT.
- Petitioners state that if the Department recalculates B&H expense using the actual average container weight of 18 MT as the denominator, the Department should use the same denominator in calculating international freight expense. Moreover, Petitioners recommend that the Department base B&H expense, and international freight expense, on the actual quantity of each shipment (i.e., QTYU), rather than the average quantity proposed by Taihe.

---

[88] See Since Hardware (Guangzhou) Co. v. United States, 977 F.Supp. 2d 1347, 1361-2 (Ct. Int'l Trade 2014) ("Since Hardware").
[89] See Sigma Corporation, et. al. v. United States, 117 F.3d 1401, 1408 (Fed. Cir. 1997).
[90] See Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011-2012, 79 FR 31298 (June 2, 2014) ("Steel Wire Garment Hangers") and corresponding IDM at Comment 5.
[91] See Certain Steel Threaded Rod From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012, 78 FR 66330 (Nov. 5, 2013) ("Certain Steel Threaded Rod from China") and accompanying IDM at Comment 7.
[92] See MLWF from China and accompanying IDM at Comment 4.

Department's Position: In the Preliminary Results, the Department calculated the per-unit surrogate value for B&H by dividing the relevant B&H costs (i.e., documents preparation, customs clearance and technical control, and ports and terminal handling), reported under the Trading Across Borders section of the DBI report, by 10 MT. Based upon careful review of record information, we continue find that, as explained in greater detail below, the B&H information provided in the DBI report constitutes the best information on the record for valuing B&H costs. We note that the DBI report reflects the surrogate country selected by the Department. The information is contemporaneous with the POR. We also note that these data are of an official nature, in that it represents statistical analysis by the World Bank, an international organization. In past cases, we found international organization publications to be reliable and credible sources of information; in particular, the Doing Business country reports have been relied upon by the Department in numerous previous investigations and reviews.[93]

Taihe maintains that the DBI data do not reflect the broad market average of B&H costs in Indonesia. We have reviewed the list of DBI contributors submitted by Taihe,[94] and note that this list only includes those participants who agreed to be acknowledged. We note that the list of participants is not grouped by section (i.e., Trading Across Borders, Paying Taxes, Registering Property, etc.), and agree with Taihe that it not possible to determine from the names of entities from this incomplete list which participants contributed to the Trading Across Borders section. However, the Trading Across Borders section states that, "{i}nformation on the procedures as well as the required documents and the time and cost to complete each procedure is collected from local freight forwarders, shipping lines, customs brokers, port officials and banks."[95] Based on this statement, we have concluded that the Trading Across Borders section reflects B&H data from a sufficient number of relevant entities, and that these entities are likely to have first-hand experience with the freight forwarding business or have direct relationships with exporting customers. Moreover, Taihe argues that B&H data in DBI only covers one city, Jakarta, and therefore the data are not country-wide, as presumed by the Department. One of the assumptions identified regarding businesses in the Trading Across Borders section is that the business is "...located in the periurban area of the economy's largest business city."[96] We note that Doing Business identifies Jakarta as the largest business city for Indonesia.[97] However, an examination of the contributor list reveals that although the vast majority of contributors are located in Jakarta, a few contributors have addresses in other cities (i.e., Cirebon, Medan, Semarang, and Jawa Barat). Moreover, we find that the B&H data in the DBI report represent a broad market average since the data reflect multiple relevant entities (e.g., local freight forwarders, shipping lines, customs brokers, etc.) and, at a minimum, Jakarta, the capital and largest city in Indonesia.

---

[93] See Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value, 77 FR 64483 (October 22, 2012) and accompanying IDM at Comment 6; see also Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Administrative Review; 2011–2012, 78 FR 15696 (March 12, 2013) and accompanying IDM at 21; see also Steel Wire Garment Hangers.

[94] See Taihe SV Comments at Exhibit SV-4.

[95] See Memorandum to the File from Krisha Hill and Maisha Cryor to Robert Bolling, regarding "Preliminary Results of the Fourth Administrative Review of Citric Acid and Certain Citrate Salts from the People's Republic of China: Surrogate Value Memorandum," dated April 18, 2014 at Attachment IX.

[96] Id. at Attachment IX.

