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Investigation
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July 17, 2019

MEMORANDUM TO: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

FROM: Abdelali Elouaradia
Director, Office IV
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Certain Steel Racks and Parts Thereof from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) determines that steel racks and parts thereof (steel racks) from the 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 731 of the Tariff Act of 1930, as amended (the Act). The mandatory respondent subject to this investigation is Nanjing Dongsheng Shelf Manufacturing Co., Ltd. (Dongsheng).

We made changes to the dumping margin calculation for Dongsheng based on minor corrections submitted at verification. Additionally, due to the modifications to the scope of the investigation reflected in the *Preliminary Determination*, we determined that Xiamen Aifei Metal Manufacturing Co., Ltd. (Aifeimetal) did not have shipments of subject merchandise during the period of investigation (POI). Below is the complete list of the issues in this investigation for which we received comments from interested parties:

Comment 1: Whether Commerce Should Rely on Romania or Brazil as the Surrogate Country
Comment 2: Whether the Compa S.A. Sibiu (Compa) or Metisa Metalurgica Timboense S/A. (Metisa) Financial Statements are a Better Source of Financial Ratios
Comment 3: The Surrogate Value for Dongsheng's P-tube Input
Comment 4: Whether Import Clearance Charges Should be Added to the Surrogate Values
Comment 5: Whether Commerce Should Grant Dongsheng a Double Remedy Offset
Comment 6: Whether Commerce Should Reduce Dongsheng's Export Price by Eight Percent Irrecoverable Value-Added Tax
Comment 7: Whether Aifeimetal Should be Excluded from this Investigation
Comment 8: The Preliminary Scope Determination

After analyzing the comments submitted by interested parties, we have made certain changes to the *Preliminary Determination*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

A. Case History

On March 4, 2019, Commerce published its *Preliminary Determination* for this investigation and invited interested parties to comment.[2] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[3] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. Accordingly, the revised deadline for the preliminary determination was May 13, 2019. On March 4, 2019, Commerce postponed the final determination of this investigation until July 17, 2019.[4]

On April 3, 2019, Trinity International Industries (Trinity) submitted its scope brief,[5] and on April 8, 2019, Target General Merchandise Inc. (Target) submitted its letter in lieu of a rebuttal scope brief.[6]

Between March 18, 2019, and March 22, 2019, Commerce conducted verification of Nanjing Dongsheng Shelf Manufacturing Co., Ltd.'s (Dongsheng) questionnaire responses.[7]

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[1] *See Steel Racks and Parts Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 84 FR 7326 (March 4, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).
[2] *See Preliminary Determination* PDM.
[3] *See* Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.
[4] *See Preliminary Determination* PDM.
[5] *See* Letter from Trinity, "Trinity International Industries – Case Brief on Preliminary Scope Determination in Antidumping and Countervailing Duty Investigations into Certain Steel Racks from the People's Republic of China," dated April 3, 2019 (Trinity's Scope Brief).
[6] *See* Letter from Target, "Steel Racks from the People's Republic of China: Letter in Lieu of Rebuttal Scope Brief," dated April 8, 2019 (Target's Scope Brief).
[7] *See* Memorandum, "Verification of the Sales and Factors Questionnaire Responses of Nanjing Dongsheng Shelf Manufacturing Co., Ltd. in the Antidumping Duty (AD) Investigation of Steel Racks from the People's Republic of China (China)," dated April 15, 2019 (Verification Report).

On April 26, 2019, Dongsheng,[8] the petitioner,[9] and Aifeimetal[10] filed their case briefs. On May 1, 2019, Dongsheng[11] and the petitioner[12] filed their rebuttal briefs.

Based on the results of the verification of Dongsheng, and our analysis of the comments received, we made certain changes to our *Preliminary Determination*.

B. Period of Investigation

The POI is October 31, 2017 through March 31, 2018.

III. SCOPE COMMENTS

During the course of this investigation and the concurrent countervailing duty investigation of steel racks from China, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in case and rebuttal briefs.[13] We received comments from interested parties on the Preliminary Scope Memorandum, which we address in Comment 8. For this final determination, we have made no changes to the scope of this investigation, as published in the *Preliminary Determination*.[14]

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are steel racks and parts thereof. For a complete description of the scope of the investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

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[8] *See* Letter from Dongsheng, "Steel Racks from the People's Republic of China – Case Brief," dated April 26, 2019 (Dongsheng's Case Brief).
[9] *See* Letter from the petitioner, "Steel Racks from the People's Republic of China: Petitioner's Case Brief," dated April 26, 2019 (Petitioner's Case Brief). The petitioner in this investigation is the Coalition for Fair Rack Imports (the petitioner).
[10] *See* Letter from Aifeimetal, "Certain Steel Racks from the People's Republic of China: Case Brief," dated April 26, 2019 (Aifeimetal's Case Brief).
[11] *See* Letter from Dongsheng, "Steel Racks from the People's Republic of China – Rebuttal Brief," dated May 1, 2019 (Dongsheng's Rebuttal Brief).
[12] *See* Letter from the petitioner, "Steel Racks from the People's Republic of China: Petitioner's Rebuttal Brief," dated May 1, 2019 (Petitioner's Rebuttal Brief).
[13] *See* Memorandum, "Steel Racks from the People's Republic of China: Preliminary Scope Decision," dated February 25, 2019 (Preliminary Scope Memorandum).
[14] *See Preliminary Determination*.

V. CHANGES FROM THE PRELIMINARY DETERMINATION

We adjusted Dongsheng's water consumption and labor hours based on the minor corrections submitted at verification.[15] In addition, we are no longer granting Aifeimetal a separate rate.[16]

VI. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Should Rely on Romania or Brazil as the Surrogate Country

Petitioner:

- Romania is not preferable to Brazil as the primary surrogate country for the following reasons: (1) Commerce has not found that import data reported on a cost, insurance, and freight (CIF) basis (as are Romania's import data) are preferable to data reported on a free on board (FOB) basis (the case for the Brazil import data); (2) the Brazilian surrogate values (SV) are more specific to Dongsheng's inputs; and (3) the Brazilian SVs are more accurate based on their unit of measure.
- Commerce has stated that it is unreasonable to limit the potential pool of surrogate countries to those that report data on a CIF basis[17] and multiple cases indicate that Commerce's practice is to add SVs for international freight and foreign brokerage and handling charges to import statistics that are not CIF.[18]
- Brazil's import values can be expressed on a CIF basis. Commerce mistakenly claimed that the petitioner failed to include a public source for the international freight costs necessary to calculate a CIF adjustment to Brazilian FOB import data. Further, Commerce does not require marine insurance costs to calculate a CIF adjustment.[19]
- Commerce incorrectly stated that, for most inputs, the Romanian SVs on the record are more specific to Dongsheng's inputs. There are eight instances where the Romanian import values for Dongsheng's inputs were reported under Harmonized Tariff Schedule (HTS) numbers at the eight-digit level and the Brazilian import values for those inputs were reported under HTS numbers at the six-digit level; however, there are ten instances where the Brazilian import values for Dongsheng's inputs were reported under HTS numbers at the eight-digit level while the Romanian import values for those inputs were reported under HTS numbers at the six-digit level.[20]

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[15] *See* Letter from Dongsheng, "Steel Racks from the People's Republic of China – Verification Exhibits," dated March 29, 2019 (Dongsheng's Verification Exhibits) at Exhibit VE-1.
[16] *See* Memorandum, "Final Determination in the Antidumping Duty Investigation of Steel Racks from the People's Republic of China: Analysis Memorandum for Nanjing Dongsheng Shelf Manufacturing Co., Ltd." (Final Analysis Memo), dated concurrently with this memorandum.
[17] *See* Petitioner's Case Brief at 3-4.
[18] *Id*. at 4-5 (citing *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010) and accompanying Issues and Decision Memorandum (IDM) at Comment 16; and Policy Bulletin, "Inclusion of International Freight Costs When Import Prices Constitute Normal Value," dated November 1, 2010, available on Commerce's website at https://enforcement.trade.gov/policy/PB-10.2.pdf (Policy Bulletin 10.2)).
[19] *Id.* at 5-6 (citing Policy Bulletin 10.2).
[20] *Id*. at 7-8.

- The Brazilian import statistics are more accurate because they are reported on a per kilogram basis. In contrast, the Romanian import statistics are reported in tons, which leads to improper counting of imports of small quantities. For example, import quantities less than one ton are reported in the Romanian data as quantities of zero, despite reported values for the imports.[21]
- Commerce incorrectly used the import statistics for Romania submitted by Dongsheng instead of properly downloading its own Romania import data from Global Trade Atlas (GTA).[22]
- Dongsheng failed to submit Romanian SV data by the deadlines established in Commerce's request for SV information and instead waited until 30 days before the preliminary determination to submit Romanian SV data.[23]

Dongsheng's Rebuttal:

- Commerce correctly found that Romania was preferable to Brazil as the primary surrogate country because: (1) Romanian import data reported on a CIF basis are more accurate than Brazil import data reported on an FOB basis, and (2) the Romanian SVs are more specific to Dongsheng's inputs than the Brazil SVs.
- Commerce relies on import values that include the costs of all movement charges incurred in shipping the input, as they are most representative of an available domestic price for the input in the absence of a domestic source. However, the petitioner did not provide information to adjust Brazilian FOB import values to CIF values. Commerce must add, as facts available, international freight, brokerage and handling, and marine insurance expenses to each import value, which is less accurate than CIF import values because the adjustment to the FOB data only approximates actual CIF costs.[24] Moreover, Commerce cannot make an adjustment for marine insurance expenses because such expenses are missing from the record. In contrast, the Romanian import values contain all the actual movement costs incurred.[25]
- Romanian import values for the primary steel inputs are more detailed than the Brazilian values,[26] which are only at the six-digit level for all of Dongsheng's steel inputs.[27] Also, Romanian SVs for labor, water, and electricity are more specific than Brazilian SVs.[28]
- The examples of zero quantity Romanian imports noted by the petitioner are imports of minor inputs in inconsequentially small (*i.e.*, less than 100 kilograms) quantities (hence listed as "zero") that make up a relatively small percentage of the total import value of those inputs; thus, they have little effect on the average unit value (AUV). Including imports with values but no quantities in AUV calculations can only minimally increase the AUV which provides no benefit to Dongsheng.[29]

[21] *Id*. at 9.
[22] *Id*. at 8.
[23] *Id.* at 2-3.
[24] *See* Dongsheng's Rebuttal Brief at 16-17.
[25] *Id.* at 17-18.
[26] *Id.* at 6-7.
[27] *Id.* at 7-8.
[28] *Id.* at 9-10.
[29] *Id.* at 4-5.

