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June 12, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2014 – 2015 Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People's Republic of China

I. SUMMARY

The Department of Commerce (Department) analyzed the comments from interested parties in the 2014 – 2015 administrative review of the antidumping duty order on seamless refined copper pipe and tube from the People's Republic of China (PRC) for the period of review (POR) November 1, 2014, through October 31, 2015. As a result of our analysis of the comments received, we made changes to our margin calculations for the Hailiang Single Entity[1] in these final results. Interested parties did not comment on our margin calculation for the GD Single Entity,[2] and we continue to find that the GD Single Entity did not sell subject merchandise in the United States at less than normal value during the POR.[3] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this review for which we received comments from interested parties:

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[1] The Hailiang Single Entity includes the following companies: (1) Hong Kong Hailiang Metal Trading Limited/ (2) Zhejiang Hailiang Co., Ltd./ (3) Shanghai Hailiang Copper Co., Ltd./ and (4) Hailiang (Anhui) Copper Co., Ltd., (collectively, Hailiang Single Entity). *See Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Results of Administrative Review; 2014-2015*, 81 FR 90322 (December 14, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] The GD Single Entity includes the following companies: (1) Golden Dragon Precise Copper Tube Group, Inc./ (2) Golden Dragon Holding (Hong Kong) International Co., Ltd./ (3) Hong Kong GD Trading Co., Ltd./ (4) Shanghai Longyang Precise Copper Compound Copper Tube Co., Ltd./ (5) Jiangsu Canghuan Copper Industry Co., Ltd./ (6) Guangdong Longfeng Precise Copper Tube Co., Ltd./ (7) Wuxi Jinlong Chuancun Precise Copper Tube Co., Ltd./ (8) Longkou Longpeng Precise Copper Tube Co., Ltd./ (9) Xinxiang Longxiang Precise Copper Tube Co., Ltd./ (10) Coaxian Ailun Metal Processing Co., Ltd./ and (11) Chonqing Longyu Precise Copper Tube Co., Ltd. *See Preliminary Results*, and accompanying Preliminary Decision Memorandum.

[3] *Id*.

Comment 1: International Freight Surrogate Value
Comment 2: Irrecoverable Value-Added Tax Adjustment
Comment 3: Truck Freight Surrogate Value
Comment 4: Preliminary Margin Calculation Clerical Errors
- A. Treatment of Packing Labor
- B. Calculation of By-Product
- C. Copper Cathode Calculation
- D. Date of Sale Variable

II. BACKGROUND

On December 14, 2016, the Department published its *Preliminary Results* in the *Federal Register*, and invited interested parties to comment on those results.[4] On January 13, 2017, Hailiang[5] timely filed a case brief and request for an administrative hearing.[6] On January 18, 2017, the petitioners[7] timely filed a rebuttal brief.[8] On May 19, 2017, Hailiang withdrew its request for an administrative hearing.[9] On May 24, 2017, Department officials met with counsel for Hailiang.[10] On March 20, 2017, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the period for issuing the final results of this review by 60 days.[11] The revised deadline for these final results of review is June 12, 2017.

III. SCOPE OF THE ORDER

For the purpose of this order, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter (OD), regardless of

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[4] *See Preliminary Results*, 81 FR at 95113. On December 27, 2016, a duplicate version of the *Preliminary Results* was published in the *Federal Register* as the result of a clerical error. *See Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Results of Administrative Review; 2014-2015*, 81 FR 95110 (December 27, 2016). These two publications are identical in content.
[5] The respondent's submissions in this administrative review are filed on behalf of Hong Kong Hailiang Metal Trading Limited/ Zhejiang Hailiang Co., Ltd./ and Shanghai Hailiang Copper Co., Ltd. (collectively, Hailiang).
[6] *See* Hailiang's Case Brief, "Hailiang's Administrative Case Brief and Request for Administrative Hearing Administrative Review of the Antidumping Order on Seamless Refined Copper Pipe & Tube from the People's Republic of China," dated January 13, 2017 (Hailiang Case Brief).
[7] The petitioners in this administrative review are the Ad Hoc Coalition for Domestically Produced Seamless Refined Copper Pipe and Tube (Copper Tube Coalition) and its individual members, Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc.
[8] *See* Petitioners' Rebuttal Brief, "Seamless Refined Copper Pipe and Tube from China: Petitioner's Rebuttal Brief," dated January 18, 2017 (Petitioners' Rebuttal Brief).
[9] *See* Letter to Hon. Wilbur L. Ross, Secretary of Commerce, from Hailiang, concerning, "Hailiang's Request for Ex-Parte Meeting and Withdrawal of Hearing Request in the Administrative Review of the Antidumping Order on Seamless Refined Copper Pipe & Tube from the People's Republic of China (A-570-964)," dated May 19, 2017.
[10] *See* Memorandum, "2014 – 2015 Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People's Republic of China: Meeting with Counsel for Hong Kong Hailiang Metal Trading Limited/ Zhejiang Hailiang Co., Ltd./ and Shanghai Hailiang Copper Co., Ltd.," dated May 25, 2017.
[11] *See* Letter to Hon. Wilbur L. Ross, Secretary of Commerce, from Hailiang, concerning, "2014-2015 Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated March 20, 2017.

wall thickness, bore (*e.g.*, smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.*, hot finished, cold-drawn, annealed), outer surface (*e.g.*, plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.*, plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.*, plastic, paint), insulation, attachments (*e.g.*, plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.*, straight, coiled, bent, wound on spools).

