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Administrative Review
10/01/2018 – 09/30/2019
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July 7, 2021

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 Results of the 2018-2019 Antidumping Duty Administrative Review of Electrolytic Manganese Dioxide from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) finds that the sole respondent in this administrative review, Duracell (China) Limited (DCL), and its U.S. affiliates, did not have any sales of subject electrolytic manganese dioxide (EMD) during the period of review (POR) (*i.e.*, October 1, 2018, through September 30, 2019) and could not link subject EMD that entered the United States during the POR to post-POR U.S. sales. Therefore, Commerce is rescinding this review.

We have analyzed the comments submitted by interested parties and have made no changes to the *Preliminary Results.*[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below are the issues in this administrative review for which we received comments from interested parties:

Comment 1: Whether Commerce Should Rescind the Administrative Review
Comment 2: Whether DCL Has Linked its POR Entry to Post-POR Sales

II. BACKGROUND

On February 23, 2021, Commerce published in the *Federal Register* the *Preliminary Results.*[2] DCL is the sole mandatory respondent in this review. On March 25, 2021, DCL submitted a

[1] *See Electrolytic Manganese Dioxide from the People's Republic of China: Preliminary Rescission of the Antidumping Duty Administrative Review; 2018-2019*, 86 FR 10925 (February 23, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *Id*.

case brief.[3] Additionally, on May 25, 2021, DCL requested a hearing.[4] On April 1, 2021, Borman Specialty Materials and Prince Specialty Products LLC (the petitioners) submitted a rebuttal brief.[5] On June 14, 2021, Commerce held a public hearing in this administrative review.[6] On June 21, 2021, Commerce postponed the deadline for issuing the final results until July 14, 2021.[7]

III. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Rescind the Administrative Review

Neither DCL, nor its U.S. affiliates, sold the subject EMD that was imported into the United States during the POR, or batteries produced from that EMD, to unaffiliated U.S. customers during the POR. Thus, DCL reported post-POR constructed export price (CEP) sales of further manufactured EMD (batteries) in its U.S. sales database.[8] Because Commerce preliminarily found that DCL did not adequately trace the POR entry of subject EMD, which was used to manufacture batteries in the United States, to particular battery sales to unaffiliated U.S. customers, Commerce determined that it did not have reviewable sales and preliminarily rescinded the review.[9]

DCL's Case Brief:

- Commerce's rescission of the review was unlawful because: (1) there was a reviewable entry of subject EMD into the United States during the POR; (2) it was not necessary to link the POR entry of subject EMD to post-POR downstream U.S. sales of the further manufactured product (*i.e.* batteries); and (3) even if linkage was required, DCL linked the entry of subject EMD during the POR to the relevant downstream sales.[10]
- First, the statute, Commerce's regulations and practice, and Court precedents require Commerce to conduct this review because there was an entry of subject EMD during the POR.

[3] *See* DCL's Letter, "Administrative Review of the Antidumping Order on Electrolytic Manganese Dioxide from the People's Republic of China (10/1/2018 – 9/30/2019): DCL's Case Brief," dated March 25, 2021 (DCL's Case Brief).
[4] *See* DCL's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Request for Hearing," dated March 25, 2021.
[5] *See* Petitioners' Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Rebuttal Brief on Behalf of Borman Specialty Materials and Prince Specialty Products LLC," dated April 1, 2021 (Petitioners' Rebuttal Brief).
[6] *See* Hearing Transcript, "The Administrative Review of the Antidumping Duty Order on Electrolytic Manganese Dioxide from the People's Republic of China: Public Hearing," filed June 21, 2021.
[7] *See* Memorandum, "Electrolytic Manganese Dioxide from the People's Republic of China: Antidumping Duty Administrative Review; 2018-2019; Extension of Deadline for Final Results," dated June 21, 2021.
[8] *See* DCL's Letter, "Administrative Review of the Antidumping Order on Electrolytic Manganese Dioxide from the People's Republic of China (10/1/2018 – 9/30/2019): Section C and E Supplemental Questionnaire Response," January 27, 2021 (DCL's January 27, 2021, Sections C and E Supplemental Questionnaire Response), and accompanying U.S. sales database.
[9] *See Preliminary Results* at 10925.
[10] *See* DCL's Case Brief at 2.

- The statute requires Commerce to calculate and assess antidumping duties on all *entries* of subject merchandise during the period covered by a particular review.[11] Commerce may rescind an administrative review only if "there were no entries, exports, *or* sales of the subject merchandise, as the case may be."[12] In this case, there was an entry of subject EMD into the United States during the POR.
- Commerce "has maintained a policy and practice of calculating and assessing duties on entries, regardless of when the sales took place."[13]
- The Court of International Trade (CIT) repeatedly held that Commerce's regulations offer three "alternatives" for Commerce to conduct an administrative review — namely, reviews based on an *entry*, export, *or* sale.[14]
- Second, the statute does not require respondents to link entries of subject merchandise to sales in order to obtain an administrative review. The CIT recognized that "in many CEP situations, the sale is made after importation *and it is often difficult or impossible to tie entries to sales*."[15] In such situations, *i.e.*, where "Commerce cannot calculate margins based on sales linked to entries," Commerce "may resort to {another} approach of calculating margins based on possibly unlinked sales during the POR."[16] Commerce has "used sales outside the POR to calculate dumping margins on entries within the POR."[17]
- Third, DCL linked the entry of subject EMD into the United States during the POR to the post-POR U.S. downstream sales of batteries that were manufactured in the United States using the subject EMD. *See* Comment 2 for details.
- In addition to the above three reasons for conducting this review, Commerce could use the special rule under section 772(e) of the Act to calculate CEP and conduct this review because the requirements for doing so have been met.[18]
- Where sales of further manufactured subject merchandise have not been linked to entries of subject merchandise, Commerce's practice is not to rescind the review, but to apply the special rule.[19] *See Aluminum Extrusions from China*, where Commerce did not rescind the review, but instead employed the special rule and calculated a dumping