- The Eurostat Comext data submitted by Dongsheng for the Romanian SVs are from an official government public source and there are no discrepancies with these data and the GTA data placed on the record by the petitioner.
- Although Commerce could rely on its own Romania GTA data in its SV calculations, Commerce has never found an issue with Eurostat Comext as a source of surrogate country statistics. In a recent proceeding, although Commerce used GTA data over the petitioner's private source trade data, it continued to select the petitioner's recommended surrogate country.[30]
- Dongsheng timely suggested Romania as a surrogate country in accordance with the deadline established by Commerce and submitted Romanian SV data by the regulatory deadline (30 days before the preliminary determination). The petitioner had opportunities to, and did provide, alternative Romanian SVs and rebuttal surrogate country information.[31]

Commerce's Position: We have continued to rely on Romania as the primary surrogate country. Commerce selects countries as surrogates that are (1) economically comparable to the country under investigation or review and (2) significant producers of comparable merchandise. Where multiple countries meet those requirements,[32] as in this investigation, Commerce evaluates the potential surrogate countries based on data availability and quality. The record contains complete SV information for Romania and contains complete SV information, except for marine insurance, for Brazil. Hence, we next considered the quality of the data on the record for each of these countries. Commerce considers several factors when evaluating data quality including "whether the SVs are publicly available, contemporaneous with the period under consideration, broad-market averages, tax and duty-exclusive, and specific to the inputs being valued."[33] Based on the breadth of the aforementioned factors, we found that the Romanian SV data are generally reliable and usable, and, as explained below, preferable to the Brazilian SV data.[34]

First, we continue to find that the Romanian SVs are more specific for the principal material (*i.e.*, steel) inputs used by Dongsheng than the Brazilian SVs. The Romanian SVs are more specific for the majority of Dongsheng's principal steel inputs because they are based on HTS numbers at the eight-digit level, as compared with Brazilian SVs for those same steel inputs reported at the more aggregated six-digit level. Specifically, Romanian SVs are more specific for the following inputs: HSECTIONS, PTUBE, USECTIONS, ISECTIONS, RECTANTUBE, COLDSTEEL,

[30] *Id.* at 4-6 (citing *Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measures*, 83 FR 66675 (December 27, 2018) (*Steel Propane Cylinders from China*)).
[31] *Id.* at 1-2.
[32] *See Preliminary Determination* PDM at 11-12 where Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia have been found to satisfy these two requirements.
[33] *See Preliminary Determination* PDM at 12 (citing, *e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 2010-2011*, 78 FR 17350 (March 21, 2013) and accompanying IDM at Comment I(C)).
[34] *See Preliminary Determination* PDM at 12-13.

and PICKLING STEEL.[35] Of the remaining principal steel inputs, the Romanian and Brazilian HTS numbers are equally specific at the eight-digit level for LSECTIONS, and the HTS numbers for HOTSTEEL and CIRCUTUBE are reported at the six-digit level for both Romania and Brazil.[36] The instances the petitioner notes where the Brazilian HTS numbers are at the eight-digit level while the Romanian HTS numbers are at the six-digit level are for certain non-steel material inputs, such as packaging materials and materials such as defoamer.[37] We continue to find it significant that the Romanian HTS numbers for nearly all of Dongsheng's principal steel inputs (*i.e*., the major inputs) are at the more specific eight-digit level.

Second, we find the Romanian SVs for labor, energy, and water to be of a better quality than the Brazilian SVs for those inputs. The Romania labor SV (labor in the "manufacture of fabricated metal products, except machinery and equipment") is more specific to the manufacture of steel racks than the Brazilian labor SV ("wages in manufacturing").[38] The Romanian electricity SV specifically excludes "taxes and levies" while the Brazilian SV has no information about whether this SV is tax-exclusive.[39] The Romanian water SV is broad based (covers 46 water service providers), excludes value-added tax (VAT), and is for a time period close to the POI while the Brazilian water SV covers two municipalities, has no information about tax-exclusivity, and appears to be for 2016.[40]

Third, we find that there are financial statements on the record from both Brazil and Romania which can serve as the basis for the surrogate financial ratios. However, as explained at Comment 2, we find the financial statements for a Romanian company on the record to be preferable to the Brazilian company financial statement on the record for purposes of calculating the surrogate financial ratios.

The petitioner claims that using Romanian import data sourced from GTA, which are reported in metric tons, is problematic because imports of less than a metric ton are shown as "zero" in the quantity field, but GTA has reported an import value.[41] However, we used Romanian Eurostat Comext data to calculate SVs where import quantities of less than a metric ton are largely not shown as "zero" in these data but are shown as fractions of a metric ton (as small as 0.1 ton, or

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[35] *See* Letter from the petitioner, "Steel Racks from the People's Republic of China: Petitioner's Pre-Preliminary Comments," dated December 20, 2018 at 4; *see also* Letter from Dongsheng, "Steel Racks from the People's Republic of China – Second Surrogate Value Submission," dated December 12, 2019 (Dongsheng's SV Submission) at Exhibit SV2-1; Letter from Dongsheng, "Steel Racks from the People's Republic of China – Final Surrogate Value Submission," dated December 17, 2019 at SV3-1; Memorandum, "Preliminary Determination of the Antidumping Duty Investigation of Steel Racks from the People's Republic of China: Surrogate Value Memorandum," dated February 25, 2019 (SV Memorandum) at Attachment I.
[36] *Id.*
[37] *See* Letter from the petitioner, "Steel Racks from the People's Republic of China: Petitioner's Pre-Preliminary Comments," dated December 20, 2018 at 4.
[38] *See* Dongsheng's SV Submission at Exhibit SV2-5; *see also* Letter from the petitioner, "Steel Racks from the People's Republic of China: Factual Information to Value Factors of Production," dated November 26, 2018 (Petitioner's FOP Submission) at Exhibit II-A.
[39] *See* Dongsheng's SV Submission at Exhibit SV2-6; *see also* Petitioner's FOP Submission at Exhibit II-B.
[40] *See* Dongsheng's SV Submission at Exhibit SV2-9; *see also* Petitioner's FOP Submission at Exhibit II-C.
[41] *See* Letter from the petitioner, "Steel Racks from the People's Republic of China: Rebuttal Comments on Dongsheng's 30-day SV Submission," dated December 20, 2018 at 2-3 and Exhibits 1 and 2.

100 kg). For example, the petitioner lists 13 countries from which rivets were imported into Romania for which GTA import data show "zero," but which have import values. However, the Eurostat Comext data contains fractional quantities for all but two of the petitioner's 13 examples of zero quantity rivets imported into Romania. Even so, for these import quantities recorded as "zero" in the data, it is reasonable to infer that these amounts are smaller than 0.1 ton, and the values for these imports are often relatively low.[42] Consequently, they are insubstantial in the calculation of the AUV. Moreover, in another proceeding, Commerce had found that it is appropriate to include in its SV calculations imports with zero quantities and low values.[43]

Regarding parties' arguments as to whether a potential surrogate country with CIF import values is preferable to one with FOB import values, Commerce has addressed this issue in multiple cases noting that CIF import data are not necessarily superior to FOB import data, and limiting potential surrogate countries to those with CIF import data unreasonably limits the pool of potential surrogate countries.[44] Nevertheless, as explained in Policy Bulletin 10.2, Commerce's practice is to adjust SV import data reported on an FOB basis to a CIF basis.[45] Because the Brazilian SV data are reported on an FOB basis, Commerce would be required to make adjustments to value the Brazilian data on a CIF basis, consistent with our practice. Normally, international freight costs include not only the ocean freight portion of transporting the merchandise from one location to another, but also the other expenses associated with moving the goods, such as marine insurance.[46] However, the record does not include an SV for marine insurance to add to the Brazilian FOB values in order to calculate a CIF value.[47] Since Policy Bulletin 10.2 does not list marine insurance as an expense to be added to surrogate import values to account for international movement charges, the petitioner contends that marine insurance need not be added to an FOB price to obtain a CIF value. However, the acronym CIF indicates

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[42] *See* SV Memorandum at Attachment I.

[43] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Antidumping Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016) and accompanying IDM at Comment 22.

[44] *See, e.g.*, *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010) (*Wooden Bedroom Furniture*) and accompanying IDM at Comment 16; *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) (*Aluminum Foil from China*) and accompanying IDM at Comment 1; *Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value*, 83 FR 57421 (November 15, 2018) and accompanying IDM at Comment 3.

[45] For a description of our practice *see* Commerce Policy Bulletin No. 10.2 at 2, stating "when the import statistics of the surrogate country do not include such {CIF} costs, {Commerce} has added surrogate values for international freight and foreign brokerage and handling charges to the calculation of normal value"; *see also Wooden Bedroom Furniture* at Comment 16; *Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018) (*Cast Iron Soil Pipe Fittings*) and accompanying IDM at Comment 3.

[46] *See, e.g.*, *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) and accompanying IDM at Comment 3; *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*Quartz from China Final*) and accompanying IDM at Comment 8.

[47] *See* Petition at Volume II, Exhibit II-5.

that such values include insurance and in multiple cases Commerce has added movement charges, including marine insurance, to surrogate FOB import values to derive CIF import values.[48] Conversely, the Romanian SV data are already reported on a CIF basis and require no adjustment because they include specific actual costs for inputs used in the production of subject merchandise. While this difference alone may not necessarily be sufficient to determine that Romania is preferable to Brazil as a surrogate country, the totality of the evidence, as discussed above, leads us to find that Romania is the appropriate primary surrogate country in this case.

The petitioner claims that Commerce should not have used the Romanian Eurostat Comext data provided by Dongsheng and instead should have downloaded Romanian import data from GTA. Exhibit II-8 of the Petition contains a table under the heading "Data available in the Main Module of Global Trade Atlas is as follows." The table lists multiple countries and the data source for each country. For Romania, the table shows the data source is "Eurostat."[49] Based on this information, Commerce finds that we used data from the same source that GTA data would have relied on in reporting Romanian import data. Therefore, we do not find it was necessary to also separately download Romanian data from GTA.

While the petitioner expressed concerns regarding the timing of Dongsheng's Romania SV data submission, Dongsheng timely submitted surrogate country selection comments in response to Commerce's request for such comments and timely submitted Romanian SV data for Commerce to consider based on the regulatory requirement to provide such data no later than 30 days before the preliminary determination signature date.[50] Thus, there is no basis for disregarding the information submitted by Dongsheng.

Comment 2: Whether the Compa S.A. Sibiu (Compa) or Metisa Metalurgica Timboense S/A. (Metisa) Financial Statements are a Better Source of Financial Ratios

Petitioner:

- Commerce should select the Brazilian company Metisa's financial statements over the Romanian company Compa's financial statements as the source of financial ratios, because: (1) Metisa's products, production processes, and inputs are more comparable to steel racks than those of Compa; (2) Metisa's financial statements are sufficiently detailed; and 3) Compa's statements reference subsidies.[51]

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[48] *See, e.g.*, *Quartz from China Final* at Comment 8; and *Aluminum Foil from China* at Comments 1 and 3.

[49] *See* Letter from the petitioner, "Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as Amended," dated June 20, 2018 (Petition), Volume II, Exhibit II-8.

[50] *See* Memorandum, "Antidumping Duty Investigation of Steel Racks from the People's Republic of China: Submission of Comments Regarding Surrogate Country Selection," dated November 13, 2018; *see also* Letter from Dongsheng, "Steel Racks from the People's Republic of China – Comments on the Surrogate Country Selection and Preliminary SV Submission," dated November 26, 2018; 19 CFR 351.301(c)(3)(1).

[51] *See* Petitioner's Case Brief at 10-12 (citing *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2016*, 83 FR 5243 (February 6, 2018) and accompanying IDM at Comment 2; *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002) and accompanying IDM at Comment 5).

- All the steel products made by Metisa involve processes used in the production of steel racks. In contrast, Compa uses production processes and makes products that are not comparable to steel racks.[52]
- The majority of the material inputs Metisa consumes are the same as those consumed in the production of steel racks. In contrast, a minority of the inputs Compa consumes are the same as those consumed in the production of steel racks.[53]
- Commerce should not reject Metisa's statements because of its subsidiary in the reforestation industry given that the proportion of the subsidiary's net revenues in the statements is small.[54]
- Commerce incorrectly stated that portions of Metisa's statements are illegible and that the notes to the statements are not as detailed as Compa's notes.[55]
- Although Commerce found Metisa's financial statements do not segregate labor, raw material, and interest expenses to the degree found in Compa's financial statements, calculating the overhead ratio does not require the segregation of labor and raw material expenses, as long as there is a way to segregate at least some component of overhead, which is generally depreciation. Metisa's financial statements report its costs of depreciation and amortization, which can be used to calculate an overhead ratio. While the resulting figure likely understates the amount of overhead included in the cost of sales, this fact favors the respondent, so there should be no objection to relying on this ratio calculation.[56]
- Commerce's practice is to disregard financial statements that demonstrate the receipt of subsidies and the notes in Compa's financial statements reference subsidies.[57]

Dongsheng's Rebuttal:

- Commerce correctly found that Compa's financial statements were preferable to Metisa's for calculating surrogate financial ratios because: (1) Compa's production processes and inputs are more comparable to steel racks than those of Metisa; (2) Metisa's financial statements are less detailed than Compa's and contain illegible pages;[58] and 3) Metisa's financial statements are consolidated with those of its subsidiary which engages in the reforestation of exotic trees, a sector of operations dissimilar to the production of steel racks.
- Unlike Metisa, in producing comparable steel products, Compa consumes raw materials comparable or identical to those consumed in the production of steel racks.[59]
- Metisa produces a variety of agricultural machinery and the petitioner has not provided evidence that all of these products have comparable production processes or inputs to

[52] *Id.* at 12.
[53] *Id*. at 10.
[54] *Id*. at 13-14.
[55] *Id*. at 14-15.
[56] *Id*. at 14-15.
[57] *Id*. at 13.
[58] *See* Dongsheng's Rebuttal Brief at 10.
[59] *Id.* at 11-12.

those of Dongsheng. The types of products produced by Metisa suggest a dissimilar and more complex production process than that used in the production of steel racks.[60]

- Even if Commerce determines that the two companies are equally comparable with respect to the production of steel racks, Metisa's financial statements are unusable because they contain illegible pages and less detailed information than Compa's financial statements. The notes to Metisa's financial statements remain illegible even when magnified in the electronic PDF version of the statements.[61]
- Despite the petitioner's attempt to downplay the impact of Metisa's reforestation subsidiary by pointing to its small sales revenue, Metisa's financial statements show significant capital, assets, liabilities, and reforestation long term costs associated with this subsidiary. Sales revenue is not indicative of all costs. Thus, the consolidation of Metisa's financial statement with that of its reforestation subsidiary impacts the comparability of Metisa's financial statements to that of Dongsheng.[62]
- Compa's financial statements provide more information on the types of expenses required to calculate financial ratios, while Metisa's statements lack expense line items for raw materials, energy, employment benefits, and interest expenses. Commerce's preference, as explained in *Certain Steel Threaded Rod from China*, is for more detailed financial statements, even if it can calculate financial ratios from less detailed financial statements.[63]
- Although Compa may have received EU funding for a project, this does not mean that Compa received a countervailable subsidy. There is no specific evidence of a countervailable subsidy in Compa's financial statements, as Commerce has no countervailing duty (CVD) cases against Romania.[64]

Commerce's Position: We are continuing to rely on the financial statements of the Romanian company, Compa, rather than those of the Brazilian company Metisa, to calculate the surrogate financial ratios for the following reasons: (1) Commerce has selected Romania as the primary surrogate country for its final determination; and (2) Compa's financial statements are complete, in English, and indicate that Compa (a) consumed inputs, and engaged in production processes, that are similar to those used in the production of steel racks, (b) operated at a profit, (c) did not receive countervailed subsidies, and (d) Compa's financial statements separately identify raw materials, energy, labor, and financial expenses to calculate the surrogate financial ratios.

Neither Compa nor Metisa produce steel racks. Metisa is primarily engaged in the manufacture and sale of parts for the agricultural industry, including spare parts for tractors, blades for cutting stone, railway accessories, and parts for road equipment.[65] Metisa also produces disc blades, draw-bars, rotavator blades, slasher blades, peanut blades, scraper blades, grouser bars, steel washers, and products made using "high technology," such as shovels, picks, hoes, and post hole

[60] *Id*. at 11.
[61] *Id.* at 12-14.
[62] *Id.* at 10-11.
[63] *Id.* at 14-15 (citing *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 83800 (November 22, 2016) (*Certain Steel Threaded Rod from China*) and accompanying IDM).
[64] *Id.* at 15-16.
[65] *See* Petition, Volume II, Exhibit II-12 at 25.

diggers.[66] Compa produces automobile parts such as components for steering gears and steering columns, components for air-conditioning systems, windscreen wiper blades, cold coiled springs, stamped parts, industrial equipment, molds and tools, and metallic welded structures.[67] Although the petitioner argues that Metisa produces merchandise that is more comparable to steel racks than the merchandise that Compa produces, "{w}hen we have two sets of financial statements - one with comparable products and usable details and another with identical and/or more comparable products but lacking necessary details - we find it reasonable for us to use the set of financial statements with comparable products and useable details."[68] As explained below, Compa's financial statements are superior to those of Metisa because of their greater detail. Moreover, Compa does produce steel products using inputs and, at least in part, production processes similar to those used in the production of steel racks.

Compa's financial statements demonstrate that it consumes, among other things, sheet, steel bars, and tubes.[69] These materials are similar to those consumed in the production of steel racks, which primarily include steel sheet, steel strips, and steel bars.[70] While Compa's financial statements do not indicate the extent of its consumption of sheet, steel bars, and tubes, they do indicate that Compa consistently consumed these materials between 2015 and 2017.[71] The POI covers the last three months of 2017 and the first three months of 2018, so for at least half of the POI, Compa consumed inputs similar to those used in the production of steel racks. Metisa's financial statements, on the other hand, do not identify the raw materials it consumed and, therefore, do not indicate whether Metisa consumed materials similar to those consumed in the production of steel racks.[72] While, as the petitioner argued,[73] record evidence "does not indicate the relative importance of each input in Compa's production," the evidence does show that Compa consumed inputs similar to those used in the production of steel racks. In contrast, although the petitioner argues that the "vast majority of what Metisa consumes are the same material inputs as are consumed in the production of steel racks…,"[74] the petitioner has not pointed to an explicit list of inputs used by Metisa on the record of this investigation.

Next, we turn to production processes. The production of steel racks involves slitting light gauge steel coil into desired widths, punching the slit steel with holes, cutting the steel to length, then roll forming the lengths of steel to bend them into desired shapes or welding them into tubes, and then finally painting or coating the steel.[75] The production processes that Compa engages in are CNC machining, welding, cutting, perforating, cold pressing, forging, laser and oxygas cutting, erosion, brazing, coating, heat treatment, and assembly.[76] Thus, Compa's production processes

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[66] *See* Petition, Volume II, at Exhibit II-13.
[67] *See* Dongsheng's SV Submission at Exhibit SV2-3 at 159-160.
[68] *See Diamond Sawblades and Parts Thereof Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying IDM at Comment 16.
[69] *See* Dongsheng's SV Submission at Exhibit SV2-3.
[70] *See* Letter from Dongsheng, "Steel Racks from the People's Republic of China – Section D Questionnaire Response," dated November 19, 2018, at Exhibit D-3.
[71] *See* Dongsheng's SV Submission at Exhibit SV2-3.
[72] *See* Petition at Volume II, Exhibit II-12.
[73] *See* Petitioner's Case Brief at 11-12.
[74] *Id*. at 10.
[75] *See* Petition, Volume I, at 10.
[76] *See* Dongsheng's SV Submission at Exhibit SV2-3 at 161-163.

include processes similar to those used in producing steel racks (*e.g.*, cutting, perforating, welding, coating, and assembly). While Compa may engage in other processes as well (*e.g.*, CNC machining, laser cutting, erosion, and brazing) at least comparable processes are identified on the record for Compa, in contrast to the record for Metisa, as explained below.

The petitioner argues that Metisa's product brochure, included in Exhibit II-13 of the Petition and Exhibit IV-A of the petitioner's SV comments, "shows that all the steel products made by Metisa involve slitting and hole punching, forming, welding, and painting flat-rolled and structural steel, just as in the production of steel racks."[77] However, Metisa's product brochure shows only the merchandise that it produces; it does not list any of the processes involved in the production of that merchandise. Even if we deduce from the photographs of Metisa's products included in its product brochure that it makes those products using the processes listed by the petitioner, Compa also engages in similar processes as noted above (*e.g.*, cutting, perforating, welding, coating, and assembly). While the petitioner argues that the "vast majority of the production processes used by Metisa are the same production processes used to produce steel racks, while a tiny minority of the production processes used by Compa are the production processes used to produce steel racks,"[78] it has not pointed to a description of Metisa's production processes on the record.

Another reason Compa's financial statements are superior to those of Metisa's is that Metisa's financial statements are consolidated with those of its subsidiary, Metisa Forestry and Energy S/A.[79] This subsidiary engages in the reforestation of trees, an operation very different from the production of steel racks. The petitioner argues that since the 2016 and 2017 net sales revenue of the subsidiary is very low, or non-existent, in comparison to Metisa's total sales revenue for 2017, Commerce should disregard the fact that Metisa's financial statements are consolidated with those of this subsidiary.[80] While low sales revenue may give some indication of the size of the non-comparable subsidiary's operations compared to Metisa's overall operations, the fact remains that Metisa's subsidiary engages in a business that is very different from the production of steel racks and those results are included in Metisa's consolidated financial statements (also the level of the subsidiary's expenses that would be included in the financial ratio calculations is unknown); however, Compa's financial statements do not reflect the operations of such a dissimilar company at all. Given that Commerce has a preference[81] for using financial statements which reflect production of comparable merchandise over non-comparable merchandise we find these facts provide further support for finding Compa's financial statements superior to those of Metisa.

[77] *See* Petitioner's Case Brief at 12.
[78] *Id.* at 10.
[79] *See* Petition, Volume II at Exhibit II-12.
[80] *See* Petitioner's Case Brief at 14.
[81] *See e.g.*, *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances,* 84 FR 23767 (May 23, 2019) and accompanying IDM at Comment 11; *see also Certain Steel Nails from Taiwan: Final Determination of Sales at Less Than Fair Value*, 80 FR 28959 (May 20, 2015) and accompanying IDM at Comment 1.

Furthermore, it is Commerce's practice to use financial statements that contain sufficient detail to adequately calculate surrogate financial ratios.[82] Metisa's financial statements do not separately state its raw material, labor, and energy expenses and how these expenses are split between Metisa and its forestry subsidiary. Compa's financial statements, on the other hand, separately state its raw material, labor, and energy expenses.[83] We find the greater level of detail in Compa's financial statements preferable. The petitioner argues that "the calculation of the overhead ratio does not require the segregation of labor and raw material expenses, as long as there is a way to segregate at least some component of overhead, which is generally depreciation."[84] Additionally, the petitioner notes that "Commerce routinely resorts to financial statements that are otherwise acceptable when they contain this degree of breakout of cost of sales."[85] However, in *Diamond Sawblades from China*, Commerce noted:

> In prior NME cases, we did use financial statements that provided depreciation as the only overhead for our calculation of financial ratios under unique circumstances, but when available on the record we prefer to use financial statements that contain the full level of details,[86] including line-item expenses that comprise manufacturing overhead.[87]

Even the petitioner acknowledges that if Commerce used Metisa's financial statements, it "is likely that the resulting overhead ratio {(based only on depreciation and amortization expenses)} understates the amount of overhead included in the cost of sales."[88] Hence, based on the more detailed level of expenses listed in Compa's financial statements, we find those statements preferable to Metisa's financial statements.

The petitioner argues that Compa's financial statements indicate that the company received subsidies; therefore, Commerce should reject Compa's financial statement.[89] We disagree with this argument. It is Commerce's practice to reject the financial statements of a company that we have reason to believe or suspect may have received countervailable subsidies from a program previously investigated by Commerce, particularly when other sufficient, reliable, and representative data are available for calculating surrogate financial ratios.[90] In determining

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[82] *See, e.g., Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) and accompanying IDM at Comment 1; *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 9753 (February 22, 2011) and accompanying IDM at Issue 1.

[83] *See* Dongsheng's SV Submission at Exhibit SV2-3.

[84] *See* Petitioner's Case Brief at 14.

[85] *Id*.

[86] *See Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) (*Xanthan Gum*) and the accompanying IDM at Comment 2.

[87] *See 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) and the accompanying IDM at Comment 16.

[88] *See* Petitioner's Case Brief at 15.

[89] *Id*. at 13.

[90] *See Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 53214 (October 22, 2018) (*Activated Carbon*) and the accompanying IDM at Comment 6 ("In determining whether a financial statement contains evidence of countervailable subsidies, Commerce will first determine whether an alleged subsidy has been found countervailable in a prior countervailing

whether a financial statement contains evidence of countervailable subsidies, Commerce will first determine whether an alleged subsidy has been found countervailable in a prior countervailing duty proceeding.[91] Commerce has never found a Romanian subsidy program to be countervailable. Also, it is not clear from the record, and the petitioner does not provide substantiating evidence to support why, "AMPOSDRU, AMPOSCEE Contracts," "EU funds projects," or any other source of subsidies mentioned in Compa's financial statements might be countervailable.[92] Furthermore, as explained above, the only other financial statements we have on record – from the Brazilian company Metisa – are not from the primary surrogate country, are not as sufficient, reliable, or representative as Compa's financial statements: they do not specify inputs or processes in which Metisa engaged; are consolidated statements that include a subsidiary which engages in operations dissimilar from the production of steel racks; and do not separately identify raw materials, energy, labor, and interest expenses. Therefore, the fact that Compa's financial statements mention a receipt of subsidies is not a reason to reject its financial statements.

Lastly, the petitioner argues that Commerce incorrectly determined that some pages in Metisa's financial statements are illegible. After another review of Metisa's financial statements, we agree with the petitioner that there are no illegible pages in Metisa's financial statements. However, the notes in Compa's financial statements, similar to the financial data, are more detailed than the notes and financial data presented in Metisa's financial statements. The notes in Compa's financial statements include information on a greater number of factors which are missing from Metisa's financial statements. Specifically, for example, the notes in Compa's financial statements have a more detailed explanation and itemization of operating income.

Comment 3: The Surrogate Value for Dongsheng's P-tube Input

Petitioner:

- Commerce incorrectly used import values under HTS number 7306.61 ("Tubes, Pipes and Hollow Profiles, of Iron or Steel, Welded, of a Square or Rectangular Cross-Section") to value P-tubes; however, a P-shaped tube by definition, and based on a photograph of the tube on the record, does not have a square or rectangular cross-section.[93]
- Of the various types of tube cross-sections – circular, square/rectangular, or non-circular –, P-tubes are non-circular. Therefore, import values under HTS 7306.69 ("Tubes, Pipes, and Hollow Profiles, of Iron or Steel, Welded, of Non-Circular Cross-Section") should be used to value P-tubes.[94]

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duty proceeding"); *see also Clearon Corp. v. United States*, Slip Op. 16-110 at 10-12 (Ct. Int'l Trade 2016), aff'd, 711 F. App'x 648 (Fed. Cir. 2018) (sustaining Commerce's application of its practice to exclude "financial statements that contain a subsidy that [Commerce] has found countervailable in the past.").
[91] *Activated Carbon* IDM at Comment 6.
[92] *See Catfish Farmers of America v. United States*, 641 F. Supp. 2d 1362, 1380 (Ct. Int'l Trade 2009) (affirming Commerce's determination that the "reason to believe or suspect" standard was not satisfied when petitioners identified a subsidy without additional substantiating evidence of countervailability).
[93] *See* Petitioner's Case Brief at 16.
[94] *Id*.

Dongsheng's Rebuttal:

- Commerce correctly used import values under HTS 7306.61 to value Dongsheng's P-tubes. The photograph submitted by the petitioner shows a structural tube that is not relevant to Dongsheng's input, while a verification exhibit shows the cross-section of Dongsheng's P-tube is nearly rectangular because it has a small rectangular bend in one corner. Therefore, the input is properly described as having a rectangular cross-section.[95]
- Dongsheng's Chinese customs export declaration for P-tubes shows the tubes were classified HTS 7306.61.[96]
- Record evidence demonstrates that Dongsheng's P-tubes and rectangular tubes use the same materials and production process except for a slightly different mold in the final step. Thus, these two inputs should not be classified and valued differently.[97]

Commerce's Position: We agree with Dongsheng that the more appropriate HTS number corresponding with its P-tube FOP is 7306.61. HTS number 7306.69 covers pipes, tubes, and hollow profiles of a non-circular cross section not elsewhere specified or indicated ("nesoi").[98] Since HTS number 7306.61 covers pipes, tubes, and hollow profiles of a square or rectangular cross section,[99] HTS number 7306.69 is a "catch all" category for all non-circular, non-square, non-rectangular pipes and tubes. Thus, pipes and tubes with a wide variety of cross sections, some nothing like the P-tube cross section, could be imported under HTS number 7306.69. On the other hand, imports under HTS number 7306.61 are limited to pipes and tubes with square and rectangular cross sections. The record shows that these cross sections are similar to that of the P-shaped tube. Dongsheng's description and the photograph of P-tubes in a verification exhibit[100] show that P-tubes have four straight sides, where all sides are not of an equal length, with three corners at what appear to be approximately right (90 degree) angles (similar to a rectangular shape), and a fourth corner where the perimeter of the tube is bent inward to form a backwards "L" shape. Given that the P-tube shape is similar to a rectangular shape with the exception of the bend in one corner, we find the most appropriate HTS number which corresponds with Dongsheng's P-tubes is the HTS number for rectangular pipes and tubes rather than HTS number 7306.69 that covers other unknown shapes.

Additionally, the Romanian HTS subheadings on the record under the 7606.61 heading are more specific because there are several subheadings each covering pipes and tubes with different wall thicknesses while HTS number 7306.69 includes pipes and tubes of all wall thicknesses. Because Dongsheng reported its P-tube has a wall thickness "not exceeding {2.00 millimeters (mm)}, and normally between 1.45 and 1.95 mm,"[101] we valued this factor of production using Romanian HTS 7306.6192 ("TUBES AND PIPES AND HOLLOW PROFILES, WELDED, OF SQUARE OR RECTANGULAR CROSS-SECTION, OF IRON OR STEEL OTHER THAN STAINLESS STEEL, WITH A WALL THICKNESS OF <= 2 MM"). Therefore, for the

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[95] *See* Dongsheng's Rebuttal Brief at 18-19.
[96] *Id.*
[97] *Id.*
[98] *See* Letter from the petitioner, "Steel Racks from the People's Republic of China: Pre-Preliminary Surrogate Value Comments," dated December 17, 2018 Exhibit 1.
[99] *Id.*
[100] *See* Dongsheng's Verification Exhibits at Exhibit VE-30.
[101] *See* Letter from Dongsheng, "Steel Racks from the People's Republic of China – Supplemental Section D Questionnaire Response," dated December 17, 2018 at 12.

reasons explained above, we continue to find that Romanian HTS 7306.6192 is the best available information with which to value Dongsheng's P-shaped tubes.

Comment 4: Whether Import Clearance Charges Should be Added to the Surrogate Values

Petitioner:

- Commerce failed to add import clearance charges to the Romanian CIF values even though it has noted that brokerage expenses must be added to the CIF values to derive an SV on a delivered basis.[102] This should be done regardless of whether or not the values are reported on a CIF or FOB basis, because adding CIF costs only brings an FOB value to a CIF basis. Thus, Commerce should add inbound brokerage and handling expenses to the SVs regardless of whether it uses Romanian or Brazilian import data as the basis for Dongsheng's SVs.[103]

Dongsheng's Rebuttal:

- Commerce should make no additional adjustments to the SVs because it has already considered and added the movement expenses it determined were appropriate. Commerce's SV memorandum and its program log and output attached to its preliminary analysis memorandum show that it already added inbound truck SV and inbound brokerage and handling costs to SVs.[104]

Commerce's Position: We disagree with the petitioner because we have already included an inbound brokerage and handling cost in the Romanian SVs. Although the narrative portion of Commerce's SV Memorandum did not specify that brokerage and handling are included in movement expenses, inbound brokerage and handling costs of $.0204 are clearly in the "Summary" and "B&H" tabs of the Excel spreadsheet attachment to the SV Memorandum.[105] Additionally, the program dataset and output for the *Preliminary Determination* show we added a truck freight SV (TRUCKSV) as well as a brokerage and handling SV (BROKSV) to movement expenses.[106] Thus, no further adjustment to the Romanian SV is necessary for inbound brokerage and handling expenses.

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[102] *See* Petitioner's Case Brief at 17 (citing *Cast Iron Soil Pipe Fittings from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018)).
[103] *Id*.
[104] *See* Dongsheng's Rebuttal Brief at 20-21 (citing Memorandum, SV Memorandum; and Memorandum, "Preliminary Determination in the Antidumping Duty Investigation of Steel Racks from the People's Republic of China: Analysis Memorandum for Nanjing Dongsheng Shelf Manufacturing Co., Ltd.," dated February 25, 2019 (Dongsheng Analysis Memorandum) at Attachment I).
[105] *See* SV Memorandum at 4-5 and Attachment I.
[106] *See* Dongsheng Analysis Memorandum at Attachment I.

Comment 5: Whether Commerce Should Grant Dongsheng a Double Remedy Offset

Dongsheng:

- Section 777A(f) of the Act directs Commerce to make double-remedy adjustments. In the *Preliminary Determination*, Commerce determined there was dumping and that countervailable subsidies were provided with respect to subject merchandise, but Commerce did not find there was a general decrease in the U.S. average import price during the POI. Commerce did not make an adjustment because its analysis of whether the countervailable subsidies reduced the average price of imports was based on incorrect data and did not properly consider the information Dongsheng reported, in accordance with Commerce's normal practice.[107]
- While Commerce stated it examined whether Dongsheng demonstrated a subsidies-to-cost link and a cost-to-price link, it did not provide analysis of Dongsheng's data. Information on the record and from verification demonstrate that Dongsheng benefited from steel for less than adequate remuneration (LTAR) programs and reduced its selling prices multiple times during the POI because of changes in the steel costs. Thus, the requirements of section 777A(f) of the Act were met and Commerce should offset the double-remedies.[108]
- Commerce only analyzed the International Trade Commission's (ITC) preliminary report and not Dongsheng's price data. However, as noted in *Quartz from China*, Commerce's practice is to analyze the respondent's information to determine whether the respondent provided adequate information to establish a link between subsidies, costs, and prices.[109] Dongsheng has provided the same information as the respondents in *Quartz from China* and other investigations where Commerce adjusted respondents' U.S. price. Therefore, it is logical and in accordance with Commerce's practice to examine the information reported by Dongsheng, which is more specific than the ITC's general trade data, to grant the double-remedy offset. Information on the record demonstrates that Dongsheng's sales prices were affected by lower costs in materials from subsidies, and that Dongsheng's duty rates are being double-counted.[110]
- Commerce determined that subsidies for LTAR existed in the CVD investigation during the POI. Thus, Commerce is comparing prices impacted by these subsidies to prices already impacted by these subsidies, and is not observing the impact of the subsidies on the prices. Commerce should consider Dongsheng's data on the record and make an adjustment for the offset because relying solely on ITC pricing trends does not satisfy Commerce's obligation to consider whether countervailable subsidies have reduced the price of imports.[111]
- It is unreasonable to rely on ITC data for the final determination because the scope of the investigation has changed significantly since the ITC's preliminary determination.

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[107] *See* Dongsheng's Case Brief at 1-2.
[108] *Id*. at 2-3.
[109] *Id*. at 3-4 (citing *Certain Quartz Surface Products from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 58540 (November 20, 2018) and accompanying PDM).
[110] *Id*. at 4-5.
[111] *Id*. at 6-7.

Specifically, the earlier scope did not have certain product exclusions, and thus these products were included in the ITC's preliminary analysis. The quantity of products excluded based on this change is significant.[112] For example, in the CVD investigation, Commerce verified that the respondent Aifeimetal did not produce or sell subject merchandise as a result of the new exclusions in the scope.[113]

Petitioner's Rebuttal:

- In the *Preliminary Determination*, Commerce correctly did not make a double remedy adjustment because Dongsheng did not meet conditions in a relatively new section of the Act.[114] Specifically, there is no indication on the record that the level of subsidization has changed over the POIs of either this investigation or the CVD investigation.[115]
- Commerce does not assume that any cost reductions are automatically passed to a producer's customers, as Dongsheng claims. Dongsheng has failed to demonstrate a subsidies-to-cost linkage and a cost-to-price linkage.[116] Data submitted by Dongsheng do not indicate that the subsidies had any effect on its costs.[117]
- Commerce followed its practice by reviewing data collected by the ITC to examine a cost-to-price linkage. While Dongsheng argues that Commerce has a practice of examining respondent's own information to evaluate the cost-to-price linkage, Commerce has in several investigations found that a respondent was not entitled to an adjustment for domestic subsidies because it failed to establish eligibility. Further, Dongsheng incorrectly claimed that Commerce did not reference the ITC data regarding an adjustment to prices in *Cast Iron Soil Pipe*. Commerce's recent findings for the double remedy adjustment in other proceedings demonstrate that it is insufficient to simply provide purchase prices for inputs and state that a cost-to-price linkage exists, as Dongsheng has done in this investigation.[118]

Commerce's Position: We disagree with Dongsheng's position that Commerce used an incorrect metric in conducting its analysis under section 777A(f)(1)(B) of the Act and improperly failed to consider Dongsheng's own information in accordance with its practice. The statute directs Commerce to reduce the antidumping duty by the amount of the increase in the weighted-average dumping margin that can be reasonably estimated as associated with the countervailable subsidies referenced in section 777A(f)(1) of the Act. Section 777A(f)(1)(B) of the Act provides that "such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period." In the *Preliminary Determination*, we examined U.S. import data in the preliminary report issued by the ITC and did not find a decrease in import prices during the relevant period.[119] Therefore, we did not make an adjustment under section 777A(f) of the Act.

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[112] *Id*. at 7-8.
[113] *Id*. at 8-9.
[114] *See* Petitioner's Rebuttal Brief at 1.
[115] *Id.*at 2.
[116] *Id.*
[117] *Id.* at 3-4.
[118] *Id.* at 5-8 (citing *Cast Iron Soil Pipe from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 44567 (August 31, 2018) (*Cast Iron Soil Pipe*)).
[119] *See Preliminary Determination* PDM at 31-32.

Dongsheng argues that it: 1) demonstrated a subsidies-to-cost link and a cost-to-price link; 2) demonstrated that the provision of hot-rolled and cold-rolled steel for LTAR necessarily reduced its prices and accordingly reduced the price of the subject merchandise that it sold to the United States during the POI; and 3) provided evidence that it did reduce its selling price multiple times during the POI. However, section 777A(f)(1)(B) of the Act relates to the average import price of a class or kind of merchandise. Dongsheng's data alone do not make the demonstration required under this sub-provision of the Act.

After acknowledging that Commerce has relied upon the ITC report for evidence of a decrease in U.S. import prices over the relevant period in some cases, Dongsheng contends that Commerce's overwhelming practice is to examine the respondent's own information when considering the provision in section 777A(f) of the Act. Yet none of the cases relied upon by Dongsheng explicitly state that Commerce used the respondent's own data when determining whether "such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period" (the requirement in section 777A(f)(1)(B) of the Act). We agree with Dongsheng that in *Quartz from China*, Commerce analyzed the respondent's information to determine whether the respondent provided adequate information to establish a link between subsidies, costs, and prices. Commerce relies on the respondent's own information to establish a subsidy-to-cost link and a cost-to-price link. However, that is not the issue addressed here. The issue here is our analysis of the requirement under section 777A(f)(1)(B) of the Act. Pursuant to section 777A(f)(1)(B) of the Act, our practice is to "examine{} whether International Trade Commission (ITC) import data showed a reduction in the price of imports of the class or kind of merchandise during the relevant period."[120] The PDM in *Quartz from China* cited by Dongsheng, includes a detailed discussion of Commerce's analysis under sections 777A(f)(1)(A) and (f)(1)(C) of the Act but does not adequately describe Commerce's analysis under section 777A(f)(1)(B) of the Act. Commerce's determination in that investigation does not explicitly indicate that Commerce looked to the respondent's own information to establish a reduction in import prices of the class or kind of merchandise during the relevant period. However, in *Passenger Vehicle and Light Truck Tires from China*, for example, we examined the preliminary report issued by the ITC in order to conduct an analysis under section 777A(f)(1)(B) and determine whether prices of imports of the class or kind of merchandise decreased during the relevant period.[121]

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[120] *See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2015-2016,* 83 FR 1018 (January 9, 2018) and accompanying PDM at 28, unchanged in *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; 2015-2016*, 83 FR 35616 (July 27, 2018) and accompanying IDM; and *Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36876 (June 8, 2016) and accompanying PDM at 36, unchanged in *Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75032, 75035 (October 28, 2016) and accompanying IDM.

[121] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015) and accompanying PDM at 33,

We disagree with Dongsheng's position that if a subsidy program, such as a program providing an input for LTAR, has been in existence throughout the POI, import data for the POI from the ITC cannot demonstrate a reduction in average import prices due to subsidization. According to Dongsheng, this is because comparing import prices at the beginning of the POI with those at the end of the POI would simply be comparing prices affected by subsidies to prices already affected by subsidies. However, Dongsheng fails to consider that the amount of subsidization could increase during the POI and import prices could be reduced during the POI as a result of such increased subsidization. Consequently, even if a subsidy program existed throughout the POI, a countervailable subsidy could be demonstrated to have reduced the average price of imports.

Lastly, Dongsheng argues that it is improper to rely on the ITC data for the double remedy determination because "the scope of the investigation has changed significantly after the ITC's preliminary report" and the "original scope of the investigation did not have many critical exclusions that were clarified by the Petitioner…"[122] While it is true that the scope of the investigation has changed since the ITC issued its preliminary ruling, none of the exclusions listed in the scope cover the merchandise for which the ITC requested pricing data which was examined by Commerce for the double remedy analysis. The ITC data that we examined relied on responses to the ITC questionnaire by U.S. producers and importers of certain types of beams and frames.[123] Specifically, the ITC requested U.S. producers and importers to provide quarterly data for the total quantity and FOB value of the following steel rack products shipped to unrelated U.S. customers between January 2015 and March 2018:[124]

Product 1: Beam, non-galvanized, 96" length, 4" face, 3 pins connection, 1 5/8" step
Product 2: Beam, non-galvanized, 120" length, 5" face, 4 pins connection 1 5/8" step
Product 3: Frame, non-galvanized, 14 gauge, 3" x 1 5/8" posts, 42" x 120"
Product 4: Frame, non-galvanized, 14 gauge, 3" x 3" posts, 42" x 192"

These products are not covered by the exclusions added to the scope. Therefore, we disagree with Dongsheng's argument that it is unreasonable to rely on the ITC price data because the scope of the investigation has narrowed.

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unchanged in *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires 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*, 80 FR 34893 (June 18, 2015) and accompanying IDM; *see also Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires 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*, 80 FR 34893 (June 18, 2015) and accompanying IDM.

[122] *See* Dongsheng's Case Brief at 7-8.

[123] *See Steel Racks from China, Investigation Nos. 701-TA-608 and 731-TA-1420 (Preliminary)*, 83 FR 40552 (August 15, 2018) at V-3.

[124] *Id*.

Comment 6: Whether Commerce Should Reduce Dongsheng's Export Price by Eight Percent Irrecoverable Value-Added Tax

Dongsheng:

- Commerce should not reduce Dongsheng's export price by eight percent irrevocable VAT because: (1) irrecoverable VAT does not constitute an export tax, duty, or other charge imposed on the exportation of the subject merchandise, as defined in section 772(c)(2)(B) of the Act; and (2) Commerce has not cited any law that supports adjusting for irrecoverable VAT in non-market economy (NME) cases.[125]
- Recent litigation (*i.e.*, *Qingdao Qihang I*) explained that when NV is based on FOPs, Commerce cannot treat VAT imposed domestically on materials used in production as an export tax.[126]
- Although the Court of International Trade (CIT) held in *Aristocraft* that an adjustment for irrecoverable VAT is permissible under section 772(c)(2)(B) of the Act, the facts in that case are different than the facts in this investigation. The respondent in *Aristocraft* acknowledged that VAT paid on domestic purchases of inputs that were used to produce the hangers it exported would have been refunded if the hangers were sold domestically. However, there is no provision in the PRC Interim VAT Regulation and nothing on the record of this investigation that indicates that a VAT rebate can be applied to domestic sales.[127]

Petitioner's Rebuttal:

- Commerce should continue to deduct irrecoverable VAT from the U.S. price.[128]
- While Commerce did not make an adjustment for irrecoverable tax in its remand results for *Qingdao Qihang I*, despite continuing to argue that the adjustment was warranted, the CIT has noted several instances where Commerce's interpretation of irrecoverable VAT is valid. For example, Commerce addressed the CIT's concerns in *Aristocraft* with a reasoned explanation, supported by substantial evidence, for an irrecoverable VAT adjustment.[129]
- In a recent proceeding, *Cast Iron Soil Pipe Fittings*, Commerce disagreed with the *Qingdao Qihang I* decision (*i.e.*, that there is a clear distinction between the Chinese export tax adjustment and VAT imposed domestically in the country of production). Accordingly, Commerce continued to follow its practice to deduct irrecoverable VAT.[130]

Commerce's Position: We disagree with Dongsheng's claim that irrecoverable VAT is not an expense covered by section 772(c)(2)(B) of the Act (*i.e.*, an export tax, duty, or other charge imposed upon exportation). Section 772(c)(2)(B) of the Act authorizes Commerce to deduct

[125] *See* Dongsheng's Case Brief at 9-10.
[126] *Id.* at 10-12 (citing *Qingdao Qihang Tyre Co. v. United States*, 308 F. Supp. 3d 1329 (Ct. Int'l Trade 2018) (*Qingdao Qihang I*).
[127] *Id.* at 12-13 (citing *Aristocraft of Am., LLC v. United States*, 269 F. Supp. 3d 1316 (Ct. Int'l Trade 2017) (*Aristocraft*)).
[128] *See* Petitioner's Rebuttal Brief at 10.
[129] *Id.* at 8-10 (citing *Aristocraft*).
[130] *Id.* at 8-9 (citing *Cast Iron Soil Pipe Fittings*); *see also* Dongsheng's November 13, 2018 Section C Response at and Exhibit C-3.

from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Commerce's current methodology has been in place since 2012, when Commerce announced it would begin adjusting U.S. price for irrecoverable VAT in an NME proceeding in accordance with section 772(c)(2)(B) of the Act.[131] In this announcement, Commerce stated that the statute provides that when an NME government imposes an export tax, duty, or other charge on subject merchandise from which the respondent was not exempted, Commerce will reduce the respondent's U.S. price by the amount of the tax, duty, or charge paid, but not rebated.[132]

VAT is an indirect, *ad valorem*, consumption tax imposed on the purchase or sale of goods. It is levied on the purchase or sale price of the good, *i.e.*, it is paid by the buyer and collected by the seller for remittance to the government.[133] VAT is typically imposed at each step in the chain of commerce. Thus, a party (1) pays VAT on its purchases of inputs and raw materials (*i.e.*, VAT-in) as well as (2) collects VAT on its sales of their output products (*i.e.*, VAT-out). Thus, this indirect consumption tax is passed through each party in the chain of commerce, and it is paid by the ultimate consumer of the goods where the amount of VAT-out includes the amount of paid VAT-in and the VAT assessed on the value added by the company. The ultimate consumer is the party which ends, or breaks, the repetitive chain that normally involves (1) paying the VAT-in, (2) passing through the VAT-in to the next party in the chain of commerce, and (3) collecting the VAT-out on behalf of the government. Further, in a typical VAT system, VAT-out is fully refunded or not collected by reason of exportation of the merchandise.

For a given company in the chain of commerce, the company calculates its "net VAT liability" as the difference between the VAT-out that it collected on behalf of the government and the VAT-in that it paid to its suppliers. This amount is the total amount of money which the company must remit to the government. This calculation is done on a company-wide basis.[134]

The Chinese VAT system is governed by the *2008 Chinese VAT Regulation*[135] and *2012 VAT Circular*.[136] Article 1 of the *2008 Chinese VAT Regulation* states that "Entities and individuals engaged in the sales of goods, supply of processing, repair and replacement services, and the

[131] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, in Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).
[132] *Id.* at 36482-83.
[133] For example, if the purchase price is $100 and the VAT rate is 15%, the buyer pays $115 to the seller, which consists of $100 paid for the goods and $15 paid in VAT.
[134] For example, a company pays $60 million in VAT-in for all input purchases and collects $100 million in VAT-out for all sales. The company will remit to the government $40 million of the $100 million in VAT-out that it collected on behalf of the government because the company can claim the $60 million paid for input VAT-in as a credit against the collected VAT-out. The $40 million remittance to the government (*i.e.*, net VAT liability) is the tax on the value added by the company and is the transfer to the government of this VAT paid by and collected from the company's customers.
[135] *See* Letter from Dongsheng, "Steel Racks from the People's Republic of China – Section C Questionnaire Response" (November 13, 2018) at Exhibit C-3.
[136] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 6132 (February 26, 2019) (*TRBs China Final 2016/17*) and the accompanying IDM at 21 (citing Government of China Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services, Cai Shui (2012) No. 39 (May 25, 2012) (*2012 VAT Circular*)).

import of goods within the territory of the People's Republic of China are taxpayers of value added tax … and shall pay VAT in accordance with this Regulation." Article 5 states that "The VAT tax amount that a taxpayer selling goods or supplying taxable service calculates on the basis of the sales amount and at the tax rate as prescribed in Article 2 of this Regulation and collects from the buyer is the output tax amount." Article 2.1 establishes that for most goods that the VAT rate shall be 17 percent, and Article 2.3 adds "For taxpayers exporting goods, the tax rate shall be zero, except as otherwise prescribed by the State Council." Thus, the Chinese VAT system is consistent with the general description of the VAT tax system above – Entities and individuals …. within the territory of the People's Republic of China …. shall pay VAT …. at the tax rate as prescribed in Article 2.

Consistent with the general description of a VAT system above, Article 5 further provides that the amount of the VAT shall be

output tax = sales amount * tax rate

The term "output tax" (*i.e.*, VAT-out) in this formula refers to any transaction between the "taxpayer" (*i.e.*, a company) and its customer, and represents an amount of VAT collected by the taxpayer from the customer on behalf of the government. The tax amount for the transaction between a supplier and a company (*i.e.*, VAT-in) represents the amount of VAT paid by the company to its supplier, as also calculated by this formula (in other words, it is the "output tax" from the supplier's point of view).

Article 4 of the *2008 Chinese VAT Regulation* states that "the payable tax amount = the output tax amount for the current period – the input tax amount for the current period." Thus, a taxpayer's obligation to the government of China is to remit an amount equal to the total amount of VAT-out collected on the government's behalf less the total amount of VAT-in that the taxpayer has paid on its purchases.

Lastly, Article 25 of the *2008 Chinese VAT Regulation* addresses exportation of merchandise which is eligible for a rebate for, or exemption from, VAT. Article 25 states that "concrete measures shall be formulated by the finance or taxation administrative department of the State Council." These further instructions are provided in the *2012 VAT Circular* as described in *TRBs China Final 2016/17*:[137]

> On May 25, 2012, the Chinese government promulgated the *2012 VAT Circular*.
>
> > For the purposes of making it easier for tax authorities and taxpayers to understand and implement the export taxation policies systemically and accurately, the Ministry of Finance and State Administration of Taxation has sorted out and classified the VAT policies and consumption tax policies on exported goods and foreign-oriented processing, repair and fitting services (hereafter referred to as the "exported goods and services", including the "goods deemed as exported goods") which were enacted successively in the recent years, and clarified fhe {sic} several problems reflected in the actual implementation.

[137] *See TRBs China Final 2016/17* IDM at 23-24 (internal citations omitted).

Article 1 defines the "export enterprises," "manufacturing enterprises" and "export goods" that "the policies concerning the exemption and refund of Value-added Tax (hereafter referred to as the 'VAT refund (exemption)') shall be applied." Article 2 provides for the "exemption, offset and refund" of VAT and Article 3 defines the VAT refund rate for exported goods. Article 3.1, consistent with Article 2.3 of the *2008 Chinese VAT Regulation*, states

> Except for the export VAT refund rate (hereafter referred to as the "tax refund rate") otherwise provided for by the Ministry of Finance and the State Administration of Taxation according to the decision of the State Council, the tax refund rate for exported goods shall be the applicable tax rate. The State Administration of Taxation shall promulgate the tax refund rate through the Tax Refund Rate Catalogue of Exported Goods and Services according to the aforesaid provisions for the implementation of the tax authorities and taxpayers.

Thus, unless otherwise defined, the VAT refund rate will be the applicable VAT rate for the exported goods, and, consequently, as stated in Article 2.3 of the *2008 Chinese VAT Regulation*, "the {net} tax rate shall be zero." Further, the Chinese tax authorities will publish the applicable VAT refund rates in the "Tax Refund Rate Catalogue of Exported Goods and Services."

Articles {sic} 4 provides for the calculation of the amount of the VAT refund because of exportation and the basis on which this amount is calculation. As noted by GGB and relevant to this proceeding, the basis for the VAT refund "shall be the actual FOB price, of exported goods and services" or "shall be determined based on the FOB price of the exported goods after having deducted the amount of customs bonded imported materials and parts as included in the exported goods." Consistent with Article 4, Article 5.1 then provides the following formula for the amount of the "Tax which may not be exempted or offset", *i.e.*, the irrecoverable VAT.

$$\textbf{Irrecoverable VAT} = \mathbf{(P - c)} \times \mathbf{(T_1 - T_2)},$$

where,

> P = "FOB Price {*i.e.*, value} of exported goods;"
> c = "Price {*i.e.*, value} of tax-free purchased raw materials;"
> T_1 = "Applicable tax rate of exported good;" and
> T_2 = "Tax refund rate of exported goods."

This formula can be applied on a shipment-specific basis as well as to accumulated values over a defined period of time. This amount, the irrecoverable VAT, cannot be exempted or offset by reason of exportation of the goods, and thus must be passed on by the company exporting the goods to its customer. It represents the amount of input VAT paid by the exporter to its supplier and which must be borne by the exporter's customer, *i.e.*, implicitly embedded in the export price charged to the exporter's customer.

> Lastly, Article 5.3 provides that "the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of the exported goods and services." The amount of irrecoverable VAT must be borne by the exporter just as the VAT must be borne by the ultimate consumer of the goods. In essence, the exporter is the ultimate consumer of the goods in the chain of pay, pass on, and collect the VAT. The exporter breaks that chain of commerce along which the indirect consumption tax is passed through to the ultimate consumer, but unlike an ultimate consumer inside the domestic market, the exporter has the benefit that some or all of the VAT is refunded or exempted by the Chinese government.

Thus, the *2012 VAT Circular* provides for the imposition by the government of China of a cost of goods sold when such goods are exported from China. This cost is imposed in the context of the reduction in the amount of the credit which a taxpayer receives for its paid VAT-in. The amount of this irrecoverable credit for VAT-in is a "tax, duty, or other charge" which is imposed by the government of China, the cost for which would not be incurred *but for* the exportation of the subject merchandise. As such, this amount of "irrecoverable VAT" constitutes an "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise consistent with section 772(c)(2)(B) of the Act.

Dongsheng's reliance on the CIT's holding in *Qingdao Qihang I* to support its position is misplaced. As an initial matter, in Commerce's remand in response to *Qingdao Qihang I*, Commerce explained that it made its redetermination under protest.[138] Furthermore, as Commerce explained in *Cast Iron Soil Pipe Fittings*, "{i}t is true that the CIT, in {*Qingdao Qihang I*} stated, in pertinent part, that '{a}ny attempt to interpret {section 772}(c)(2)(B) to address irrecoverable VAT poses an insurmountable problem.'"[139] However, as also observed in *Cast Iron Soil Pipe Fittings*, where we continued to adjust U.S. price by the reported amount of irrecoverable VAT, "the {CIT} has yet to speak in one voice on this issue."[140] For instance, the CIT explained in *Jacobi Carbons I* that *Qingdao Qihang I's* holding "was premised on its understanding that Commerce was applying the export tax, duty or other charge language to a domestic tax," but "in this case, Commerce is adjusting for an output VAT charged on the exportation of the merchandise."[141] Thus, the CIT recognized that the *2012 VAT Circular* mandates that a taxpayer recognize a cost for exported merchandise as a result of "irrecoverable VAT" and that this cost is imposed as a reduction in the credit which the taxpayer is due for paid VAT-in on a company-wide basis.

As discussed in detail above, the *2008 Chinese VAT Regulations* and *2012 VAT Circular* establish that the Chinese VAT system can impose a cost on export sales of subject merchandise which must be recovered by the exporter through the U.S. price. As such, the U.S. price incorporates an "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise which is not reflected in the comparable normal value.

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[138] *See Qingdao Qihang Tyre Co., Ltd. et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-35 (CIT 2018); and *Final Results of Redetermination Pursuant to Court Demand* at 8 (July 24, 2018).
[139] *See Cast Iron Soil Pipe Fittings* IDM at Comment 9 (citation omitted).
[140] *Id.*
[141] *See Jacobi Carbons AB v. United States*, 313 F. Supp. 3d 1308, 1340 n.49 (CIT 2018) (*Jacobi Carbons I*).

Thus, section 772(c)(2)(B) of the Act is squarely applicable to the question at hand. Commerce agrees that the comparison of U.S. price with normal value must be tax neutral,[142] in order to ensure a fair comparison.[143] Therefore, the amount of any such "charge" must be deducted from the reported U.S. price. In particular, as recently explained in *Jacobi Carbons II*, and as is the final determination here, "{t}o interpret section {772}(c)(2)(B) {of the Act} as unambiguously barring Commerce from adjusting EP/CEP for these taxes when comparing those prices to a tax-exclusive normal value would be to require that it understate the margin of dumping."[144] Furthermore, as to Dongsheng's argument, again relying on *Qingdao Qihang I*, that "Commerce nonetheless cannot treat VAT imposed domestically on materials used in production as an equivalent of an export tax," the *2008 Chinese VAT Regulation* and *2012 VAT Circular* clearly demonstrate that the cost associated with "irrecoverable VAT" is imposed on export sales, including export sales of subject merchandise.

Finally, neither Dongsheng's claim that "no provision {of the Chinese VAT law} provides that VAT tax rebate can be applied to domestic sales"[145] nor the quoted acknowledgement in *Aristocraft* that VAT was paid on "domestic purchases of inputs used to produce {subject merchandise for} export sales, and this VAT would ordinarily be refunded if the same subject merchandise was sold in a domestic sale"[146] is material to decide whether an adjustment for "irrecoverable VAT" is appropriate. Dongsheng appears to suggest that whether a VAT rebate can be applied to domestic sales matters, and that this is a basis to not adjust its U.S. price for irrecoverable VAT.[147] We disagree. As discussed above, the *2012 VAT Circular* requires irrecoverable VAT to be calculated as a percentage of export price.[148] Further, as described above, VAT-in is the amount of VAT paid by the taxpayer to its suppliers, and VAT-out is the amount of VAT which the taxpayer collects on behalf of the Chinese government from its customers. A taxpayer's net VAT liability is the amount of VAT-out less the amount that is "rebated" or "refunded" for the paid VAT-in, plus the amount of "irrecoverable VAT." "Irrecoverable VAT" is an offset to the amount of paid VAT-in which will increase the taxpayer's net VAT liability – that is, irrecoverable VAT, as required by the *2012 VAT Circular*, is a (increased) payment to the Chinese government which must be recognized as a cost attributed to export sales.

Nowhere does the Chinese VAT system provide an exception for Dongsheng as a taxpayer and Dongsheng cites to no such exemption. The cost for "irrecoverable VAT" is imposed on the taxpayer as a reduction in the credit which the taxpayer may claim for VAT-in paid to its suppliers. Further, this offset to the taxpayer's VAT-in credit (and consequential increase in the taxpayer's net VAT liability) is on a company-wide basis. Theoretically, a taxpayer could pay no VAT-in for inputs to produce subject merchandise (*e.g.*, VAT-exempt inputs are imported from which subject merchandise is produced and exported) and yet the Chinese VAT system

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[142] *See* Dongsheng Case Brief at 11; *see also Jacobi Carbons AB v. United States*, Slip Op. 19-27, at 30-32 (CIT 2019) (*Jacobi Carbons II*) ("the principle that dumping margin calculations should be tax-neutral supports Commerce's adjustment").
[143] *See* section 773(a) of the Act.
[144] *See Jacobi Carbons II*, at 33.
[145] *See* Dongsheng Case Brief at 12-13.
[146] *Id.* at 12, quoting *Aristocraft*, 269 F. Supp. 3d at 1324.
[147] *Id.* at 12-13.
[148] *See TRBs China Final 2016/17* IDM at 23-24 (internal citations omitted).

would still impose a cost on the taxpayer for export sales consistent with the *2008 Chinese VAT Regulations* and the *2012 VAT Circular*. This is demonstrated by the deduction of the amount of "Price {*i.e.*, value} of tax-free purchased raw materials" in the formula from the *2012 VAT Circular* which defines the calculation of "irrecoverable VAT."

Accordingly, for this final determination, Commerce has continued to adjust Dongsheng's U.S. price for irrecoverable VAT consistent with section 772(c)(2)(B) of the Act to ensure a fair comparison of U.S. price with normal value that is tax neutral.

Comment 7: Whether Aifeimetal Should be Excluded from this Investigation

Aifeimetal:

- Consistent with Commerce's finding at the companion CVD verification of Aifeimetal, the company has not produced or sold merchandise covered by the revised scope of this investigation, which has changed substantially since the initiation of this LTFV investigation. Accordingly, Commerce should exclude Aifeimetal from this investigation.[149]

No other parties commented on this issue.

Commerce's Position: In the *Preliminary Determination*, Commerce adopted revisions to the scope of this investigation that were proposed by the petitioner.[150] In the companion CVD investigation, Commerce verified Aifeimetal and found, in its final CVD determination, that based on the revised scope, Aifeimetal no longer had sales of subject merchandise during the POI.[151]

Although we granted Aifeimetal a separate rate in the *Preliminary Determination*, given that Commerce requires a company to have made a sale of subject merchandise to an unaffiliated purchaser in the United States during the period under consideration in order to make a separate rate determination,[152] and Aifeimetal had no sales of subject merchandise during the POI,[153] we have not granted Aifeimetal a separate rate in this final determination.

We disagree with Aifeimetal's position that it be excluded from the investigation and any eventual order. Commerce did not calculate a zero or *de minimis* estimated weighted-average dumping margin for Aifeimetal and thus, there is no basis for excluding Aifeimetal from any order. Rather, Aifeimetal is not eligible for a separate rate. Should Aifeimetal export subject merchandise to the United States in the future, if an AD order is in place, its merchandise would be subject to the China-wide rate in effect at the time of the entry until Aifeimetal establishes its eligibility for a separate rate in a potential future segment of this proceeding.

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149 *See* Aifeimetal's Case Brief at 1-3.
150 *See Preliminary Determination*, 84 FR at 7327.
151 *See* Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Steel Racks from the People's Republic of China," dated concurrently with this memorandum (*Steel Racks from China CVD Final*).
152 *See* Letter from Aifeimetal, "Separate Rate Application: Steel Racks from the People's Republic of China," dated August 22, 2018, at 2.
153 *See Steel Racks from China CVD Final*.

Comment 8: The Preliminary Scope Determination

Trinity:

- Commerce correctly revised the scope to include the word "units" in the exclusion added for "wire shelving." Commerce has not identified administrability issues with this revised scope language, and this language will ensure accuracy if the LTFV and CVD investigations go to order because it clarifies the initially ambiguous and broad scope.[154]
- Commerce should continue to accept the revised scope language with the exclusion for "wire shelving" because it expresses the petitioner's intent for the scope to only cover industrial steel racks,[155] which are an entirely different class and type of merchandise than Trinity's wire shelving rack units for residential or consumer use.[156]

Target:

- Commerce should continue to adopt the revised scope language adopted in the *Preliminary Determination*. No party has challenged the amended scope language; therefore, this issue is no longer in dispute.[157]

Commerce's Position: Commerce adopted revised scope language, *i.e.*, the addition of the word "units" in the scope exclusion for wire shelving units, in the *Preliminary Determination*. In our preliminary scope decision, we noted that Trinity had argued "that the current scope language is ambiguous as to whether the entire multi-tier wire shelving rack units or only the horizontal wire shelves themselves are excluded from the scope. . . ."[158] The addition of the word "units" addresses concerns as to the ambiguity of the scope exclusion for wire shelving rack units. No party disagreed with this addition. Therefore, we agree with Trinity and Target, and will continue to adopt this revised scope language for the final determination.

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[154] *See* Trinity's Scope Brief at 2.
[155] *Id.*
[156] *Id.* at 3.
[157] *See* Target's Scope Brief at 2.
[158] *See* Memorandum, "Steel Racks from the People's Republic of China: Preliminary Scope Decision," dated February 25, 2019, at 4.

VII. RECOMMENDATION

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

☒ ☐

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Agree Disagree

7/17/2019

X

Signed by: JAMES MAEDER

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James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations