



A-570-058
Investigation
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DATE: April 9, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation of Certain Cold-Drawn
Mechanical Tubing of Carbon and Alloy Steel from the People's
Republic of China

I. SUMMARY

The Department of Commerce (Commerce) determines that imports of cold-drawn mechanical tubing of carbon and alloy steel (CDMT) from People's Republic of China (China) are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2016, through March 31, 2017.

As a result of our analysis of the comments submitted by interested parties and based on our findings at verification, we made certain changes to the margin calculations for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.



II. BACKGROUND

On November 22, 2017, Commerce published its *Preliminary Determination* in the LTFV investigation of CDMT from China.¹ On January 3, 2018, Commerce published its *Amended Preliminary Determination*.²

On January 5, 2018, Commerce issued a memorandum to the file informing Jiangsu Hongyi Steel Pipe Co. (Hongyi) of its intent not to verify Hongyi's questionnaire responses.³ From January 23, 2018, through January 27, 2018, Commerce conducted verification of the sales and factors of production (FOP) data reported by Zhangjiagang Huacheng Import & Export Co., Ltd. (Huacheng), pursuant to section 782(i) of the Act.⁴ On January 23, 2018, Commerce exercised its discretion to toll all deadlines affected by the duration of the closure of the Federal Government from January 20 through 22, 2018.⁵

Additionally, we invited parties to comment on the *Preliminary Determination*.⁶ On March 8, 2018, ArcelorMittal Tubular Products, Michigan Seamless Tube, LLC, Plymouth Tube Co. USA, PTC Alliance Corp., Webco Industries, Inc., and Zekelman Industries, Inc. (collectively, the petitioners), and both mandatory respondents, Huacheng and Hongyi, submitted case briefs.⁷ On March 13, 2018, the petitioners, Huacheng, and Hongyi submitted rebuttal briefs.⁸

¹ See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 82 FR 55574 (November 22, 2017) (*Preliminary Determination*) and the accompanying memorandum, "Decision Memorandum for Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China," (Preliminary Decision Memorandum), dated November 15, 2017.

² See *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Amended Preliminary Affirmative Determination of Sales at Less-Than-Fair Value*, 83 FR 352 (January 3, 2018) (*Amended Preliminary Determination*).

³ See memorandum, "Cancellation of Verification of Jiangsu Hongyi Steel Pipe Co. Ltd.," dated January 5, 2018 (Cancellation Memorandum).

⁴ See memorandum, "Verification of the Questionnaire Responses of Zhangjiagang Huacheng Import & Export Co., Ltd. in the Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China," dated February 28, 2018 (Huacheng's Verification Report).

⁵ See memorandum from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

⁶ See *Preliminary Determination*, 82 FR at 55577.

⁷ See letter from the petitioners, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Case Brief," dated March 8, 2018 (Petitioners' Case Brief); letter from Huacheng, "Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Case Brief of Huacheng," dated March 8, 2018 (Huacheng's Case Brief); and letter from Hongyi, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Case Brief," dated March 8, 2018 (Hongyi's Case Brief).

⁸ See letter from the petitioners, "Certain Cold-Drawn Mechanical Tubing from the People's Republic of China: Petitioners' Case Rebuttal Brief," dated March 13, 2018 (Petitioners' Rebuttal Brief); letter from Huacheng, "Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Rebuttal Brief of Huacheng," dated March 13, 2018 (Huacheng's Rebuttal Brief); and letter from Hongyi, "Hongyi's Rebuttal Administrative Case Brief: Antidumping Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon

On December 8, 2017, Hongyi requested both a closed and public hearing for this segment of the proceeding.⁹ On December 11, 2017 and December 22, 2017, respectively, Huacheng and the petitioners requested a public hearing. On March 29, 2018, Commerce held a public hearing, limited to the issues raised in the case and rebuttal briefs.

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is cold-drawn mechanical tubing from China. Commerce addressed all scope comments received in the Final Scope Decision Memorandum.¹⁰ For a complete description of the scope of this investigation, see Appendix I of the accompanying *Federal Register* notice.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

Based on our analysis of the comments submitted by interested parties and our findings at verification, we made changes since the *Amended Preliminary Determination*. Specifically, for Huacheng, we calculated export price (EP) and normal value (NV) using the same methodology as stated in the *Preliminary Determination* and *Amended Preliminary Determination*, with the following changes, as discussed below and as described in the Huacheng's Final Calculation Analysis Memo:¹¹

- We are valuing ocean freight using a surrogate value (SV), rather than reported market economy ocean freight expenses. *See* Comment 9, below.
- We are valuing seamless carbon alloy semi-finished cold drawing tube (CAST) inputs using Romanian import data for HS category 7304.59 as a SV, rather than the import data for HS 7306.50 used as a SV in the *Preliminary Determination*. Further, we are valuing non-alloy seamless semi-finished cold drawing tube (NAST) using Romanian import data for HS category 7304.39.92, rather than the import data for HS 7306.30 used as a SV in *Preliminary Determination*. *See* Comment 7, below.
- For the *Preliminary Determination*, we found Hongyi eligible for a separate rate and applied total adverse facts available (AFA) to Hongyi on the basis of its steel grade reporting. For the *Final Determination*, we are finding Hongyi to be part of the China-wide entity. *See* Comment 1, below.

and Alloy Steel from the People's Republic of China (A-570-058)," dated March 13, 2018 (Hongyi's Rebuttal Brief).

⁹ *See* letter from Hongyi, "Hongyi's Request for Closed & Public Hearings: Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China (A-570-058)," dated December 8, 2017.

¹⁰ *See* memorandum, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany, India, Italy, the Republic of Korea, the People's Republic of China, and Switzerland: Scope Decision Memorandum for the Final Determinations: Final Scope Decision Memorandum," dated December 4, 2017 (Final Scope Decision Memorandum).

¹¹ *See* letter from Commerce, "Analysis for the Final Determination of the Less-Than-Fair-Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China," dated concurrently with this memorandum (Huacheng's Final Calculation Analysis Memo).

VI. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

On November 22, 2017, Commerce preliminarily determined that critical circumstances exist for the China-wide entity and the separate rate respondents, but not for Huacheng.¹² Specifically, we preliminarily determined, pursuant to section 733(e) of the Act, that Huacheng's imports of subject merchandise in the comparison period did not increase by 15 percent from its imports of subject merchandise during the base period.¹³ For the final determination, we continue to find that there were not "massive imports" for Huacheng and that critical circumstances, therefore, do not exist for Huacheng.¹⁴

Moreover, as in the *Preliminary Determination*, in this final determination, Commerce continues to find that massive imports exist for non-individually examined respondents, based upon Global Trade Atlas (GTA) import statistics specific to the merchandise covered by the scope of the investigation. With respect to the China-wide entity, as in the *Preliminary Determination*, for the final determination, Commerce continues to find, as adverse facts available, that the entity had "massive imports" over a "relatively short period," in accordance with sections 735(a)(3) and 776(a) and (b) of the Act and 19 CFR 351.206(h). Therefore, we determine that critical circumstances still exist.

Additionally, Commerce notes that, because Hongyi is part of the China-wide entity, as discussed further below, Hongyi is subject to the same critical circumstances determination as the China-wide entity.¹⁵ Accordingly, because Commerce finds that critical circumstances exist for the China-wide entity, as noted above, Hongyi is subject to this critical circumstances determination.

VII. USE OF ADVERSE FACTS AVAILABLE

Legal Framework

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping duty (AD) statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to

¹² See Preliminary Decision Memorandum, at 7-10.

¹³ *Id.* at 10.

¹⁴ *Id.* at 7-10.

¹⁵ *Id.*

remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the Trade Preferences Extension Act of 2015 (TPEA), Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁶ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined in section 776(c) of the Act as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. Finally, under the new section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

China-Wide Entity

In the *Preliminary Determination*, we found that the China-wide entity did not respond to Commerce’s requests for information, failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. We further determined that because non-responsive companies had not demonstrated their eligibility for separate rate status, they are part of the China-wide entity. Finally, Commerce preliminarily assigned a China-wide rate based on facts available, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, applying an adverse inference, pursuant to 776(b) of the Act.¹⁷

No parties commented on this preliminary finding, and Commerce continues to find that the China-wide entity failed to cooperate to the best of its ability in responding to Commerce’s requests for information. Therefore, for the final determination, we continue to apply AFA to the China-wide entity.

¹⁶ See section 776(b)(1)(B) of the Act; see also the TPEA, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015), section 502(1)(B).

¹⁷ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 21-26.

AFA Rate for the China-Wide Entity

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁸ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value,¹⁹ although under the TPEA, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.²⁰ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although under the TPEA, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²¹ The AFA rate that Commerce used for the China-Wide Entity is from the Petition, and, thus, is secondary information subject to the corroboration requirement.

In the *Preliminary Determination*, in order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the petition dumping margin of 186.89 percent to the transaction-specific dumping margins for Huacheng, we found transaction-specific margins at or above the petition rate.²² Therefore, we found that the rate alleged in the petition was within the range of transaction-specific margins computed for the *Preliminary Determination*. Accordingly, we preliminarily found the 186.89 percent rate to be both reliable and relevant and, thus, that it had probative value.²³

For the final determination, we continue to base the China-wide entity rate on AFA. We hereby adopt the corroboration methodology used in the *Preliminary Determination* to corroborate the highest petition rate for purposes of the final determination.²⁴ There is no information on the record that calls into question the relevance or reliability of the petition rate, or that calls into question our corroboration methodology. Therefore, we determine that that AFA rate is corroborated for purposes of the final determination.

¹⁸ See SAA at 870.

¹⁹ *Id.* at 870; see also 19 CFR 351.308(d).

²⁰ See section 776(c)(2) of the Act; TPEA, section 502(2).

²¹ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

²² See Huacheng’s Preliminary Analysis Memorandum.

²³ See *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 21-26.

²⁴ *Id.*

VIII. SEPARATE RATES

Pursuant to section 771(18)(C)(i) of the Act, the designation of a country as an NME remains in effect until Commerce revokes the NME country designation. Accordingly, there is a rebuttable presumption that all companies within China are subject to government control and, thus, should be assessed a single antidumping duty rate.²⁵

In the *Initiation Notice*, Commerce notified parties of the application process by which exporters and producers may obtain separate rate status in NME proceedings.²⁶ It is Commerce's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, Commerce analyzes each exporting entity in an NME country under the test established in *Sparklers*,²⁷ as further developed by *Silicon Carbide*.²⁸ However, if Commerce determines that a company is wholly foreign-owned, then a separate-rate analysis is not necessary to determine whether it is independent from government control, and thus eligible for a separate rate.²⁹

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the China AD proceeding, and its determinations therein.³⁰ In particular, in litigation involving the diamond sawblades from the China proceeding, the CIT found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity exercised control over the respondent

²⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006).

²⁶ See *Initiation Notice*, 81 FR at 18834.

²⁷ See *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*).

²⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

²⁹ See, e.g., *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169, (September 8, 2014), and unchanged in *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014).

³⁰ See *Final Results of Redetermination pursuant to Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) (*Advanced Technology II*), *aff'd Advanced Technology & Materials Co., Ltd. et al. v. United States*, 2014 U.S. App. LEXIS 201800 (Fed. Cir. Oct. 24, 2014) (*Advanced Technology II*). See also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memorandum at 7, unchanged in *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 Issues and Decision Memorandum at Comment 1.

exporter.³¹ Following the Court’s reasoning, in recent proceedings, we have concluded that, where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the respondent is not eligible for a separate rate.³² Otherwise, we will analyze the impact of government ownership within the context of the *de facto* criteria, as established above. This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with our normal separate rate practice, any ability to control, or possess an interest in controlling, the operations of the company (including the selection of board members, management, and the profit distribution of the company) by a government entity is subject to Commerce’s rebuttable presumption that all companies within the NME country are subject to government control.

