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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

FROM: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China

SUMMARY

The Department of Commerce (Department) has analyzed the case and rebuttal briefs submitted by interested parties in the above-referenced investigation. As a result of our analysis, we have made changes in the margin calculation for the final determination. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of the issues in this investigation:

Comment 1: Whether Huludao Pipe Could Have Reported Steel Consumption on a More Product-Specific Basis
Comment 2: Whether Huludao Pipe Could Have Reported the Consumption of Paint, Thinner, and Packing Labor on a More Product-Specific Basis
Comment 3: The Department's Valuation of Huludao Pipe's Water Consumption
Comment 4: Huludao Pipe's Reported Steel By-Product Quantity
Comment 5: Whether Huludao Pipe's Reported Scrap Steel Offset Should be Reduced by Transportation Costs
Comment 6: Application of Warehousing Grace Period
Comment 7: Reported Days in Warehouse
Comment 8: Calculation of Warehousing Volume

Comment 9: Whether the Date of the Commercial Invoice Is the Proper Date of Sale
Comment 10: Scrap Surrogate Value
Comment 11: Eligibility of Pangang Group Beihai Steel Pipe Corporation for a Separate Rate
Comment 12: Applying Adverse Facts Available to Non-Responsive Companies
Comment 13: Selection of Surrogate Financial Statements
Comment 14: Whether the Imposition of Both Countervailing and Antidumping Duties Constitutes the Double Counting of Duties

Background

On November 6, 2008, the Department published its preliminary determination in the investigation of certain circular welded carbon quality steel line pipe (line pipe) from the People's Republic of China (PRC). See Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 66012 (November 6, 2008) (Preliminary Determination). We invited parties to comment on our Preliminary Determination. On January 5, 2009, Petitioners,[1] Huludao Pipe Steel Pipe Industrial Co., Ltd. (Huludao Pipe), a mandatory respondent in this investigation, and the Bureau of Fair Trade, Imports and Exports, Ministry of Commerce (GOC) of the PRC, submitted case briefs. On January 12, 2009, Petitioners and Huludao Pipe filed rebuttal briefs.

Discussion of the Issues

Comment 1: Whether Huludao Pipe Could Have Reported Steel Consumption on a More Product-Specific Basis

Petitioners note that Huludao Pipe only took into account one control number (CONNUM) characteristic (i.e., outside diameter) in reporting steel consumption to the Department; however, the record demonstrates that Huludao Pipe tracked steel consumption using additional CONNUM characteristics. Therefore, Petitioners assert that Huludao Pipe's failure to report steel consumption on a more CONNUM-specific basis warrants the application of partial adverse facts available (AFA).

Specifically, Petitioners cite the Department's finding at verification that Huludao Pipe records daily the quantity of steel input and the slit steel output of the slitting workshop based on width and wall thickness.[2] Maverick asserts that Huludao Pipe's contention that it destroys these daily slitting workshop records at the end of the month would violate the terms of its ISO 9001 requirements, which require it to have clear document retention procedures in place to monitor its production process. U.S. Steel asserts that Huludao Pipe was capable of retaining, and had an

[1] Petitioners who submitted case and rebuttal briefs in this investigation are United States Steel Corporation (U.S. Steel) and Maverick Tube Corporation (Maverick) (collectively, "Petitioners").
[2] See the Memorandum from Jeff Pedersen and Rebecca Pandolph, through Howard Smith, to the file regarding Verification of the Questionnaire Responses of Huludao Pipe Steel Pipe Industrial Co., Ltd. at 21 (December 11, 2008) (Verification Report).

obligation to retain, these daily slitting workshop records given their importance in reporting consumption rates as close to a CONNUM-specific basis as possible. U.S. Steel argues that the Department cannot allow a respondent to retain one set of production reports (i.e., the monthly reports tracking costs on the basis of outside diameter) and dispose of another (i.e., the daily slitting workshop records tracking costs on the basis of outside diameter and wall thickness).

Maverick also contends that Huludao Pipe could have reported steel consumption on a more specific basis because customers specify the grade of steel required in their purchase orders and that specific grade is included in the mill certificates provided to U.S. customers. These mill certificates contain specific information identifying the heat treatment batch, and the quality and quantity of the purchased merchandise. Maverick concludes that these detailed records assuring customers of the quality of the steel used to produce subject merchandise demonstrate that Huludao Pipe was able to track which coils were used to produce merchandise throughout each stage of production. Thus, Huludao Pipe could have reported steel consumption on a more CONNUM-specific basis. Maverick also contends that Huludao Pipe's claim that it does not need detailed inventory records because it often produces to order and operates under a very tight inventory turnover protocol is contradicted by instances where very lengthy times exist between when Huludao Pipe receives orders and when it ships the ordered merchandise to customers.[3]

U.S. Steel further notes that despite repeated requests by the Department to report steel consumption as close to a CONNUM-specific basis as possible, Huludao Pipe failed to proffer any means to do so other than its monthly production reports, which only itemized consumption based on outside diameter. U.S. Steel suggests that Huludao Pipe was obligated to suggest an alternative basis or allocation methodology that would provide a more CONNUM-specific steel consumption rate.

Petitioners assert that Huludao Pipe's refusal to hand over records that tracked steel consumption on a more specific basis than outside diameter and failure to devise a reasonable methodology to report CONNUM-specific factors of production (FOPs) demonstrate a failure of Huludao Pipe to act to the best of its ability. Thus, Maverick argues that the Department should base Huludao Pipe's steel consumption on AFA. Maverick asserts that as AFA, the Department should assign the highest reported steel consumption rate to all of Huludao Pipe's sales of subject merchandise. U.S. Steel contrasts Huludao Pipe's retention of monthly consumption records with its disposal of daily consumption records and asserts that the Department should infer that Huludao Pipe benefitted by choosing not to retain the daily documents that would have allowed it to report steel consumption on a more CONNUM-specific basis. U.S. Steel asserts that verification and the antidumping law itself would be rendered meaningless if the respondent could pick and choose which documents to retain. To minimize any benefit that Huludao Pipe would receive from its refusal to report on a more CONNUM-specific basis, U.S. Steel argues that the Department should use, as partial AFA, the World Trade Atlas (WTA) data for Harmonized Tariff Schedule (HTS) number 7208.36 as the surrogate value for the hot-rolled steel input. U.S. Steel asserts that using the WTA data for HTS number 7208.36 results in the highest surrogate value for the hot-rolled steel input based on thickness.

Huludao Pipe asserts that it reported steel consumption on the most CONNUM-specific basis its

[3] See Huludao Pipe's August 21, 2008, submission at SQ2-4 and SQ2-5.

records allowed. Huludao Pipe asserts that its records enable the company to comply with ISO standards and report audited financial statements in accordance with Chinese Generally Accepted Accounting Procedures. Huludao Pipe adds that since it always uses steel that meets API (American Petroleum Institute) 5L standards, it knows that the output meets API 5L and, thus, ISO standards. Huludao Pipe argues that while its records allow it to identify the grade, heat number, and wall thickness of customers' orders, this does not mean that it also maintains records allowing it to report per-unit steel consumption by grade, heat number, and wall thickness. Huludao Pipe also notes that while the daily slitting reports specify consumption by width and wall thickness, the monthly slit hot-rolled steel production report created from these daily slitting reports is used to record steel consumption and output itemized only by outside diameter. Huludao Pipe further notes that this investigation began after the end of the period of investigation (POI), and thus its normal record-keeping practice of destroying the daily slitting reports in the month after production occurred resulted in Huludao Pipe having no other choice but to report steel consumption based on the monthly slit hot-rolled steel production report, which identified steel consumption only on an outside diameter basis.

Huludao Pipe cites the Department's statement in the Verification Report that there is "no way to link the type of steel input to the pipe produced in any records that recorded the consumption of inputs used to make pipe."[4] Huludao Pipe notes that in addition to the verification, the Department researched the level to which Huludao Pipe could report steel consumption in supplemental questionnaires and Huludao Pipe claims that the Department concluded that Huludao Pipe made its maximum effort to report steel as specifically as its records allowed. Huludao Pipe argues that as it met all of the conditions of section 782(e) of the Tariff Act of 1930, as amended (the Act), the Department should use Huludao Pipe's submitted information.

Department Position:

We found no evidence that Huludao Pipe retained records that would allow it to report steel consumption on a more CONNUM-specific basis than already reported. We asked Huludao Pipe in numerous supplemental questionnaires to report the consumption of all inputs on as close to a CONNUM-specific basis as possible using the records it maintains in the normal course of business. Huludao Pipe reported that the only CONNUM characteristic that it could take into account in reporting steel consumption was outside diameter.[5] At verification, we confirmed that Huludao Pipe retained no records that would allow it to report steel consumption taking into account CONNUM characteristics other than outside diameter.[6] The Court of Appeals for the Federal Circuit found that the Department's authority to apply facts available (FA) does not extend to situations in which the information or data requested is not able to be produced because these data do not exist. See Olympic Adhesives, Inc. v. United States, 899 F.2d 1565, 1572-1574 (Fed. Cir. 1990). While Huludao Pipe did maintain slitting records that recorded steel consumption at the slitting stage of production based on width and thickness,[7] we verified that

[4] See Verification Report at 23.
[5] See Huludao Pipe's October 3, 2008, submission (entire submission explains why Huludao Pipe could only report steel consumption on an outside diameter basis).
[6] See Verification Report at 23 ("All cost and production records reviewed at verification itemized consumption by only outside diameter").
[7] Id. at 20.

these records were destroyed at the end of each month and the detailed daily consumption amounts were not transferred to any record maintained on a long-term basis. Hence, regardless of Maverick's claims that Huludao Pipe must have maintained its slitting records in order to comply with ISO 9001 requirements, the Department found no evidence at verification that Huludao Pipe retained records that would allow it to report steel consumption on a more CONNUM-specific basis than already reported. Moreover, the record does not clearly demonstrate that Huludao Pipe was required to maintain the specific records in question in order to comply with ISO 9001 requirements.

In addition, we note that in arguing that Huludao Pipe destroyed the slitting production records in order to benefit itself, U.S. Steel has overlooked the fact that Huludao Pipe would not have known of this investigation until after the end of the POI. Thus, Huludao Pipe would not have known that the records that it destroys at the end of every month in the normal course of business should have been retained for purposes of this investigation.

Petitioners correctly note that Huludao Pipe was able to track steel grade and heat numbers throughout the production process. However, these records tracking steel grade and heat numbers throughout the production process cannot be reconciled with those production records that record steel input and slit steel or pipe output.[8] Petitioners' comments fail to address the fact that it is necessary when calculating consumption quantities to have records recording both input and output. Thus, we conclude that Petitioners have not pointed to any document, aside from the daily slitting reports destroyed at the end of each month, which would enable Huludao Pipe to report per-unit steel consumption on a more CONNUM-specific basis. Further, we do not agree with Maverick's argument that the long lag between order and delivery is inconsistent with Huludao Pipe's claims that its just-in-time production process results in low input inventories and obviates the need for detailed inventory records. Rather, we find that a company can, and in Huludao Pipe's case does, have very long periods between order and production and yet only purchase steel shortly prior to production.

Nonetheless, we are hereby notifying Huludao Pipe that it should maintain all records generated in the normal course of business, including the daily and monthly slitting steel consumption records, that would allow it to report steel consumption in future segments of this proceeding taking into account as many CONNUM characteristics as possible. Knowing the wall thickness and width of inputs will allow the Department to better match the appropriate surrogate values and consumption rates to different kinds of subject merchandise. If Huludao Pipe fails to comply with this request, the Department may resort to the use of AFA in accordance with section 776(b) of the Tariff Act of 1930, as amended (the Act). This is consistent with our approach in another antidumping proceeding. See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007), and accompanying Issues and Decision Memorandum at Comment 25.

[8] Id. at 23.

Comment 2: Whether Huludao Pipe Could Have Reported the Consumption of Paint, Thinner, and Packing Labor on a More Product-Specific Basis

Maverick argues that Huludao Pipe's methodology for reporting the consumption of paint, thinner, and packing labor, namely, dividing the amount of each input's consumption during the POI by the weight of total pipe output during the POI, results in a per-unit amount that is both grossly underreported and is also not as CONNUM-specific as possible. Thus, Maverick argues that the consumption of these factors should be based on facts otherwise available. Maverick asserts that while the Department verified the POI consumption of these factors, it did not verify the validity of the methodology used to allocate POI consumption to output. According to Maverick, the Department should find that Huludao Pipe could have reported per-unit consumption on a more accurate basis. Maverick, citing 19 CFR 351.401(g)(1), states that while a respondent is allowed to report allocated costs when transaction-specific reporting is not possible, the allocation methodology must not "cause inaccuracies or distortions."