[11] *Id.* at 2 and 3 (citing sections 752(1)(B) and 752(2)(A) of the Tariff Act of 1930, as amended (the Act)).
[12] *See* DCL's Case Brief at 3 (citing 19 CFR 351.213(d)(3) (emphasis added).
[13] *See* DCL's Case Brief at 3 and 4 (citing *Helmerich & Payne, Inc. v. United States*, 24 F. Supp. 2d at 304, 312 (CIT 1988) (*Helmerich & Payne*) (citing *Timken Co. v. United States*, 10 CIT 86, 103, 630 F. Supp. 1327, 1342 (1986))).
[14] *See* DCL's Case Brief at 3 (citing *Watanabe Group v. United States*, 34 CIT 1545, 1547-48, 2010 WL 5371606 (2010) (*Watanabe Group*); *see also Helmerich & Payne*, 24 F. Supp. 2d at 304, 312-14; and *Corus Staal BV v. United States*, 387 F. Supp. 2d 1291, 1303 (CIT 2005) (*Corus Staal BV*)).
[15] *See* DCL's Case Brief at 4 and 5 (citing *Helmerich & Payne*, 24 F. Supp. 2d at 313 (emphasis supplied); *see also Corus Staal BV*, 387 F. Supp. 2d at 1301).
[16] *See* DCL's Case Brief at 4 and 5 (citing *Helmerich & Payne*, 24 F. Supp. 2d at 313 (emphasis supplied); *see also Corus Staal BV*, 387 F. Supp. 2d at 1301; and *Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 30688, 30692 (June 7, 2001)).
[17] *See* DCL's Case Brief at 5 (citing *Helmerich & Payne*, 24 F. Supp. 2d at 312).
[18] *See* DCL's Case Brief at 1.
[19] *Id.* at 5-6.

margin for the respondent, even in the absence of export price (EP) or CEP sales of subject merchandise during the POR.[20]

- Given the provision for determining CEP using "any other reasonable basis" under section 772(e) of the Act,[21] and Commerce's broad discretion to limit the universe of U.S. sales reported and used to calculate a dumping margin, Commerce should base the U.S. price of EMD on the data provided by DCL, even if it concludes that the entry of subject EMD during the POR cannot be linked to post-POR sales of batteries to unaffiliated U.S. customers.
- The data provided by DCL is equivalent to the data provided in *Silicon Metal from Brazil*, yet, in *Silicon Metal from Brazil*, Commerce calculated a dumping margin based on the respondent's limited sales data and costs of downstream products.[22]
- The *Preamble*, *Korean Pipe 1998-1999*, and *Indian Pipes and Tubes 2008-2009*, which Commerce relied upon in the *Preliminary Results*, do not address the question of whether a review should be rescinded where there was a reviewable entry during the POR.[23]
- The portion of the *Preamble* that was relied upon relates to 19 CFR 351.212(b)(1), which deals with "the method that {Commerce} will use to assess antidumping duties upon completion of a review," not whether a review should be conducted.[24]
- Linking POR entries to post-POR sales was not an issue in *Korean Pipe 1998-1999*. While Commerce noted in that review that "basing a review on entries would be inappropriate where the respondent could not tie sales to entries …", it explained that tying sales to entries does not completely address the question of whether Commerce should exercise its discretion to base its review on entries rather than sales.[25]
- The issue in *Indian Pipes and Tubes* 2008-2009 involved which date (*i.e.*, sale date, entry date or shipment date) to use to determine the universe of sales.[26]

Petitioners' Rebuttal Brief:

- Commerce correctly rescinded this review because there were no sales of subject merchandise during the POR and DCL could not link post-POR sales of further manufactured subject merchandise to the POR entry of subject merchandise, as required by Court precedent and Commerce's well-established rules and practice.[27] Because there

[20] *Id.* at 5 (citing *Aluminum Extrusions from the People's Republic of China, Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2015–2016*, 82 FR 26055 (June 6, 2017), and accompanying Issues and Decision Memorandum (IDM) at 10-12; *see also Aluminum Extrusions from the People's Republic of China, Final Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 52265 (November 3, 2017), and accompanying IDM) (*Aluminum Extrusions from China*)).
[21] *See* DCL's Case Brief at 9-10.
[22] *Id.* at 11 and 12 (citing *Silicon Metal from Brazil: Affirmative Final Determination of Sales at Less Than Fair Value*, 83 FR 9835 (March 8, 2018) (*Silicon Metal from Brazil*), and accompanying IDM at Comment 1).
[23] *See* DCL's Case Brief at 6-8 (citing *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27314 (May 19, 1997) (*Preamble*); *see also Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review*, 66 FR 18747 (April 11, 2001) (*Korean Pipe 1998-1999*); and *Certain Welded Carbon Steel Standard Pipes and Tubes from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 69626 (November 15, 2010) (*Indian Pipes and Tubes 2008-2009*)).
[24] *See* DCL's Case Brief at 6.
[25] *Id.* at 7 (citing *Korean Pipe 1998-1999* IDM at Comment 2).
[26] *See* DCL's Case Brief at 7-8 (citing *Indian Pipes and Tubes 2008-2009* IDM at Comment 2).
[27] *See* Petitioners' Rebuttal Brief at 2 (citing *Preliminary Results* PDM at 7).

were no sales to use to calculate a dumping margin, there is nothing to review and the review must be rescinded.