[97] See Taihe SV Comments at Exhibit SV-5.

Based on a detailed examination of the B&H pricing published by Hapag-Lloyd,[98] it is unclear whether these costs are country-wide and reflect a broad market average. For both ocean tariff rate details provided in Taihe's SV submission (i.e., 20-foot and 40-foot container sizes), we note that the origin port is indicated as "Indonesia." The rate details do not provide any further information on locations. Based on this, it is unclear whether the origin port covers one city or multiple cities. Additionally, it is unclear whether Hapag-Lloyd is the sole contributor of the pricing data, or whether there are multiple contributors. Although Taihe states that the B&H pricing is contemporaneous with the POR, the effective and publication dates for certain fees (i.e., terminal handling charge, document charge, and security manifest document fee) indicated in the rate detail for the 20-foot container[99] are prior to the POR. Similarly, the rate detail for the 40-foot container also includes fees with effective and publication dates prior to the POR. We note that the data in the DBI report are current as of June 1, 2012, thus, are contemporaneous with the POR. Moreover, the record contains insufficient information on Hapag-Lloyd as an entity. We note that in Certain Steel Threaded Rod from China, the Department relied on Doing Business rather than Hapag-Lloyd for B&H costs. For these reasons, we find the DBI report to be a superior source to Hapag-Lloyd.

Taihe recommends that we use the average of Taihe's actual weight for a 20-foot container, rather than the 10 MT amount provided in the Methodology section for Trading Across Borders on the Doing Business web-site, should we continue to rely on the DBI report. Taihe maintains that B&H pricing is not dependent on specific kilograms inside a container, and that many of the B&H costs are the same for 20-ft and 40-ft containers. Citing to Since Hardware, Taihe notes that no evidence exists that container costs presented by Doing Business are dependent on the kilograms inside the container, and that the Court of International Trade remanded the case to request that the Department use the respondent's actual container weight. Although Taihe cites to Since Hardware to argue that we should similarly change our methodology for this review, we note that this case is still in litigation and a decision on the remand is pending. Accordingly, we will continue to use 10 MT consistent with the Department's past, as well as recent, practice.[100] The Methodology section for Trading Across Borders provides certain assumptions for Trading Across Borders data, including the following: "{t}he traded product travels in a dry-cargo, 20-foot, full container load. It weighs 10 tons and is valued at $20,000." If the Department were to use an alternate weight, it would be using a weight not related to the costs reported in the DBI survey which would, in turn, result in a distortive per-unit cost. The Department continued to use 10 MT to calculate the B&H SV because this is the weight upon which participants in the DBI survey reported B&H costs. Specifically, the B&H costs used to calculate the SV were based upon the assumption that a 20-foot container contained 10 MT of product. Using 10 MT in the per-unit calculation maintains the relationship between costs and quantity from the survey (which is important because the numerator and the denominator of the calculation are dependent

[98] See Taihe SV Comments at Exhibit SV-8.
[99] See Taihe Case Brief at Exhibit 1.
[100] See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China, 79 FR 25572 (May 5, 2014) and corresponding Issues and Decision Memorandum at Comment 5.

upon one another), and makes use of data from the same source.[101] Accordingly, we made no changes from the Preliminary Results and continued to use Doing Business for the final results.

Comment 5: Whether the Department Should Deny the Corn Feed By-Product Offset Claimed by Taihe