Specifically, Maverick argues that Huludao Pipe's allocation of paint and thinner consumption to all pipe produced based on the weight of the pipe is overly simplistic and does not accurately reflect the costs associated with the subject merchandise. In analyzing Huludao Pipe's U.S. sales database, Maverick notes that the differences in paintable surface areas of pipe due to the differences in outside diameter and wall thickness of the line pipe sold by Huludao Pipe during the POI, results in great differences in the actual consumption rates of paint and thinner for these varying dimensions of pipe. Maverick cites several examples of differences in consumption for different outside diameters reported by Huludao Pipe and theoretical surface areas to show that the allocation methodology reported by Huludao Pipe is inaccurate and distortive. While Maverick does not suggest a specific allocation basis as FA, Maverick argues that Huludao Pipe could have reported paint and thinner consumption using a less distortive allocation methodology, such as basing consumption on the paintable surface area per ton for line pipe, or on the paint and thinner applied only to line pipe, rather than to all pipe.

Maverick further contends that Huludao Pipe's allocation of packing labor consumption based on the weight of the pipe is distortive and does not accurately represent Huludao Pipe's costs because the total weight per piece of line pipe varies given the differences in outside diameter and wall thickness. This fact results in a varying number of pieces of finished line pipe per metric ton and a difference in the number of labor hours needed to pack the pipe. Maverick argues that Huludao Pipe did not take into consideration the variability in packing labor hours for different product types, even though Huludao Pipe could have reported this information in a manner that was not distortive and inaccurate. Maverick contends that the Department should base packing labor hours on FA. Citing section 776(a) of the Act, Maverick further contends that the Department should find that Huludao Pipe failed to cooperate by not providing accurate labor hours for packing as requested by the Department. Specifically, Maverick proposes basing the per-unit packing labor hours for all CONNUMs on the month with the highest per-unit consumption of packing labor during the POI.

Maverick also alleged that end cap consumption was underreported.

Huludao Pipe maintains that it reported its factor consumption on a basis as close to CONNUM-

specific as its records allow. Huludao Pipe agrees with Maverick that calculating consumption using the surface area of the different products would be more accurate if it could be verifiably done. Huludao Pipe asserts that while it had initially attempted to report paint and thinner consumption by surface area, its records only list production quantity in metric tons by outside diameter; therefore, it could not report consumption on a more CONNUM-specific basis. Huludao Pipe cites the verification report where the Department determined that the only physical characteristic Huludao Pipe's records itemized output by was outside diameter.[9]

Similarly, Huludao Pipe agrees with Maverick that allocating packing labor consumption on a per piece basis may be more accurate, but points out that it recorded the quantity of pipe packed only on a weight basis in its normal books and records, thus, it could not report packing labor hours by pieces as Maverick suggests. Huludao Pipe asserts that it cooperated fully by reporting packing labor as accurately and specifically as its books kept in the normal course of business would allow.

Department Position:

We found no evidence that Huludao Pipe maintained production records that would have allowed it to take surface area into account in reporting per-unit paint and thinner consumption or take the number of piece of packed pipe into account in reporting per-unit packing labor. Moreover, we found no records at verification that would have allowed Huludao Pipe to report the consumption of paint and thinner, and the use of packing labor on a more CONNUM-specific basis than that reported in Huludao Pipe's FOP submission. Thus, we have made no adjustments to the per-unit paint, thinner, and packing labor consumption reported by Huludao Pipe.

Even if Petitioners were correct that reporting consumption based on surface area was more accurate for paint and thinner and reporting consumption based on a per-piece basis was more accurate for packing labor, the information necessary to calculate the surface area of pipe produced or the number of pieces of pipe packed is not on the record. As stated by Huludao Pipe, to calculate the surface area of Huludao Pipe's pipe production, output would have to be itemized by not only outside diameter, but also length and wall thickness. At verification, the Department tested Huludao Pipe's supplemental responses and found that it could not calculate per-unit consumption of any input on any basis other than outside diameter. The Department noted that "{a}ll costs and production records reviewed at verification itemized consumption by only outside diameter."[10] In addition, the information necessary to calculate the number of packed pieces of pipe is not on the record. The Department found at verification that Huludao Pipe's packed quantity of pipe was recorded by weight, rather than by the number of pieces of pipe.[11] Maverick's alternative suggestion that paint and thinner consumption be allocated only to the weight of line pipe rather than to the total weight of both line and structural pipe, does not consider the Department's finding at verification that "all cost and production records reviewed at verification never separated the costs of line pipe from those of structural pipe."[12]

[9] Id. at 23.
[10] Id. at 23.
[11] Id. at Table 2.11 of Exhibit 1.
[12] Id. at 23.

Further, Maverick has not supported, with any evidence, its assertion that paint, thinner, and packing labor consumption are all underreported. In fact, the Department verified that total paint, thinner, and packing labor were fully allocated to total pipe output.[13]

The Department finally notes that Maverick alleged that end caps were underreported, but has not supported this assertion with any argument. The Department has made no changes to Huludao Pipe's reported end cap consumption.

Comment 3: The Department's Valuation of Huludao Pipe's Water Consumption

Huludao Pipe sold pipe produced by its two factories, Huludao and Bohai. The Huludao factory only used well water during the POI. The Bohai factory used well water for the first half of the POI and then used municipal water for the second half of the POI. Since Huludao Pipe reported that neither factory recorded the amount of well water consumed, for the Preliminary Determination, the Department based the water consumption of both factories for the entire POI on the per-unit consumption reported by the Bohai factory during the second half of the POI when it used municipal water. The Department then applied a surrogate value based on water costs in the state of Maharashtra in India.[14]

Huludao Pipe requests that the Department value its well water consumption at zero. Huludao Pipe has placed information on the record to support its claim that there are no fees assessed for well water in India.[15] Based on this information, Huludao Pipe argues that the Department should apply a surrogate value of zero to its well water consumption.

Huludao Pipe also requests that the Department reduce the Bohai factory's consumption rate for municipal water that was applied in the Preliminary Determination by half. Huludao Pipe contends that the Department verified that the Huludao factory did not consume a lot of water during the production process, and that the consumption quantity of municipal water reported by the Bohai factory included water used in its administrative offices in addition to water used in production.

U.S. Steel argues that the Department's decision in the Preliminary Determination to calculate a surrogate value for water based on the industrial water rates from the state of Maharashtra in India was proper. U.S. Steel notes that the Department has previously rejected an argument nearly identical to the one made by Huludao Pipe. See Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005) (Garlic from the PRC) and accompanying Issues and Decision Memorandum at Comment 3. U.S. Steel notes that in Garlic from the PRC, the respondent argued, similarly to Huludao Pipe, that it should not be assigned a surrogate value for water because both it and the producers of comparable merchandise in India obtained water free of charge. In Garlic from the PRC, the Department reasoned that for non-market economy (NME) cases, FOPs should be determined without regard to the actual cost of the input to the respondent. U.S. Steel asserts that this

[13] Id. at 30, 47 and Exhibit 22.

[14] See Preliminary Analysis Memorandum for Huludao Pipe Steel Pipe Industrial Co., Ltd. (October 30, 2008) (Prelim Analysis Memo).

[15] See Huludao Pipe's September 15, 2008, submission at Exhibit 5.

reasoning has been affirmed by the CIT, and thus requests that the same decision be applied in this situation. See Pacific Giant, Inc. v. United States, 223 F. Supp. 2d 1336, 1346 (CIT 2002).

Department Position:

We have based the surrogate value for well water on municipal water costs in Maharashtra Province in India. The information that Huludao Pipe placed on the record to support its claim that there are no fees assessed for well water in India does not explicitly state that well water for industrial users is free in India. The Department notes that the argument concerning well water valuation has previously been raised in other cases and, in those cases, the Department has determined to value well water using the same surrogate value as we are using in our calculations for this case, i.e., the municipal water costs in Maharashtra Province in India. See Garlic from the PRC and Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the Eleventh Administrative Review and New Shipper Reviews, 72 FR 34438 (June 22, 2007) and accompanying Issues and Decision Memorandum at Comment 8. Further, these values are widely used by the Department to value water consumption, are publicly available, are paid by industrial users rather than agrarian users and cover a large number of data points. This approach is consistent with the Department's determination in the Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 71 FR 77373 (December 26, 2006) (unchanged in Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007)).

We also disagree with Huludao Pipe's request to decrease the water consumption rate that was applied in the Preliminary Determination. Huludao Pipe has not placed any information on the record to support its assertion that water consumed by its administrative offices is a significant part of its reported water consumption. Contrary to Huludao Pipe's assertion that the Department verified that Huludao Pipe did not consume a lot of water during production, the Department found during verification that "in both factories an anti-rust solution was mixed with water and used at all stages in the welding workshop."[16] This reinforces the fact that water played a significant role in the production process. Moreover, Huludao Pipe has provided no evidence to support cutting the water consumption rate used in the Preliminary Determination by half.

Comment 4: Huludao Pipe's Reported Steel Scrap Quantity

U.S. Steel contends that the Department should not accept the scrap offset reported for Huludao Pipe's factories because it is based, in part, on scrap quantities that fail to reflect the fact that some scrap cannot be recovered and sold. Specifically, U.S. Steel notes that unlike the Bohai factory, which tracked the quantity of recoverable, sellable scrap that it generated in production, the quantity of scrap generated by the Huludao factory, which constituted part of the total scrap offset, was based on the total difference between the weight of the hot-rolled steel input and the weight of the pipe output. U.S. Steel contends that this approach is unacceptable because it assumes that all of the steel that entered into production that did not become part of the finished

[16] See Verification Report at 20.

product is sellable steel scrap. U.S. Steel notes that even Huludao factory's production manager conceded at verification that some of the scrap reported as an offset by the Huludao factory is unsellable.[17] U.S. Steel further notes that the production manager's estimated recoverable scrap rate is impossibly high and unsupported by documentation. Hence, to account for the unusable and unsellable scrap generated by the Huludao factory, U.S. Steel requests that the Department apply the actual documented recovery rate for sellable scrap that was experienced by the Bohai factory to the Huludao factory.

Huludao Pipe argues that it would not be appropriate to base Huludao factory's scrap recovery rate on that of the Bohai factory for a number of reasons. First, Huludao Pipe claims that the Department witnessed that, apart from a tiny percentage of steel that turned to metal dust, all of the scrap was recoverable. Second, Huludao Pipe claims that the vast majority of the scrap figures used in reporting the scrap offset are figures for sellable scrap from the Bohai factory since the Bohai factory generated most of the scrap.[18] Third, Huludao Pipe contends that the adjustment proposed by U.S. Steel would be minor and should be ignored. Specifically, Huludao Pipe argues that since most of the scrap came from slitting, and the Bohai factory's scrap recovery rate for slitting indicates that almost all of the scrap is sellable, the adjustment proposed by U.S. Steel would be minor. Additionally, Huludao Pipe submits that the proposed adjustment should be ignored in light of the fact that it reported the scrap offset using the lesser of the quantity of scrap sold or scrap generated and thus the scrap offset has already been capped. According to Huludao Pipe, reporting the lower of the two is in accordance with Department practice.

Further, Huludao Pipe notes that the Huludao factory has been in operation since 1993, while the Bohai factory only began production shortly before the POI. Huludao Pipe asserts that this gap in experience explains why the Huludao factory would not experience the same degree of scrap loss that was experienced by the Bohai factory. Huludao Pipe further asserts that if the Huludao factory's unrecoverable scrap rate were similar to the lower recovery rate of the Bohai factory, this would be reflected in its financial statements through a large balance in the scrap material ledger. Huludao Pipe notes that it has a very low accumulated balance in the scrap material ledger despite being in operation since 1993.[19] Huludao Pipe cites the tolling arrangement between the Bohai factory and the Huludao factory, where scrap generated by the Bohai factory was returned to the Huludao factory, as possibly resulting in the Bohai factory's recoverable scrap being under-reported. Finally, Huludao Pipe asserts that most of the scrap was generated by the slitting process. Huludao Pipe argues that previous submissions demonstrate that almost all of the scrap from this process is sellable.[20]

Huludao Pipe also states that if the Department finds it necessary to base its scrap offset on the Bohai factory's scrap recovery rate, the Department should correct the miscalculation of the Bohai factory's scrap recovery rate for the POI in the Verification Report at 37. Huludao Pipe contends that in calculating the scrap recovery rate, the Department overstated the weight of pipe

[17] Id. at 37.
[18] Id. at 37.
[19] Id. at Exhibit 27.
[20] See Huludao Pipe's August 27, 2008, submission at 8; Huludao Pipe's September 29, 2008, submission at 15; and Huludao Pipe's October 3, 2008, submission at 2.

output for December 2007. Also, Huludao Pipe requests the Department use a weight average of the POI monthly recovery rate instead of a simple average. Huludao Pipe also requests that if the Department finds it necessary to base its scrap offset on the Bohai factory's scrap recovery rate, the Department should separate the Bohai factory's recovery rate between the first and second halves of the POI. This approach would take into account the differences between the periods that resulted from the fact that in the first half of the POI, Huludao Pipe did not recognize scrap generated by the welding workshop, but it did so in the second half of the POI.[21]

Department Position:

The Department will continue to rely on Huludao Pipe's reported scrap offset. This per-unit offset is based on the lower of Huludao Pipe's scrap sales quantity and its generated scrap quantity and is in accordance with Department practice. See Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003) and accompanying Issues and Decision Memorandum at Comment 12D. Further, the Department verified that the reported scrap offset is consistent with the Huludao factory's quantity of steel scrap generated that it recorded in its books and records. See Verification Report at 35 and 36.

With regard to whether it was appropriate for the Huludao factory to base the scrap offset on the difference between the steel input quantity and the pipe output quantity, we note that the difference between the steel input quantity and pipe output quantity was recorded in the scrap ledger as a debit. This amount was offset on the credit side of the same ledger by the actual quantity of scrap sales. The difference between the two columns was, as stated by Huludao Pipe, very small. We find this small difference, which reflects operations since 1993, supports Huludao Pipe's claim that most of the scrap that it generated is recoverable.[22] Moreover, the Department has found nothing on the record, or at verification, to contradict the Huludao factory's production manager's assertion that nearly all of the Huludao factory's recovered scrap was sellable. Thus, we have accepted the Huludao factory's method of reporting its scrap offset.

Comment 5: Whether Huludao Pipe's Reported Steel Scrap Offset Should be Reduced by Transportation Costs

U.S. Steel notes that in calculating Huludao Pipe's preliminary margin, the Department did not take into account the expenses Huludao Pipe incurred when transporting scrap to buyers. U.S. Steel asserts that the Department should reduce Huludao Pipe's scrap offset to account for transportation expenses, which, U.S. Steel asserts, is in accordance with Department practice. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30664 (June 8, 1999) and accompanying Issues and Decision Memorandum at Comment 17. U.S. Steel requests that since the distance to the scrap buyers is not on the record, the Department adjust the scrap offset by calculating transportation costs using the distance from Huludao Pipe to the nearest port.

Huludao Pipe disagrees with U.S. Steel's argument to deduct transportation costs from the scrap

[21] See Verification Report at 35.
[22] Id. at Exhibit 27.

offset. Huludao Pipe notes that during the verification, it explained to the Department that it sold scrap at an ex-factory price and the Department found no evidence that transportation costs were incurred on scrap sales. Since Huludao Pipe is not responsible for transportation fees, it claims that there is no basis to deduct this expense from the scrap offset.

Department Position:

In the case cited by U.S. Steel, the Department noted that the net value for the scrap (scrap revenue less transportation costs) should be used as a reduction in material costs. Likewise, in the instant investigation, we have based the scrap offset on WTA scrap values which we consider to be equivalent to an ex-factory scrap price which does not reflect delivery charges. The Department has noted that its practice is to value by-products using import values as surrogates for the ex-factory, freight-exclusive prices from suppliers because it is the best estimate of the market value of the by-product. See e.g., Titanium Sponge From the Russian Federation; Notice of Final Results of Antidumping Duty Administrative Review, 61 FR 58525, 58531 (November 15, 1996) (Comment 11). In this case, reducing the WTA value by transportation costs would understate the scrap offset. Accordingly, we have continued to value scrap steel using data from the WTA without reducing the value for transportation costs.

Comment 6: Application of Warehousing Grace Period

Maverick contends that Huludao Pipe reduced the number of days that its subject merchandise was reportedly warehoused by seven days without providing any justification for the reduction. Although Maverick notes that Huludao Pipe attempted to justify this reduction by pointing to a particular document on the record, Maverick claims there is no evidence that Huludao Pipe actually used the entity that provided the document for the subject merchandise sold during the POI. Thus, Maverick urges the Department to reject Huludao Pipe's attempts to eliminate the warehousing expenses that it incurred during the POI.

Huludao Pipe notes that even Maverick's own submission containing a warehousing surrogate value indicates that a seven-day grace period is offered and that the Department granted Huludao Pipe a seven-day grace period in the Preliminary Determination.[23]

Department Position:

We have determined that in this case it is appropriate to reduce the actual number of days used to calculate warehousing expenses by seven days. The Indian warehousing company whose warehousing fee the Department used as the surrogate value for Huludao Pipe's warehousing costs granted its customers a seven-day grace period before it began charging warehousing fees. Also, the record contains documentation supporting the use of a seven-day grace period from the freight forwarder who arranged warehousing for all subject merchandise sales reviewed at the verification of Huludao Pipe.[24] Thus, in calculating warehousing expenses, we have used a warehousing period that reflects a seven day grace period.

[23] See Maverick's submission at 13, note 37 (October 1, 2008).
[24] See Verification Report at Exhibits 11 through 15 and 17.

However, the warehouse expenses calculated in the Preliminary Determination were understated because the Department reduced the reported number of days in the warehouse by seven days[25] without realizing that Huludao Pipe had already reduced the number of days in the warehouse that it reported to the Department by seven days. We only discovered this fact at verification.[26] Therefore, in calculating Huludao Pipe's final margin, we have not subtracted seven from the number of warehouse days reported by Huludao Pipe (which already incorporates a seven-day grace period).

Comment 7: Reported Days in Warehouse

Huludao Pipe's U.S. sales often consisted of several truckloads of subject merchandise sent to a warehouse at the PRC port, where the merchandise was then gathered and shipped as one shipment on an ocean vessel to the United States. In reporting warehouse days for specific U.S. sales, Huludao Pipe calculated the warehousing period beginning on the day the warehousing company received the last shipment.

Maverick argues that Huludao Pipe has failed to explain why a warehouse operator would not charge fees from the first day that a truckload of merchandise entered the warehouse rather than the last day. Maverick questions the facsimile that Huludao Pipe provided at verification to substantiate its claim that the warehouse operator's billing policy was in accord with how Huludao Pipe reported warehousing days to the Department. Specifically, Maverick claims that this facsimile did not exist on the record prior to verification, it was drafted after the beginning of this investigation, and that Huludao Pipe failed to demonstrate that the provider of the facsimile actually provided warehousing services for subject merchandise during the POI.[27] Maverick argues that since there was a significant period of time between the first and last shipment to the warehouse for at least some shipments, the Department should reopen the record, instruct Huludao Pipe to report shipment dates for each of its shipments to the warehouse, and base Huludao Pipe's warehouse expenses on the total number of days goods were warehoused.

Huludao Pipe asserts that Maverick's request to reopen the record to obtain more information is too late and that calculating warehousing expenses as Maverick suggests would be inconsistent with Huludao Pipe's normal business practice. Huludao Pipe also asserts that the surrogate value for brokerage and handling covers the cost of warehousing shipments that span several days because brokers need to time deliveries so that shipments can be loaded in an orderly way.

Department Position:

Aside from the change described in Comment 6, we have not altered Huludao Pipe's reported warehouse days. Maverick has failed to cite any record evidence contradicting Huludao Pipe's contention that its warehouse operators normally begin calculating warehouse charges upon receipt of the final truckload of merchandise. To support its assertion that the warehouses it used only began charging warehousing fees when they received the full shipment, Huludao Pipe provided documentation from the freight forwarder who arranged warehousing. The document

[25] See Prelim Analysis Memo.
[26] See Verification Report at 19 and Exhibit 17.
[27] Id. at 19 and Exhibit 17.

shows that the number of days in the warehouse only begins when the warehouse receives the final truckload pursuant to an overseas shipment. Contrary to Maverick's assertion, the party providing documentation did arrange the warehousing for all subject merchandise sales reviewed at the verification of Huludao Pipe.[28] We find nothing on the record to contradict Huludao Pipe's assertion that warehouse operators begin charging warehousing fees from the date when they receive the full shipment. Thus, there is no basis for reopening the record or changing Huludao Pipe's reported warehouse days.

Comment 8: Calculation of Warehousing Volume

In order to apply the surrogate value for warehousing expenses, the Department requested that Huludao Pipe report the volume of subject merchandise for each U.S. sale. Huludao Pipe reported the volume on a per-pipe basis in the field QTYM3U. U.S. Steel requests that the Department convert the field QTYM3U from a per-pipe basis to a per-metric ton basis so that it is consistent with the unit of measure for Huludao Pipe's U.S. sales quantity, which is reported on a metric ton basis in its U.S. sales file. During verification, the Department converted the field QTYM3U to a per-metric ton basis in Appendix III of the Verification Report. The Petitioners assert that the QTYM3U figures from the Verification Report should be used in the final determination.

Huludao Pipe states that it has no objection to U.S. Steel's request to convert the figures in the field QTYMU3 from a per-pipe to per-metric ton basis to be consistent with the U.S. sales file.

Department Position:

The quantity of subject merchandise was reported by Huludao Pipe in both its sales and FOP database in metric tons. This requires all adjustments to be reported on the same basis. However, at verification we discovered that Huludao Pipe had reported warehoused volume on a per-piece basis rather than a per-metric ton basis. In calculating Huludao Pipe's final margin, the Department has used the warehoused volume on a per-metric ton basis from the Verification Report.

Comment 9: Whether the Date of the Commercial Invoice Is the Proper Date of Sale

U.S. Steel claims that the Department should use the date of shipment from the factory instead of the invoice date, as the date of sale. U.S. Steel, citing Huludao Pipe's own statements on the record, argues that the invoice date is a random date and an unreliable basis for the date of sale. Specifically, U.S. Steel relies on Huludao Pipe's statements that it "did not pay careful attention" to the invoice date and that this date "did not bear intrinsic importance in the normal business of trade."[29] While acknowledging that the Department verified that no changes in the material terms of sale occurred after the reported invoice date, U.S. Steel argues that the commercial invoice date is random and meaningless and thus could not be the date on which the material terms are no longer subject to change. U.S. Steel asserts that the Department has stated that in

[28] See Verification Report at Exhibits 11 through 15 and 17. The goods collection notice in Exhibit 17 identifies the same freight forwarder that is identified in certain documents for each of the sales traces reviewed at verification.
[29] See Huludao Pipe's September 17, 2008, Supplemental Response.

situations where an invoice date was not issued pursuant to a standard invoicing practice, the invoice date could be manipulated. See Antidumping Duties; Countervailing Duties, 62 FR 27296, 27349 (May 19, 1997). For all of the above reasons, U.S. Steel requests that the date of shipment from the factory be used as the date of sale, as Huludao Pipe had no difficulty reporting this date accurately and reliably.

Huludao Pipe does not agree with U.S. Steel's argument to change the date of sale. Huludao Pipe points to its statement on the record that key sales terms may change after the date of shipment from the factory and they are not finalized until commercial invoices are issued or finalized. Huludao Pipe demonstrates this fact by pointing to a sale where the terms changed after the date of shipment.[30] Huludao Pipe notes that the Department found at verification that there were no changes in the terms of sale after each commercial invoice was issued.[31] Huludao Pipe thus requests that the Department's final determination remains consistent with its practice of using the invoice date as the date of sale.

Department Position:

We continue to find invoice date to be the appropriate date of sale. The Department's regulations at 19 CFR 351.401(i) provides that:

> {i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

While this regulation allows the Department to use a date of sale other than invoice date if another date better reflects the date on which the material terms of sale are established, at verification, we confirmed that there were no changes in the terms of sale after the commercial invoice date.[32] Therefore, there is no basis to use a date of sale other than invoice date.

Additionally, with regard to U.S. Steel's claim that the factory date should be the date of sale, we noted at verification that the terms of at least one sale changed after shipment from the factory.[33] Thus, the date of shipment from the factory is not the point in time at which the material terms of sale are finalized.

Comment 10: Steel Scrap Surrogate Value

U.S. Steel requests that the Department use Indian HTS subheading 7204.49[34] to value the steel scrap that formed the basis of Huludao Pipe's scrap offset rather than Indian HTS subheading

[30] See Huludao Pipe's September 7, 2008, submission at 11.
[31] See Verification Report at 11.
[32] Id. at 11.
[33] Id. at 11.
[34] This category is identified as "Ferrous waste and scrap; re-melting scrap ingots of iron or steel: other."

7204.41,[35] which the Department applied in the Preliminary Determination. U.S. Steel notes that all steel scrap generated during Huludao Pipe's production of subject merchandise was generated in either the slitting or the welding stage of production. U.S. Steel asserts that the slitting stage generated the vast majority of Huludao Pipe's steel scrap, as steel scrap from welding was either not reported as part of the scrap offset or reported by Huludao Pipe to be "minimal" during the POI.[36] U.S. Steel further states that in previous cases, the Department and the International Trade Commission (ITC) have reasoned that steel scrap generated from a slitting process cannot be described as turnings or shavings and, therefore, steel scrap should not be valued using HTS subheading 7204.41. See Heavy Forged Hand Tools From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 67 FR 57789 (September 12, 2002) and accompanying Issues and Decision Memorandum at Comment 8 (00-01 Hand Tools). See also ITC Ruling, CLA-2-72:OT:RR:E:NC:N1:117 (April 28, 2008) (ITC Scrap Classification Ruling).[37]

Huludao Pipe finds U.S. Steel's justification for using a new HTS subheading to value scrap unpersuasive. Specifically, Huludao Pipe questions U.S. Steel's reasoning because the case that U.S. Steel relies upon, 00-01 Hand Tools, covers a product entirely different from line pipe (i.e., forged hand tools). Additionally, contrary to U.S. Steel's insinuation that 00-01 Hand Tools involved the proper classification of scrap from a slitting process, Huludao Pipe claims that the case addressed the proper classification of pieces of scrap rails, billets, and rods that have been cut with a cutting torch. Nonetheless, Huludao Pipe finds the hand tools antidumping (AD) proceeding to be instructive here because in one segment of the proceeding the Department valued the scrap steel used to make hand tools and the scrap steel generated from the production of heavy forged hand tools using the same HTS subheading. See Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 66 FR 48026 (September 17, 2001) and accompanying Issues and Decision Memorandum at Comment 13 (99-00 Hand Tools). Thus, in accordance with this decision, Huludao Pipe suggests that the Department value its scrap using the same HTS subheading that was used to value its steel input.

Huludao Pipe further asserts that the ITC Scrap Classification Ruling cited by U.S. Steel is actually from a U.S. Customs and Border Protection Ruling[38] and is not binding as it identifies the appropriate HTS classification for steel scrap from stamping operations, which Huludao Pipe claims differ greatly from its slitting and welding operations. Also, Huludao Pipe cites additional U.S. Customs and Border Protection cases that ruled that reducing the width of a steel coil, which it claims occurs during the slitting stage of its production, is a "trimming" operation. See HQ228509 (April 9, 2002), 2002 U.S. Custom HQ Lexis 1186 at *4; see also HQ224283 (March 17, 1993), 1993 U.S. Custom HQ Lexis 893 at *3. Huludao Pipe notes that the description of Indian HTS subheading 7204.41 contains the word "trimmings." Thus, Huludao Pipe contends, if the Department does not value its scrap using the value for hot rolled coil (the steel input), common sense dictates valuing its scrap using Indian import values under Indian

[35] This category is identified as "Ferrous waste and scrap; re-melting scrap ingots of iron or steel: Turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles."
[36] See Huludao Pipe's October 27, 2008, response at 8-10.
[37] See U.S. Steel's new factual information submission at Exhibit 1 (November 3, 2008).
[38] See U.S. Customs and Border Protection Ruling from New York (No. 25570).

HTS subheading 7204.41.

Finally, Huludao Pipe also contends that U.S. Steel's calculation of the surrogate value for scrap is flawed because U.S. Steel based its calculation, in part, on a large quantity of low value imports from unidentified countries when it is the Department's normal practice to exclude such data from its calculations of surrogate values.

Department Position:

Huludao Pipe reported that the types of scrap classified under Indian HTS subheading 7204.41 are representative of the types of scrap it generated. The Department did not find anything at verification which calls this statement into question. We further note that in the 00-01 Hand Tools and ITC Scrap Classification Ruling cases cited by U.S. Steel, the subject merchandise was produced by a forging and stamping process and that these processes differ greatly from the slitting and welding processes used by Huludao Pipe to produce line pipe. Also, in 00-01 Hand Tools, the scrap that the Department found to be other than turnings and shavings was made up of pieces of scrap rails, billets, and rods that had been cut with a torch or other machine, not scrap from slitting steel coils. Thus, the findings in 00-01 Hand Tools are not applicable here. Consequently, for the final determination, we have continued to use the Indian import data for HTS subheading 7204.41 to value Huludao Pipe's steel scrap.

We disagree with Huludao Pipe that the 99-00 Hand Tools case supports its contention that the steel scrap should be valued using the same HTS subheading as the steel input. The 99-00 Hand Tools case was based on a fact pattern specific to the company being reviewed where both the input and output were scrap steel. In contrast, nowhere on this record, including in its case brief, has Huludao Pipe argued that the steel input that it used to manufacture line pipe and the steel scrap generated from that process are the same product. Rather, Huludao Pipe reported using hot rolled steel coils to make line pipe and generating steel scrap in the process. Moreover, Huludao Pipe has consistently argued that HTS subheading 7204.41 "is the most accurate representative classification for {Huludao Pipe's} scrap,"[39] while HTS categories for hot-rolled steel most accurately represent Huludao Pipe's steel input. We have found nothing on the record to contradict Huludao Pipe's assertions and have continued to value Huludao Pipe's scrap using HTS subheading 7204.41.

Comment 11: Eligibility of Pangang Group Beihai Steel Pipe Corporation for a Separate Rate

U.S. Steel argues that Pangang Group Beihai Steel Pipe Corporation (Pangang Beihai**)** should not be granted a separate rate in the final determination because Pangang Beihai's management is controlled by the PRC government. U.S. Steel argues that the Panzhihua Iron & Steel (Group) Co. (Panzhihua Group) directly owns and controls, Panzhihua Steel Ltd. Co. and Pangang Group International Economic & Trading Corporation, which have a combined ownership percentage in Pangang Beihai greater than that of the third shareholder of Pangang Beihai. U.S. Steel asserts that the Panzhihua Group is a central state-owned enterprise managed by the State-owned Assets

[39] See Letter from deKieffer & Horgan to Secretary of Commerce, Huludao Pipe's response at 1-2 (December 29, 2008).

Supervision and Administration Commission of the State council of the government of the PRC (SASAC). U.S. Steel argues that although the Department found in the Preliminary Determination that equity interest alone does not establish control, SASAC's power to appoint and remove the senior management and directors of the Panzhihua Group establishes the PRC government's control, through SASAC, over the Panzhihua Group and its subsidiaries, including Pangang Beihai. As evidence of this power, U.S. Steel notes: (1) on March 14, 2008, the SASAC Personnel Management No. 2 bureau announced that it was making changes to the directors and senior managers of the Panzhihua Group; (2) in June 2006, SASAC announced the appointment of new board members and senior management for the Pangang Group; and (3) the person appointed by SASAC in 2006 to be Chairman of the Panzhihua Group also serves as the legal representative of Panzhihua Steel Ltd. Co., the controlling shareholder of Pangang Beihai.[40] U.S. Steel also notes that from 2008, SASAC has had the ability to collect profits from the Panzhihua Group.[41]

U.S. Steel maintains that the control the PRC government exerts through SASAC over the Panzhihua Group ultimately leads to control over Pangang Beihai's board of directors, which in turn controls its management. Thus, U.S. Steel asserts that Pangang Beihai has not demonstrated that it has autonomy from the PRC government, including its autonomy in selecting management and therefore should not be granted a separate rate.

Pangang Beihai did not comment on the issue.

Department's Position:

Pursuant to section 771(18) of the Act, the Department continues to consider the PRC to be a non-market economy (NME). See Section 771(18)(C) of the Act (the determination shall remain in effect until revoked by the administering authority); see also Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006). In making this determination, the Department concludes that market principles do not impact cost or pricing structures. See section 771(18) of the Act. This determination presumes that all entities within the PRC are subject to government control and, therefore, all exporters should be assigned a single, country-wide rate. However, the Department has refrained from codifying a presumption of a single rate in NME cases because "policy in this area continue(s) to develop." See Antidumping Duties: Countervailing Duties; Final Rule, 62 FR at 27305. The Department has recognized, over time, that within the NME entity, companies exist which are independent from government control to such an extent that they can independently conduct export activities. See Separate-Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries, 69 FR 77722 (December 28, 2004). In order for the Department to conclude that a company operates independently of government control, the Department has announced a policy requiring that the exporter submit evidence on the record to demonstrate an absence of government control both in law (de jure) and in fact (de facto). See Policy Bulletin 5.1: Separate -Rates Practice and Application of Combination Rates in Antidumping Investigations involving

[40] See U.S. Steel's January 5, 2009, case brief at 27 and Attachments 7, 8, and 9.
[41] See U.S. Steel's January 5, 2009, case brief at 27; see also Pangang's August 4, 2008, response to the Department's supplemental separate rate questionnaire at 6-7.

Non-Market Economy Countries. Notably, the Department has refrained from codifying a presumption of a single rate in NME cases because "policy in this area continue(s) to develop." See Antidumping Duties: Countervailing Duties; Final Rule, 62 FR at 27305.

The Department analyzes separate rate applicants for an absence of government control, both de jure and de facto. See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588, 20589 (May 6, 1991) ("Sparklers"); Notice of Final Determination of Sales at less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Evidence supporting, though not requiring, a finding of de jure absence of central control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. See Sparklers. In addition, our analysis of an absence of de facto government control over exports is based upon: (1) whether each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management. See Silicon Carbide, 59 FR at 22587.

The Department's separate rates practice has been consistently affirmed by the United States Court of Appeals for the Federal Circuit and the Court of International Trade. See Sigma Corp. v. United States, 117 F.3d 1401 (Fed. Cir. 1997); Transcom, Inc. v. United States, 294 F.3d 1371 (Fed. Cir. 2002); Peer Bearing Co.-Changshan v. United States, 587 F. Supp. 2d 1319 (CIT 2008); Tianjin Mach. Import & Export Corp. v. United States, 806 F. Supp. 1008 (CIT 1992).

As discussed in the Preliminary Determination, the Department analyzed Pangang Beihai's separate rate application and supplemental responses and preliminarily found that Pangang Beihai had demonstrated both de jure and de facto independence from the PRC government with respect to its export activities. Consistent with the Department's requirements on exporters requesting a separate rate, Pangang Beihai placed numerous documents on the record that were examined for the Preliminary Determination. Specifically, Pangang Beihai demonstrated an absence of de jure government control by the absence of restrictive stipulations associated with its business license and export certificate of approval and through submission of pertinent legislative enactments that protect the operational and legal independence of companies incorporated in the PRC.[42] With respect to de facto government control, Pangang Beihai (1) certified that its export prices are neither set by or subject to the approval of a government agency;[43] (2) placed on the record documents that demonstrate an absence of government control over the negotiation and signing of contracts including documents related to price negotiation for U.S. sales, and complete sales and export documentation;[44] (3) provided financial statements demonstrating the independent distribution of profit;[45] and (4) placed on the

[42] See Pangang Beihai's Separate Rate Application at 7-10 and Exhibits 2 and 3 (July 1, 2008) (Pangang SRA)
[43] Id. at 13.
[44] Id. at Exhibit 1 and Pangang Beihai's August 5, 2008, supplemental response at Exhibits 8 and 9.
[45] See Pangang SRA at Exhibit 5 and Pangang Beihai's August 5, 2008, supplemental response at 12-13.

record a board resolution and an internal notice of a new appointment, which demonstrates its independent selection of management.[46]

Petitioners allege but do not place any evidence on the record that demonstrates actual government control over the export activities of Pangang Beihai. The information submitted by Petitioners addresses only speculative and potential control by SASAC over Pangang Beihai. Specifically, Petitioners allege that because of SASAC's ownership of the Panzhihua Group, there is government control over Pangang Beihai. However, Petitioners have not provided evidence on the record of actual government control of individual export decisions of Pangang Beihai during the POI, or evidence demonstrating that SASAC actually controlled the selection of Pangang Beihai's management. Neither has the Department's investigation of these matters produced such evidence. Moreover, as noted in the Preliminary Determination, absent evidence of de facto control over export activities, the Department has determined that government ownership alone does not warrant denying a company a separate rate. See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008) (Thermal Paper Final) and accompanying Issues and Decision Memorandum at Comment 7 (citing Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry Coke From the People's Republic of China, 66 FR 13885 (March 8, 2001), unchanged in Notice of Amended Final Determination of Sales at Less Than Fair Value: Foundry Coke From the People's Republic of China, 66 FR 45962 (August 31, 2001), and Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006) (Sawblades)) As was the case in Sawblades, the information submitted by Petitioner addresses theoretical control by SASAC through the Panzhihua Group, rather than any control of the PRC government at any level over the numerous individual export decisions of Pangang Beihai.

In determining whether to grant a separate rate, the Department is required to base that determination on substantial evidence on the record. As noted above, the Department's practice is to examine the de jure and de facto criteria as set forth in Sparklers and Silicon Carbide with respect to a respondent's or separate rate applicant's export activities. Since the Preliminary Determination, no additional evidence has been produced demonstrating government involvement with respect to Pangang Beihai's individual firm level activities in setting prices, making decisions regarding disposing of profits or financing of losses, negotiating or signing contracts, or selecting management. Moreover, Pangang Beihai has overcome the Department's presumption in an NME context by demonstrating that it operates its export activities free of de jure and de facto government control. Based on the substantial evidence on the record, the Department determines for this final determination that Pangang Beihai should receive a separate rate.

Comment 12: Applying Adverse Facts Available to Non-Responsive Companies

Petitioners argue that the Department should apply AFA to Shanghai Metals and Benxi because these companies refused to participate in verification and withdrew from the investigation. U.S. Steel cites several cases where the Department has applied total AFA to a respondent who

[46] See Pangang SRA at Exhibit 10.

refuses to participate in verification and withdraws from a proceeding. See, e.g., Notice of Final Results of Antidumping Duty Administrative Review and Final Partial Rescission: Certain Cut-to-Length Carbon Steel Plate from Romania, 71 FR 7008 (February 10, 2006) and accompanying Issues and Decision Memorandum at Comment 1; Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil, 69 FR 76910, 76912 (December 23, 2004); Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Moldova, 67 FR 55790 (August 30, 2002) and accompanying Issues and Decision Memorandum at Comment 1. U.S. Steel further notes that the Department has also not granted a separate rate to an applicant who withdraws from a proceeding. See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China, 73 FR 31970 (June 5, 2008) (Standard Pipe) and accompanying Issues and Decision Memorandum at Comments 2 and 3 (denying a separate rate to an applicant that withdrew from the AD investigation). Maverick contends that the Department must use FA as directed by section 776(a) of the Act because "necessary information is not on the record," and because Benxi and Shanghai Metals withheld requested information, impeded the investigation, and provided information that could not be verified. Petitioners further contend that since both companies withdrew from the investigation before their information could be verified, they have failed to cooperate to the best of their ability to comply with a request for information from the Department and, therefore, the Department must make adverse inferences when selecting from among the FA. See section 776(a) of the Act; see also Nippon Steel Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

Further, Maverick maintains that in the Preliminary Determination, the Department properly applied an AFA rate to the nonresponsive PRC-wide entity and argues that for the final determination the Department should continue to apply AFA to the PRC-wide entity.

Maverick notes that in choosing from among the FA, the Department can rely on information found in the initiation of this investigation and in the Preliminary Determination. Maverick further notes that in the initiation checklist of this investigation, the Department stated that should it need to use information from the initiation as FA under section 776 of the Act, it may reexamine the information and revise the initiation margins. See Antidumping Duty Investigation Initiation Checklist: Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China, dated April 23, 2008.

Petitioners assert that the margins calculated in the initiation of this investigation should be revised because the surrogate data used in the initiation has since been updated. Specifically, Petitioners point out that two of the financial statements on the record at the initiation had not been used in calculating the margins at the initiation because they were not contemporaneous with the POI. However, Petitioners note that they have since submitted financial statements from these two companies that are contemporaneous with the POI. Petitioners have also provided updated surrogate values for steel, sheet, scrap, labor and electricity. Petitioners maintain that using the updated values and financial statements provides the most recent and relevant information for calculating the initiation margins.

Petitioners state that the revised initiation margins can be corroborated by comparing them to the

margins calculated for individual control numbers from the Preliminary Determination. Maverick further asserts that it is reasonable to use data from the respondent companies that cooperated with the Department to corroborate information, and particularly so in this case, because Huludao Pipe was one of the two producers for Shanghai Metals during the POI. See Association of American School Paper Suppliers v. United States, Slip Op. 08-122 at 16, Consol. Ct. No. 06-00395 (CIT 2008). Maverick further argues that it is reasonable to use the financial statements provided by Petitioners in calculating the revised initiation rates because they are representative of the entire industry.

Petitioners claim that if the initiation rates were updated to reflect the financial statements and surrogate values they submitted, the rates would be higher than the highest rate calculated for the initiation or Preliminary Determination. Maverick argues that Shanghai Metal's withdrawal after the Preliminary Determination implies a belief by Shanghai Metal that its rate could only increase from the 81.52 percent rate calculated in the Preliminary Determination. Thus, Maverick asserts that using the initiation or Preliminary Determination rates would allow the uncooperative respondents to benefit from their lack of cooperation. Maverick further argues that in accordance with Department practice, the Department should select an AFA rate that will "ensure that the companies that are part of the PRC-wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully." See Sixth Administrative Review of Honey From the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 73 FR 66221, 66224 (November 7, 2008). Therefore, Petitioners argue, the revised initiation rates are the most appropriate rates to apply to Shanghai Metals, Benxi, and the PRC-wide entity.

Respondents did not comment on the issue.

Department Position:

We agree with Petitioners, in part. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 776(b) of the Act authorizes the Department to use an adverse inference with respect to an interested party if the Department finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information.

Shanghai Metals and Benxi withdrew from verification. See Shanghai Metals' Notice of Withdrawal from Investigation and Certification of APO Compliance and Destruction of APO Materials at 1 (November 5, 2008). See also Benxi's Notice of Withdrawal from Investigation (November 6, 2008). By withdrawing from verification, Shanghai Metals and Benxi prevented the Department from verifying the information that they had submitted and significantly impeded the proceeding.[47] Thus, pursuant to sections 776(a)(2)(C) and (D) of the Act, we have

[47] As discussed in the October 8, 2008, Memorandum from Jeff Pedersen to Interested Parties regarding Verifications of Antidumping Duty Investigation of Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China, the Department had planned to verify Benxi, Huludao Pipe, and Shanghai Metals.

determined to base Shanghai Metals and Benxi's dumping margins for the final determination on facts otherwise available. Furthermore, by withdrawing from verification, we determine that Shanghai Metals and Benxi failed to act to the best of their ability to allow the Department to verify the accuracy of the information that they submitted to the Department. Therefore, pursuant to section 776(b) of the Act, we have determined to use an adverse inference when selecting from among the facts otherwise available.

As AFA we are considering Shanghai Metals and Benxi to be part of the PRC-wide entity because, due to their failure to cooperate, we cannot verify that they are eligible for a separate rate. The PRC-wide entity also includes companies that failed to respond to the Department's request for quantity and value information as well as Shanghai Metals and Benxi who prevented the Department from verifying their information. Thus, pursuant to sections 776 (a)(2)(A), (C), and (D) of the Act, and consistent with our Preliminary Determination, we find it appropriate to base the PRC-wide entity's dumping margin on FA. Moreover, because the PRC-wide entity did not respond to the Department's request for information and both Shanghai Metals and Benxi decided not to allow the Department to verify their information, we have determined that the PRC-wide entity has failed to cooperate to the best of its ability to provide needed information. Therefore, pursuant to section 776(b) of the Act, we have determined to use an adverse inference when selecting from among the facts otherwise available (i.e., we have decided, consistent with our Preliminary Determination, to base the PRC-wide entity's dumping margin on total AFA).

Pursuant to section 776(b) of the Act, the Department may select, as AFA: (1) information derived from the initiation; (2) the final determination from the less than fair value investigation; (3) a previous administrative review; or (4) any other information placed on the record. In order to induce the respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice is to select, as AFA, the higher of: (a) the highest margin alleged in the initiation or (b) the highest calculated rate for any respondent in the investigation. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 65 FR 5510, 5518 (February 4, 2000) (the Department applied an adverse inference in determining the Russia-wide rate); Final Determination of Sales at Less Than Fair Value: Certain Artists Canvas from the People's Republic of China, 71 FR 16116, 16118-19 (March 30, 2006) (the Department applied an adverse inference in determining the PRC-wide rate).

In this case, the preliminary dumping margin calculated for Shanghai Metals is higher than the highest margins from the initiation and is higher than any other company's margin calculated for the Preliminary Determination. However, this calculated rate was insufficient to induce cooperation given that Shanghai Metals and Benxi both withdrew from verification after the Preliminary Determination. As a result, the Department has now decided to use, as the AFA rate, 101.10 percent, the highest CONNUM-specific dumping margin calculated in the Preliminary Determination for Shanghai Metals.

Although the highest CONNUM-specific dumping margin calculated in the Preliminary Determination for Shanghai Metals would be based on unverified information, we note that there is no such limitation in the statute or the regulations with respect to the application of FA. Furthermore, the Department has, in other cases, selected a margin under similar circumstances

as a total AFA rate. See Stainless Steel Bar from India: Final Results of Antidumping Duty New Shipper Review, 72 FR 72671 (December 21, 2007) (the Department was unable to verify the respondent's home market sales data and as a result assigned to the respondent, as total AFA, its dumping margin from the preliminary results of review because the Department found that this rate was higher than the other rates in the proceeding and, therefore, was sufficiently adverse to serve the purposes of FA); see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 35652 (June 24, 2008) (LWR from China), and accompanying Issues and Decision Memorandum at 1, dated June 13, 2008 (the Department applied total AFA to a respondent because its information could not be verified and assigned the respondent its preliminary dumping margin, which was the highest rate in the investigation); See also, Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 4913 (January 28, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

There is no need, in this case, to revise the initiation margins, as suggested by Petitioners, because, as noted, there are other margins available on the record from which to select an AFA margin. Moreover, there is no need to corroborate the selected margin because it is based on, and calculated from, information submitted by Shanghai Metals in the course of this investigation and, as such, it is not secondary information. See 19 CFR 351.308(c) and (d) and section 776(c) of the Act.

Lastly, we note that we have based the AFA dumping margin on the information on the record at the time that we made our Preliminary Determination, without making any adjustments to our calculations. This approach is consistent with other cases where the Department has not adjusted a respondent's preliminary dumping margin that was assigned to the respondent as AFA, except to correct ministerial errors. See LWR from China; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela, 67 FR 62119 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 1 ("we have not adjusted the preliminary rate {being used as AFA} other than to correct for the ministerial error and minor corrections presented at verification . . . "). In this case, no party has alleged that there are ministerial errors in the Department's preliminary margin calculations. Therefore, as AFA, we have assigned the PRC-wide entity the highest CONNUM-specific dumping margin calculated in the Preliminary Determination for Shanghai Metals.

Comment 13: Selection of Surrogate Value Financial Statements

Interested parties made the following comments regarding the six financial statements placed on the record: Jindal SAW Ltd. (Jindal), Ratnamani Metals & Tubes Ltd. (Ratnamani), Bihar Tubes Limited (Bihar), Rama Steel Tubes Limited (Rama), Tata Steel Group (Tata) and Zenith Birla (India) Limited (Zenith).

Tata

Huludao Pipe maintains that the Department appropriately disregarded the 2006-2007 Tata

financial statements in the Preliminary Determination because, unlike Huludao Pipe, Tata is an integrated producer and for this reason the Department should not use the 2007-2008 Tata financial statements. See Preliminary Determination, 73 FR at 66019.

Petitioners made no comment regarding Tata.

Jindal

Huludao Pipe argues that Jindal's financial statements should not be used because Jindal is a large, fully integrated, and highly diversified pipe producer, earning income from the production of several different and distinct pipe products as well as other products, e.g., steel plate and coils. Huludao Pipe argues that Jindal's financial statements demonstrate that it has installed capacity to make cold-rolled strips, steel plates, and pig iron, and that the latter was produced in large quantities during the POI. Huludao Pipe contrasts this with itself, noting that it must purchase all of its steel inputs. Huludao Pipe also argues that Jindal produces pipe using a submerged arc welding process that differs greatly from Huludao Pipe's welding process. Huludao Pipe notes that Jindal does not produce in-scope merchandise that is similar to Huludao Pipe's. Specifically, Jindal produces pipes that are 16 inches or greater, which is the largest outside diameter covered by the scope whereas Huludao Pipe only produced line pipe up to 14 inches. See Petition for the Imposition of Antidumping and Countervailing Duties: Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China and the Republic of Korea, Volume 2 at 22-25 and Exhibit II-22A (April 3, 2008) (Line Pipe Petition). Huludao Pipe further notes that Jindal produces pipes, such as ductile pipes and seamless pipe, which are very different from what Huludao Pipe produces. Huludao Pipe claims that seamless pipes use much more expensive inputs than are used to make line pipe and the welds of seamless pipes are much stronger than for welded pipes. Huludao Pipe also cites a Department decision where it did not use the financial statements of companies because the company was either fully integrated and derived income from a significant number of non-subject sources or the company manufactured products that used different raw materials and a different manufacturing process than the respondents. See Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China, 72 FR 19690 (April 19, 2007) (PSF from China) and accompanying Issues and Decision Memorandum at Comment 12. Huludao Pipe further notes that Jindal earns its income from many different sectors and from a wider range of products than Huludao Pipe sells, including non-pipe products, such as steel plate. Huludao Pipe claims that a wider range of diversified sales was one reason the Department rejected the financial statements of a company called Reliance in PSF from China. Huludao Pipe also notes that Jindal's financial statements include a category for advance licenses, which the Department has countervailed in the past. Huludao Pipe also notes that Jindal received other subsidies and benefits, including deemed exports benefits and government grants. Huludao Pipe concludes that these are countervailable subsidies.

Petitioners argue that Jindal's financial statements should be used in the final determination. Petitioners argue that Jindal produces both line pipe and merchandise comparable to that produced by Huludao Pipe, such as ductile and seamless pipe. Petitioners add that both Huludao Pipe and Jindal purchase the same type of major material input. Petitioners argue against

Huludao Pipe's claims that Jindal's production process and output is not comparable to that of Huludao Pipe. First, Petitioners note that the Department has not found that in the context of steel cases, using different welding processes is a basis to find steel products non-comparable. See Policy Bulletin 04.1, Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) (stating that steel products are comparable when they are "made by combining iron, energy, and further processing"); see also, Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania: Final Results of Antidumping Duty Administrative Review, 68 FR 12672 (March 17, 2003) (Pressure Pipe from Romania) and accompanying Issues and Decision Memorandum at Comment 2. Second, Petitioners argue that in Policy Bulletin: 04.1, the Department found that the merchandise comparable to circular steel pipe includes such products as rectangular steel pipe, hot-rolled steel sheet and plate, steel wire rod, steel wire rope, steel bar, and structural pipe. Third, Petitioners add that in Pressure Pipe from Romania the Department found seamless and welded pipe to be comparable merchandise. See Pressure Pipe from Romania and accompanying Issues and Decision Memorandum at Comment 2. Petitioners further assert that Huludao Pipe has not cited to any evidence on the record that shows Jindal has benefitted from subsidies found countervailable and that the Department may rely upon financial statements that show receipt of subsidies as long as they have not been found countervailable by the Department. See Thermal Paper Final, 73 FR 57329 and accompanying Issues and Decision Memorandum at Comment 1. Petitioners further note that the amount of benefits in the advance license subheading identified by Huludao Pipe is zero.

Petitioners also argue that Jindal is not an integrated producer as it lacks the capacity to make the steel plate and coil inputs necessary to produce most of its outputs. Petitioners note that Jindal's financial statements demonstrate that it purchased, rather than produced the steel plate and coils it used to produce line pipe and that it has no capacity to produce steel plate or coil. Petitioners also assert that Huludao Pipe mischaracterized a Department decision as relying on integration as grounds for not using financial statements when the actual basis for not using the financial statements was the type of process and the type of major inputs used, rather than whether the process was integrated. See PSF from China accompanying Issues and Decision Memorandum at Comment 12. Thus, Petitioners argue that PSF from China is not applicable here. Petitioners argue that Huludao Pipe's statement that Jindal's sales of steel inputs, and its sales to various markets and countries, should disqualify it as a surrogate for financial ratios contradicts a recent Department decision where the Department determined that a company that trades in the same items that it uses as an input does not preclude it from being chosen as a surrogate. See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 73 FR 49162 (August 20, 2008) and accompanying Issues and Decision Memorandum at Comment 10.

Bihar and Rama

Huludao Pipe argues that Bihar and Rama's financial statements, although not contemporaneous, are more representative of Huludao Pipe's production experience than Jindal, Tata, or Ratnamani because Bihar and Rama manufacture and sell in-scope merchandise and use the same welding process as Huludao Pipe. Huludao Pipe further argues that contemporaneity alone is not a reason for not using a company's financial statements. Further, Huludao Pipe argues that the Department prefers more than one financial statement when calculating surrogate financial ratios

and that the Department must rely on the non-contemporaneous financial statements of Bihar and Rama because the financial statements of Tata, Jindal, and Ratnamani are unusable. Huludao Pipe adds that Bihar produces in-scope merchandise, using the same electric reduction welding (ERW) process and the same raw materials of steel coil as Huludao Pipe. Huludao Pipe notes that Rama produces black pipe using the same ERW process and the same raw materials of steel coil as Huludao Pipe. Huludao Pipe further notes that even the non-subject merchandise sold by Bihar and Rama of structural and galvanized pipe are also produced by Huludao Pipe.

Petitioners argue that Bihar should not be used because (1) Bihar's financial statements are not contemporaneous with the POI, (2) the majority of its revenue comes from sales of merchandise outside the scope of this investigation, (3) its financial statements show captive power generation (4) it is backward integrated, and (5) there is no evidence that it produces in-scope merchandise. U.S. Steel further argues that Bihar's financial statements should be excluded because it received export incentives and subsidies under the Duty Entitlement Pass Book Scheme,[48] a program the Department found countervailable. See e.g., Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 73 FR 40295 (July 13, 2008). Maverick also argues that while Bihar's financial statements indicate that it utilizes the same welding method as Huludao Pipe, this does not necessarily show that Bihar manufactures line pipe since this welding method can also be used to produce standard pipe.

Petitioners argue that the Department should reject Rama's financial statements because: (1) there is no evidence that Rama produces the in-scope merchandise; (2) Rama produced a greater quantity of higher value pipe than ERW line pipe; (3) Rama's financial statements are not contemporaneous; (4) the arguments used by Huludao Pipe to disregard Ratnamani, if valid, would apply to Rama, as well (i.e., Rama, like Ratnamani, sells higher value items, is more integrated, and sells a higher value added merchandise than Huludao Pipe); and (5) Rama did not use hot-rolled coil in production but instead, resold it. Petitioners also argue that if Huludao Pipe contends that Ratnamani should be excluded since Ratnamani does not produce in-scope merchandise based on the HTS subheading used to classify some of Ratnamani's pipe output, then Rama should also be excluded since it uses the same HTS subheading for its pipe output. Maverick also alleges that Rama's financial statements are incomplete because pages are clearly missing and are not publicly available because the document appears to be an internally sourced financial document, containing official seals and signatures. Maverick contends that the Department has disregarded financial statements that were incomplete or not publicly available. See Magnesium Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 40293 (July 7, 2008) and accompanying Issues and Decision Memorandum at Comment 3; see also Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China: Preliminary Results of New Shipper Review, 73 FR 67124 (November 13, 2008).

Ratnamani

Petitioners argue that the Department should use Ratnamani's 2007-2008 financial statements in its calculation of surrogate financial ratios because Ratnamani's financial statements overlap the POI and Ratnamani produces in-scope merchandise using the same production and welding

[48] See U.S. Steel's rebuttal case brief (January 13, 2009) at 16.

processes as Huludao Pipe. Specifically, Ratnamani's website states that the majority of its capacity is dedicated to producing line pipe, within sizes specified by the scope, for use in oil and gas applications. Maverick acknowledges that while Ratnamani's financial statements list the HTS subheadings of its primary output, they do not list the HTS subheading for line pipe. However, Maverick believes the evidence on the record demonstrates that Ratnamani does make line pipe and further notes that the Department relies on the written descriptions in determining whether items are within a given scope rather than HTS subheadings. See Preliminary Determination, 73 FR at 66014. Maverick cites Ratnamani's website asserting its ability to meet the "huge demand for the line pipe due to increase in the Gas and Water distribution."[49] Maverick adds that Ratnamani produces its line pipe using the ERW process, which is the same process used by Huludao Pipe and that 50 percent of Ratnamani's total carbon steel capacity utilizes the ERW process.

Huludao Pipe maintains that Ratnamani's financial statements are not the best information available because: (1) the majority of Ratnamani's profits come from its sale of stainless steel pipe, which is produced from more expensive raw materials than those used in producing carbon pipe; (2) the carbon pipe produced by Ratnamani either utilized a different welding process than Huludao Pipe or if it used the same welding process, this was only for a small share of its total steel pipe output; (3) Ratnamani's financial statements indicate that it has received a subsidy, an excise benefit, and it may have received a rebate for electricity; (4) Ratnamani is more integrated than Huludao Pipe as it produces electricity from wind power, operates a hot extrusion line and a coating workshop; (5) Ratnamani is not comparable because its income and profit in 2007-2008 were increasing by approximately 40 percent while Huludao Pipe incurred losses, which Huludao Pipe alleges is due to Ratnamani's integration; (6) the information on Ratnamani's website is unclear with regard to the kind of pipe it produces, except that most are not within scope; (7) most or all of Ratnamani's pipe production utilizes a welding process different than the ERW process used by Huludao Pipe; (8) although tariff classifications are not dispositive, the omission of an HTS subheading for line pipe in Ratnamani's list of produced HTS subheadings is meaningful because there is a single tariff classification, which specifically includes line pipe for oil and gas; (9) Ratnamani uses, as inputs, plates and billets, which are different from the inputs used by Huludao Pipe; and (10) Ratnamani receives subsidies in the form of its ability to receive a power factor rebate from India's State Electricity Board and also an excise benefit from its operations in the Kutch District of Gujarat.

Petitioners contend that Huludao Pipe's arguments regarding Ratnamani are without merit for several reasons. First, Ratnamani, as a percentage of total pipe production by weight, produced and sold significantly more carbon pipe than stainless pipe and its carbon pipe capacity is 300,000 MT, while its stainless steel capacity is 18,900 MT. Second, Ratnamani is not integrated because it does not produce any major material input used in its pipe production. Petitioners dispute Huludao Pipe's argument that Ratnamani is more integrated than Huludao Pipe because it produces electricity from wind power, operates a hot extrusion line, and has a coating workshop. Specifically, Petitioners note that electricity production alone does not qualify Ratnamani as an integrated producer. Further, Petitioners argue that the hot extrusion line is only used to produce merchandise other than line pipe and that the coating workshop has not yet been built. Petitioners claim that the Department has defined an integrated pipe producer as a

[49] Id.

company that produces "its major material input used in the production {of} pipe." See Pressure Pipe from Romania and accompanying Issues and Decision Memorandum at Comment 2. Third, Petitioners argue that Huludao Pipe uses contradictory logic by asserting that the Department should use the financial statement ratios of Rama while arguing against Ratnamani when the financial statements of Rama identify the same HTS subheading of 7306.90 for its output of pipes as does Ratnamani. Finally, there is no basis for finding the excise benefit and power factor rebate in Ratnamani's financial statements to be subsidies countervailable by the Department.

Zenith

Maverick argues that the Department should not use Zenith's 2007-2008 financial statements because, like Zenith's 2005-2006 financial statements that were rejected by the Department in the Preliminary Determination, the 2007-2008 financial statements also show that the company received countervailable export subsidies, specifically export incentives.

Huludao Pipe argues that as a percentage of sales, the subsidies that Zenith received were significantly less substantial than the same subsidies from which Jindal benefited.

In conclusion, Petitioners argue that the financial statements of Jindal and Ratnamani both represent contemporaneous financial statements of producers of comparable and in-scope merchandise and, thus, the Department should not use the non-contemporaneous financial statements of Bihar and Rama. Petitioners contend that whenever the Department has contemporaneous financial statements from at least one producer of either identical or comparable merchandise on the record, the Department will not use non-contemporaneous financial statements. See Thermal Paper Final, 73 FR 57329 and accompanying Issues and Decision Memorandum at Comment 2.

Huludao Pipe notes that section 773(c)(1) of Act directs the Department to select the "best available information" for valuing FOP in the calculation of normal value and that the AD statute requires the Department to calculate respondent's costs as accurately as possible. See American Silicon Technologies v. United States, 334 F.3d 1033, 1039 (Fed. Cir. 2003). Huludao Pipe thus concludes that the financial statements of Bihar and Rama represent the "best available information" and that the Department should not use the financial statements for Tata, Jindal, and Ratnamani.

Department Position:

We determine that the Zenith 2007-2008 and Ratnamani 2007-2008 financial statements contain the best information available on the record of this investigation to calculate surrogate financial ratios because both companies appear to produce subject merchandise,[50] their financial statements are contemporaneous with the POI, and both companies did not benefit from

[50] Ratnamani's website clearly indicates that it sells subject merchandise. See Petitioners' Submission at Exhibit 2B (December 16, 2008). Zenith's financial statements state that approximately 85 percent of its production is of steel pipes and at page 7 of its financial statements, Zenith states its growing sales are in part due to rises in sales in the oil and gas sectors. See Huludao Pipe's Submission at Exhibit 1, pages 7 and 34 (December 16, 2008).

subsidies found countervailable by the Department. We find the remaining financial statements on the record (i.e., the financial statements for Bihar, Rama, Tata, and Jindal) are either non-contemporaneous with the POI or indicate that the producer, unlike Huludao Pipe, is integrated. Specifically, the Department has excluded the Bihar and Rama financial statements because they are not contemporaneous with the POI. While contemporaneity alone would not be a reason to reject the statements, the record already contains the contemporaneous Zenith 2007-2008 and Ratnamani 2007-2008 financial statements and, as stated above, Zenith and Ratnamani produce merchandise identical or comparable to Huludao Pipe and did not benefit from subsidies found countervailable by the Department. Accordingly, and consistent with Department practice, we did not use non-contemporaneous data. See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying Issue and Decision Memorandum at Comment 17.A. Huludao Pipe's claim that Bihar and Rama produce in-scope merchandise and thus make these companies better candidates than companies producing other types of steel pipe ignores the fact that the record indicates that Ratnamani and Zenith produce subject merchandise and meet other criteria that the Department considers in selecting surrogate financial statements.

In the Preliminary Determination, the Department excluded Tata's financial statements because it was an integrated producer. See Preliminary Determination, 73 FR at 66019. Similarly, the Department determines that based on information in Jindal's financial statements, it is also integrated, as it produces steel billets.[51] We further note that a significant amount of Jindal's revenue comes from the resale of a wide range of non-pipe products and that this differs greatly from Huludao Pipe, which sells almost exclusively structural and line pipe that it produces.[52] Therefore, the Department determines that Jindal's production experience is not representative of Huludao Pipe's production experience.

With regard to Huludao Pipe's assertion that Ratnamani's financial statements should not be considered due to its receipt of subsidies, Department practice is not to base surrogate value ratios on the financial ratios of companies that receive subsidies countervailed by the Department. See e.g., Thermal Paper Final, 73 FR 57329 at Comment 1. While Ratnamani's 2007-2008 financial statements indicate that it received excise benefits,[53] there is nothing on the record that demonstrates that these incentives were subsidies found countervailable by the Department. Further, contrary to Huludao Pipe's claims, there is no evidence that Ratnamani definitively received any countervailable benefit from India's State Electricity Board. Therefore, the Department will use Ratnamani's financial statements.

We disagree with Maverick's assertion that Zenith's 2007-2008 financial statements should not be considered due to its alleged receipt of subsidies. Although Zenith's 2007-2008 financial statements indicate that it received export incentives,[54] absent further specific information, such as evidence that this statement refers to programs previously found by the Department to provide countervailable subsidies, we cannot conclude that Zenith's 2007-2008 statements are unsuitable

[51] See Line Pipe Petition at Exhibit II-22A, page 52.
[52] Id. at Exhibit II-22A.
[53] See Petitioners' Submission at Exhibits 2A, pages 28 and 53 (December 16, 2008).
[54] See Huludao Pipe's Submission at Exhibit 1, pages 25 and 34 (December 16, 2008).

for calculating financial ratios. The Department further notes that while it excluded Zenith's 2005-2006 financial statements in the Preliminary Determination because those statements did refer to a program previously found to be countervailable by the Department, there is no evidence in Zenith's 2007-2008 financial statements that it received any subsidies under programs previously found countervailable by the Department.

Huludao Pipe's allegation that Ratnamani is, unlike Huludao Pipe, an integrated producer is unsupported by the record. Specifically, Ratnamani only makes steel pipes and there is no evidence that Ratnamani produces a major input used in the manufacture of pipes.[55] As noted by Petitioners, the Department has stated that a pipe manufacturer is not fully integrated unless it produces a major input. See Pressure Pipe from Romania 68 FR 12672 at Comment 2. While Ratnamani does produce electricity from wind power, the Department does not find that electricity is a major input. Further, hot extrusion is a process wherein steel is heated and shaped into items, including pipe. Thus, based on the information on the record the Department concludes that this process is similar to that of other, non-integrated pipe manufacturers that shape purchased steel into pipe. The coating workshop plans discussed by Ratnamani which Huludao Pipe cites as evidence of it being an integrated pipe producer are not yet realized.[56] Further, we note that Huludao Pipe has a coating workshop and yet no party, including Huludao Pipe itself, considers it an integrated pipe producer. Because Ratnamani is not an integrated producer, the Department will not reject the financial statements as Huludao Pipe suggests.

With regard to Huludao Pipe's argument that Ratnamani receives a significant amount of revenue from non-subject merchandise, specifically stainless steel pipe, the Department notes that Ratnamani's production quantity of carbon steel pipes, which includes in-scope merchandise, is over 500 percent of its production quantity of stainless steel pipes.[57] Thus, we find Huludao Pipe's concerns that Ratnamani's production mix differs significantly from that of Huludao Pipe to be unfounded. Further, Ratnamani's website states that it produces ERW pipes according to API 5L specifications with outside diameters from 6 to 16 inches.[58] The scope of this investigation includes pipe made to API 5L specifications with outside diameters of 16 inches or less. Thus, Ratnamani's website clearly indicates that it makes in-scope merchandise.[59] Huludao Pipe has not supported its argument with record evidence showing how this description could be interpreted as describing anything but line pipe. While the list of HTS subheadings under Ratnamani's list of generic names of the principal products in its financial statements omits an HTS subheading for line pipe, as stated above, Ratnamani's website shows that it does produce line pipe. As stated above, Huludao Pipe's comments also ignore 19 CFR 351.408(c)(4), which states that for financial ratios, the Department normally will use information gathered from producers of identical or comparable merchandise. Nearly 100 percent of Ratnamani's output is either carbon pipes or stainless pipes,[60] which we find to be comparable to line pipe. Thus, even if Ratnamani did not make in-scope merchandise, which

[55] See Petitioners' Submission at Exhibit 2A, page 58 (December 16, 2008).
[56] Id. at Exhibit 2A, page 23.
[57] Id. at Exhibits 2A and 2B.
[58] Id. at Exhibit 2B.
[59] Id. at Exhibit 2B.
[60] Id. at Exhibit 2A at 59.

does not appear to be the case, we would still consider its financial statements in calculating Huludao Pipe's financial ratios.

Huludao Pipe's arguments that Ratnamani's financial statements should not be considered because its profits were significantly higher than Huludao Pipe's are irrelevant. While it is Department practice to not consider companies that are not profitable, among profitable companies, the Department does not consider the degree of profitability in determining whether a company's financial statements should be considered for surrogate financial ratios. See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews, 72 FR 52049 (September 12, 2007) at Comment 2B. We further note that Huludao Pipe has not cited an instance where the Department has considered the degree of profitability when choosing financial statements.

Additionally, Huludao's concerns over Ratnamani's welding process being different from its own process are unfounded because Ratnamani does utilize the ERW process, which is the same welding process as that used by Huludao Pipe.[61] Even if Ratnamani's welding process differed from Huludao Pipe's, the Department has found different types of steel products, including products welded and not welded, are comparable merchandise. See e.g., Policy Bulletin 4.1;[62] see also Pressure Pipe from Romania. 19 CFR 351.408(c)(4) states that the Department "normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country" (emphasis added). Thus, it is appropriate to use Ratnamani's financial statements in calculating Huludao Pipe's surrogate financial ratios.

Comment 14: Whether the Imposition of Both Countervailing and Antidumping Duties Constitutes the Double Counting of Duties

Huludao Pipe and the GOC argue that the Department must take action to avoid double remedies in the context of simultaneous antidumping and countervailing duty investigations where both remedies potentially can be applied upon a single exporter.

The GOC claims a double remedy can result from the Department's NME antidumping methodology being a hybrid remedy that addresses not only price dumping but also subsidies. The GOC notes that both the Department's antidumping and countervailing duty methodologies compare market prices and costs with the actual prices and costs of respondents and that the differences are then used to calculate the amount of NME antidumping and countervailing measures. The GOC claims that by doing so, antidumping duties for NMEs can include not only the amount of dumping, but the amount of countervailable subsidies.

The GOC further claims that the Department has the legal authority to adjust antidumping and countervailing duty rates to avoid applying a double remedy. The GOC argues that the U.S.

[61] Id. at Exhibit 2B.

[62] "{I}f circular steel pipe and tube were the subject merchandise, rectangular steel pipe and tube, hot-rolled steel sheet and plate, steel wire rod, steel wire rope, steel bar, and structurals, all of which are low value-added products of roughly similar form (made by combining iron, energy, and further processing), would constitute comparable merchandise."

Congress' silence regarding this precise instance of a double remedy is due to the U.S. Congress' failure to anticipate the existence of concurrent NME antidumping and market economy countervailing duty cases and should not be misconstrued as an intentional and meaningful silence. The GOC further argues that the export subsidy offset demonstrates that the U.S. Congress has recognized the unfairness of punishing a party twice for the same act. The GOC notes that a United States Court of Appeals for the Federal Circuit's (CAFC) decision[63] rejected the contention that because distinct trade remedies may address dissimilar trade distortions, it is not possible to encounter a double remedy situation. The GOC maintains that the CAFC explicitly affirmed the legal authority of the Department to take action to avoid collecting a double remedy.[64] The GOC asserts that there is no reason why the same reluctance to apply double remedies should not be adopted in this case.

The GOC and Huludao Pipe argue that the Department's antidumping margin in the Preliminary Determination and the Department's final countervailing margin target the same action by Huludao Pipe and thus Huludao Pipe is the victim of a double remedy. See Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 70961 (November 24, 2008); see also Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Notice of Amended Final Affirmative Countervailing Duty Determination and Notice of Countervailing Duty Order, 74 FR 4136 (January 23, 2009). The GOC and Huludao Pipe note that nearly the entire countervailing duty margin is derived from Huludao Pipe's purchase of hot-rolled steel. Meanwhile, in the antidumping Preliminary Determination, the Department applied a surrogate value for hot-rolled steel that exceeded Huludao Pipe's actual hot-rolled steel cost. Thus, the GOC and Huludao Pipe argue that the Department must reduce the combined antidumping and countervailing remedies by the amount of overlapping remedies by either using Huludao Pipe's actual purchase prices for hot-rolled steel in its calculation of normal value or the Department must net out the full amount of the countervailing duty for the provision of hot-rolled steel.

Huludao Pipe argues that the Department should further reduce the surrogate financial ratios by the remaining amount of countervailing duties assessed against Huludao Pipe with respect to financial ratios in order to avoid overlapping remedies. Specifically, Huludao Pipe contends that these countervailing duties include the provision of land for less than adequate remuneration, Foreign Trade Development Program Grants, Five Points One Line Grants, Income Tax Credits, and Preferential Lending.

The GOC adds that the Department's often stated requirement that parties identify the specific instance of a double remedy when antidumping and countervailing remedies are applied to NMEs is an unreasonable standard. The GOC notes that the NME antidumping methodology's practice of basing normal value on surrogate market costs and then comparing these to actual export prices of NME respondents already offsets all distortions that might exist in an NME, including countervailable subsidies. However, the resulting potential overlap of antidumping and countervailing duties is so broad that the GOC claims that respondents cannot identify individual double remedies with absolute precision, especially when the double remedies derive from countervailed activities not involving direct inputs, and that it is unreasonable to expect

[63] See Wheatland Tube Co. v. United States, 495 F.3d 1355, 1364 (Fed. Cir. 2007).
[64] Id. at 1364.

respondents to prove that a double remedy has occurred.

Petitioners maintain that the Department has no statutory authority to comply with the respondents' request, and argue that even if the Department had such authority, it should not exercise it in this case because the GOC and Huludao Pipe have failed to substantiate their double-remedy claim, which rests on the faulty assumption that a domestic subsidy results in a pro rata change in the price of the subject merchandise. Petitioners argue that the Department has come to this exact conclusion in numerous recent decisions.[65]

Petitioners cite to section 772(c)(1)(C) of the Act, which authorizes the Department to increase the export price and constructed export price by "the amount of any countervailing duty imposed on the subject merchandise. . . to offset an export subsidy." Petitioners maintain that this section makes clear that the U.S. Congress considered the prospect that subsidy programs could warrant an offset in order to avoid a double-remedy issue. Petitioners assert that the U.S. Congress explicitly limited the remedy to export subsidies, and maintain that offsetting the antidumping duty margin with the proportion of the countervailable domestic subsidy is contrary to congressional intent, as the Department has confirmed in previous investigations.[66] Petitioners also maintain that the Department has never found that section 772(c)(1)(C) of the Act permits it to offset its antidumping duty calculations with domestic subsidies. Petitioners argue that the Department should affirm this well-established interpretation in this investigation

Petitioners further argue that consistent with recent Department determinations,[67] there is no reason to assume that domestic subsidies in general have a pro rata effect on the price of the subject merchandise. Maverick states that an export subsidy, by definition, is intended to lower the selling price of a product in order to make it more competitive in a foreign market. Maverick contrasts this with a domestic subsidy, which becomes one of many inputs into the cost of manufacturing a product and whose effect on the price of a product is subject to numerous factors and is thus impossible to predict conceptually.[68]

Moreover, Maverick argues that the GOC and Huludao Pipe cannot point to any record evidence demonstrating that the domestic subsidies received by Huludao Pipe resulted in a pro rata reduction to the price of its sales of subject merchandise. Maverick contends that the GOC and Huludao Pipe seek to overcome this weakness by asking the Department to shift the burden to Petitioners to prove the absence of double-counting, despite the fact that the GOC and Huludao

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[65] See e.g., Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40485 (July 15, 2008) and accompanying Issues and Decision Memorandum at Comment 2 (Pneumatic Tires); Standard Pipe, 73 FR 31970 and accompanying Issues and Decision Memorandum at Comment 6; and Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China, 72 FR 60632 (October 25, 2007) and accompanying Issues and Decision Memorandum at Comment 2 (CFS from the PRC).

[66] See e.g., Pneumatic Tires and accompanying Issues and Decision Memorandum at Comment 2; Standard Pipe and accompanying Issues and Decision Memorandum at Comment 6; and CFS from the PRC and accompanying Issues and Decision Memorandum at Comment 2.

[67] See e.g., Pneumatic Tires and accompanying Issues and Decision Memorandum at Comment 2; Standard Pipe and accompanying Issues and Decision Memorandum at Comment 6; and CFS from the PRC and accompanying Issues and Decision Memorandum at Comment 2.

[68] See Countervailing Duties, Final Rule, 63 FR 65348, 65403 (November 25, 1998).

Pipe, not Petitioners, are in possession of the data that could show the effect, if any, of domestic subsidies on prices. Maverick argues that if the GOC and Huludao Pipe expect the Department to seriously consider their theory about the effect of domestic subsidies on the price of the subject merchandise, they should at least take the initiative to provide data showing this effect. According to Maverick, the only evidence provided by the GOC and Huludao Pipe is a theoretical example that compares the hypothetical surrogate values with actual costs in the PRC where the surrogate value input is always higher than the actual costs. Maverick argues that Huludao Pipe's example is pure speculation and not based on any specific record evidence.

Finally, Petitioners argue that the GOC and Huludao Pipe misunderstood the rationale behind the Department's NME antidumping duty methodology. According to Maverick, the Department's NME antidumping duty methodology is not designed to address subsidies such as the domestic subsidies that Huludao Pipe receives for hot-rolled steel, but is intended to address distortions in prices in NMEs. Maverick maintains that the NME antidumping duty methodology regarding surrogate values does not inherently benefit or punish a respondent, but merely provides a surrogate market price. Thus, Maverick concludes, the purpose of the Department's NME antidumping duty methodology is not to offset subsidies.

Department Position:

We agree with Petitioners that we cannot adjust for double-remedy in this instance. As we stated in CFS from the PRC [69], we disagree with the GOC's and Huludao Pipe's argument that the Department must assume that domestic subsidies necessarily result in lower U.S. prices. Neither the GOC nor Huludao Pipe have demonstrated that a double remedy will result from this investigation because they have failed to present any data showing that the benefits received from any domestic subsidy lowers U.S. prices, pro rata, or that they are entitled to an adjustment under U.S. law. These fundamental defects, present in CFS from the PRC, remain the same in this investigation.

The GOC is correct in noting that the purpose of adding countervailing duties (CVDs) to offset subsidies to U.S. prices is to prevent antidumping duties from constituting a second remedy for the export subsidies. We agree with the GOC that U.S. law requires certain adjustments to avoid the imposition of two duties for the same unfair trade practice.[70] However, we disagree with the assertion that the Department has expressed a presumption that domestic subsidies lower prices pro rata in both domestic or export markets. In Pneumatic Tires,[71] the Department explained that "it would be more accurate to say 'that, when it has considered the issue, the Department has sometimes presumed that, whatever the effect, if any, of domestic subsidies upon the prices subsequently charged by their recipients, that effect would be the same for domestic prices and export prices.'"

[69] See CFS from the PRC Issues and Decision Memorandum at Comment 2.
[70] See GATT Art. VI.6 (no product can be subject to both AD and CVD duties "to compensate for the same situation of dumping or export subsidization"); section 772(c)(1)(C) of the Act (requiring adjustments to AD duties in the event of simultaneous CVDs in order to counter export subsidies on the same product).
[71] See Pneumatic Tires and accompanying Issues and Decision Memorandum at Comment 2 (citing CFS from the PRC and accompanying Issues and Decision Memorandum at Comment 2).

The premise of the GOC's claimed adjustment is that antidumping law embodies the presumption that domestic subsidies automatically lower export prices, pro rata (while having no effect upon normal value as determined in NME proceedings). Here, as in CFS from the PRC, the GOC provides no basis for this presumption. There is indeed a direct connection between export subsidies and export price. However, the connection between domestic subsidies and export price is indirect and subject to a number of variables. Consequently, as we stated in CFS from the PRC, "to presume that domestic subsidies automatically lower export prices, pro rata, would be speculative."[72]

More importantly, neither the statute nor the legislative history provides any basis for adjusting for domestic subsidies or any presumption of their effect on export prices. The Department has previously noted that the 1979 amendments to the statute only require that CVDs to offset export prices be added to the initial U.S. prices and these amendments do not speak directly to domestic subsidies.[73] The Department has determined that because the statute addresses CVDs to offset export subsidies directly, but "then remains silent about the plainly related issue of CVDs to offset domestic subsidies, is not complete silence – it implies that no adjustment is appropriate."[74] Therefore, the Department continues to conclude that if Congress intended, it would have provided for the addition of domestic subsidy CVDs.[75]

Additionally, we find no indication in the legislative history that Congress intended otherwise: The Senate Report accompanying the 1979 legislation states that, for domestic subsidies (where the situation with respect to the domestic and export markets is the same) no adjustment to U.S. price is appropriate. See Trade Agreements Act of 1979, Report of the Committee on Finance on H.R. 4537, Senate Report No. 96-249, 96th Cong. July 17, 1979, at 79. In so stating, Congress may have presumed that domestic subsidies had no effect on prices, had the same (if uncertain) effect on domestic and export prices, or may have presumed nothing. Thus, neither the statute nor the Senate Report indicates that the statute embodies the presumption that domestic subsidies automatically lower prices (including export prices) pro rata.[76]

We also disagree with the GOC that placing the burden on respondents to demonstrate that actual double-remedy exists is unreasonable. In accordance with the Department's practice, as affirmed by the CAFC, the party that is in possession of the relevant information has the burden of establishing the amount and nature of the particular adjustment.[77] Neither the GOC nor Huludao Pipe demonstrate the amount that should be offset from U.S. price for the domestic subsidy. Instead, the GOC relies on the assumption that domestic subsidies lower U.S. price pro rata, an

[72] See CFS from the PRC and accompanying Issues and Decision Memorandum at Comment 2.
[73] See Notice of Final Results of Antidumping Duty Administrative Review: Low Enriched Uranium from France, 69 FR 46501, 46506 (August 3, 2004) ("LEU from France")
[74] See LEU from France; see also Pneumatic Tires and accompanying Issues and Decision Memorandum at Comment 2.
[75] See CFS from the PRC and accompanying Issues and Decision Memorandum at Comment 2 (noting that "despite addressing the issue of parallel antidumping duties and countervailing duties directly, and explicitly requiring that the amount of any countervailing duties to offset export subsidies be added to the U.S. price, Congress provided no adjustment for countervailing duties imposed by reason of domestic subsidies in NME proceedings").
[76] See CFS from the PRC and accompanying Issues and Decision Memorandum at Comment 2.
[77] See Koyo Seiko Co. v. United States, 551 F.3d 1286 (Fed. Cir. 2008); see also Zenith Electronics Corp. v. United States, 988 F.2d 1573 (Fed. Cir. 1993).

assumption that the Department has concluded is speculative.

Nor does the fact that a material input (i.e., hot-rolled steel) was found to be subsidized in the CVD investigation necessarily mean that the benefit from the subsidy resulted in a lower price to the U.S. customer. Although the subsidy was input-specific, it does not change the fact that the recipients of such subsidies may not necessarily choose to respond to such subsidies by lowering prices pro rata. In CFS from the PRC we found, "while subsidies unquestionably benefit their recipients, it is by no means certain that those recipients automatically respond to subsidies by lowering prices, pro rata, as opposed to investing in capital improvements, retiring debt, or any number of uses."[78] Therefore, the Department continues to find that, absent a statutory directive for an adjustment, an underlying assumption similar to that regarding CVDs imposed to offset export subsidies, or evidence that domestic subsidies have lowered U.S. prices in a given case, any adjustment for an assumed or undetermined effect would be inappropriate.

As for Huludao Pipe's claim that the Department is obligated to achieve a "fair comparison" by adjusting for domestic subsidies, in addition to the statutory adjustment for export subsidies, we note that the statute and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act demonstrate that the "fair comparison" language in section 773(a) of the Act is merely descriptive of the adjustments contemplated by the statute, and does not impose an additional, independent requirement on the Department.[79]

While we agree with Huludao Pipe that the Department is required to calculate antidumping margins as accurately as possible,[80] we note that supporting evidence is necessary in order to achieve such accuracy. No such evidence has been provided on the record by either the GOC or Huludao Pipe demonstrating that domestic subsidies pass through, pro rata, to U.S. prices. As neither the GOC nor Huludao Pipe have demonstrated that a double remedy will result from this investigation, or that Huludao Pipe is entitled to an adjustment under the antidumping law to prevent a presumed double remedy from arising, we have not made any such adjustment in the final determination.

[78] See CFS from the PRC and accompanying Issues and Decision Memorandum at Comment 2.
[79] See the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 (1994), at 809, 820.
[80] See Rhone-Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

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 this investigation in the Federal Register.

Agree ___ Disagree ____

_____
Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration

_____
(Date)