- While the statute instructs Commerce to determine dumping margins for entries of subject merchandise, it does not dictate precisely how Commerce should conduct a review. A POR entry without an associated sale is not usable for purposes of calculating a dumping margin. Thus, Commerce has a decades-long sale-based approach to calculating dumping margins. Specifically, Commerce requests that respondents report each U.S. sale of subject merchandise entered during the POR, or in the case of CEP sales made after importation, report each sale with a date of sale during the POR.[28]
- In the *Preamble* to its regulations, Commerce explained that "{b}ecause of the inability to tie entries to sales, {Commerce} normally must base its review on sales made during the period of review." However, Commerce went on to state that, "{w}here a respondent can tie its entries to its sales, we potentially can trace each entry of subject merchandise made during a review period to the particular sale or sales of that same merchandise to unaffiliated customers, and we conduct the review on that basis."[29]
- By DCL's own admission, it cannot trace the POR entry of subject EMD to post-POR sales of further manufactured EMD to unaffiliated U.S. customers. Hence, DCL failed to meet the requirement in the *Preamble* for conducting this review on that basis.
- The cases relied upon by DCL do not undermine Commerce's preliminary decision to rescind this review. These cases give Commerce broad discretion in its approach and do not require Commerce to calculate a dumping margin because there was an entry during the POR.
- In *Watanabe Group*, the CIT explained that, "… Commerce has the discretion to choose entries, exports, or sales in determining whether sales activity occurred during the POR."[30]
- In *Corus Staal BV,* the CIT upheld Commerce's use of different approaches to select the universe of EP and CEP sales to review.[31]
- In *Helmerich & Payne*, the CIT upheld Commerce's use of POR CEP sales outside of the POR that were *linked* to POR entries to calculate a dumping margin and cited Commerce's sales-based approach for calculating dumping margins for CEP sales.[32]
- Although DCL claims that linking an entry to a sale is not required in order to conduct an AD administrative review, a sale is required to calculate a dumping margin. As the CIT explained in *Helmerich & Payne*, "where a respondent can tie its entries to its sales, {Commerce} can trace each entry of subject merchandise made during a review period to the particular sales … of that same merchandise … and {Commerce} conduct{s} the review on that basis."
- Contrary to DCL's claim, the "special rule," where Commerce excuses a respondent from reporting sales of further-manufactured merchandise and bases the dumping margin on alternative sales, cannot be applied in this review because no alternative sales exist (*e.g.*, neither the out-of-period sales that cannot be linked to the POR entry, nor DCL's sales of

[28] *See* Petitioners' Rebuttal Brief at 4 (citing Commerce's Letter, Initial AD Questionnaire, dated December 23, 2019 at Section C (PDF page 27)).
[29] *See* Petitioners' Rebuttal Brief at 5 (citing *Preamble*).
[30] *See* Petitioners' Rebuttal Brief at 6-7 (citing *Watanabe Group*, 34 CIT at 1548).
[31] *See* Petitioners' Rebuttal Brief at 8 (citing *Corus Staal BV*, 387 F. Supp. 2d at 1302-3).
[32] *See* Petitioners' Rebuttal Brief at 9 (citing *Helmerich & Payne*, 24 F. Supp. 2d at 312 (citing *Preamble* at 27314)).

EMD to its U.S. affiliate provide an appropriate basis for calculating an accurate dumping margin).[33]

- Moreover, "because the purpose of section 772(e) {the special rule} is to reduce the administrative burden on {Commerce}, {Commerce} retains the authority to refrain from applying the special rule in those situations where the value added, while large, is simple to calculate."[34]
- The cases relied upon by DCL do not support its position because Commerce did not apply the "special rule" in those cases to exclude further manufactured sales prices from its dumping margin calculation.[35]
- In *Aluminum Extrusions from China*, Commerce found that there were no sales on which it could base a dumping margin and no other reasonable basis on which to determine CEPs. Therefore, Commerce continued to apply the China-wide rate to the respondent. Likewise, DCL does not have reviewable sales because it did not make any EP or CEPs sales during the POR and it could not link its POR entry of subject EMD to CEP sales of further-manufactured EMD. Additionally, there are no sales to use for the "special rule." Consequently, consistent with *Aluminum Extrusions from China*, DCL will remain subject to the China-wide rate.[36]
- In *Silicon Metal from Brazil*, unlike the instant administrative review, Commerce found that although the respondent commingled silicon metal from multiple sources, it was able to identify the quantity of subject silicon metal in each product.[37]

Commerce's Position: We disagree with DCL's arguments in its case brief. DCL contends that, if requested, the statute requires Commerce to conduct an administrative review if there is an entry of subject merchandise into the United States during the POR. However, in making this argument, DCL failed to address several basic tenets of the statute.

Section 751(a)(2)(A) of the Act explains that in conducting an administrative review, Commerce "shall determine the normal value and export price (or constructed export price) of each entry of the subject merchandise, and the dumping margin for each such entry." However, section 771(34) of the Act states that the terms "dumped" and "dumping" refer to the sale or likely sale of goods at less than fair value. Hence Commerce generally looks to sales to determine the amount of dumping. Additionally, section 771(35)(A) of the Act states that the term "dumping margin" means the amount by which the normal value exceeds the EP or CEP of the subject

[33] *See* Petitioners' Rebuttal Brief at 12.
[34] *See* Petitioners' Rebuttal Brief at 12 (citing *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320, 33338 (June 18, 1998)).
[35] *See* Petitioners' Rebuttal Brief at 10-11 (citing *Tapered Roller Bearings and Parts Thereof Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof from Japan; Final Results of Antidumping Duty Administrative Reviews*, 66 FR 15078 (March 15, 2001) (*TRBs from Japan*), and accompanying IDM at Comment 1; *see also Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin from Italy*, 65 FR 54993 (September 12, 2000) (*PTFE Resin from Italy*), and accompanying IDM at Comment 1; and *Polyvinyl Alcohol from Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 6042, 6044 (February 8, 1999) (*PVA from Taiwan Prelim*), unchanged in *Polyvinyl Alcohol from Taiwan: Final Results of Second Antidumping Duty Administrative Review*, 64 FR 32024 (June 15, 1999) (*PVA from Taiwan Final*)).
[36] *See* Petitioners' Rebuttal Brief at 14 (citing *Aluminum Extrusions from China* PDM).
[37] *See* Petitioners' Rebuttal Brief at 15 (citing *Silicon Metal from Brazil* IDM at Comment 1).

merchandise. Section 772 of the Act defines EP and CEP as "the price at which the subject merchandise is first sold (or agreed to be sold)" to an unaffiliated purchaser in the United States.

When considered in total, these provisions indicate that in order to calculate a dumping margin for an entry of subject merchandise during a POR, Commerce must determine the EP or CEP of the sale of that merchandise. Hence, Commerce requires a reviewable sale to an unaffiliated purchaser (within, or outside of, the POR, as appropriate), to conduct an administrative review.

Moreover, the CIT has recognized that with respect to the universe of sales to calculate a dumping margin, "the statute does not specify whether Commerce should use the date of entry or the date of sale as the basis on which to select transactions for review."[38] Accordingly, "Commerce has adopted a regulation, however, that gives it the flexibility to use date of sale, date of export, or date of entry, as appropriate."[39]

As explained in detail in Commerce's position to Comment 2, DCL did not identify, to Commerce's satisfaction, the post-POR sales of batteries to unaffiliated U.S. customers that contain the subject EMD that was entered into the United States during the POR. This is critical in this case because Commerce must calculate the dumping margin for the entry based on sales of subject EMD, not sales of batteries that may not contain subject EMD. Because DCL did not adequately identify the relevant sales for calculating a dumping margin, there were no usable (reviewable) sales on which to base CEP and calculate a dumping margin. Therefore, we continue to find it is appropriate to rescind this review.

This conclusion is consistent with Commerce's practice. For example, where Commerce finds that there were no *bona fide* sales during a POR, and therefore no reviewable (usable) sales on which to base a dumping margin, it rescinds the review, even if there was an entry during the POR.[40]

While DCL claims that the passages from the *Preamble* relied upon by Commerce in its preliminary decision address assessment of duties, not when to rescind a review, these passages are relevant to this review because they explain when Commerce may conduct a review based on sales of merchandise *entered* during the POR, rather than on sales of subject merchandise that *occurred* during the POR. DCL reported an entry of subject EMD during the POR, but no sales of EMD to unaffiliated U.S. customers during the POR. Therefore, Commerce examined whether it could base this review on post-POR sales of a downstream product (*i.e.*, batteries) that were manufactured in the United States from subject EMD that was entered into the United States during the POR. In doing so, we relied upon the following guidance in the *Preamble*:

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[38] *See, e.g., Corus Staal BV* at 1302 (citing *Helmerich & Payne, Inc. v. United States*, 24 F.Supp.2d 304, 310 (1998) ("{T}he statute is silent with respect to the universe of sales to be used in calculating dumping margins…")).
[39] *Id.*
[40] *See, e.g., Honey from the People's Republic of China: Preliminary Rescission of the Administrative Review*, 77 FR 79 (January 3, 2012), unchanged in *Honey from the People's Republic of China: Final Rescission of Antidumping Duty Administrative Review*, 77 FR 34343 (June 11, 2012); *see also Certain Carbon and Alloy Steel Cut-To-Length Plate from the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 6865 (January 25, 2021).

> where a respondent can tie its entries to its sales, we potentially can trace each entry of subject merchandise made during the review period to the particular sale or sales of that same merchandise to unaffiliated customers and we conduct the review on that basis {we calculate dumping duties for the entries based on the linked sales}.

DCL was unable to satisfactorily identify the post-POR sales of batteries that contain subject EMD; thus, we find that it did not tie its POR entry of subject EMD to post-POR sales. Hence, our conclusion, based on the *Preamble*, is that we cannot conduct this review on that basis (on the basis of post-POR sales) since there is insufficient evidence that Commerce would be using the correct sales to calculate an accurate dumping margin. Because there were also no POR sales of subject EMD to unaffiliated U.S. customers, there are no sales with which to calculate a dumping margin and therefore, Commerce has continued to rescind this review.

DCL claims that the statute does not require respondents to link entries of subject merchandise to sales in order to obtain an administrative review. However, the statute requires Commerce to determine whether dumping occurred in administrative reviews.[41] Dumping occurs when normal value exceeds the EP or CEP of the subject merchandise.[42] EPs and CEPs are based on sales.[43] Therefore, in order to determine the margin of dumping in administrative reviews, Commerce must first determine the universe of sales to examine in the review.

In the case of CEP sales of subject merchandise made after the merchandise was imported into the United States, which is the fact pattern faced in this review, it is often difficult or impossible to link such sales to entries. Therefore, Commerce has developed a practice, which has been upheld by the courts,[44] of examining CEP sales that were made after importation with dates of sale *during the POR* to determine the margin of dumping.[45] However, there were no CEP sales of subject EMD or batteries containing subject EMD to unaffiliated U.S. customers with dates of sale during the POR. Hence, the circumstances where Commerce could use unlinked CEP sales to calculate the margin of dumping are not present in this review.

Accordingly, it was necessary for Commerce to use another basis for identifying the sales to be reviewed. Section 751(a)(2)(A) of the Act explains that in conducting an administrative review, Commerce "shall determine the normal value and EP (or CEP) of each entry of the subject

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[41] *See* section 751(a)(2)(A) of the Act.
[42] *See* section 771(35)(A) of the Act.
[43] *See* section 772 of the Act.
[44] *See, e.g., Ad Hoc Comm. Of Southern California Producers of Grey Portland Cement v. United States*, 914 F. Supp. 535, 544 n.7 (CIT 1995); *see also American Silicon Tech. v. United States*, Slip Op. 99-34 (CIT 1999); *Hynix Semiconductor, Inc. v. United States*, 248 F. Supp. 2d 1297, 27 Ct. Int'l Trade 207 (CIT 2003); and *Corus Staal BV*, 387 F. Supp. 2d at 1291, 1303.
[45] *See Preamble*; *see also Gray Portland Cement and Clinker from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 48826, September 20, 1993 at Comment 20; *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005), and accompanying IDM at Comment 9; *Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review*; 2010-2011, 78 FR 28190 (May 14, 2013), and accompanying IDM at Comment 2; and *Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 66 FR 52097 (October 12, 2001) at Comment 7.

merchandise, and the dumping margin for each such entry." As noted above, the statute provides that EP and CEP are based on sales.[46] Thus, contrary to DCL's claim, it was necessary for Commerce to identify the sales of the entered subject EMD or "link" the entry to the relevant sales to comply with the statute. DCL could not adequately establish this link. If we are unable to link the entry of subject EMD to each reported sale with an appropriate degree of certainty, and we were to use the reported sales of batteries to calculate a dumping margin, the dumping margin may reflect, in part, sales of batteries with only non-subject EMD. Therefore, there are no usable (reviewable) sales on which to base a dumping margin, and we are rescinding this review.