- Petitioners assert that Taihe failed to provide necessary information to support its claimed offset for corn feed.
- Petitioners maintain that Taihe treats corn feed as a co-product in its normal cost accounting system, and separately assigns materials, labor, and energy costs to corn feed from those assigned to citric acid, calcium citrate, and sodium citrate. Petitioners argue that the costs to produce corn feed are not reflected in the factors of production ("FOP") response.
- Petitioners argue that Taihe failed to report further processing costs after the split-off point (i.e., labor and energy consumed in the drying process, and consumption of relevant packing labor and materials).
- Petitioners state that Taihe's current allocation of corn feed between the production of citric acid and calcium citrate is distortive, and that Taihe has not provided the necessary information to accurately allocate the corn feed offset between the production of these products.
- Taihe asserts that Petitioners waived such arguments raised in their case brief since they failed to provide rebuttal comments on Taihe's by-product reporting in response to Taihe's questionnaire and supplemental responses.
- Taihe argues it would be inappropriate to now deny Taihe's by-product offset since it received no deficiency letter regarding its by-product reporting from the Department.
- Taihe states that although in its normal course of business it separately assigns factors for corn feed, it has included the factors consumed in the production of corn feed in the FOP database.
- Taihe states that, in calculating consumption, its reported methodology demonstrates that the numerator reflects all FOP consumption during the POR, and the denominator reflects production quantities of all finished and semi-finished products, but not corn feed.
- Taihe explains that the total consumption amounts (e.g., corn) reported in the FOP database (i.e., the numerator) tie to raw materials inventory-out summary sheets maintained in the normal course of business. Taihe notes that this demonstrates that the FOP database does not exclude materials assigned to corn feed.
- Taihe states that further processing costs after the split-off point are captured in the FOP database. Specifically, Taihe states that all consumption of energy, labor, and packing materials is captured in the numerator, whereas the denominator reflects the total production quantity of all products except corn feed.
- Taihe explains that although corn feed is only generated in the production of citric acid, citric acid is consumed in the production of calcium citrate. Because Taihe cannot separate these products, Taihe argues that the proper methodology for the allocation of corn feed is to allocate corn feed over the production quantities of all products.

[101] See Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 54563 (September 5, 2012) and corresponding Issues and Decision Memorandum at Issue 5.

- Taihe proposes an alternate allocation methodology should the Department choose to revise Taihe's current methodology. Specifically, Taihe states that since corn feed is generated from corn consumption, the Department may use the total POR corn feed production quantity divided by the total POR corn consumption to get a ratio of quantity of corn feed generated by unit consumption of corn. The next step is to use this ratio to multiply the unit corn consumption for each control number ("CONNUM") to get the quantity of by-product offset.

Department's Position: In the Preliminary Results, we granted a by-product offset for Taihe's corn feed. As an initial matter, we first note that the record contains insufficient information to conduct a joint product cost analysis to determine whether or not corn feed should be considered a co-product or by-product.[102] For example, we did not give Taihe an opportunity calculate the net realizable value of both the main products and corn feed at the split-off point of the production process. Accordingly, in light of this fact, we have reconsidered Taihe's corn feed as a by-product and find that Taihe met its burden of demonstrating that it is entitled to an offset. However, we find Taihe's current allocation for corn feed offset distortive and thus have revised the calculation methodology for the final results.

We note that the Department's practice is to grant respondents an offset to the reported FOPs for by-products generated during the production of the merchandise under consideration if evidence is provided that such by-product has commercial value. The Department explained its practice regarding by-product offsets as follows: ". . . the by-product offset is limited to the total production quantity of the by-product . . . produced during the POR, so long as it is shown that the by-product has commercial value."[103] The respondent requesting the offset bears the responsibility for substantiating the quantity of the by-product offset produced and demonstrating that the by-product has commercial value. In the instant segment, Taihe submitted a document entitled "corn feed dispose situation record," an internal accounting of corn feed production, for October 2012 demonstrating that corn feed was generated during the POR.[104] We note that the total amount indicated in the "corn feed dispose situation record" for October 2012 ties to the Excel chart identifying, by month, the quantity of corn feed produced.[105] We further note that the monthly corn feed production quantities in this Excel chart are the basis for Taihe's by-product offset calculation reported in the FOP database. Additionally, Taihe

[102] The Department looks to several factors in order to determine which joint products are to be considered co-products and which are to be considered by-products.[102] Among these factors are the following: 1) how the company records and allocates costs in the ordinary course of business, in accordance with its home country GAAP; 2) the significance of each product relative to the other joint products; 3) whether the product is an unavoidable consequence of producing another product; 4) whether management intentionally controls production of the product; and 5) whether the product requires significant further processing after the split-off point. No single factor is dispositive in our determination. Rather, we consider each factor in light of all of the facts and circumstances surrounding the case. See Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Africa, 67 FR 35485 (May 20, 2002) ("Structural Steel Beams from South Africa")

[103] See Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 70706 (November 15, 2011), and accompanying IDM at Comment 18.

[104] See Taihe First Supplemental Response at Exhibit S-25.

[105] See Letter from Taihe to the Department regarding, "Citric Acid and Citrate Salts from the People's Republic of China: Section C and D Response," dated September 17, 2013 ("Taihe Section D Response") at Exhibit D-5.

demonstrated that its corn feed has commercial value because it submitted sales documentation (i.e., invoice and payment receipt) establishing that corn feed was sold.[106]

We disagree with Petitioners that costs to produce corn feed are not reflected in the FOP response, or that Taihe has failed to report relevant usage factors after the split-off point. In the first supplemental questionnaire response, Taihe stated that its raw material inventory-out summary sheets are the basis for the reported consumption amounts in the FOP database.[107] We tied the raw material inventory-out summary sheet for February 2013[108] for various inputs to Taihe's monthly input consumption spreadsheet,[109] and noted that the totals in this spreadsheet tie to total consumption amounts used in the FOP ratio calculation.[110] Additionally, Taihe stated that it used total POR consumption for packing consumption, energy, and labor when calculating the per-unit consumption amounts reported in the FOP database. We do not have information on the record to suggest that Taihe did not report total consumption, including consumption for corn feed, for factors of production.

Taihe calculated its per-unit production of corn feed by dividing total POR production of corn feed by the total POR production quantity of all products (i.e., citric acid anhydrous, citric acid monohydrate, calcium citrate, and sodium citrate).[111] As a result, we note that this per-unit amount is the same for each CONNUM. When the Department requested Taihe to revise its allocation methodology based on a CONNUM-specific basis, Taihe responded, "{i}n the normal course of business, the company does not trace the production of corn feeds specific to certain products. Therefore, the company has to allocate the consumption of corn feeds to the different CONNUMs on the basis of production quantity of those CONNUMs. Since the production of corn feeds is affected by the production quantities of the finished products, Laiwu Taihe believes its current methodology is most accurate."[112] It is the Department's preference to calculate the by-product offset based on the production quantity of finished products. Specifically, our preference is to first allocate by-product generated to each finished product produced (e.g., calcium citrate) based on equivalent weight basis, and then divide this by-product allocation for each product by the finished goods product quantity of the respective product (e.g., calcium citrate). Taihe's reporting methodology for its by-product offset at the Preliminary Results did not take into account the equivalent weight of each product produced. However, Taihe's recommended methodology provided in its case brief takes into account the equivalent weight of the products produced. Specifically, we note that the corn FOP used in Taihe's recommended calculation is based on the POR converted quantity of citric acid monohydrate, and thus reflects the equivalent weight of products. Therefore, for the final results, we have used Taihe's recommended methodology to calculate its corn feed offset.

Comment 6: Whether the Department Should Apply Adverse Facts Available to Yixing

---

106 See Taihe Section D Response at Exhibit D-6.
107 See Taihe's First Supplemental Response at 14 and Ex. S-16.
108 Id. at Exhibit S-16,
109 Id. at Exhibit S-17, Table 1.2.
110 Id. at Exhibit S-17, Table 1.1.
111 See Taihe's First Supplemental Response at 20 and Exhibit S-24; see also Letter from Taihe to the Department, "Citric Acid and Citrate Salts from the People's Republic of China: Second Supplemental Response," dated March 4, 2014 ("Taihe Second Supplemental Response") at 12.
112 See Taihe Second Supplemental Response at 12-13.

- Petitioners argue that the Department should base Yixing's margin on total adverse facts available ("AFA") because Yixing intentionally fabricated inspection reports to support a fraudulent claim that it sold its by-products rather than discarding them as waste.
- Petitioners note that Yixing explained that any errors in its inspection reports were due to unintentional human error. However, Petitioners argue that given the nature and the extent of the errors, Yixing's claim of unintentional human error strains credulity.
- Moreover, Petitioners argue that record data contradicts several instances that Yixing credits to human error. For example, Petitioners note that Yixing ascribes certain errors in its inspection reports to data entry errors made by specific employees. However, Petitioners assert that a number of the errors were made during months that the employees were not working.
- Petitioners allege that Yixing made affirmative steps to cover up the inconsistencies in its inspection reports.
- Petitioners argue that it is improbable that two different employees would have made the same type of data entry error. Petitioners also allege that these errors could not be inadvertent because steps were made to cover up its fraudulent data submissions. Petitioners argue that this and other indicia of fraud counter Yixing's claims of unintentional human error.
- Petitioners argue that total AFA should be applied because Yixing knowingly submitted false data, withheld information that had been requested, significantly impeded the review and provided information that cannot be verified. In addition, Petitioners allege that Yixing failed to cooperate by not acting to the best of its ability to comply with a request for information. Citing Nippon Steel, Petitioners note that knowingly providing inaccurate data satisfies the requirements for the application of AFA.[113]
- Petitioners allege that these errors render Yixing's questionnaire response unreliable and unusable in its entirety. Petitioners contend that the Court of International Trade (the "CIT") has upheld Departmental decisions to reject entire responses when information in the responses is shown to have been fabricated.[114]
- Petitioners contend that it would be an abuse of discretion for the Department to deny the by-product offset rather than apply total AFA. Citing Tianjin Magnesium, Petitioners allege that simply denying the offset, rather than applying total AFA, would encourage Yixing to commit fraud because Yixing would be in no worse position than had it not committed fraud.[115]
- Petitioners argue that even if the Department determines that Yixing did not commit intentional fraud, the application of total AFA is still warranted because Yixing's inaccurate data makes its accounting system unreliable. Specifically, Petitioners assert that Yixing stated that the information in its accounting records comes from the production department. Therefore, erroneous data from the production department, i.e., inaccurate inspection reports, renders unreliable the accounting records used to prepare the responses.

[113] Nippon Steel Corp. v. United States, 337 F.3d 1373 (Fed. Cir. 2003) ("Nippon Steel").
[114] Jiangsu Changbao Steel Tube Co. v. United States, 884 F. Supp. 2d 1295, 1306 (Ct. Int'l Trade 2012).
[115] Tianjin Magnesium Int'l Co. v. United States, 844 F. Supp. 2d 1342, 1346-47 (Ct. Int'l Trade 2012) ("Tianjin Magnesium").

- Yixing argues that it is nonsensical for it to have fabricated data in its inspection reports because the inspection reports have no direct impact on the dumping margin. Yixing states that the inspection reports provide information related to certain characteristics of the by-products, e.g., moisture content, protein content.
- Yixing asserts that while it does not deny that there are inaccuracies in the inspection reports, it is important to note that Yixing cooperated fully with the Department's requests for information and provided data even though the data included inaccuracies. Therefore, Yixing contends that Petitioners request for total AFA is groundless.
- Yixing contends that as long as it properly reported the per-unit amount of each by-product generated and demonstrated that the by-product was sold, the Department's practice is to accept the reported by-product offset regardless of the moisture or protein content in any given sample.
- Yixing argues that Petitioners' reliance upon Tianjin Magnesium is misplaced. In Tianjin Magnesium, Yixing notes that the respondent manufactured information that falsely indicated that sales of by-products had occurred. In contrast, Yixing asserts that the inaccuracies in its inspection reports have no bearing on the Department's requirements for establishing the basis for a by-product offset.
- In addition, Yixing argues that Petitioners' reliance upon Nippon Steel is also misplaced because Nippon Steel concerned weight conversions and because that respondent failed to promptly produce the requested information. In contrast, Yixing argues that it complied with all requests for information in a timely manner.
- Yixing disagrees with Petitioners that inaccuracies in its inspection reports render its accounting system unreliable. Yixing states that while the inspection reports are part of its normal production records, the information from its production records does not all flow into its accounting records. Yixing notes that there is no place in its accounting records for certain information maintained in production records, e.g., moisture content.
- Yixing argues Petitioners allegation that it discarded its by-products as waste, rather than selling them, is contradicted by the sales documentation that it submitted for sales of its by-products. Yixing asserts that the sales documentation is evidence of real commercial transactions.

Department Position: Certain conditions must be met for the Department to apply facts available to a respondent's margin calculation. Specifically, those conditions are detailed in section 776(a) of the Act which provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Pursuant to section 776(b) of the Act, the Department may apply an adverse inference if it finds that an interested party has failed to cooperate by not acting to the best of its ability. In this instance, the Department finds that the errors surrounding Yixing's by-product record keeping do not satisfy the requirements for the application of total AFA.

In Exhibits X-5 through X-8 of Yixing's October 28, 2013, original section D questionnaire response ("section D response"), Yixing provided inspection reports detailing the moisture and protein percentages of its by-products.[116] Petitioners noted a number of inconsistencies in these inspection reports and the Department subsequently issued several supplemental questionnaires attempting to clarify these inconsistencies.[117] In response to the Department's supplemental questionnaires, Yixing noted that certain information related to its by-product record keeping was not accurate and stated that while it thought the errors were due to unintentional human error during data entry, it was not entirely sure how the errors occurred.[118]

Although Yixing acknowledged that there were errors in its submitted inspection reports, we do not find that these errors call for the application of total AFA. While Petitioners claim that Yixing knowingly and intentionally fabricated and submitted false information, there is no record evidence to demonstrate that such a deliberate action occurred, as opposed to Yixing's explanation of unintentional human error. Moreover, while there are errors throughout the inspection reports, there is no record evidence that these errors significantly impacted the remainder of Yixing's questionnaire response in a way that would render the remaining information unreliable or unusable. In addition, Yixing provided timely responses to all requests for information from the Department in the form and manner requested. While the inconsistencies in the inspection report most certainly impacted the nature of Yixing's reported by-products and claimed off-set, there is no record evidence to demonstrate that any other portion of Yixing's questionnaire response was significantly impaired. Thus, we find that Yixing did not fail to cooperate by not acting to the best of its ability.

While Petitioners cite Tianjin Magnesium and Nippon Steel as precedent for applying total AFA in this case, we note that those cases contain different fact patterns that are not present in this case. Specifically, in Tianjin Magnesium, the respondent demonstrated persistent and fraudulent conduct by providing the same information that had been deemed fraudulent by the Department in a prior review. Petitioners have not provided any record evidence that Yixing's inspection reports contained inaccuracies in prior reviews. In Nippon Steel, the respondent failed to provide information to the Department despite repeated requests. In this instance, Yixing provided the requested information to the Department in a timely manner and explained that while it believed some inconsistencies were due to human error, it was not entirely sure how the errors occurred.

We also disagree with Petitioners that failing to apply AFA will leave Yixing no worse off than had it not submitted the erroneous inspection reports. Specifically, Petitioners argument presumes that Yixing knowingly and intentionally submitted false information in its inspection reports. However, as we stated previously, there is no record evidence to support such a claim.

Therefore, given that there is no evidence that Yixing failed to act to the best of its ability and given the limited nature of the errors and the absence of any concrete evidence that the aforementioned errors were willful and intentional, we did not apply total AFA to Yixing's margin calculation for the final results.

---

[116] See Exhibits X-5 through X-8 of Yixing's October 28, 2013, section D questionnaire.
[117] See Preliminary Results and accompanying Preliminary Decision Memorandum.
[118] Id.

Comment 7: Whether to Grant Yixing a By-Product Offset

- Citing Certain New Pneumatic Off-the-Road Tires from the People's Republic of China, Yixing contends that the Department will allow an offset to production costs for a by-product generated in the manufacturing process that is sold for revenue.[119] Yixing also acknowledges that a respondent must accurately report the quantity of by-product sold.
- Yixing argues that record evidence demonstrates that it sold its four by-products for revenue and that the sales quantities were accurate. Yixing contends that this record evidence refutes Petitioners allegations that Yixing discarded its by-products as waste.
- Moreover, Yixing argues that the Department had no basis to deny its four reported by-product offsets because the conditions for allowing the by-product offsets had been met, and the Department failed to find any nexus between errors in the inspection reports and the by-product quantities used in the margin calculation.
- Yixing contends that the mother liquor and mycelium feed by-product offsets should not be denied because these data have not been alleged to contain errors.
- Yixing disputes Petitioners' claims that it intentionally fabricated data in the inspection reports and contends that it would not do so because it would not risk an AFA margin to get a small beneficial adjustment for two minor by-products.
- Yixing argues that the Department demonstrated neither a nexus between the inspection reports and its by-product calculation nor demonstrated how erroneous inspection reports compromise either the by-product sales documentation or the by-product quantities on the record.
- Yixing argues that the Department should have provided Yixing with the opportunity to address concerns regarding its by-product offsets before denying them.
- Petitioners disagree with Yixing. Petitioners state that they have demonstrated that at least some of Yixing's by-product inspection reports were deliberately fabricated. Citing, Jiangsu Changbao Steel Tube Co. v. United States,[120] Petitioners argue that where it has been shown that one aspect of a questionnaire has been fabricated, it is reasonable to infer that the entire questionnaire response is unreliable.
- Petitioners reiterate that, if Yixing does not sell its by-products, then it had every reason to fabricate both the inspection reports and the invoices showing by-product sales. Petitioners state that it is not incumbent upon them to demonstrate that all of the documents have been falsified. Because the record shows that the inspection data were falsified, Petitioners maintain that it is reasonable to conclude that other aspects of the response, including the sales invoices, were falsified.
- Petitioners state that there is, in fact, a nexus between the inspection reports and Yixing's by-product reporting because Yixing acknowledged that the inspection reports are part of the company's normal production books and records and because the inspection reports may be used to determine the quantity of Yixing's by-product sales. Specifically, Petitioners note that in order to make the by-product quantity consistent with the surrogate value, a conversion may be needed using information pertaining to moisture content in the inspection reports.

---

[119] See Certain Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 34.
[120] See Jiangsu Changbao Steel Tube Co., v. United States, 884 F. Supp. 2d 1295 (Ct. Int'l Trade 2012).

- Petitioners also assert that the Department did not fail to provide Yixing with an opportunity to address its by-product shortcomings before denying the offset. Petitioners contend that the Department issued several deficiency questionnaires to Yixing addressing the inspection reports but Yixing was unable to remedy or explain the deficiencies.
- Petitioners argue that the Department should not allow the offset for mycelium or mother liquor because Yixing's by-product record keeping, in general, has proven to be inaccurate.
- However, if a byproduct is allowed for mycelium, Petitioners argue that the Department should make an adjustment to Yixing's factors of production quantities for this by-product.

Department Position: We disagree with Yixing and will continue to deny it a by-product offset for the final results. First, in making an adjustment to normal value, 19 CFR 351.401(b) states that the interested party in possession of the relevant information has the burden of establishing the amount and nature of the adjustment. In this instance, even though Yixing submitted sales documents purporting to show sales of its by-products, it also acknowledged that many of the production records, i.e., inventory reports, related to its by-products contained inexplicable errors. While Yixing argues that these errors are inconsequential because they are not germane to the margin calculation, we disagree. As noted by Petitioners, had the by-product offset been granted, the moisture content in the inspection reports may have been used to adjust the by-product surrogate values, thereby impacting the margin calculation. Therefore, given the inexplicable errors in Yixing's inspection reports, and the potential distortive impact on the margin calculations, we find that Yixing has not met its burden of establishing the amount and nature of the by-product offset adjustment.

Moreover, we disagree with Yixing that we did not provide it with an opportunity to address the inaccuracies related to its by-products before denying the by-product offset. We issued Yixing several supplemental questionnaires relating to its inaccurate inspection reports because that was the aspect of its by-product calculation that concerned the Department. As noted above, in response, Yixing stated that while it thought the errors could be attributed to human error, it was not certain. Therefore, we find that Yixing was given an opportunity to respond to the Department's concerns regarding the amount and nature of its by-product offset adjustment.

In addition, we disagree with Yixing that the by-product offset should be granted for mother liquor and mycelium. Even though the errors noted by Petitioners did not pertain to these particular by-products, Yixing admitted that it could not account for how numerous errors in its inspection reports occurred. Therefore, as in the Preliminary Results, we continue to be concerned about the accuracy and veracity of the by-product data as a whole and denied the offset for all four by-products for the final results.[121]

[121] See Preliminary Results, 79 FR 23322 (April 28, 2014) and accompanying Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Citric Acid and Certain Citrate Salts from the People's Republic of China.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of this administrative review and the final weighted-average dumping margins in the Federal Register.

✓ ______________________ Agree

______________________ Disagree

____
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

27 OCTOBER 2014
____
Date