Separate Rate Recipients

Commerce preliminary determined that Anji Pengda,³³ Changshu Fushilai,³⁴ Changshu Special,³⁵ Dingxin,³⁶ Foster,³⁷ Hongyi,³⁸ Huacheng,³⁹ Shengdingyuan,⁴⁰ Wuxi Huijin,⁴¹ and Zhejiang Minghe⁴² are eligible for a separate rate.

³¹ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) (The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it.); *Id.*, at 1351 (Further substantial evidence of record does not support the inference that SASAC’s {state-owned assets supervision and administration commission} ‘management’ of its ‘state-owned assets’ is restricted to the kind of passive-investor *de jure* ‘separation’ that Commerce concludes.) (footnotes omitted); *Id.*, at 1355 (The point here is that ‘governmental control’ in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a ‘degree’ of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to ‘day-to-day decisions of export operations,’ including terms, financing, and inputs into finished product for export.); *Id.*, at 1357 (AT&M itself identifies its ‘controlling shareholder’ as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.) (footnotes omitted).

³² See *Carbon and Certain Alloy Steel Wire Rod from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9.

³³ See letter from Anji Pengda, “Cold Drawn Mechanical Tubing from the People’s Republic of China: Submission of SRA Response,” dated June 22, 2017 (Anji Pengda’s SRA).

³⁴ See letter from Changshu Fushilai, “Cold Drawn Mechanical Tubing from the People’s Republic of China: Submission of Q&V Response,” dated June 15, 2017 (Changshu Fushilai’s SRA).

³⁵ See letter from Changshu Special, “Cold Drawn Mechanical Tubing from the People’s Republic of China: Submission of Q&V Response,” dated June 15, 2017 (Changshu Special’s SRA).

³⁶ See letter from Dingxin, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China; A-570-058; Separate Rate Application,” dated June 15, 2017 (Dingxin’s SRA).

³⁷ See letter from Foster, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Separate Rate Application,” dated June 15, 2017 (Foster’s SRA).

³⁸ See Hongyi’s August 4, 2017 Section A Questionnaire Response (Hongyi’s August 4, 2017 AQR).

³⁹ See letter from Huacheng, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Separate Rate Application,” dated June 29, 2017 (Huacheng’s SRA).

⁴⁰ See letter from Shengdingyuan, “Separate Rate Application of Zhangjiagang Shengdingyuan Pipe-Making Co., Ltd.: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China, A-570-058,” dated June 22, 2017 (Shengdingyuan’s SRA).

⁴¹ See letter from Wuxi Huijin, “Cold Drawn Mechanical Tubing from the People’s Republic of China: Submission of Separate Rate Application,” dated June 15, 2017 (Wuxi Huijin’s SRA).

⁴² See letter from Zhejiang Minghe, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the

No parties commented on this preliminary finding, and Commerce continues to find that all the companies listed above, with exception of Hongyi, are eligible for a separate rate. Therefore, for the final determination, we continue to grant separate rates to all the companies above, except Hongyi.

Companies Not Receiving a Separate Rate

For this final determination, Commerce has not granted a separate rate to Hongyi. Specifically, Commerce determined that it is unable to rely on information submitted by Hongyi due to concerns regarding the integrity of Hongyi's books and records and thus declined to verify Hongyi's questionnaire responses. As a result, Hongyi's separate rate information, which includes information pertaining to whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses⁴³ is unverified and thus cannot be relied upon for purposes of this final determination.⁴⁴ As such, for the final determination, Commerce has found Hongyi ineligible for separate rate status.

IX. LIST OF ISSUES

- Comment 1: Cancellation of Verification for Hongyi
- Comment 2: Hongyi's Reporting of Steel Grade
- Comment 3: Rejection of Factual Information in Hongyi's Submissions
- Comment 4: Critical Circumstances
- Comment 5: Surrogate Country Selection
- Comment 6: Romanian Financial Statements Used in the Calculation of Surrogate Financial Ratios
- Comment 7: Surrogate Used to Value Huacheng's Seamless Tube Inputs

People's Republic of China: Separate Rate Application," dated June 15, 2017 (Zhejiang Minghe's SRA).

⁴³ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995); also, see, *Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 3284 (January 11, 2017), and accompanying Issues and Decision Memorandum at Comment 1. (Commerce denied separate status because it was unable to rely upon the statements concerning the *de facto* criteria of a respondent's separate rate responses because such statements are unverifiable on the grounds that they rely on unreliable accounting documentation); *Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 82 FR 11428 (February 23, 2017), and accompanying Issues and Decision Memorandum at Comment 2. (Commerce denied separate rate status because of unreliable questionnaire responses).

⁴⁴ See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995); also, see, *Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 3284 (January 11, 2017), and accompanying Issues and Decision Memorandum at Comment 1. (Commerce denied separate status because it was unable to rely upon the statements concerning the *de facto* criteria of a respondent's separate rate responses because such statements are unverifiable on the grounds that they rely on unreliable accounting documentation); *Xanthan Gum from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 82 FR 11428 (February 23, 2017), and accompanying Issues and Decision Memorandum at Comment 2. (Commerce denied separate rate status because of unreliable questionnaire responses).

Comment 8: Whether to Adjust U.S. Price for Market Economy Ocean Freight Expenses
Comment 9: Other Issues

X. DISCUSSION OF COMMENTS

Comment 1: Cancellation of Verification for Hongyi

Hongyi's Comments

- Commerce committed a series of legal errors by canceling verification based on its concern over Hongyi's inventory adjustment; as such, the law and substantial evidence do not support Commerce's decision not to verify Hongyi.⁴⁵
- Hongyi's inventory adjustment did not warrant cancelling verification and Commerce's findings with respect to this adjustment were erroneous. Specifically, Commerce lacked justification for its finding that the inventory adjustment appeared to represent lost or missing inventory that was suddenly "found" by Hongyi, and of which Hongyi lacked prior knowledge.⁴⁶
- Hongyi demonstrated that, in its books and records, each year raw materials and semi-finished goods remain in work in progress (WIP) and are not separately entered into the accounting system because they represent an extremely small percentage of the cost of goods sold (COGS). Thus, the adjustment is immaterial from an accounting standpoint.⁴⁷ Additionally, Chinese Generally Accepted Accounting Principles (GAAP) do not require that Hongyi account for the material.⁴⁸
- Commerce misstated the facts and confused the issue when it stated that the materials were "found" in Hongyi's facility without anyone's prior knowledge. In fact, Hongyi knew that this WIP material existed; it simply did not account for it in its financial reporting system because Chinese GAAP does not require Hongyi to perform physical stock checks of the WIP.⁴⁹
- Hongyi's placement of the WIP back into COGS is a practice sanctioned by Chinese GAAP.⁵⁰ Furthermore, Hongyi made the year-end inventory adjustment for accumulated WIP prior to the filing of the AD/CVD petitions for a period prior to the POI.⁵¹ Hongyi made the adjustment in contemplation of an initial public offering (IPO) to more accurately state profits, and better track inventory movements.⁵²
- Commerce incorrectly found that the inventory adjustment is many times the quantity of the beginning inventory in Hongyi's books and records for 2016 alone and relates to WIP taken in a single year. Because Commerce relied on this incorrect assumption to call into question both the integrity of Hongyi's accounting and inventory control systems for that year, and

⁴⁵ See Hongyi's Case Brief at 12.

⁴⁶ *Id.* at 13.

⁴⁷ *Id.*

⁴⁸ *Id.* at 14.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

thus, by inference, the reported FOPs, Commerce's finding that Hongyi's reported FOPs are unreliable is also erroneous.⁵³

- Hongyi reported its actual consumption; thus, the year-end inventory adjustment had no impact whatsoever on the reported FOPs, and did not provide a basis to cancel verification.⁵⁴ Specifically, the inventory adjustment is merely an accounting entry made for accumulated WIP prior to 2016 and prior to the POI that bears no relation to actual consumption of raw materials and production inputs during the POI.⁵⁵ It is an accounting adjustment only, entirely unrelated to actual withdrawal and consumption of production factors during the POI.⁵⁶
- Commerce violated 782(d) of the Act by identifying a deficient submission without providing Hongyi an opportunity to remedy the deficiency. The Court of International Trade (CIT) recently affirmed Commerce's obligation to provide prompt notice of a deficiency, give clear notice of the deficiency, and to act reasonably in providing an opportunity to remedy deficiencies.⁵⁷
- Commerce committed a *de facto* and *ultra vires* application of AFA based solely on a legitimate and justified inventory accounting adjustment made under provisions of Chinese GAAP in the ordinary course of business for Hongyi.⁵⁸

The Petitioners' Comments

- Commerce correctly determined it could not rely on Hongyi's books and records and, thus, cancelled verification. Accordingly, Commerce should assign Hongyi an AFA rate for the final determination.⁵⁹
- After reviewing Hongyi's post-preliminary questionnaire response, Commerce determined that it raised significant concerns about the integrity of its inventory records and accounting systems.⁶⁰ Specifically, Commerce determined that it could not rely on Hongyi's books and records and cancelled verification of the company.⁶¹
- Because Hongyi's books are unreliable, an accurate and complete cost reconciliation, a necessary aspect of any antidumping investigation, is not available on the record.⁶²
- The information in question is essential to calculate accurate FOP consumption, and, in turn, an accurate dumping margin.⁶³

⁵³ *Id.*

⁵⁴ *Id.* at 17-18.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 18-20 (citing *Hyundai Steel Co. v. United States*, Court No. 16-0016, Slip Op. 2018-2, 1 (January 10, 2018) (*Hyundai Steel*); *American Tubular Products, LLC v. United States*, Court No. 13-00029, Slip Op. 14-116 (CIT 2014) (*American Tubular*); *Ta Chen Stainless Steel Pipe v. United States*, 23 CIT 804 (CIT 1999) (*Ta Chen Stainless*); *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 28 CIT 1185, 1193-95 (CIT 2004) (*Hebei Metals*)).

⁵⁸ *Id.* at 21-24 (citing *Husteel Co., Ltd. v. United States*, 98 F. Supp. 3d 1315, 1345 (CIT 2015); *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1244 (CIT 1998); *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003)).

⁵⁹ See Petitioners' Case Brief at 14.

⁶⁰ *Id.* at 15.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

- Because Hongyi's books and records are unreliable and prevented Commerce from being able to verify its responses, it has not made maximum effort to cooperate with Commerce's investigation, thus, AFA is appropriate because Hongyi did not act to the best of its ability pursuant to section 776(b) of the Act.⁶⁴

Hongyi's Rebuttal

- The petitioners provide no additional evidence or argument rebutting the fact that Commerce unlawfully cancelled verification based on unwarranted concerns regarding a year-end inventory adjustment made prior to the POI.⁶⁵
- Hongyi demonstrated on the underlying record that each year raw materials and semi-finished goods remain in WIP and not separately entered into the accounting system, because it is extremely small as a percentage of COGS and there is no requirement under Chinese GAAP that it be accounted for.⁶⁶
- The petitioners' argument that Hongyi's inventory adjustment strains credulity, and thus has failed to act to the best of its ability, is both legally and factually flawed. Hongyi provided Commerce with complete explanations as to the circumstances surrounding the inventory adjustment at issue in multiple questionnaire responses.⁶⁷
- The inventory adjustment for FY 2016 is negligible, representing a small percentage of COGS year-on-year for the amortized surplus WIP adjustment over the course of ten years.⁶⁸
- Not all the material quantity representing ten-years of prior WIP was physically reintroduced into inventory for consumption, because Hongyi consumed the material in prior years.⁶⁹
- Hongyi demonstrated that it included the consumption of any surplus raw material during the POI in the computation of the raw materials consumption factors.⁷⁰
- The petitioners' claim that an accurate and complete cost reconciliation, a necessary aspect of any antidumping investigation, is not available on the record, is erroneous.⁷¹ Specifically, Hongyi established that the inventory adjustment fully reconciled to its financial accounting system and year-end financial statements. Hongyi demonstrated that its accounting system, with regard to consumption and inventory withdrawals, reconciled to its financial statements and are accurate and fully reliable.⁷²

The Petitioners' Rebuttal

- Commerce's findings are based on record evidence.⁷³
- Hongyi's books are unreliable; thus, it is not possible to "verify" the questionnaire response data.⁷⁴ As such, Commerce could not verify Hongyi's reported steel billet consumption.⁷⁵

⁶⁴ *Id.* at 16.

⁶⁵ *See* Hongyi's Rebuttal Brief at 21.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 23.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *See* Petitioners' Rebuttal Brief at 10.

⁷⁴ *Id.* at 10-12.

⁷⁵ *Id.* at 13.

- Hongyi's inventory adjustment does affect its FOP reporting.⁷⁶ Additionally, Hongyi was unable to provide an adequate explanation regarding the significant inventory adjustment, which concerned steel billet inputs, the primary input in the production of subject merchandise.⁷⁷
- Commerce satisfied its obligations under 782(d) of the Act by granting Hongyi multiple opportunities to satisfactorily explain the unusual inventory adjustment.⁷⁸

Commerce's Position: Commerce continues to find that it properly declined to verify Hongyi's questionnaire responses. Specifically, the magnitude of Hongyi's inventory adjustment, the inappropriate expensing of materials that were never consumed in production, and the number of years during which Hongyi inappropriately recorded production costs and inventory, raise serious concerns about the integrity of the company's accounting records and render Hongyi's reported factors of production unreliable. Because Commerce is unable to rely on Hongyi's underlying books and records or financial reporting, which serves as the basis of Hongyi's reported factors of production, verification is not possible.

On August 29, 2017, Commerce requested information on certain adjustments in Hongyi's 2016 unaudited financial statements.⁷⁹ After receiving Hongyi's response to the request for information on September 19, 2017,⁸⁰ Commerce again requested information from Hongyi on the abnormal adjustment related to inventory and the cost of manufacturing in its unaudited financial statement.⁸¹ On November 1, 2017, the petitioners requested that Commerce cease its investigation of Hongyi.⁸² On November 7, 2017, Hongyi submitted rebuttal comments to the petitioners' request to terminate the investigation.⁸³ On November 18, 2017, Commerce issued a post-preliminary supplemental questionnaire to clarify certain issues.⁸⁴ On December 1, 2017, Hongyi submitted its response to the questionnaire.⁸⁵

⁷⁶ *Id.* at 15-17.

⁷⁷ *Id.*

⁷⁸ *Id.* at 18.

⁷⁹ See letter from Commerce, "Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Jiangsu Hongyi Steel Pipe Co. Supplemental Section A Questionnaire," dated August 29, 2017 at 9-10 (Hongyi's Section A SQ).

⁸⁰ Hongyi's September 19, 2017 Supplemental Section A Questionnaire Response (Hongyi's SAQR).

⁸¹ See letter from Commerce, "Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Jiangsu Hongyi Steel Pipe Co. Supplemental Section D Questionnaire," dated October 17, 2017 at 7 (Hongyi's Section D SQ).

⁸² See letter from the petitioners, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from China: Petitioners' Request to Terminate the Investigation with Respect to Hongyi and Base Hongyi's Dumping Margin on Adverse Facts Available," dated November 1, 2017 (The petitioners' Request to Terminate).

⁸³ See letter from Hongyi, "Hongyi Rebuttal to Petitioner's Request to Terminate the Investigation and Base Hongyi's Dumping Margins on Adverse Facts Available: Antidumping Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China," dated November 7, 2018 (Hongyi's Rebuttal to Terminate Investigation).

⁸⁴ See letter from Commerce, "Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Post-Preliminary Determination Questionnaire for Jiangsu Hongyi Steel Pipe Co.," dated November 18, 2017 (Post-Preliminary Questionnaire for Hongyi).

⁸⁵ See letter from Hongyi, "Actual Title," dated December 1, 2017 (Hongyi's PPQR).

After reviewing Hongyi's December 1, 2017 submission, we determined that Hongyi's explanations regarding its adjustment to inventory and the cost of manufacturing rendered its accounting systems and underlying records unreliable.⁸⁶ Specifically, Hongyi stated that it conducted a "physical inventory check" and discovered a massive amount of steel billets, coils, and WIP in physical inventory, which it claims accumulated on the factory floor over a ten-year period, an amount it states it merely placed back into its accounting system through its inventory adjustment.⁸⁷ Hongyi claims that it made the inventory adjustment to account for the accumulated steel billets, coils, and WIP because it expensed the raw materials as part of the cost of sales in previous years.⁸⁸ As noted at the time, Hongyi's explanation of this adjustment called into question the accuracy of Hongyi's reporting of its raw materials consumption and Commerce's ability to verify reported information in Hongyi's underlying books and records.⁸⁹ Specifically, Commerce noted that this quantity represents a multiple so large compared to the recorded quantity of beginning inventory captured in its books and records prior to the adjustment, that the underlying explanation that this quantity was simply over-reported steel billets, coils, and WIP expensed as part of the cost of sales in previous years, strained credulity. Specifically, the fact that the company did not know it had such a huge discrepancy in its books and records as compared to the conditions on the actual factory floor raises serious questions as to the reliability of Hongyi's recordkeeping.⁹⁰ As such, despite Hongyi's claims to the contrary, it has failed to provide sufficient and credible justification regarding this adjustment.

Moreover, we note that Hongyi did not have audited financial statements for 2016, or prior to 2016, and Hongyi has not provided any authoritative basis to support its highly unusual claim that Chinese GAAP permits the expensing of raw materials that were never consumed or the subsequent write-up of inventory through a large one-time inventory adjustment. Moreover, even if Chinese GAAP did permit this particular adjustment, Chinese GAAP would not permit the inaccurate accounting of COGS and profit, as present in Hongyi's financial statement. While we do not require a respondent to have audited financial statements in an antidumping proceeding, we do take the fact that a company does not have audited records into account when a respondent makes questionable claims or adjustments that are significant in nature, as is the case with Hongyi's massive amount of inventory on hand as compared to what it had recorded in its accounting system.⁹¹ Furthermore, even if the massive adjustment accumulated over a period of ten years, as claimed by Hongyi, it still does not overcome the fact that Hongyi failed to maintain accurate accounting books and records for an extended period of time. Nor does it make its accounting records reliable without some form of review or audit by an independent party. It is also important to note that the record of this investigation does not support Hongyi's

⁸⁶ See memorandum, "Cancellation of Verification of Jiangsu Hongyi Steel Pipe Co., Ltd.," dated January 5, 2018 (Cancellation Memorandum) at 2.

⁸⁷ See Hongyi's October 31, 2017 Section D Supplemental Questionnaire Response at 24 (Hongyi's SDQR); Hongyi's PPQR at 1-3; Hongyi's September 19, 2017 Supplemental Section A Questionnaire Response at 10 (Hongyi's SAQR); Hongyi's PPQR at 4-6.

⁸⁸ See Hongyi's SDQR at 24; Hongyi's PPQR at 1-3; Hongyi's SAQR at 10.

⁸⁹ See Cancellation Memorandum at 2.

⁹⁰ See Hongyi's SDQR at 24; Hongyi's PPQR at 1-3; Hongyi's SAQR at 10. For Commerce's calculation supporting the instant discussion (which contain proprietary information which cannot be discussed herein), see, "Inventory Calculation Memorandum," dated concurrently with this memorandum.

⁹¹ See *Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review*, 74 FR 17160 (April 14, 2009), and accompanying Issues and Decision Memorandum at Comment 1 (Commerce analyzed the unaudited financial statements of a Respondents supplier).

claim that the inventory adjustment is the result of misstated inventory accumulated over a ten-year period. It is not clear the extent to which the misreported inventory arose in any of the past years, and whether it even is the result of ten years of misstatements. Thus, to claim that the average annual inventory misstatement is small when you spread the large current year cumulative adjustment over an arbitrary ten-year period is disingenuous; there is simply no evidence supporting the claim that the misreporting occurred over a ten-year period.

Additionally, inventory is a significant element in determining the steel billet FOP during the POI. Specifically, beginning inventory, plus purchases, less ending inventory, results in the quantity of consumption in standard cost reporting. Thus, accurate inventory tracking is a crucial component in calculating accurate consumption, and, in turn, accurate FOPs and an accurate dumping margin. Hongyi's responses to Commerce's questionnaires illustrate that Hongyi has unreliable inventory tracking procedures in place, particularly for its steel input inventory, which is its primary cost driver.⁹² Moreover, Hongyi's questionnaire responses indicate that it inappropriately booked its cost of sales and inventory for an extended period of time prior to making its inventory adjustment.⁹³ Thus, at the very least, based on Hongyi's questionnaire and rebuttal responses, it is clear that Hongyi has had unreliable inventory tracking procedures in place for some period of time.

Additionally, Hongyi's 2016 claimed inventory adjustment is significant, drastically reducing its COGS within its unaudited financial statements, calling into question the reliability of its unaudited financial statements, its reported FOPs, and in turn, its cost-reconciliation. Commerce has stated in previous cases that the cost reconciliation is an integral part of Commerce's examination of a respondent, which is why we require respondents to complete a cost reconciliation in the standard non-market economy (NME) questionnaire and include the cost reconciliation in the Verification Outline.⁹⁴ In the instant case, Hongyi's inventory adjustment and the proven unreliability of its accounting records over an extended period of time makes it impossible for Commerce to rely upon the underlying information used to formulate its reported factors of production and to create its cost reconciliation, making the cost reconciliation unverifiable.⁹⁵

Furthermore, Hongyi adjusted the previously unknown and unrecorded inventory which it states built up over ten-years, in a single month during 2016. We note that the impact of unreliable accounting records impacts all the company's accounting information for the entire year, not just the period in which Hongyi made the questionable accounting entry. Specifically, Hongyi's inventory adjustment obscures whether Hongyi properly included or excluded all consumption of raw materials in its FOP calculations. Consequently, because Commerce cannot establish that Hongyi properly included or excluded all costs and the associated consumption in its FOP

⁹² *Id.*

⁹³ See Hongyi's PPQR at 1-3.

⁹⁴ See *Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 3284 (January 11, 2017), and accompanying Issues and Decision Memorandum at Comments 3 (*Biaxial Integral Geogrid China Final*).

⁹⁵ See Hongyi's SDQR at SD-15A; also see Hongyi's PPQR at 1-3; also see Hongyi's September 19, 2017 Supplemental Section A Questionnaire Response at 10 (Hongyi's SAQR).

calculations, the accuracy of Hongyi's entire FOP response is unascertainable, leaving Commerce without the ability to use the per-unit consumption factors as reported.

Section 782(d) of the Act gives Commerce the authority to disregard all or part of the original and subsequent responses of a deficient submission if the submitting party provides subsequent responses regarding the deficiency that Commerce does not find satisfactory. In multiple proceedings, Commerce has found insufficient answers to questionnaires and unreliable cost reporting as grounds for declining to verify a respondent.⁹⁶ In the instant case, despite Commerce granting Hongyi multiple opportunities through supplemental questionnaires, as well as rebuttal comments, to clarify the inventory adjustment, Hongyi has failed to adequately satisfy Commerce's concerns regarding the reliability of its accounting records.

Hongyi is correct in its assertion that the CIT has emphasized the importance of providing respondents with an opportunity to cure deficient responses. However, Hongyi is mistaken in its assertion that *Hyundai Steel* is analogous to the instant case. In *Hyundai Steel*, the CIT found that Commerce both failed to provide prompt notice of a deficiency and acted unreasonably in promising an opportunity to remedy a discrepancy, failing to provide such an opportunity, and then holding the discrepancy against the respondent. In the instant case, Commerce has granted Hongyi multiple opportunities to adequately address its inventory adjustment, including a chance to comment on Commerce's decision not to verify.⁹⁷ Commerce notified Hongyi as early as the first section A supplemental questionnaire that its accounting records contained certain accounting maneuvers which required further explanation.⁹⁸ Furthermore, 782(e) only requires Commerce to use information that is verifiable. As stated in Commerce's cancellation of verification letter, Commerce finds Hongyi's accounting records unreliable and unverifiable.⁹⁹

Furthermore, Hongyi is equally mistaken in its assertion that somehow the instant case is analogous to *American Tubular*, *Ta Chen Steel*, and *Hebei Metals*. In these cases, the CIT highlighted Commerce's obligation to articulate deficiencies to respondents in a clear and timely manner.¹⁰⁰ Here, Commerce has issued multiple supplemental questionnaires to Hongyi,

⁹⁶ See, e.g., *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313, 67320 (November 17, 2004) (the Department declined to verify Tech Lane's questionnaire responses because Tech Lane did not have financial statements which to reconcile); *Stainless Steel Wire Rods from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 26288, 26291 (May 15, 2003) (Commerce provided Panchmahal numerous opportunities to fully respond to the request for a cost reconciliation and to correct response deficiencies, but when Panchmahal failed to satisfactorily answer Commerce's questionnaire concerning issues related to its cost-reconciliation, Commerce declined to verify the respondent); *Finished Carbon Steel Flanges from Italy: Final Determination of Sales at Less Than Fair Value*, 82 FR 29481, 29483 (June 29, 2017) (Commerce declined to verify a respondent due to unreliable cost reconciliation data); *Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856 (September 4, 2012) (Commerce found that the continual submission of inaccurate information prevented it from engaging in a verification of a record that had concerns as to reliability).

⁹⁷ See letter from Commerce, "Cancellation of Verification of Jiangsu Hongyi Steel Pipe Co., Ltd.," dated January 5, 2018 (Cancellation Letter).

⁹⁸ See Hongyi's Section A SQ at 6.

⁹⁹ See Cancellation Letter at 1.

¹⁰⁰ See *American Tubular Products, LLC v. United States*, Court No. 13-00029, Slip Op. 14-116, at *6-7 (CIT 2014); *Ta Chen Stainless Steel Pipe v. United States*, 23 CIT 804, at *12-14 (CIT 1999); *Hebei Metals & Minerals Imp. &*

explicitly asking it to explain the inventory adjustment. As stated above, Commerce outlined its concerns regarding Hongyi's inventory adjustment as early as in its section A supplemental, and in subsequent supplemental questionnaires, clearly outlining the underlying adjustments for which it had concerns, particularly the adjustment to its inventory.¹⁰¹

In the instant case, Commerce has provided Hongyi with multiple opportunities to adequately explain its inventory adjustment, but it has failed to satisfy our concerns regarding the reliability of its accounting records and system. In fact, Hongyi's explanations regarding the adjustment itself have changed significantly over the course of this investigation.¹⁰² For example, prior to Commerce's cancellation of verification, Hongyi remained steadfast that it found additional inventory during a physical check; however, Hongyi later asserted that the adjustment in its books and records was merely an accounting adjustment, having no relation to discovered inventory on the factory floor.¹⁰³

Moreover, as discussed above, because we found Hongyi's response to be so unreliable that we chose not to verify it, we cannot rely upon the separate rate information submitted by Hongyi. As such, for purposes of this final determination, we find Hongyi ineligible for separate rate status and thus are treating Hongyi as part of the PRC-wide entity.¹⁰⁴

Comment 2: Hongyi's Reporting of Steel Grade

Hongyi's Comments

- Hongyi provided detailed responses to Commerce's comprehensive post-preliminary supplemental questionnaire identifying the grades of steel consumed.¹⁰⁵
- Given these detailed and complete explanations of its steel grade reporting, along with supporting documentation, any remaining concerns regarding this issue with respect to reporting steel grades within the U.S. and FOP databases are now fully alleviated.¹⁰⁶
- Assuming, *arguendo*, that the steel grade issue is no longer a concern, then the legal and factual premises underlying Commerce's preliminary application of AFA pursuant to Section 776(a)(1) and (2) of the Act, regarding steel billets, no longer exist.¹⁰⁷

The Petitioners' Comments

- Commerce should continue to assign Hongyi an antidumping margin that is based on total adverse facts available (AFA) for the reasons stated in the *Preliminary Determination*.¹⁰⁸ Specifically, based on Commerce's determination in its cancellation memorandum that

Exp. Corp. v. United States, 28 CIT 1185, at *7-9 (CIT 2004).

¹⁰¹ *Id.*

¹⁰² See Hongyi's SAQR at 10; Hongyi's SDQR at 24; Hongyi's PPQR at 1-3; Hongyi's Case Brief at 11-17.

¹⁰³ *Id.*

¹⁰⁴ See *Galvanized Steel Wire from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012), and accompanying Issue and Decision Memorandum at Comment 2 (where mandatory respondents were placed in the China-wide entity as a result of verification not taking place).

¹⁰⁵ See Hongyi's Case Brief at 5-6.

¹⁰⁶ *Id.* at 7-8.

¹⁰⁷ *Id.* at 9.

¹⁰⁸ See Petitioners' Rebuttal Brief at 4.

Hongyi's internal books and records are unreliable, Commerce cannot use Hongyi's books and records as the basis for supporting Hongyi's questionnaire response data.¹⁰⁹

Commerce's Position: As noted by Hongyi, the information provided subsequent to the *Preliminary Determination* was responsive to Commerce's request and, indeed, addressed the concerns which served as the basis for application of adverse facts in the *Preliminary Determination*. However, because of Commerce's finding that Hongyi's books and records are unreliable in toto, as explained in Comment 1, the issue regarding Hongyi's steel reporting is rendered moot.

Comment 3: Rejection of Factual Information in Hongyi's Submissions

Hongyi's Comments

- Commerce erred as a matter of law in rejecting (in part) the data, narrative, and exhibits in Hongyi's January 10 and 12, 2017, comments.¹¹⁰
- The information was timely filed under 19 CFR 351.102(b)(21)(ii) and 351.301(c)(2)(vi).¹¹¹
- The data, narratives and exhibits submitted by Hongyi were either: (1) based entirely on evidence of record submitted previously in the original questionnaire and supplemental responses; or (2) filed to rebut, clarify, and correct data, information and allegations made by Commerce in its Verification Cancellation Memorandum, which is precisely the type of factual information expressly permitted under 19 CFR 351.102(b)(21)(ii).¹¹²

The Petitioners' Comments

- Commerce was right in its decision to reject Hongyi's above submissions.¹¹³
- Commerce's Cancellation Memo is not an allegation and does not contain any new factual information; the memo is simply an analysis to explain Commerce's decision to cancel the verification of Hongyi.¹¹⁴
- Hongyi had ample opportunities to place the information on the record concerning the inventory adjustment, including its post-preliminary questionnaire submission.¹¹⁵ However, it failed to do so, and instead filed unsolicited and untimely new factual information.¹¹⁶

Commerce's Position: On January 5, 2018, Commerce informed Hongyi that it did not intend to conduct a verification of its questionnaire responses.¹¹⁷ Within Commerce's cancellation letter to Hongyi, Commerce granted interested parties seven days to comment on the determination not to verify Hongyi.¹¹⁸ On January 10, 2018, Hongyi submitted its first set of

¹⁰⁹ *Id.* at 5.

¹¹⁰ *See* Hongyi's Case Brief at 24.

¹¹¹ *Id.* at 24-25.

¹¹² *Id.* at 25.

¹¹³ *See* Petitioners' Rebuttal Brief at 18.

¹¹⁴ *Id.* at 19.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *See, generally*, Cancellation Letter.

¹¹⁸ *Id.* at 2.

comments regarding Commerce's determination not to verify.¹¹⁹ On January 12, 2018, Hongyi submitted its second set of comments regarding Commerce's decision not to verify.¹²⁰ On January 29, 2018, Commerce rejected, in part, both Hongyi's January 10 and January 12, 2018 letters, citing untimely filed factual information contained in both submissions.

Commerce disagrees with Hongyi that it erred as a matter of law in partially rejecting data, narrative, and exhibits contained in Hongyi's January 10 and 12, 2018 comments. The information referenced in Hongyi's comments to Commerce's letter canceling verification represented unsolicited new factual information not previously placed on the record.¹²¹ The deadline for providing unsolicited new factual information is 30 days before the scheduled date of the preliminary determination in an investigation, or 14 days before verification, whichever is earlier.¹²² In the instant case, the deadline to file new factual information was October 16, 2018. As the Court has noted, Commerce has broad discretion with respect to antidumping proceedings to fashion its own rules of administrative procedure, including authority to establish and enforce time limits concerning submission of written information and data.¹²³ Accordingly, Commerce was justified in rejecting Hongyi's placement of untimely-filed factual information on the record.

Hongyi seems to have misinterpreted Commerce's letter and/or its regulations by presuming that Commerce's invitation to provide comment on its verification cancellation memo constituted an opportunity to submit factual information in response to that determination. Hongyi argues that "comments filed on January 10 and 12 regarding the cancellation of verification were timely filed under 19 C.F.R. 351.102(b)(21)(ii) and 351.301(c)(2)(vi), as they clearly amounted to '{e}vidence, including statements of fact, documents, and data submitted either in support of allegations, or, to rebut, clarify, or correct such evidence submitted by any other interested party.¹²⁴'" "As provided in 19 C.F.R. 351.301 (c)(2)(vi), an interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in support of allegations 10 days after the date such factual information is served on an interested party.¹²⁵" However, Commerce's January 5 memorandum concerning the cancellation of the verification of Hongyi did not contain factual information, and, therefore, there was no "factual information submitted in support of allegations" for Hongyi to rebut, clarify, or correct, per 19 C.F.R. 351.301(c)(2)(vi). Therefore 19 CFR 351.102(b)(21)(ii) and 351.301(c)(2)(vi) are inapplicable in the current circumstances. Commerce's submission simply restated information on the record that underlined its determination not to verify. As such, Commerce properly rejected certain data, narrative, and exhibits in Hongyi's January 10 and 12, 2017, comments.

¹¹⁹ See letter from Hongyi, "Hongyi Comments Regarding the Department's Cancellation of Verification: Antidumping Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China," dated January 10, 2018 (Hongyi's January 10, 2018 Letter).

¹²⁰ See letter from Hongyi, "Hongyi Comments Regarding the Department's Cancellation of Verification: Antidumping Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China," dated January 12, 2018 (Hongyi's January 12, 2018 Letter).

¹²¹ See Hongyi's January 10, 2018 Letter; also see Hongyi's January 12, 2018 Letter.

¹²² See 19 CFR 351.301(c)(5).

¹²³ See *Maui Pineapple Co., Ltd. v. U.S.*, 264 F.Supp.2d 1244, 27 C.I.T. 580, opinion after remand 286 F.Supp.2d 1379, 27 C.I.T. 1418 (CIT 2003).

¹²⁴ See Hongyi's Case Brief at 25.

¹²⁵ *Id.*

Comment 4: Critical Circumstances

Hongyi's Comments

- Because of the application of AFA, Commerce did not engage in any analysis of massive imports for Hongyi under Section 733(e)(1)(B) of the Act, and 19 CFR 351.206(h).¹²⁶
- Hongyi has fully addressed and alleviated Commerce's concerns regarding steel grades. As such, there is no longer any basis for Commerce to find critical circumstances with respect to Hongyi without performing a "massive import" analysis.
- Sales data does not show massive imports and, thus, an affirmative finding of critical circumstances is not possible with respect to Hongyi.¹²⁷

The Petitioners' Comments

- Commerce should continue to determine that critical circumstances exist with respect to Hongyi.¹²⁸
- Commerce should, in accordance with its well-established practice, base a finding that there were massive imports over a relatively short-period of time on AFA by rejecting Hongyi's entire response.¹²⁹
- In the alternative, if Commerce decides to conduct a "massive imports" analysis, the record still indicates that Hongyi had massive imports over a relatively short period of time during the analyzed period, justifying an affirmative critical circumstance finding.¹³⁰

Commerce's Position: In the *Preliminary Determination*, Commerce found that critical circumstances existed for Hongyi based on AFA.¹³¹ Specifically, Commerce found that Hongyi misreported information pertaining to steel grade, one of the physical characteristics of the product CONNUM, in its U.S. sales database for several U.S. sales.¹³² As a result of this misreporting, and because Commerce could not rely on Hongyi's submitted information, Commerce determined that there were massive imports for Hongyi based on AFA.¹³³

Since the *Preliminary Determination*, Hongyi has rectified the problems associated with its steel grade misreporting.¹³⁴ However, as discussed above in Comment 1, because we find Hongyi's books and records to be unreliable, for purposes of this final determination we have determined that Hongyi is ineligible for separate rate status and thus are treating Hongyi as part of the China-wide entity. As such, Hongyi is subject to our critical circumstances determination with respect

¹²⁶ See Hongyi's Case Brief at 10-11.

¹²⁷ *Id.*

¹²⁸ See Petitioners' Rebuttal Brief at 20.

¹²⁹ *Id.* at 21.

¹³⁰ *Id.*

¹³¹ See *Preliminary Determination* at 25.

¹³² See Hongyi's SDQR at Exhibit S-3D; *also see* Hongyi's August 18, 2017 Section C Questionnaire Response at Exhibit C-1 (Hongyi's CQR).

¹³³ See *Preliminary Determination* at 25.

¹³⁴ See Hongyi's PPQR at 3-12 and SSC-1 through SCC-8.

to the China-wide entity. As stated above, Commerce finds, based on AFA, that the entity had “massive imports” over a “relatively short period,” in accordance with sections 735(a)(3) and 776(a) and (b) of the Act and 19 CFR 351.206(h).

Comment 5: Surrogate Country Selection

The Petitioners’ Comments

- Commerce based its preliminary decision to select Romania as the primary surrogate country on two premises, both of which were incorrect, and should instead select Thailand as the primary surrogate country.¹³⁵
 - First, Commerce stated that Thai surrogate values (SV) were not available for both high and low carbon steel billets; however, the record does include Thai values suitable to value both high and low carbon steel billets.¹³⁶
 - Second, Commerce stated that a Romanian company, ARTROM, produces identical merchandise, while the Thai company, Top Tube Manufacturing Co., Ltd. (Top Tube), has an “overall product mix” that is “much more diverse” than pipes and tubes. However, Top Tube is a producer of identical merchandise which conforms to Commerce’s grade codes as specified in the scope description and, like Huacheng, Top Tube is not an integrated producer.¹³⁷ On the other hand, ARTROM is a fully integrated producer.¹³⁸ ARTROM’s operations thus range from the production of liquid steel to the production of mechanical tubing.¹³⁹ Therefore, ARTROM’s production experience is less reflective of Huacheng’s production experience than Top Tube’s.¹⁴⁰ In addition, ARTROM, like Top Tube, also produces merchandise that is not identical to the merchandise under consideration.¹⁴¹ Further, ARTROM obtains its billets from an affiliate at transfer prices that may not reflect market value.¹⁴²
 - The record includes two useable Thai financial statements *i.e.*, one for Top Tube and one for Grand Tech Manufacturing (Thailand) Co., Ltd. (Grand Tech) but only includes one useable Romanian financial statement.¹⁴³ Commerce’s preference is to use multiple financial statements to value the overhead and financial ratios whenever possible in order to eliminate distortions that may arise from using the financial statement of only one producer.¹⁴⁴ Both Top Tube and Grand Tech produce tubes to the same grades and specifications as those covered by the scope of this investigation and they are at the same

¹³⁵ See Petitioners’ Case Brief at 3 -4.

¹³⁶ *Id.* at 5 – 6.

¹³⁷ *Id.* at 6 – 7.

¹³⁸ *Id.* at 9 – 10.

¹³⁹ *Id.* at 2.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 7 – 8.

¹⁴² *Id.* at 5 – 6.

¹⁴³ *Id.* at 11 – 12.

¹⁴⁴ *Id.* at 11 – 12, citing *Dorbest Ltd. v. United States*, 604 F.3d 1363,1368 (Fed. Cir. 2010), and *Jianxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1332 (CIT 2014) (“Commerce prefers to use multiple financial statements to calculate surrogate financial ratios to avoid distortions that may arise from using just one financial statement”).

level of integration as Huacheng.¹⁴⁵

Huacheng's Rebuttal Comments

- Romania is the appropriate surrogate country.
 - Romanian import data are superior to Thai import data with respect to billets, the principal material input used to produce CDMT, because the relevant Romanian HS descriptions include specifications regarding shape as well as carbon content, while the relevant Thai HS descriptions include only specifications regarding carbon content.¹⁴⁶
 - The petitioners' argument concerning the availability of two financial statements for producers in Thailand does not support selecting Thailand for all surrogate values.¹⁴⁷
 - Top Tube's production activities and products are, at best, comparable to those of Huacheng.¹⁴⁸ Top Tube's company profile, submitted with its financial statement, indicates that Top Tube manufactures "high precision, small dimension steel tube products" such as "carbon steel pipe and copper coated steel pipe parts for automobiles, motorcycles and household electrical appliances."
 - Grand Tech, at best, manufactures comparable rather than identical merchandise. Grand Tech produces ERW tubes, as well as cold-drawn welded tubes, with a focus on automotive parts and precision applications. Moreover, Grand Tech's financial data is distorted by countervailable subsidies administered by the Thai Board of Investment, namely, promotional benefits under the Investment Promotion Act,¹⁴⁹ which has not been refuted on the record.
 - If Grand Tech's financial statement are rejected, the petitioners' argument that multiple financial statements justify changing the surrogate country is moot.¹⁵⁰
 - The data in ARTROM's financial statements is properly disaggregated in detail, to a greater extent than is done in Top Tube's and Grand Tech's financial statements.¹⁵¹ In addition, Commerce has found that ARTROM produces identical merchandise.¹⁵²
 - The selection of a surrogate country is not based entirely on a comparison of the respondent's level of integration or corporate /organizational structure to that of companies whose financial statements are on the record of this investigation as proposed basis for the calculation of surrogate financial ratios.¹⁵³ Commerce addressed the petitioners' criticism that ARTROM and Huacheng function at different levels of integration by concluding that the product mix produced by Top Tube and Huacheng differed substantially to the point that, on balance, the concerns regarding the level of

¹⁴⁵ See Petitioners' Case Brief at 2, 5 – 6, and at 12.

¹⁴⁶ See Huacheng's Rebuttal Brief at 2 – 3.

¹⁴⁷ *Id.* at 4.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*, citing to Hongyi's submission, "Pre-Preliminary Comments of Hongyi in Antidumping Investigation of Cold Drawn Mechanical Tube from China, dated October 31, 2017, at 10-11; also citing letter from the petitioners, "Surrogate Values Submission of Petitioner" dated September 29, 2017, at Attachment 6B, ("Financial Statement of Grand Tech") at note 12.

¹⁵⁰ See Huacheng's Rebuttal Brief at 5.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at 1.

integration are outweighed, rendering ARTROM's financial statement a superior basis on which to calculate surrogate financial ratios.¹⁵⁴

- There is no evidence on the record that ARTROM's purchases of some inputs from related companies are likely to reflect internal transfer values rather than true market values, which could distort the overhead-to-raw materials ratios.¹⁵⁵
- The petitioners base much of their argument regarding surrogate country selection on the adequacy of the available financial statements; however, surrogate country selection is based on several factors, including whether the country is a significant producer of merchandise under consideration, the contemporaneity and quality of the data, whether the data is specific to reported material inputs, and whether the data represents broad market averages, *etc.*¹⁵⁶

Hongyi's Rebuttal Comments

- Substantial record evidence establishes that for valuing the most significant FOPs, including round steel billets, and financial ratios of both Hongyi and Huacheng, the Romanian SV data are far superior as compared to the corresponding Thai SV data.¹⁵⁷
 - Commerce needs to evaluate the quality of the potential Romanian and Thai surrogate value data with respect to Hongyi's reported FOPs as well as Huacheng's. This is necessary so that in the event Commerce continues to apply total AFA to Hongyi for the final determination, and there is then a subsequent court remand instructing Commerce to calculate an antidumping duty margin for Huacheng, the relevant data with respect to Hongyi would be on the record of this investigation.¹⁵⁸
 - The petitioners are correct that the record contains Thai SV data for both low and high carbon non-alloy billets, however, the Thai surrogate values are comparatively less product-specific than the Romanian surrogate values for almost all types of billets.¹⁵⁹ The descriptions for semi-finished iron or steel products, Romanian HS numbers 72071912 and 72072052, specify that the category includes heat treatment/hot rolled, circular billets. The descriptions for the applicable Thai HS numbers, 720719 and 720720, do not specify heat treatment/hot rolled, circular billets. The Romanian and Thai descriptions for HS 722490 are the same and make no specifications with respect to heat treatment or shape.¹⁶⁰ Commerce has a longstanding preference for valuing circular or round steel inputs based on SV data that precisely covers the steel input having circular or round profile shape.¹⁶¹ Established precedent also supports the choice of SV data that is specific to the input in terms of its heat treatment properties.¹⁶²

¹⁵⁴ *Id.* at 5 - 6.

¹⁵⁵ *Id.* at 6.

¹⁵⁶ *Id.* at 7.

¹⁵⁷ See Hongyi's Rebuttal Brief at 4 - 5.

¹⁵⁸ *Id.* at 5.

¹⁵⁹ *Id.* at 6.

¹⁶⁰ *Id.* at 7 - 8.

¹⁶¹ *Id.* at 9 - 11 citing *Peer Bearing Company-Changshan v. United States*, 804 F. Supp. 2d 1337, 2011 Ct. Intl. Trade (November 21, 2011), affirmed in *Peer Bearing Co. - Changshan v. United States*, 914 F. Supp. 2d 1343, 1349-1350 (CIT 2013).

¹⁶² *Id.* at 11 citing *Foshan Shunde Yongjian Housewares & Hardware Co. v. United States*, 33 Int'l Trade Rep. (BNA) 2123 (CIT Oct. 12, 2011) ("Because the surrogate value of hot-rolled steel is less than that for cold-rolled steel, according to Commerce, Foshan Shunde had an incentive to report inputs of the former, which would result in

- Evidence on the record does not show that ARTROM is an integrated producer, nor does it demonstrate that ARTROM self-produces steel, or the principal FOPs used to produce merchandise under consideration, *i.e.*, billets and hot rolled coil.¹⁶³
- Evidence on the record does not support the petitioners' assertion that Top Tube produces identical merchandise.¹⁶⁴ Although Top Tube consumes some of the same steel grades in its production that respondents consume to produce merchandise under consideration, this does not demonstrate that Top Tube produced identical merchandise.¹⁶⁵ A multitude of distinct products can be produced using the same steel grade. ARTROM's financial statement and website information unambiguously demonstrate that it produces identical merchandise, *i.e.*, mechanical tubing.
- The petitioners fail to provide evidence showing that ARTROM's transfer pricing was not market based. In addition, Commerce has rejected such arguments in other proceedings.¹⁶⁶
- ARTROM's financial statement is very well disaggregated, providing discrete expense data for all expense categories, including raw materials, labor, and energy. Notably, it also provides the cost of excludible expenses like freight. As such, ARTROM's financial statement serves as a reliable basis on which Commerce can calculate very accurate financial ratios.
- Grand Tech's 2016 financial statement is distorted by benefits obtained through subsidy programs administered by the Thai Board of Investment (BOI) that were previously determined to be countervailable pursuant to an independent CVD investigation. In 2016, the company received promotional privileges granted by the Board of Investment (BOI) agency of the Government of Thailand, under the provisions of the Investment Promotion Act (IPA).¹⁶⁷ Specifically, the company was a beneficiary pursuant to the "2nd Certificate No. 2316(2)/2557, dated September 29, 2014 for producing of Steel pipe or Stainless pipe and received an exemption of corporate income tax for 8 years which the company has to follow up on the BOI conditions."¹⁶⁸
- Grand Tech's and Top Tube's financial statements are not sufficiently disaggregated. Grand Tech's financial statement does not disaggregate expenses for raw materials, labor or energy.¹⁶⁹ Instead it provides merely a broad basket category of "Cost of Sales". Further, Grand Tech's financial statement also fails to disaggregate administrative or sales expenses.¹⁷⁰ Similarly, Top Tube's financial statement does not disaggregate raw materials, labor or energy.¹⁷¹ Instead, it also provides only a broad basket category

a lower normal value calculation.").

¹⁶³ *Id.* at 13.

¹⁶⁴ *Id.* at 13 – 14.

¹⁶⁵ *Id.* at 14.

¹⁶⁶ *Id.*, citing *Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015) ("We also do not find that Trigger's sales of its products mostly to its Japanese parent company undermine the specificity, contemporaneity, and quality of Trigger's financial statements in this review.").

¹⁶⁷ See Petitioners' SV Submission at Attachment 6B (Note 12).

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 14 – 18.

¹⁷⁰ *Id.* at 16.

¹⁷¹ *Id.* at 17.

expense for “Cost of Sales,” and does not disaggregate administrative or sales expenses.¹⁷²

- Commerce should utilize the financial statements of Intfor SA, SC Mairon Tubes, and Galfinband SA in addition to ARTROM’s financial statements to calculate financial ratios.¹⁷³ They include disaggregated expenses and all they produce comparable merchandise.¹⁷⁴

Commerce’s Position: When Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer’s factors of production (FOPs), valued in a surrogate ME country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, “to the extent possible, the prices or costs of [FOPs] in one or more ME countries that are -- (A) at a level of economic development comparable to that of the [NME] country; and (B) significant producers of comparable merchandise.”¹⁷⁵ As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value (SV) data, or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations outweigh the difference in levels of economic development.¹⁷⁶ To determine which countries are at the same level of economic development, Commerce generally relies on per capita gross national income (GNI) data from the World Bank’s World Development Report. Identifying potential surrogate countries based on GNI data has been affirmed by the CIT.¹⁷⁷ Further, Commerce normally values all FOPs in a single surrogate country. Further, Commerce normally values all FOPs in a single surrogate country. Finally, Commerce considers the quality and availability of SV data with respect to each potential surrogate country.

In the *Preliminary Determination*, we found that Brazil, Bulgaria, Mexico, Romania, South Africa, and Thailand are all at the same level of economic development as the PRC, based on per capita gross national economic income.¹⁷⁸ Furthermore, we preliminarily found that Bulgaria, Romania, South Africa and Thailand were significant producers of comparable merchandise. When evaluating SV data, with respect to quality and availability, Commerce considers several factors including whether the SV data is publicly available, contemporaneous with the POI,

¹⁷² *Id.*

¹⁷³ *Id.* at 18.

¹⁷⁴ *Id.*

¹⁷⁵ See Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce’s website at <http://enforcement.trade.gov/policy/bull04-1.html>.

¹⁷⁶ See the memorandum, “Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information,” dated September 7, 2018.

¹⁷⁷ See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).

¹⁷⁸ *Id.* at 2.

representative of broad-market averages, tax and duty-exclusive, and specific to the input.¹⁷⁹ There is no hierarchy among these criteria. Commerce carefully considers the available evidence considering the industry specific circumstances when undertaking its analysis.¹⁸⁰ The petitioners, Hongyi, and Huacheng placed surrogate value data on the record from Romania and Thailand.¹⁸¹ No parties placed SV information on the record for Brazil, Bulgaria, Mexico, or South Africa, or argued that these countries should be selected as the surrogate country. Thus, Commerce has not considered Brazil, Bulgaria, Mexico, or South Africa for surrogate country selection purposes in this investigation.

Based on our review of the SV data on the record, we determine to continue selecting Romania as the primary surrogate country for purposes of valuing FOPs and calculating surrogate financial ratios for the final determination. As an initial matter, and as described above, because Hongyi's reported information is deemed unreliable in its entirety and Hongyi is being treated as part of the China-wide entity, its data is not being considered with respect to surrogate country selection. Therefore, we consider surrogate country selection in terms of specificity with respect to Huacheng's reported data.

First, steel billets are one of the principal inputs consumed by Huacheng in the production of merchandise under consideration. Commerce “. . . favors one country over another on the basis of surrogate value specificity, where a surrogate value from one country representing a significant portion of normal value is more specific to a respondent's input.”¹⁸² The petitioners' argument that Thailand should be selected as the surrogate country because the record includes Thai values suitable to value both high and low carbon steel billets is moot because Huacheng did not report its FOPs on the basis of carbon content. Huacheng reported that it consumed round carbon steel billets in the production of merchandise under consideration.¹⁸³ For the *Preliminary Determination*, we valued Huacheng's billet consumption using a SV for circular/round carbon steel billets, *i.e.*, we used Romanian import data for HS 7207.19.12, which covers circular/round carbon steel billets: “Semi-Finished Products, Of Iron Or Non-Alloy Steel, Containing By Weight < 0,25% Carbon, Of *Circular* Or Polygonal Cross-Section, Rolled Or Obtained By Continuous Casting.” The description of the corresponding Thai HS category 720719, does not specify that it includes round carbon steel billets: “Semifinished Products of Iron Or Nonalloy Steel, Under 0.25% (Wt.) portion, Cross section other than Rectangular, NESOI.” While we agree with the petitioners that Thai SVs for carbon steel billets are indeed on

¹⁷⁹ See, *e.g.*, *Certain Activated Carbon from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012), and accompanying Issues and Decision Memorandum at 8.

¹⁸⁰ See Policy Bulletin 04.1.

¹⁸¹ See, *generally*, Petitioners' September 29, 2017 SV Comments; Hongyi's September 29, 2017 SV Comments; Huacheng's September 29, 2017 SC Comments.

¹⁸² See *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014) and the accompanying Issues and Decision Memorandum at Comment 2, citing *Utility Scale Wind Towers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012) and the accompanying Issues and Decision Memorandum at Comment 1.

¹⁸³ See Huacheng's section D questionnaire response, “*Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: AD Questionnaire Response to Sections C & D*,” dated August 28, 2017 at 17 – 18.

the record of this investigation, these potential SVs are less specific to the carbon steel billets consumed by Huacheng to produce the merchandise under consideration, as they do not indicate that the shape of the input material is circular.¹⁸⁴ The Court has held that shape is a significant consideration in the selection of an appropriate surrogate value. In *Peer Bearing Company-Changshan v. United States*, 804 F. Supp. 2d 1337, 2011 Ct. Intl. Trade LEXIS 142 (November 21, 2011), the Court remanded Commerce to redetermine the surrogate value for circular steel wire rod because Commerce did not value it using a circular input. The Court stated: “{t}he court cannot sustain Commerce’s choice of a surrogate value without a finding of fact, supported by substantial record evidence, that the product being valued was not of a circular cross-section.”¹⁸⁵ In its redetermination pursuant to Court remand, Commerce applied a HTS heading that was specific to wire rods of circular cross-section in order to value the circular wire rod input, which the Court affirmed.¹⁸⁶

Furthermore, the greater degree of disaggregation of the data in ARTROM’s financial statement as compared to the Thai financial statements on the record allows Commerce to more accurately calculate surrogate financial ratios used in the calculation of normal value. ARTROM’s financial statement is disaggregated in such detail that more than 30 line-items may be excluded from the calculation of the surrogate financial ratios.¹⁸⁷ On the other hand, only two, broad line-item exclusions are possible with respect to Top Tube’s and Grand Tech’s financial statements.¹⁸⁸

Moreover, ARTROM manufactures merchandise that is identical to the merchandise under consideration in this investigation (*i.e.* pipe and tube).¹⁸⁹ Petitioners argue that Top Tube produces identical merchandise, but base their analysis on the steel grade of the inputs consumed, rather than the characteristics of the finished product.¹⁹⁰ Steel grade alone is not reflective of what types of products are produced by a company. While the Thai financial statements are from a company at a comparable level of integration to that of Huacheng (*i.e.* non-integrated) and ARTROM is arguably integrated, we find the overall product mix of the Thai producer to be much more diverse than just pipe and tube. Further, we do not know the

¹⁸⁴ Hongyi asserts that “. . . non-circular billets encompass myriad forms of complex shapes and since any one non-circular shape would generally not be produced in as significant proportion as a round billet, the average price of non-circular shapes would be higher as compared to circular shapes.” See Hongyi’s Rebuttal Brief at 10.

¹⁸⁵ See *Peer Bearing Co.*, 35 CIT, 752 F. Supp. 2d at 1375-76.

¹⁸⁶ See *Peer Bearing Co. - Changshan v. United States*, 914 F. Supp. 2d at 1343, 1349-1350 (Ct. Intl Trade 2013): “. . . Commerce redetermined the surrogate value according to WTA data for Thai HTS subcategory 7228.50.10, which corresponds to steel rod that is of a circular crosssection. Commerce stated that subcategory 7228.50.10 is appropriate based on plaintiff’s indication in a December 2011 questionnaire response that the steel wire rod input consumed by CPZ was of circular cross-section. The redetermined surrogate value complies with the court’s remand order, and no party opposed this redetermined surrogate value in comments filed before the court. The court, therefore, affirms this aspect of the Remand Redetermination.”

¹⁸⁷ See submission from Hongyi, “Hongyi’s First Surrogate Value Submission: Antidumping Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China (A-570-058), dated September 29, 2017, at Attachment 9B.

¹⁸⁸ See Petitioners’ SV Submission at Attachment 6B (Note 12).

¹⁸⁹ See Hongyi’s September 29, 2017 SV Comments at Attachment 9B.

¹⁹⁰ See Petitioners’ Case Brief at 6 – 7.

percentage of other non-comparable products that accounts for the Thai producer's production. Thus, we find that the Romanian financial statements better reflect the experience of Huacheng.

Furthermore, although the petitioners claim that the record indicates that ARTROM is a fully integrated producer of steel from liquid steel to final mechanical tubing production without citing to record evidence,¹⁹¹ they also claim that ARTROM's financial statement shows that the company "purchased" virtually all of the steel billets it used in production from a sister company, TMK RESITA, that is also located in Romania."¹⁹² Therefore, because record evidence does not demonstrate that ARTROM produces products from liquid steel to finished product, and it purchases the billets it uses in its production process, we find that ARTROM is not fully integrated, and that its structure is not incomparable to that of Huacheng.

Moreover, the petitioners claim that the transfer prices for the billets ". . . are likely to reflect internal transfer prices rather than true market values. . ." and ". . . will distort the ratio of overhead to raw materials in a manner that is unrepresentative of ratios for companies that buy raw materials from non-affiliates." However, the petitioners cite no record evidence to support their assertion that the transfer prices are not market-driven or that they are distortive in any respect.

Furthermore, evidence on the record indicates that Grand Tech receives countervailable subsidies. In 2016, the company received promotional privileges granted by the Board of Investment (BOI) agency of the Government of Thailand, under the provisions of the Investment Promotion Act (IPA).¹⁹³ When Commerce has reason to believe or suspect that a company may have received countervailable subsidies, financial ratios derived from that company's financial statements may not constitute the best available information with which to calculate surrogate financial ratios.¹⁹⁴ Consequently, Commerce does not rely on financial statements that contain references to programs previously found to be countervailable by Commerce when there are other sufficiently reliable and representative data on the record for purposes of calculating surrogate financial ratios.¹⁹⁵ In *Photovoltaic Cells*, Commerce cited countervailable subsidies under the IPA program as a basis for disregarding certain financial statements in the calculation of surrogate financial ratios.¹⁹⁶ Therefore, the petitioners' argument that Thailand should be

¹⁹¹ *Id.* at 2.

¹⁹² *Id.* at 9.

¹⁹³ See Petitioners' submission, "Certain Cold-Drawn Mechanical Tubings of Carbon and Alloy Steel from China – Petitioners' Submission of Thai Surrogate Value Information," dated September 29, 2017, at Attachment 6B, Note 12.

¹⁹⁴ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017) (*Photovoltaic Cells*) and accompanying IDM at Comment 16, citing *Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 82 FR 17634 (April 12, 2017) and accompanying IDM at Comment 1.

¹⁹⁵ *Id.*, citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 14.

¹⁹⁶ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments;*

selected as the primary surrogate country because Commerce has a preference to calculate surrogate financial ratios using multiple financial statements is rendered moot by the fact that Grand Tech's financial statement includes countervailable subsidies.

Comment 6: Romanian Financial Statements used in the Calculation of Surrogate Financial Ratios

Huacheng's Comments

- Commerce stated in its preliminary ministerial error memorandum:¹⁹⁷ “We disregarded the financial statements of all producers other than TMK-ARTROM S.A. (ARTROM), which is the producer of identical merchandise, either because the producers were insolvent/not profitable, produce comparable and not identical merchandise, or did not have audited financial statements.”¹⁹⁸ However, Commerce failed to explain why it considers these other financial statements from Romanian producers to be unacceptable for purposes of calculating surrogate financial ratios and should rely on all Romanian financial statements to calculate surrogate financial ratios.¹⁹⁹

The Petitioners' Rebuttal Comments

- 19 CFR 351.309(c)(2) of Commerce's regulations require interested parties to “present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results.”²⁰⁰ In arguing that Commerce should rely on all Romanian financial statements to calculate surrogate financial ratios, Huacheng does not cite any record evidence or provide any analysis of the available financial statements other than those of ARTROM.²⁰¹ Because Huacheng has failed to present its legal and factual arguments in full in its case brief, as required by Commerce's regulations, Commerce should reject Huacheng's arguments and consider them waived.²⁰²
- Even if Commerce were to consider Huacheng's arguments, however, none of the available Romanian financial statements are useable for purposes of calculating surrogate financial ratios.²⁰³
 - INTFOR SA (INTFOR) produces non-identical and non-comparable products. Additionally, the company filed for bankruptcy in 2011 and has failed to make a profit in each subsequent year.²⁰⁴
 - SC Mairon Tubes' (Mairon) financial statement is not on the record. Hongyi submitted the financial statement of Mairon's sister company, Mairon Galati SA (Galati), but failed

2014-2015,” 82 FR 29033 (June 27, 2017) (*Photovoltaic Cells*).

¹⁹⁷ See memorandum, “Less-Than-Fair-Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Allegation of Ministerial Errors in the Preliminary Determination,” dated December 22, 2017.

¹⁹⁸ See Huacheng's Case Brief at 3 – 4 citing the Preliminary Decision Memorandum.

¹⁹⁹ *Id.*

²⁰⁰ See Petitioners' Rebuttal Brief at 22 – 23.

²⁰¹ *Id.* at 23.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

to submit Mairon's financial statement. Galati produces many other non-comparable products and Mairon does not produce identical merchandise.²⁰⁵

- Galfinband SA (Galfinband) is neither a producer of identical nor comparable merchandise.²⁰⁶
- SC Tubomet SRL's (Tubomet) financial statement does not include an auditor's opinion nor does it include the original Romanian-language version of the company's profit and loss statement. Additionally, the record indicates this company's main business is the wholesale of metals, not the production of identical or comparable merchandise.²⁰⁷

Parties' comments with respect to surrogate country selection included discussion of the viability of Romanian surrogate values, as discussed in Comment 5, above. To the extent such previously summarized comments are relevant, we incorporated them by reference herein and address them below.

Commerce's Position: We agree with the petitioners that data in the financial statements of INTFOR,²⁰⁸ Mairon,²⁰⁹ Galfinband,²¹⁰ and Tubomet²¹¹ cannot be relied on to calculate surrogate financial ratios for the final determination in this investigation. Contrary to Huacheng's claim that Commerce did not address reasons for not using these statements, the *Amended Preliminary Determination* indeed explained our reasons for excluding data from the INTFOR, Mairon, Galfinband and Tubomet financial statements from the calculation of surrogate financial ratios. Specifically, we stated: "We disregarded the financial statements of all producers other than ARTROM, which is the producer of identical merchandise, either because the producers were insolvent/not profitable, produce comparable and not identical merchandise, or did not have audited financial statements."²¹²

We agree with the petitioners that Huacheng failed to cite any record evidence or provide any analysis of the available financial statements in its case and rebuttal briefs. However, although Huacheng did not cite specific evidence as to why it believes that each of the four financial statements is suitable as a basis for calculation of surrogate financial ratios, Huacheng argues that Commerce did not *fully* explain its decision, thus satisfying the requirements of 19 CFR 351.309(c)(2).

As described in detail below, we continue to find that data from these financial statements should not be relied on to calculate surrogate financial ratios for the final determination. For the final determination, we will continue to rely on ARTROM's financial statement as the sole basis for calculation of surrogate financial ratios because it is for a company within the selected surrogate country, ARTROM produces identical merchandise, and its financial statement does not suffer

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ See letter from Hongyi, "Hongyi's Submission of Final Surrogate Value Comments: Antidumping Duty Investigation on Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China (A-570-058)," dated October 16, 2017 (Final SV Submission) at Exhibit 8A.

²⁰⁹ *Id.* at Exhibit 8C.

²¹⁰ *Id.* at Exhibit 8B.

²¹¹ *Id.* at Exhibit 8D.

²¹² See the Preliminary Decision Memorandum at 30.

the deficiencies described below with respect to the financial statements of INTFOR, Mairon, Galfinband and Tubomet. Moreover, the level of disaggregation of data in ARTROM's financial statement facilitates an accurate calculation of surrogate financial ratios.

In selecting surrogate values (SV) for FOPs, section 773(c)(1) of the Act instructs Commerce to select "the best available information" from the appropriate market economy (ME) country to value FOPs.²¹³ Commerce normally will use publicly available information to value FOPs, pursuant to 19 CFR 351.408(c)(1). In determining the suitability of SVs, we carefully consider the available evidence with respect to the particular facts of each case and evaluate the suitability of each source on a case-by-case basis.²¹⁴ Accordingly, when examining the merits of financial statements on the record, we do not have an established hierarchy that imparts primacy to consideration of certain factors (*e.g.*, contemporaneity or specificity) over others in the selection of SVs.²¹⁵ Rather, we must weigh available information with respect to each situation and make a product- and case-specific decision as to what constitutes the "best available information."²¹⁶ Furthermore, the Court of International Trade (CIT) has recognized the wide discretion given to Commerce in selecting the best SVs on the record.²¹⁷

In calculating surrogate financial ratios, it is Commerce's practice, in accordance with 19 CFR 351.408(c)(4), to use nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country. In doing so, Commerce narrows the list of financial statements meeting this criterion by considering the quality and specificity of the statements, as well as whether the statements are contemporaneous with the data used to value FOPs.²¹⁸

Our reasons for declining to use the financial statements of INTFOR, Mairon, Galfinband, and Tubomet to calculate surrogate financial ratios are described below.

²¹³ See section 773(c)(1) of the Act; *see also* *Shakeproof*, 268 F.3d 1376, 1382 (Fed. Cir. 2001); *Ningbo*, 580 F.3d at 1254 (emphasizing that statute mandates that Commerce "shall" use "best available information" in valuing factors of production).

²¹⁴ See *Peer Bearing Co. v. United States*, 182 F. Supp. 2d 1285, 1291 (CIT 2001).

²¹⁵ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017).

²¹⁶ *Id.*

²¹⁷ The CIT has held that, "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." See *FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2003), (citing *Technoimportexport, UCF America Inc. v. United States*, 783 F. Supp. 1401, 1406 (CIT 1992)), affirmed, 87 Fed. Appx. 753 (Fed. Cir. 2004) (FMC).

²¹⁸ See *Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 1592 (January 12, 2010), and accompanying IDM at 36; *See also, Dorbest Ltd. v. United States*; 604 F.3d 1363, 1374 (Fed. Cir. 2010).

INTFOR

INTFOR declared bankruptcy in 2011,²¹⁹ has remained insolvent, and has failed to make a profit from operations since then.²²⁰ Commerce has an established practice of rejecting financial statements of companies that are not profitable.²²¹ Furthermore, during 2016, the period covered by INTFOR's financial statements, it did not produce mechanical tubes. INTFOR's 2016 financial statements describe 15 assorted steel products that the company claims to manufacture which are not specific to the merchandise under consideration in this investigation. They span a wide array of products distinct from mechanical tubing that include "Galvanized profiles for reinforcement of PVC joinery" and "Different metallic garments (fences, metal racks, containers, etc.) - black, galvanized or epoxy painted."²²² The only product that appears to be a pipe product is "Square, rectangular, and round longitudinally welded pipes for construction."²²³ However, pipes for construction are structural pipes, a different category of steel product from mechanical tube.²²⁴

Mairon

Mairon's website shows that it did not manufacture mechanical tubes.²²⁵ It produced only structural hollow sections, *i.e.*, structural pipe, a product completely distinct from mechanical tubing,²²⁶ and performed bending services for reinforcing steel and slitting/cutting services for steel coils and sheets.²²⁷ Information on the record shows that Mairon's sister company, Mairon Galati SA (Galati), produced various types of steel pipe, however Galati's financial statements are not on the record of this investigation. Commerce has developed a well-established practice of excluding incomplete financial statements from consideration, whether due to missing information or a lack of full translation.²²⁸ Moreover, Galati's website shows it produced/distributed a wide variety of products distinct from mechanical tubing including other steel products, fertilizer, and oil products.²²⁹

²¹⁹ See submission from the petitioners, "Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from China – Petitioners' Final Surrogate Value Rebuttal and Pre-Preliminary Comments," (Petitioners' SV Rebuttal) dated October 26, 2017, at Attachment 2A.

²²⁰ *Id.* at Attachment 2B, INTFOR's profit and loss statements for the years 2011 – 2015.

²²¹ See *Certain Steel Threaded Rod from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 68400 (November 4, 2011) and accompanying IDM at Comment 5.

²²² See Hongyi's Final SV Submission at Attachment 8A, PDF page 235.

²²³ *Id.*

²²⁴ See Petitioners' SV Rebuttal at Attachment 3C for information regarding the differences between mechanical tubing and structural tubing.

²²⁵ *Id.* at Attachment 3B.

²²⁶ *Id.*

²²⁷ See Petitioners' SV Rebuttal at Attachment 3B.

²²⁸ See *e.g.*, *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 14499 (March 12, 2012) and accompanying IDM at Comment 2 (*Ironing Tables*).

²²⁹ *Id.* at Attachment 3A.

Galfinband

Galfinband produces a wide variety of steel products most of which are manufactured from cold-rolled steel sheet including “metallic coated steel strips,” “galvanized steel profiles,” and “steel cored wire filled with calcium silicon, graphite, sulphur, or other material” but it does not produce or sell tubing.²³⁰ The galvanized steel profiles it produces are for “construction works.”²³¹ The cored wire it produces is for use in metallurgy applications, *e.g.*, in-ladle treatment of steel.²³² As such, Galfinband is not an identical producer.

Tubomet

Tubomet’s financial statement is incomplete. It does not include an auditor’s opinion. In addition, Tubomet’s financial statement includes an English translation of its 2016 profit and loss statement, but does not include the original Romanian language version. Without the original Romanian language version, it is not possible to compare the two versions to determine whether the translated version is accurate. As stated above, Commerce has developed a well-established practice of excluding incomplete financial statements from consideration, whether due to missing information or a lack of full translation.²³³ Furthermore, the company’s 2016 Director’s Report states that, in 2016, Tubomet’s “main object of activity” was the “wholesale of metals and metal ores,” products distinct from mechanical tubing.

Comment 7: Surrogate Used to Value Huacheng’s Seamless Tube Inputs

Huacheng’s Comments

- Commerce should value reported carbon-alloy semi-finished tube (CAST) inputs using price data for HS 7304.51 (tubes, pipes, and hollow forms, *seamless*, of other alloy steel; cold drawn or cold rolled) instead of 7306.50 (other tubes, pipes, or hollow profiles, *welded*, of circular cross section, of other alloy steel) because the CAST it consumed was a seamless product.²³⁴

The Petitioners’ Comments

- The citations to the record provided by Huacheng in support of its statement that it consumes seamless tube do not actually demonstrate that this input was seamless. Indeed, the record was, at best, ambiguous on this detail and, because Huacheng did not properly define its inputs and claims for the first time in its case brief that CAST is seamless without any evidence, Commerce should apply AFA for each CONNUM using this FOP.²³⁵ Furthermore, the record does not contain price information for Huacheng’s suggested SV of HS 7304.51.

Commerce’s Position: We agree with Huacheng that CAST is a seamless, not welded tube. Record evidence demonstrates that welded tube inputs were separately accounted for as a distinct category in Huacheng’s books and records, and that Huacheng consumed both alloy and non-

²³⁰ See Petitioners’ SV Rebuttal at Attachment 4.

²³¹ *Id.*

²³² *Id.*

²³³ See *Ironing Tables*.

²³⁴ See Huacheng’s Case Brief at 1 – 2.

²³⁵ See Petitioners’ Rebuttal Brief at 25 – 26.

alloy seamless semi-finished cold drawing tube (*i.e.*, both CAST and NAST) as an intermediate FOP in the production of merchandise under consideration. Specifically, Huacheng reported consumption of the following six distinct steel FOPs: carbon round steel billet, carbon alloy round steel billet, carbon semi-finished cold-drawing tube, carbon alloy semi-finished cold-drawing tube, hot rolled pipe, and – separately – carbon *welded* tube.²³⁶ Moreover, several purchase contracts on the record of this investigation demonstrate that purchases of seamless steel tube were made by Huacheng during the POI²³⁷ and diagrams of the production process further support Huacheng’s explanation that the CAST (and NAST) inputs represent a seamless input used in the production facility of its affiliate.²³⁸

Accordingly, because we agree that the record sufficiently demonstrates that semi-finished cold drawing tube inputs are seamless, we agree with Huacheng that the welded tube SV used to value CAST in the *Preliminary Determination* (*i.e.*, HS 7306.50) is not the most specific information on the record to value this input.

However, import data for Huacheng’s suggested HS category to be used to value CAST, HS 7304.51, is not on the record. The record does include data on the record which covers a circular, alloy input with which CAST can be valued, *i.e.*, HS category 7304.59.²³⁹ Therefore, for the Final Determination, we are valuing CAST using import data for HS category 7304.59. Even if data for HS 7304.51 were on the record, this does not appear to be an accurate category for the input, described, as the category is comprised of seamless tubes that have been *cold-worked*, whereas the record indicates that this input is a semi-finished product that has *yet to be cold-worked*, much like Huacheng’s hot rolled pipe inputs.²⁴⁰ Commerce thus finds that this category is the most specific to the input in question on record, as it represents price data for seamless alloy hollows that were not cold-worked prior to the drawing stage and the record provides no indication that these semi-finished cold drawing inputs were cold-worked prior to the drawing stage (as such, the 7304.59 category would be more specific to the input than 7304.51 even if the latter were available on the record).

Similarly, although Huacheng did not raise this issue, for the *Preliminary Determination*, we valued *non-alloy* seamless semi-finished cold drawing tube (NAST) using import data for HS 7306.60,²⁴¹ which covers *welded* tube. Thus, Commerce must also examine whether the record contains more specific information to value NAST. Import data for HS 7304.39.92,²⁴² a non-alloy seamless tube product, is on the record and is the most specific information with which to value NAST. This HS category was used to value non-alloy hot-rolled pipe for the preliminary

²³⁶ See letter from Huacheng, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Supplemental Section D Questionnaire Response and Response to Item 3 of Supplemental C Questionnaire,” dated October 31, 2017 (October 31 D SQR) at *e.g.*, Exhibits DS-8.3, DS-2.23, and DS-3.1.

²³⁷ See the October 31 D SQR at Exhibit DS-3.4.

²³⁸ *Id.* at Exhibits DS-1.1 and DS-2.1.

²³⁹ Narrative description: Oth Tb Ps Hp Aly Stl Nt Ss Smls Circ Cs Nt Cld-Wrk.

²⁴⁰ See Huacheng’s section D questionnaire response at D-2.1.

²⁴¹ Narrative description: Pipe Etc Nesoi, Weld Cir Cr Sect, Iron Or Nonal St.

²⁴² Narrative description: Tubes, Pipes And Hollow Profiles, Seamless, Of Circular Cross-Section, Of Iron Or Non-Alloy Steel, Not Cold-Drawn Or Cold-Rolled (Cold-Reduced), Of An External Diameter Of <= 168,3 Mm (Excl. Cast Iron Products, Line Pipe Of A Kind Used For Oil Or Gas Pipe.

determination.²⁴³ Therefore, for the Final Determination we will value NAST using import data for HS category 7304.39.92.

Comment 8: Whether to Adjust U.S. Price for Market Economy Ocean Freight Expenses

The Petitioners' Comments

- Commerce failed to adjust U.S. price for market economy ocean freight expenses.²⁴⁴

No other interested party provided comment on this issue.

Commerce's Position: For the *Preliminary Determination*, we stated “{w}here Huacheng reported shipped merchandise on market economy carriers and *paid for freight in a market economy currency*, we valued ocean freight using Huacheng’s reported ocean freight expenses.”²⁴⁵ 19 CFR 351.408(c)(1) states that “. . . where a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers *and paid for in market economy currency*, the Secretary normally will use the price(s) paid to the market economy supplier(s) . . . ” In this case, for the *Final Determination*, we will not value ocean freight using Huacheng’s reported market economy international freight expenses, because Huacheng was unable to demonstrate with record evidence that the market economy carriers were actually paid in a market economy currency. It is Commerce's practice to require a respondent to establish a link between payments to the market economy carrier through the market economy ocean freight carrier's agent.²⁴⁶ In response to our supplemental questionnaire, Huacheng requested that its freight forwarders provide documentation demonstrating that payment they made to the market economy carriers, on Huacheng’s behalf, were made in a market economy currency. However, Huacheng reported that the freight forwarders would not provide evidence of payment from the forwarders to the market economy carriers because the documents included the forwarders “confidential” information.²⁴⁷

²⁴³ See the memorandum, “Less Than Fair Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Preliminary Determination Surrogate Value Memorandum,” dated November 17, 2018 at Attachment I.

²⁴⁴ See Petitioners’ Case Brief at 12.

²⁴⁵ See memorandum, “Less Than Fair Value Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People’s Republic of China: Preliminary Determination Surrogate Value Memorandum,” dated November 15, 2017 at 7.

²⁴⁶ See, e.g., *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) and accompanying Issues and Decision Memorandum at Comment 21.

²⁴⁷ See Huacheng’s section supplemental questionnaire response, “Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Supplemental AD Questionnaire Response to Section C,” at 12 – 13.

Comment 9: Other Issues

Huacheng's Comments

- Commerce should continue to value oxygen, truck freight, and insurance expenses as they were valued for the *Amended Preliminary Determination*.²⁴⁸

No other interested party provided comment on this issue.

Commerce's Position: The surrogate values for these FOPs were properly valued as described in the *Amended Preliminary Determination*²⁴⁹ and we will continue to value them for the *Final Determination* as we did for the *Amended Preliminary Determination*.

IX. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register* and inform the International Trade Commission of our findings.

☒

☐

Agree

Disagree

4/9/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

²⁴⁸ See Huacheng's Case Brief at 2 – 3.

²⁴⁹ See the memorandum, "Antidumping Duty Investigation of Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China," dated December 27, 2017 at II. a., b., and c.