DCL claimed that *Korean Pipe 1998-1999* and *Indian Pipes and Tubes 2008-2009* do not support Commerce's preliminary decision to rescind a review with a reviewable entry. However, Commerce relied upon those cases to demonstrate the necessity of linking POR entries to sales outside of the POR in order to conduct a review when there were no POR sales.

While DCL claimed that linking POR entries to post-POR sales was not an issue in *Korean Pipe 1998-1999*, linking POR entries to sales outside of the POR was in fact considered in *Korean Pipe 1998-1999*. In that review, Commerce explained that the "ability to tie sales to entries is a necessary pre-condition for basing a review on entries."[47] This is the principle that Commerce followed in the instant review. Although Commerce explained in *Korean Pipe 1998-1999* that tying sales to entries does not completely address the question of whether Commerce should exercise its discretion to base its review on entries rather than sales, Commerce need not consider the other factors mentioned in that review since DCL has not met the necessary pre-condition for basing this review on POR entries rather than POR sales, which is the ability to tie sales to entries. Moreover, the other factors discussed in *Korean Pipe 1998-1999* involve reasons Commerce would not base a review on entries during the POR rather than POR sales, so these reasons only provide additional bases for rescinding this review.[48]

In *Indian Pipes and Tubes 2008-2009*, Commerce explained that "{o}ur practice is to use entry date to establish the universe of sales only when sales can be linked to entries."[49]

DCL claims that multiple court cases refute Commerce's apparent interpretation of 19 CFR 351.213(d)(3) as requiring an entry, export, *and* a sale *during the POR* before Commerce would rescind the administrative review. However, Commerce did not interpret 19 CFR 351.213(d)(3) in that manner, nor did it base the preliminary rescission of this review on such an interpretation. Commerce's regulation at 19 CFR 351.213(d)(3) provides that Commerce may rescind a review if it determines during the period covered that "there were no entries, exports, or sales of the subject merchandise, *as the case may be*." (emphasis added). Commerce attempted to conduct this review based on a *POR entry* of subject merchandise and the associated *post-POR* sales. However, DCL was unable to satisfactorily identify those sales. Hence Commerce had no sales

[46] *See* section 772 of the Act.
[47] *See Korean Pipe 1998-1999* IDM at Comment 2.
[48] *Id.* (explaining that Commerce also considered whether certain sales of subject merchandise may be missed as a result of using an entry-based approach, and whether a respondent has been able to link sales and entries previously for prior review periods and whether it appears likely that the respondent will continue to be able to link sales and entries in future reviews.)
[49] *See Indian Pipes and Tubes 2008-2009* IDM at Comment 2.

with which to calculate CEPs and therefore no basis for calculating a dumping margin for DCL. Therefore, Commerce preliminarily rescinded the review.

DCL claims that in *Corus Staal BV* the CIT affirmed Commerce's entry-based methodology in administrative reviews. However, that case does not stand for the proposition that Commerce can conduct an administrative review where there are no reviewable sales. Citing *Helmerich & Payne*, in *Corus Staal BV*, the CIT noted "that the entry-based approach resulted in a more accurate measure of dumping and ensured that all relevant *sales* were considered" (emphasis added).[50] Thus, sales within, or outside of, the POR are necessary to conduct a review. In *Corus Staal BV*, the CIT went on to note that:

> In certain situations, such as CEP situations where Commerce cannot tie entries to future sales, or when {Commerce} cannot ascertain entry dates, Commerce cannot calculate {dumping} margins based on sales linked to entries. Therefore, Commerce may resort to the less accurate approach of calculating {dumping} margins based on possibly unlinked sales during the POR.

Commerce's approach taken in this review is consistent with this excerpt. DCL could not satisfactorily link (*i.e.*, tie) the POR-entry of subject EMD to its post-POR sales of further manufactured EMD (*i.e.*, batteries) to unaffiliated customers. However, Commerce was unable to resort to the less accurate approach of calculating {dumping} margins based on possibly unlinked sales during the POR because there were no sales of subject merchandise to unaffiliated U.S. customers during the POR (*i.e.*, no unlinked (or linked) sales of subject EMD to unaffiliated customers during the POR). Therefore, there were no sales to review and Commerce preliminarily rescinded the review.

According to DCL, *Helmerich & Payne* demonstrates that Commerce may conduct a review of an entry of subject merchandise into the United States irrespective of the date of sale of that merchandise. It is not clear how this point is relevant given that Commerce did not restrict the sales that could be examined in this review to only sales with dates within a certain time period, nor did Commerce rescind the review because it found that the entered subject merchandise was sold too long after the end of the POR. In *Helmerich & Payne*, the CIT noted that "Commerce's practice allows {it} to link entries during the POR to relevant sales in all possible cases." This is precisely the approach taken in this review; however, DCL could not satisfactorily identify the relevant sales that link to the POR entry of subject EMD. Hence, in the absence of reviewable POR or post-POR sales, Commerce preliminarily rescinded this review. *Helmerich & Payne* therefore supports the methodology used by Commerce in this review.

Furthermore, it is not possible to apply the special rule in section 772(e) of the Act in this review. The special rule under section 772(e) of the Act provides that Commerce shall determine CEP using alternative prices (the prices of sales of identical or other subject merchandise to unaffiliated persons) when the value added through further manufacturing substantially exceeds the value of the subject merchandise sold to the affiliate. Under the special rule, Commerce may determine CEP using "any reasonable basis" if the alternative prices are inappropriate, or if there is an insufficient quantity of sales with the alternative prices. We do not have alternative prices

[50] *See Corus Staal BV*, 387 F. Supp. 2d at 1303.

in this review because neither DCL nor its U.S. affiliates sold identical or other subject merchandise to unaffiliated persons. Given these facts, the appropriate "other reasonable basis" in this case would be to use the reported further manufacturing costs to calculate CEP. However, this approach cannot be used because we are uncertain of which sales to use to calculate CEPs because of DCL's inability to identify which post-POR sales contained subject EMD.

DCL appears to have attempted to expand the provision in section 772(e) of the Act that allows Commerce to determine CEP "on any other reasonable basis" to cover calculation issues beyond simply determining whether using further manufacturing costs in price calculations, or an alternative to further manufacturing costs, is appropriate. Specifically, after discussing the special rule, Commerce's broad authority to limit the universe of U.S. sales to be reported and used in dumping margin calculations, and the facts in *Silicon Metal from Brazil*, DCL argues that even if U.S. sales of batteries cannot be linked to the POR entry of subject EMD, the data provided by DCL are more than sufficient for Commerce to calculate a U.S. sales price for the imported EMD. We disagree. There is nothing in the "any other reasonable basis" provision in section 772(e) of the Act to suggest that it can be used to cure defects in reporting such as we have here, or that it allows for alternatives to anything other than using further manufacturing costs in CEP calculations. DCL failed to adequately identify the downstream U.S. sales of batteries containing the subject EMD that was entered during the POR. Consequently, Commerce does not have reviewable sales on which to base its dumping margin calculations.

None of the cases cited by DCL support applying the special rule under section 772(e) of the Act in this review. In *Aluminum Extrusions from China*, we did not have further manufacturing data on the record and were faced with unique issues involving converting different units of measure. Commerce thus applied the special rule in that situation.[51] We have further manufacturing data on the record of this review and are not faced with unique issues involving units of measure.

Although DCL cited *Silicon Metal from Brazil*, *TRBs from Japan*, *PVA from Taiwan*, and *PTFE Resin from Italy* in discussing the special rule,[52] Commerce did not apply the "special rule" in those cases. In *Silicon Metal from Brazil*, Commerce based U.S. sale prices on the respondent's verified downstream sales, COP, and further manufacturing cost data. In *TRBs from Japan*, Commerce calculated CEP using further manufactured costs because doing so yielded a more accurate dumping margin.[53] In *PVA from Taiwan*, Commerce found that applying the "special rule" was inappropriate, even though the value-added was above the 65 percent threshold, because the value-added "… is simple to calculate and does not present an administrative burden."[54] Similarly, in *PTFE Resin from Italy*, Commerce relied on further manufacturing costs because applying the "special rule" would introduce a relatively high potential for inaccuracy and the administrative burden of applying the standard methodology of using further manufacturing costs was relatively low.[55]

[51] *See Aluminum Extrusions from China.*
[52] *See Silicon Metal from Brazil* IDM at Comment 1.
[53] *See TRBs from Japan* IDM at Comment 1.
[54] *See PVA from Taiwan Prelim*, unchanged in *PVA from Taiwan Final.*
[55] *See PTFE Resin from Italy* IDM at Comment 1.

For all of the reasons explained above, including our response to Comment 2 below, we disagree with the position taken by DCL and have continued to rescind this review.

Comment 2: Whether DCL Has Linked its POR Entry to Post-POR Sales

DCL's Case Brief:

- DCL fully explained and documented how it linked the subject EMD that was imported into the United States during the POR, and used to produce batteries, to downstream sales of batteries to unaffiliated U.S. customers.[56]
- Commerce took issue with one step in the six-step process linking the imported EMD to battery sales because it concluded that supporting documents contain conflicting information regarding which of the batches and lots of EMD that were used to produce batteries contain subject EMD. Commerce misread these documents.
- The supporting documents at issue are a production process report, a Blended Cathode Report, and a Blended Powder Batch Record. The production process report identifies the type of EMD in specific batch codes and lot numbers of blended powder. The Blended Cathode Report shows quality data (test results) for batches and lots of blended powder to ensure it meets specifications.[57] The Blended Powder Batch Record shows all of the components that were blended together to produce the blended powder. Blended powder is a mixture of subject EMD, non-subject EMD, and other materials.[58]
- Commerce concluded that the production process report and the Blended Cathode Report show a different number of lots with subject EMD. However, there is no discrepancy between these reports. Subject and non-subject EMD were listed separately in the Blended Cathode Report to compare the quality of each before they were blended together. If this is taken into account, there is no discrepancy.
- Moreover, the Blended Cathode Report and the Blended Powder Batch Record contain data for different blending stages, using different lots, bins, or vessels, and at different times. There is not a one-to-one relationship between bins and vessels at different stages of production. No report is generated in the normal course of business to reconcile differences between lots in various records because the lots mean different things at different production stages. Therefore, there is no conflicting information regarding the lot numbers in the various records.[59]
- Commerce should only rely on the production process report to trace imported subject EMD to finished batteries. That report was used to track the consumption of subject

[56] *See* DCL's Case Brief at 12-13.
[57] *Id.* at 13-14 (citing DCL's Letter, "Administrative Review of the Antidumping Order on Electrolytic Manganese Dioxide from the People's Republic of China (10/1/2018 - 9/30/2019): Section C and E Supplemental Questionnaire Responses," dated September 21, 2020 (DCL's September 21, 2020, Sections C and E Supplemental Questionnaire Response) at Exhibit SE-6 (Blended Cathode Report)).
[58] *See* DCL's Case Brief at 14-15 (citing DCL's September 21, 2020, Sections C and E Supplemental Questionnaire Response at Exhibit SE-7 (Blended Powder Batch Record)).
[59] *Id.*

EMD and EMD from other sources and that report has the batch codes that were used to track associated lots of raw materials to finished batteries.[60]

- Commerce found that DCL did not respond to the question of whether it could identify the actual quantity of subject EMD in each battery sold. However, DCL explained in detail how it allocated subject and non-subject EMD to each battery cell. DCL cannot identify the *actual* quantity of subject EMD in each battery, but it reasonably used an allocation, based on bills of materials, to determine the amount of subject EMD in each battery.[61] Furthermore, the actual *total* consumption of subject EMD can be traced to the batteries produced and sold.[62]
- In *Silicon Metal from Brazil*, the respondent commingled subject silicon metal with non-subject silicon metal in production. However, the respondent was able to determine how much subject silicon metal was in each product based on the relative consumption of the Brazilian silicon metal, and by tracking associated costs.[63] In the instant review, DCL used a similar reporting and allocation methodology to report the quantity of subject EMD in each battery sold. Following this administrative precedent, Commerce should accept DCL's sales and cost databases and use them to calculate its dumping margin.

Petitioners' Rebuttal Brief:

- DCL's acknowledgment that it cannot identify the actual quantity of subject EMD in a given battery cell undermines its claim that it fully linked the imported subject EMD to U.S. sales of further-manufactured merchandise (*i.e.*, batteries).[64]
- DCL admits that Commerce cannot rely on the number of batches in its production reports given the nature of battery production (EMD goes through various lots, bins, and vessels in various production lines) and the fact that differences in the reports cannot be reconciled.[65]
- This admission supports the petitioners' point – once subject EMD is entered into production, DCL cannot identify the specific batteries that actually contain the subject EMD. A comparison of the quantity of EMD in the reported sales of batteries and the quantity of imported subject EMD indicate that DCL reported U.S. sales of batteries that do not include subject EMD.
- Contrary to its claim, DCL did not respond to Commerce's question regarding whether it could identify the actual quantity of *subject* EMD in a battery. The response that DCL pointed to in its brief relates to the *total* quantity of EMD in a battery, not the quantity of *subject* EMD in a battery.
- Even DCL's claim that the total quantity of subject EMD consumed in production can be traced to specific batteries produced and sold is incorrect since DCL merely used an

[60] *See* DCL's Case Brief at 16 (citing DCL's Letter, "Administrative Review of the Antidumping Order on Electrolytic Manganese Dioxide from the People's Republic of China (10/1/2018 - 9/30/2019)," dated October 5, 2020 at Exhibit S-1 (Step 3) (Production Process Report)).
[61] *See* DCL's Case Brief at 17.
[62] *Id*.
[63] *Id.* at 17-18 (citing *Silicon Metal from Brazil* IDM at Comment 1).
[64] *See* Petitioners' Rebuttal Brief at 16 (citing DCL's Case Brief at 17).
[65] *See* Petitioners' Rebuttal Brief at 16 and 17 (citing DCL's Case Brief at 14 and 15).

allocation methodology in its responses, not the type of trace required by the *Preamble* to Commerce's regulations and Commerce's practice.

- DCL's use of an allocation methodology to determine the quantity of subject EMD in a battery proves that DCL cannot identify the relevant CEP sales at issue.[66]
- In *Silicon Metal from Brazil*, unlike the instant administrative review, Commerce found that although the respondent commingled silicon metal from multiple sources, it was able to identify the quantity of subject silicon metal in each product.[67]
- Because there are no usable U.S. sales on which to base a dumping margin, Commerce should continue to rescind this administrative review.

Commerce's Position: We disagree with DCL and continue to find that DCL failed to adequately link the POR entry of subject merchandise to the post-POR sales of batteries reported in its U.S. sales database. As an initial matter, DCL stated in its case brief that it "cannot identify the actual quantity of subject EMD in a given {battery} cell."[68] Further, although DCL minimizes the inconsistencies noted by Commerce in the *Preliminary Results* because they involve only one of six steps that DCL used to link the entry to the sales, the inconsistencies noted by Commerce are significant because they involve identifying which batches and lots of blended powder used in battery production contain subject EMD. This is a linchpin in the linkage because DCL used batch and lot numbers to tie the imported subject EMD to the downstream product (*i.e.*, a battery) that was produced and then sold to unaffiliated U.S. customers. Thus, to adequately complete the linkage, there should be no outstanding questions regarding which batches and lots contain subject EMD. However, in Commerce's view, questions remain. Multiple times Commerce requested that DCL link the POR entry of subject EMD to post-POR sales of batteries. Commerce also asked multiple, specific questions of DCL regarding the steps that it performed, and the documents that it provided, to establish the link. Despite this, there remain unexplained inconsistencies between the production process report, the Blended Cathode Report, and the Blended Powder Batch Record that call into question whether DCL is able to conclusively identify the specific batteries that contain the subject EMD that was imported during the POR. We lay out those inconsistencies below.

Commerce found that the production process report and the Blended Cathode Report show a different number of lots with subject EMD. DCL's response to this, in part, is that it simply listed subject and non-subject EMD in separate rows in the Blended Cathode Report to compare the quality of each *before* they were mixed together.[69] DCL claims there is no discrepancy between the total number of lots listed in the two reports for the batches related to subject EMD. DCL's explanation does not clarify this matter and is inconsistent with what it previously reported.

DCL reported that "{t}he subject EMD was consumed in *each* lot" in the batches identified in the production process report (emphasis added).[70] However, in its brief, DCL explained that "there is no discrepancy – there were {a certain number of} lot numbers associated with {the}

[66] *See* Petitioners' Rebuttal Brief at 6.
[67] *See* Petitioners' Rebuttal Brief at 15 (citing *Silicon Metal from Brazil* IDM at Comment 1).
[68] *See* DCL's Case Brief at 17.
[69] *Id.* at 14.
[70] *See* DCL's January 27, 2021, Sections C and E Supplemental Questionnaire Response at 6 (public version).

batch numbers …, {a portion} of which included subject EMD, that were used to produce the batteries containing subject merchandise."[71] This statement contradicts DCL's explanation because it indicates that only a certain number of lots, not *each* lot, associated with the relevant batches include subject EMD. Furthermore, the production process report and the Blended Cathode Report, as annotated by DCL, specifically identify whether subject, non-subject, or both subject and non-subject EMD are in a specific lot. The lot-specific EMD information in these reports is different and does not agree.

According to DCL, the disagreement between lot-specific EMD information in these reports is due to the fact that the Blended Cathode Report shows the quality of subject and non-subject EMD before they were blended or mixed together.[72] We find there is insufficient evidence to support this explanation. DCL routinely described the battery component identified in the Blended Cathode Report as "blended powder," indicating that the EMD was already blended or mixed.[73] For example, DCL explained "…{the Blended Cathode Report} shows the test results for each *blended powder lot* to ensure the blended material is within specifications" (emphasis added).[74] Of note is the fact that DCL stated that the test results were for a *blended* lot to make sure the *blended* material was within specifications. DCL did not state that the test results were for a lot of unblended EMD. DCL also explained that the Blended Cathode Report "… relates to EMD blending only" and is associated with the EMD blending station.[75] DCL never indicated that the Blended Cathode Report was produced in the blending station before subject and non-subject EMD were blended together. Thus, DCL's assertion that the Blended Cathode Report reflects subject and non-subject EMD prior to being blended together is not persuasive and does not clarify the matter in light of its prior statements.

Questions also remain with respect to the Blended Powder Batch Record. DCL explained that the Blended Powder Batch Record was "… provided to show that all batches produced with the trial EMD {(*i.e.*, subject EMD)} were produced (blended) in accordance with required specifications."[76] These rows appear to relate to the production runs of blended powder that contain subject EMD.[77] Based on the number of rows highlighted, Commerce concluded that the Blended Powder Batch Record indicates a different number of lots containing subject EMD than was indicated in the Blended Cathode Report. DCL explained that these two documents relate to different blending stages at different lots and that lots mean different things in different stages of production. Even if that is the case, according to DCL, it submitted the Blended Powder Batch Record to provide Commerce with information regarding blended powder batches that contain

[71] *See* DCL's Case Brief at 14.
[72] *See* Memorandum "Proprietary Information for the Final Results of the 2018-2019 Antidumping Duty Administrative Review of Electrolytic Manganese Dioxide from the People's Republic of China," dated June 23, 2021 (Final BPI Memorandum) at Note 1.
[73] *See* DCL's September 21, 2020, Sections C and E Supplemental Questionnaire Response at 42 (public version); *see also* DCL's January 27, 2021, Sections C and E Supplemental Questionnaire Response at 7 (public version); and DCL's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Response to Domestic Producers' Pre-Preliminary Comments," dated February 10, 2021 at 9-10 (public version).
[74] *See* DCL's January 27, 2021, Sections C and E Supplemental Questionnaire Response at 7 (public version).
[75] *See* DCL's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Response to Domestic Producers' Pre-Preliminary Comments," dated February 10, 2021 at 10 (public version).
[76] *See* DCL's September 21, 2020, Sections C and E Supplemental Questionnaire Response at 43 (public version).
[77] *See* Final BPI Memorandum at Note 2.

subject EMD, yet it never explained how it identified which production runs/batches of blended powder that are listed in the report contain subject EMD.

The Blended Powder Batch Record does not contain the same type of batch information that was included in the production process report or that was included in the Blended Cathode Report. In a supplemental questionnaire, Commerce requested that DCL "explain how the information in one report may be linked to the other report" (specifically, how to link the Blended Powder Batch Record to the Blended Cathode Report).[78] In response to this request, DCL referenced its responses to other requests in the same supplemental questionnaire.[79] However, these other responses do not include explanations of how to link the reports, nor do they explain how DCL identified which production runs/batches of blended powder that are listed in the Blended Powder Batch Record contain subject EMD. This raises questions as to whether DCL is able to identify the batches or production runs that contain subject EMD at the stage of production where EMD is mixed with other materials to form blended powder.

DCL explained the apparent difference in the number of lots that contain subject EMD in the Blended Cathode Report and the Blended Powder Batch Record by noting that "the size of the vessel in the EMD blending station {(reflected in the Blended Cathode Report)} is {different from} the size of the vessel in {the} all material blending station {reflected in the Blended Powder Batch Record}."[80] In the *Preliminary Results* of this review, Commerce noted that this explanation does not appear to explain the variation in the number of lots containing subject EMD listed in these reports given that DCL "previously indicated that the larger the vessel, the fewer the number of lots."[81] DCL did not address this concern in its brief. Thus, DCL did not resolve the discrepancy between these two reports.

DCL claims that it can identify all of the batteries produced from the batches of blended powder that contain subject EMD (the powder comprises subject EMD, non-subject EMD, and other materials). However, it used an allocation to determine the specific quantity of subject EMD in any one battery in the group of batteries produced. Citing *Silicon Metal from Brazil*, DCL contends that Commerce should accept the allocation methodology that it used to identify the specific quantity of subject EMD in a single battery sold. However, DCL's allocation is based on its ability to distribute the entire actual quantity of subject EMD to a specific group of batteries produced. As noted above, we have concerns with DCL's explanations of, and the record evidence that it provided to support, which lots in the batches of powder contain subject EMD. Hence, the facts here are unlike those in *Silicon Metal from Brazil*, where Commerce noted that although the respondent commingles silicon metal from multiple sources, the respondent, "… is able to determine how much Brazilian silicon metal each product contains based on the processing facility of the Brazilian silicon metal, and tracks the associated costs."[82]

[78] *See* Commerce's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Supplemental Questionnaire," dated January 13, 2021 at Question 12.
[79] *See* DCL's January 27, 2021, Sections C and E Supplemental Questionnaire Response at 7 (public version).
[80] *See* DCL's Letter, "Electrolytic Manganese Dioxide from the People's Republic of China: Response to Domestic Producers' Pre-Preliminary Comments," dated February 10, 2021 at 10 (public version).
[81] *See* Memorandum "Proprietary Information for the Preliminary Results of the 2018-2019 Antidumping Duty Administrative Review of Electrolytic Manganese Dioxide from the People's Republic of China," dated February 17, 2021.
[82] *See Silicon Metal from Brazil* IDM at Comment 1.

Furthermore, in *Silicon Metal from Brazil*, the respondent maintained product-specific bills of materials, which separately identify the Brazilian and non-Brazilian silicon metal for each product.[83]

IV. RECOMMENDATION

We recommend applying the above methodology for these final results.

☒	☐
Agree	Disagree

7/7/2021

X James Maeder

Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

[83] *See Silicon Metal from Brazil* IDM at Comment 2; *see also* Final BPI Memorandum at Note 3.