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

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

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

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

IV. DISCUSSION OF THE ISSUES

Comment 1: International Freight Surrogate Value

<u>Hailiang's Comments</u>

- The single Descartes data point used to value international freight is anomalous and less representative of a broad market average as compared to the alternative set of Descartes data available on the record.
- The Descartes data used in the *Preliminary Results* are unreliable because it is unclear how the goods were transported from the U.S. port to the final destination. It is reasonable to assume that goods were shipped by road from Long Beach, California to Detroit, Michigan. Thus, the Descartes data used by the Department improperly include inland freight costs.
- Although the Department stated that it valued international freight using the most similar route to the one used by Hailiang, this rationale is unpersuasive and is not based on the best available information on the record.[12]
    - o Record evidence indicates that, although Hailiang's port of loading and place of discharge remained constant, the port of discharge varied from consignment to consignment.[13]
    - o Hailiang reported the cost of ocean freight to the Department in its questionnaire response.[14] Therefore, a surrogate value source that unambiguously exclusively provides the cost of ocean freight is the best available information.[15]
- The Department should use Descartes data for six shipments from the PRC to the U.S. port of Long Beach, California because: (1) they provide exclusive ocean freight costs from China to the U.S. port; (2) they are more specific to the data source for valuing ocean freight because it is undistorted by inland freight costs;[16] and (3) they better satisfy the Department's broad market average surrogate value selection criterion.

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[12] *See* Hailiang Case Brief at 9 (citing Memorandum, "Analysis Memorandum for Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., and Hailiang (Anhui) Copper Co., Ltd.," dated December 5, 2016 (Hailiang Preliminary Analysis Memorandum)).
[13] *Id.* (citing Hailiang's April 19, 2016 Section C and D Questionnaire Response at Exhibit 6C (Hailiang April 19, 2016 CDQR). The Department notes that Hailiang's April 19, 2016 CDQR does not contain an Exhibit 6C, however, Exhibit C-2-C contains bills of lading showing, *inter alia*, the port of loading, port of discharge, and place of delivery.
[14] *Id.* (citing Hailiang's April 19, 2016 CDQR at 27 ("Hailiang has allocated ocean freight over the individual pieces shipped for each invoice line item and reported international freight in {U.S. dollars per-pieces} in this field."))
[15] *Id.* (citing *Olympia Indus. v. United States*, 22 C.I.T. 387, 390 (CIT 1998) (*Olympia*) ("Commerce has an obligation to review all data and then determine what constitutes best information available, or, alternatively, to explain why a particular data set is not methodologically reliable") and *Hebei Metals & Materials Imp. & Exp. Corp. v. United States*, 28 C.I.T. 1185, 1191 (CIT 2004) (*Hebei Metals*) ("Surrogate value must bear a rational and reasonable relationship to the factor of production it represents.")).
[16] *Id.*, at 11 for additional proprietary information regarding Hailiang's assertion that the alternative Descartes data are more specific to the international freight used by Hailiang.

The Petitioners' Comments

- The Department should continue to use the Descartes data used in the *Preliminary Results* because they are specific to the international freight used by Hailiang.
- Descartes data are maritime rates published by maritime common carriers in accordance with U.S. regulations, and there is no problem with the freight rates reflecting multi-modal rates (*i.e.*, {both ocean and ground transportation}).[17]

Department's Position: The Department agrees with the petitioners and has continued to value international freight using Descartes data for a shipment of goods from Ningbo, PRC to Detroit, Michigan for these final results of review. Section 773(c)(1)(B) of the Act instructs the Department to value the factors of production based upon the best available information from a market economy country, or countries, that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the surrogate value data are contemporaneous, publicly available, tax-and duty-exclusive, representative of a broad market average, and specific to the input.[18] Further, the Department's practice is to consider factors of production on a case-by-case basis wherein the Department makes product and case-specific decisions as to what constitutes the "best available information" to value each input.[19] In the instant review, the Department has considered these surrogate value criteria to determine which of the following potential surrogate value sources is the best available information for valuing international freight: (1) Descartes shipment data for six shipments from Qingdao, PRC to Long Beach, California;[20] or (2) Descartes data for one shipment from Ningbo, PRC to Detroit, Michigan.[21] For the reasons explained below, the Department finds that Descartes data for one shipment from Ningbo, PRC to Detroit, Michigan are the best available information within the meaning of section 773(c)(1)(B) of the Act for valuing Hailiang's international freight.

As an initial matter, no party argues that the two Descartes data sources on the record of the instant review can be distinguished from one another on the basis of contemporaneity, public availability, or tax-and duty-exclusivity. The Department finds that both Descartes data sources are contemporaneous with the instant POR, and publicly available.[22] Furthermore, there is no

[17] *See* Petitioners' Rebuttal Brief at 2 (citing 46 CFR 520.3 ("all common carriers and conferences shall keep open for public inspection, in automated tariff systems, tariffs showing all rates, charges, classifications, rules, and practices between all points or ports on their own routes and on any through transportation route that has been established.")).
[18] *See Certain Polyester Staple Fiber from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4542 (January 28, 2015) (*PSF from the PRC Final*), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.
[19] *See PSF from the PRC Final*, and IDM at Comment 4.
[20] *See* Letter to Hon. Penny Pritzker, Secretary of Commerce, from Hailiang, concerning, "Hailiang's Second Surrogate Value Comments: Administrative Review of the Antidumping Order on Seamless Refined Copper Pipe & Tube from the People's Republic of China (A-570-964) (Hailiang's Second Surrogate Value Comments)," dated November 7, 2016, at Exhibit 5.
[21] *See* Letter to Hon. Penny Pritzker, Secretary of Commerce, from Hailiang, concerning, "Hailiang's First Surrogate Value Comments: Administrative Review of the Antidumping Order on Seamless Refined Copper Pipe & Tube from the People's Republic of China (A-570-964), dated July 19, 2016 (Hailiang's First Surrogate Value Comments), at Exhibit 7.
[22] *Id*.; *see also* Hailiang's Second Surrogate Value Comments at Exhibit 5.

evidence to suggest that these sources can be distinguished from one another on the basis of tax- and duty-exclusivity. Accordingly, to determine which data source is the best available information, the Department has considered whether the two Descartes data sources are: (1) specific to the international freight input used by Hailiang, and (2) representative of a broad market average.

Record evidence does not support Hailiang's claim that the inland-freight-exclusive Descartes data for six shipments from Qingdao, PRC to Long Beach, California are more specific to the freight service used by Hailiang. In its questionnaire response, Hailiang reported U.S. dollar denominated international freight expenses to the Department.[23] Hailiang purchased these international freight services from non-market economy (NME) suppliers.[24] In the *Preliminary Results*, the Department valued Hailiang's international freight using a surrogate value, rather than Hailiang's reported international freight expense, and no interested party argues that the Department should use Hailiang's reported international freight expenses for these final results of review. Rather, Hailiang argues that the international freight information reported to the Department in Hailiang's questionnaire response should inform the Department's surrogate value selection.[25] Hailiang contends that international freight information reported to the Department indicates that Hailiang reported an international freight expense that excludes U.S. inland freight expenses.[26] Accordingly, Hailiang argues that "a surrogate value unambiguously provides the cost exclusively of ocean freight is the best available information as per the Department's longstanding practice."[27] Hailiang relies on the following statement to support its assertion that it reported a U.S.-inland-freight-exclusive international freight expense to the Department:

> Hailiang has allocated ocean freight over individual pieces shipped for each invoice line item and reported international freight in {U.S. dollars per piece} in {the international freight} field.[28]

Hailiang appears to argue that this statement demonstrates that the movement expenses incurred by Hailiang in shipping subject merchandise from the PRC to the United States during the POR were limited to ocean freight, and did not include inland freight expenses. However, contrary to Hailing's claims, record evidence indicates that Hailiang's reported international freight expenses did, in fact, include both ocean freight and U.S. inland freight. Specifically, Hailiang reported the following:

[23] *See* Hailiang April 19, 2016 CDQR at 27-28.
[24] *See* Hailiang Preliminary Analysis Memorandum at 4-5; *see also* Letter to Hon. Penny Pritzker, Secretary of Commerce, from Hailiang, concerning, "Supplemental Sections A and C Response: Fifth Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe & Tube from the People's Republic of China (A-570-964)," dated July 19, 2016, at 9.
[25] *See* Hailiang Case Brief at 9.
[26] *Id*.
[27] *Id.* (citing *Olympia*, 22 C.I.T. at 390 ("Commerce has an obligation to review all data and then determine what constitutes best information available, or, alternatively, to explain why a particular data set is not methodologically reliable"), and *Hebei Metals*, 28 C.I.T at 1191 ("Surrogate value must bear a rational and reasonable relationship to the factor of production it represents.")).
[28] *See* Hailiang Case Brief at 9, f.n. 13 (citing Hailiang April 19, 2016 CDQR at Exhibit 6C).

> {o}n…sales that were shipped using full container loads, delivery was made directly to the customer's warehouse and all U.S. inland freight to the U.S. customer was subsumed in the unitary international freight charge reported as ocean freight expenses in {the U.S. sales database field for international freight}.[29]

Thus, Hailiang's own statements on the record of the instant review indicate that it incurred a "unitary international freight charge" that included both ocean freight and U.S. inland freight.[30] The Department also considered additional proprietary record evidence, which may not be publicly disclosed, that further contradicts Hailiang's claim that its international freight expenses were limited to ocean freight, and did not include U.S. inland freight expenses.[31] Accordingly, the Department finds that Hailiang's claim that it reported a U.S. inland freight expense is not supported by record evidence. Moreover, record evidence indicating that Hailiang's international freight expense reflects a mixture of ocean freight and U.S. inland freight supports the application of the surrogate value used in the *Preliminary Results*, which reflects both ocean freight and U.S. inland freight expenses, because this surrogate value is more specific to the international freight service used by Hailiang.

The Department also disagrees with additional claims by Hailiang in support of its argument that the Descartes data for six shipments from Qingdao, PRC to Long Beach, California represent the best available information for valuing international freight. Specifically, the Department disagrees with Hailiang's argument that record evidence indicating that the port of discharge varied for shipments of subject merchandise sold to U.S. customers indicates that the Descartes data used in the *Preliminary Results* are not specific to the international freight used by Hailiang. Hailiang's argument and the Department's analysis of this argument rely on proprietary information, which may not be publicly disclosed. *See* Hailiang's Final Analysis Memorandum for the Department's discussion of Hailiang's claims. Additionally, the Department finds that Hailiang offers no evidentiary support for its claim that the Descartes data used in the *Preliminary Results* are anomalous.

While the Department agrees with Hailiang that the Descartes data for six shipments better satisfy the Department's criterion that surrogate values reflect a broad market average, the Department finds that these data do not reflect the full cost of international freight used by Hailiang to ship subject merchandise during the POR. The Descartes data that Hailiang urges the Department to use are limited to only ocean freight costs and do not reflect the cost of moving goods from the U.S. port of discharge to the U.S. inland port.[32] As noted above, Hailiang's international freight services included both ocean freight and U.S. inland freight. Moreover, the record of the instant review lacks information that would permit the Department to value separately the ocean freight and U.S. inland freight costs incurred by Hailiang. Therefore, using the Descartes data for six shipments from Qingdao, PRC to Long Beach, California, as Hailiang suggests, would fail to capture the full international freight cost incurred by Hailiang. Thus, the

[29] *See* Hailiang April 19, 2016 CDQR at 28. Proprietary information has been redacted from this quotation.
[30] *Id*.
[31] *See* Memorandum, "2014-2015 Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Analysis Memorandum for the Hailiang Single Entity," dated concurrently with this memorandum (Hailiang Final Analysis Memorandum).
[32] *See* Hailiang's Second Surrogate Value Comments at Exhibit 5

Department finds that these data are not the best available information within the meaning of section 773(c)(1)(B) of the Act.

Based on its examination of record evidence, the Department finds that the Descartes data is more specific to the international freight expenses incurred by Hailiang.[33] Additionally, the Department finds that even though the Descartes data for six shipments from Qingdao, PRC to Long Beach, California may reflect a broad market average, using these data would fail to capture the full cost of Hailiang's international freight expense, and thus, supports a determination to prefer specific data to data that reflect a broad market average in the instant review. For the foregoing reasons, the Department has continued to value Hailiang's international freight using Descartes data for a shipment of goods from Ningbo, PRC to Detroit, Michigan for these final results of review because these data reflect the best available information.[34]

Comment 2: Irrecoverable Value-Added Tax Adjustment

Hailiang's Comments

- The Department should not reduce Hailiang's reported U.S. price by any allegedly unrefunded value-added tax (VAT) associated with these sales.
- The Department's VAT adjustment is contrary to the plain language and clear intent of the Act.
    - Section 772(c)(2)(B) of the Act authorizes the Department to adjust U.S. price for "the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States."[35]
    - Pursuant to U.S. Customs and Border Protection (CBP) regulations, exportation is the point in the chain of commerce at which the merchandise is physically transported from one sovereign country to another.[36] The record indicates that no VAT was imposed on subject merchandise at the point of (or due to the fact of) exportation. The relevant Chinese VAT law on the record establishes that taxpayers that export goods are subject to zero tax rate.
    - The only tax-related event triggered by exportation is that a company is entitled to a refund of certain VAT amounts previously paid on input purchases; Hailiang paid no VAT upon exportation of subject merchandise – the export VAT rate is zero.
    - The Department's treatment of VAT that is not fully refunded upon exportation as an export tax is unlawful. The VAT paid by Hailiang for its purchase of domestically sourced inputs is not a tax imposed upon exports.[37]

[33] *See* Hailiang's First Surrogate Value Comments at Exhibit 7.
[34] *See* Hailiang Final Analysis Memorandum.
[35] *See* Hailiang Case Brief at 13 (citing section 772(c)(2)(B) of the Act).
[36] *Id.* (citing 19 CFR 101.1).
[37] *Id.*, at 14 (citing *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012) (*Methodological Change*)).

    - The Court of International Trade (CIT) has concluded that Chinese VAT is a domestic tax, which directly contradicts the Department's position that it is a tax imposed upon exportation.[38]
    - There is no evidence that Hailiang incurs an input VAT credit detriment while exporting goods as opposed to when it sells goods domestically.
    - It is not accurate to link VAT credit losses to exportation because VAT losses occur in other instances (*e.g.*, when purchased goods are lost or damaged).
- The Department's VAT adjustment methodology is flawed and must be revised if it continues to adjust for unrefunded VAT.
    - The Department did not provide any record support for the formula used to estimate the amount of unrefunded tax. The formula applied by the Department has no grounding in commercial reality or the record of the instant review.
    - The Department should not base the unrefunded VAT adjustment on the tax rate. Rather, it should base the adjustment on the amount of the tax.[39]
    - Judicial precedent supports basing the adjustment on the actual amount of unrefunded VAT.[40]
    - The *Methodological Change* requires the Department to establish the actual amount of unrefunded VAT in accordance with the actual amount of such VAT paid by respondent as duly supported by copies of relevant tax returns.[41] Hailiang provided all relevant laws and returns that establish the actual amount of tax paid by Hailiang.
    - Alternatively, if the Department continues to calculate the amount of unrefunded VAT, it must revise its methodology.[42]

<u>The Petitioners' Comments</u>

- The Department has explained that the adjustment is lawful because VAT is paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[43] Furthermore, because the Act does not define the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise, the Department reasonably interprets the Act to encompass irrecoverable VAT because the irrecoverable VAT is a cost that arises as result of export sales.
- Hailiang has not demonstrated that the Department's VAT adjustment is an estimation of the tax and does not address the amount of tax foregone.
- The Department reasonably relied on the published VAT on imports used in production and reduced Hailiang's U.S. price by an amount rebated on export.

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[38] *Id.* (citing *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340, 1346-47 (CIT 2011), and *Bridgestone Ams., Inc. v. United States*, 33 C.I.T. 1040, 1048-50 (CIT 2009)).
[39] *Id.*, at 18 (citing *Federal Mogul Corp. v. United States*, 63 F.3d 1572 (Fed. Cir. 1995) (*Federal Mogul*), and *E. I. DuPont De Nemours & Co. v. United States*, 20 C.I.T. 373, 381 (CIT 1996) (*E. I. DuPont*)).
[40] *Id.*, at 20 (citing *Fine Furniture (Shanghai), Ltd. v. United States*, 182 F. Supp. 3d 1350 (CIT 2016)).
[41] *Id.*, at 20-22 (citing *Methodological Change*).
[42] *Id.*, at 25.
[43] The petitioners state that the Department recently addressed statutory arguments similar to the ones raised by Hailiang in *Activated Carbon from China*, however the Petitioners' Rebuttal Brief does not include a citation to that proceeding. *See* Petitioners' Rebuttal Brief at 3.

Department's Position: The Department agrees with the petitioners. For the reasons explained below, the Department continues to apply the unrefunded (*i.e.*, irrecoverable) VAT adjustment used in the *Preliminary Results*.

In 2012, after public comment, we announced a change of methodology with respect to the calculation of export price or constructed export price to include an adjustment of any (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[44] In this announcement, the Department stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's exported prices (EPs) or constructed exported prices (CEPs) by the amount of the tax, duty or charge paid, but not rebated.[45]

In a typical VAT system, companies do not incur VAT expense for exports. Instead, they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports (input VAT) and, in the case of domestic sales, the company can credit the VAT it pays on input purchases for those sales against the VAT they collect from customers.[46] That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[47] This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Therefore, we disagree with Hailiang's assertions that irrecoverable VAT should not be deducted from its U.S. prices pursuant to section 772(c)(2)(B) of the Act. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[48]

Furthermore, the Department disagrees with Hailiang's claim that the Department lacks authority under the statute to adjust for VAT. Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Although Hailiang argues that it pays no VAT upon export, it misstates what is at issue. The issue is the irrecoverable VAT on inputs, not VAT *per se*. Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports.[49] It is VAT

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[44] *See Methodological Change*.
[45] *Id*., 77 FR at 36483*; see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016) (*Activated Carbon PRC Final*), and accompanying IDM at Comment 1; and *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012,* 79 FR 4875 (January 30, 2014) (*Chlorinated Isocyanurates PRC Final*), and accompanying IDM at Comment 5.
[46] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014), and accompanying IDM at Comment 6; *see also Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 79 FR 26712 (May 9, 2014). (*Wood Flooring PRC Final*), and accompanying IDM at Comment 3; and *Methodological Change*, 77 FR at 36483.
[47] *See Methodological Change*, 77 FR at 36483.
[48] *Id*.
[49] *See* Hailiang April 19, 2016 CDQR at Exhibit 6 (PRC Government Circular Caishui 2012, No. 39, Circular of the Ministry of Finance and the State Administration of Taxation of the People's Republic of China on Value-Added Tax and Consumption Tax Policies on Exported Goods); *see also, Activated Carbon PRC Final*, and accompanying

paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[50] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[51] The statute does not define the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.[52] Additionally, it is set forth in PRC law, and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise.[53] Moreover, an adjustment for irrecoverable VAT falls under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax neutral net price received by the seller.[54] This deduction is consistent with the Department's recent refinement to its policy with respect to certain NME countries, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[55] Further, the CIT recently affirmed the Department's VAT methodology in *Fushun Jinly*.[56]

In accordance with 19 CFR 351.401(c), the Department makes price adjustments that are "reasonably attributable to the subject merchandise." The PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry.[57] Consistent with the PRC VAT regime and the Department's regulations, the Department's methodology, as applied in this review and prior segments of this proceeding, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise; and (2) reducing U.S. price by the amount (or rate) determined in step one.[58] Irrecoverable VAT is (1) the FOB value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.[59] The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in PRC law and regulations.[60]

IDM at Comment 1; *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014), and accompanying IDM at Comment 7.

[50] *Id*.

[51] *See*, *e.g.*, *Activated Carbon PRC Final*, and accompanying IDM at Comment 1; *Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014), and accompanying IDM at Comment 5.

[52] *Id*.

[53] *Id*.

[54] *Id*.

[55] *See Methodological Change*, 77 FR at 36483, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) at 827).

[56] *See Fushun Jinly Petrochemical Carbon Co. v. United States*, 37 Int'l Trade Rep. (BNA) 2866 (CIT 2016) (*Fushun Jinly*).

[57] *See Activated Carbon PRC Final*, and accompanying IDM at Comment 1.

[58] *See Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 39893 (June 2016) (*Copper Pipe 2013-2014 Final*), and accompanying IDM at Comment 5.

[59] *Id*.

[60] *See* Hailiang April 19, 2016 CDQR at 38, and Exhibits C-6, C-7, and C-8; Hailiang's July 19, 2016 Supplemental Questionnaire Response (Hailiang July 19, 2016 SQR), at 13-17, and Exhibits SC-11, SC-12, SC-13, and SC-14; and Hailiang's October 14, 2016 Supplemental Questionnaire Response (Hailiang October 14, 2016 SQR) at 1-9,

In the instant review, in step one, the Department determined the irrecoverable VAT on subject merchandise by first determining the amount of tax levied on inputs and raw materials (used in the production of exports). As the Department explained in the *Preliminary Results*, information placed on the record of this review by Hailiang indicates that according to the PRC VAT schedule, the standard VAT levy is 17 percent, and the rebate rate for the merchandise under consideration is 13 percent.[61] Further, evidence on the record of the instant review also indicates that Hailiang's U.S. sales of subject merchandise were produced entirely from VAT-exempt copper cathode, the major input consumed in the production of subject merchandise.[62] However, Hailiang incurred an irrecoverable VAT expense on inputs other than copper cathode used to produce subject merchandise.[63] Accordingly, the record indicates that the fixed irrecoverable VAT rate of four percent (*i.e.*, the difference between the VAT levy rate and the rebate rate) should not be applied to the full export price of subject merchandise because Hailiang did not incur VAT expenses on copper cathode used in the production of subject merchandise.[64] Therefore, the Department limited the irrecoverable VAT adjustment to the amount of tax paid for non-exempt inputs used in the production of subject merchandise.[65] Specifically, the Department applied the fixed rate of four percent in calculating irrecoverable VAT attributable to non-VAT-exempt inputs used in the production of subject merchandise.[66] Because the PRC government does not provide a full refund of VAT paid for inputs upon exportation of subject merchandise, we find that the unrefunded input VAT is a cost that arises as a result of export sales. The Department's analysis is consistent with its current irrecoverable VAT policy and its treatment of irrecoverable VAT in recently completed NME cases.[67] Furthermore, the Department's treatment of irrecoverable VAT was recently upheld by the CIT.[68] Therefore, we have not altered our irrecoverable VAT adjustment methodology for these final results.

Furthermore, the Department disagrees with Hailiang's assertion that the Department should base the calculation of unrecovered VAT on the amount reported by the company. The Department has explained that when the VAT tax is a fixed percentage of the price, it will adjust the export price or constructed export price downward by the same percentage.[69] As noted above, the irrecoverable VAT tax is a fixed percentage of the price (*i.e.*, four percent).

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and Exhibits 1, 2, 3, 4, 5, and 6.

[61] *See* Preliminary Decision Memorandum at 21 (citing Hailiang April 19, 2016 CDQR at 38-42, and Exhibit C-7; and Hailiang July 19, 2016 SQR at 15, and Exhibit SC-11).

[62] *See* Preliminary Decision Memorandum at 21 (citing Hailiang April 19, 2016 CDQR at 38, and Exhibits C-6, C-7, and C-8; Hailiang July 19, 2016 SQR at 13-17, and Exhibits SC-11, SC-12, SC-13, and SC-14; and Hailiang October 14, 2016 SQR at 1-9, and Exhibits 1, 2, 3, 4, 5, and 6).

[63] *See* Preliminary Decision Memorandum at 21 (citing Hailiang dated July 19, 2016 SQR at 15; Hailiang October 14, 2016 SQR at 4, and Exhibits 4, 5, 6, and 7).

[64] *See, e.g.*, *Copper Pipe 2013-2014 Final*, and accompanying IDM at Comment 5; *Certain Uncoated Paper from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 51768, (August 26, 2015), and accompanying Preliminary Decision Memorandum at 17, unchanged in *Certain Uncoated Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016).

[65] *See* Preliminary Decision Memorandum at 21.

[66] *See* Hailiang Preliminary Analysis Memorandum at 4, and Attachment I.

[67] *See Copper Pipe 2013-2014 Final*, and accompanying IDM at Comment 5.

[68] *See Golden Dragon Precise Copper Tube Grp., Inc. v. United States*, Slip Op. 2017-29 (CIT 2017).

[69] *See Methodological Change*, 77 FR at 36483.

Accordingly, the use of Hailiang's actual renminbi-derived VAT expenses is not warranted. Therefore, the Department has applied this fixed percentage in calculating irrecoverable VAT attributable to non-VAT-exempt inputs used in the production of subject merchandise.[70]

Additionally, the Department disagrees with Hailiang's argument that it must revise the methodology used to calculate unrefunded VAT. Hailiang argues that using the unadjusted FOB price in its irrecoverable VAT adjustment overstates the amount of unrefunded VAT incurred by Hailiang. However, record evidence indicates that the PRC government uses the unadjusted FOB price in determining the amount of the VAT refunded on exports.[71] Thus, the Department finds that its adjustment is consistent with the PRC VAT regulations, and Hailiang's argument that the Department's unrecovered VAT calculation is distorted is not supported by record evidence.

Finally, we note that in both cases, *Federal Mogul* and *E.I. DuPont*, cited by Hailiang in support of its contention that VAT adjustments should be based upon the amount of VAT paid rather than the VAT rate paid to prevent a "multiplier effect," the CIT directed the Department to recalculate the final dumping margins by implementing a tax-neutral adjustment methodology based on the amounts of foreign taxes rather than the tax rates to establish the dumping margins.[72] Unlike in those cases where the court addressed a foreign tax adjustment where the sales tax is included in the home market price and the rate was used to back out the tax on the home market price of the finished product, here the Department does not adjust U.S. price by a VAT rate.[73] The Department adjusts U.S. price by an amount of tax -- an amount which is arrived at by applying a rate to a tax base.[74] In the instant case, the amount of tax used in the adjustment to U.S. price is the statutory amount of tax on inputs not rebated on exportation.[75]

Comment 3: Truck Freight Surrogate Value

<u>Hailiang's Comments</u>

- Revise the truck freight surrogate value used in the *Preliminary Results* by applying only the distance specified in *Doing Business 2016, Measuring Regulatory Quality and Efficiency, Economy Profile: Thailand* (*Doing Business Thailand 2016*) (*i.e.*, the distance from a warehouse in Bangkok to Laem Chabang).[76] This methodology is consistent with *OTR Tires*, a recent preliminary determination, which involved the same publication.[77]

[70] *See* Hailiang Final Analysis Memorandum.
[71] *See* Hailiang April 19, 2016 CDQR at 38, and Exhibit C-6.
[72] *See Federal Mogul*, 63 F.3d 1572, and *E. I. DuPont*, 20 C.I.T. 373, 381.
[73] *See, e.g.*, *Activated Carbon PRC Final*, and accompanying IDM at Comment 1
[74] *See, e.g.*, *Certain Activated Carbon Final, Wood Flooring PRC Final,* and *Chlorinated Isocyanurates PRC Final*.
[75] *Id*.
[76] *See* Hailiang Case Brief at 4 (citing Memorandum, "Preliminary Results Surrogate Value Memorandum," dated December 5, 2016 (Preliminary Surrogate Value Memorandum).
[77] *Id.*, at 7 (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 71068 (October 14, 2016) (*OTR Tires*) ("We valued truck freight using data published in the World Bank's Doing Business 2016: Thailand for inland transportation and handling relating to importing and exporting a standardized cargo of goods. {citation omitted} This report gathers information concerning the distance and cost to transport products in a 20-foot container

- The Department incorrectly relied on *PC Tie Wire from the PRC* in using an estimated average distance to calculate the freight surrogate value applied in the *Preliminary Results*.[78] In *PC Tie Wire from the PRC,* the Department applied an estimated average distance only because the surrogate value source, *i.e.*, the 2013 edition of *Doing Business*, did not specify the distance factor (unlike *Doing Business in Thailand 2016*).
- *Doing Business in Thailand 2016* relied on a substantially different methodology to derive reported freight costs than the edition of *Doing Business in Thailand* used in *PC Tie Wire from the PRC*, which did not specify the port of export, provided a different point of origin, and the freight cost was based on a different shipment weight.
- *Doing Business in Thailand 2016* provides an unambiguous, specific truck freight value.

No other interested party provided rebuttal comments on this issue.

Department's Position: The Department agrees with Hailiang and has revised the valuation of inland freight (*i.e.*, truck freight) for these final results of review. In the *Preliminary Results*, the Department used an average distance from central Bangkok to the ports of Bangkok and Laem Chabang to derive a per-unit inland freight surrogate value.[79] This methodology is consistent *PC Tie Wire from the PRC* in which the Department used an earlier edition of the World Bank's annual "*Doing Business*" publication to value inland freight.[80] However, record evidence indicates that *Doing Business in Thailand 2016* provides the cost of transporting goods from Thailand's Laem Chabang port to the city of Bangkok, a distance of 129 kilometers.[81] Because *Doing Business Thailand 2016* provides the specific distance associated with the cost of transportation, the Department finds that using this distance (*i.e.*, 129 kilometers) yields a more accurate per-unit surrogate value than using an estimated average distance between Bangkok and the ports of Laem Chabang and Bangkok. Moreover, using only the distance from Thailand's Laem Chabang port to Bangkok to calculate a per-unit inland freight surrogate value is consistent with the Department's practice in recent cases in which the Department valued inland freight using *Doing Business in Thailand 2016*, the same edition of the publication used in the instant review.[82] For the foregoing reasons, for these final results of review, the Department valued

weighing 15 metric tons from the largest city in Thailand (Bangkok) to the Laem Chabang port 129 kilometers away.")).

[78] *Id*., at 5 (citing Preliminary Surrogate Value Memorandum, and *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) (*PC Tie Wire from the PRC*)).

[79] *See Preliminary Results* and accompanying PDM at 26. *See also* Preliminary Surrogate Value Memorandum at 7.

[80] *See PC Tie Wire from the PRC*, and accompanying IDM at Comment 4 ("In the *Preliminary Determination*, we valued truck freight expenses using data from the World Bank's Doing Business 2013: Thailand....").

[81] *See* Hailiang's First Surrogate Value Comments, at Exhibit 6A and 6B.

[82] *See Large Residential Washers from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination,* 81 FR 48741 (July 26, 2016) ("We valued truck freight expenses using price data from the World Bank publication Doing Business 2016: Thailand (Doing Business 2016), and a calculation methodology based on a container weighing 15,000 kilograms and a distance from Bangkok to Laem Chabang port of 129 kilometers (both of which were noted in the Doing Business 2016 study). We did not inflate this price because it is contemporaneous with the {period of investigation}."), unchanged *in Large Residential Washers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 90776 (December 15, 2016). *See also Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015,* 82 FR

inland freight surrogate value using the distance between Bangkok and the port of Laem Chabang as indicated by *Doing Business in Thailand 2016*, which is the source of the inland freight surrogate value data.[83]

Comment 4: Preliminary Margin Calculation Clerical Errors

A. Treatment of Packing Labor

<u>Hailiang's Comments</u>

- The Department should revise its treatment of packing labor in its margin calculations by treating packing labor as a packing input.
- In the *Preliminary Results,* the Department incorrectly included packing labor in its labor calculation rather than the packing calculation.[84]

No other interested party provided rebuttal comments on this issue.

Department's Position: The Department agrees with Hailiang. In the *Preliminary Results*, the Department inadvertently treated packing labor as a direct material input in its margin calculation.[85] Therefore, the Department has corrected this error for the final results of review.[86]

B. Calculation of By-Product

<u>Hailiang's Comments</u>

- The Department should correct its valuation of recycled copper because the formula used in the preliminary margin calculation contained a programming error.[87]

No other interested party provided rebuttal comments on this issue.

Department's Position: The Department agrees with Hailiang. In the *Preliminary Results*, the Department made a clerical error in its valuation recycled copper.[88] Therefore, the Department has corrected this error for the final results of review.[89]

18733 (April 21, 2017), and accompanying IDM at Comment 4 ("Indeed, the two domestic freight costs identified in {*Doing Business in Thailand 2016*} Thailand are for average costs for exports of a certain product from a standardized company location in Bangkok to the port of Laem Chabang and average costs for imports of another containerized product from the port of Laem Chabang to a standardized company in Bangkok.").

[83] *See* Hailiang Final Analysis Memorandum.

[84] *See* Hailiang Case Brief at 25-26 (citing Hailiang Preliminary Analysis Memorandum at Attachment 1).

[85] *See Preliminary Results*. *See also* Hailiang Preliminary Analysis Memorandum at Attachment 1.

[86] *See* Hailiang Final Analysis Memorandum.

[87] *See* Hailiang Case Brief at 26 (citing Hailiang Preliminary Analysis Memorandum at Attachment 1).

[88] *See Preliminary Results*. *See also* Hailiang Preliminary Analysis Memorandum at Attachment 1.

[89] *See* Hailiang Final Analysis Memorandum.

C. Copper Cathode Calculation

Hailiang's Comments

- The Department should correct its valuation of copper cathode because the formula used in the preliminary margin calculation contained a programming error.[90]

No other interested party provided rebuttal comments on this issue.

Department's Position: The Department agrees with Hailiang. In the *Preliminary Results*, the Department made a clerical error in its valuation of copper cathode.[91] Therefore, the Department has corrected this error for the final results of review.[92]

D. Date of Sale Variable

Hailiang's Comments

- The Department should use shipment date as the date of sale for all reported sales, which is consistent with its preliminary finding that shipment date is the appropriate date of sale.[93]
- The Department inadvertently used an incorrect date of sale in its preliminary margin calculations.

No other interested party provided rebuttal comments on this issue.

Department's Position: The Department agrees with Hailiang. In the *Preliminary Results*, the Department found that shipment date was the appropriate date of sale.[94] However, the Department inadvertently used Hailiang's reported invoice date rather than the shipment date in its preliminary margin calculations.[95] Therefore, the Department has corrected this error for the final results of review.[96]

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[90] *See* Hailiang Case Brief at 27 (citing Hailiang Preliminary Analysis Memorandum at Attachment 1).
[91] *See Preliminary Results*. *See also* Hailiang Preliminary Analysis Memorandum at Attachment 1.
[92] *See* Hailiang Final Analysis Memorandum.
[93] *See* Hailiang Case Brief at 27-28 (citing Hailiang Preliminary Analysis Memorandum at Attachment 1).
[94] *See Preliminary Results*. *See also* Hailiang Preliminary Analysis Memorandum at Attachment 1.
[95] *Id.*
[96] *See* Hailiang Final Analysis Memorandum.

V. RECOMMENDATION

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

☒ ☐

________ Agree ☐ __________ Disagree

6/12/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

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Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance