A-570-943
Final Redetermination
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PUBLIC VERSION

January 28, 2015

MEMORANDUM TO: The File

FROM: Paul Stolz
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Antidumping and Countervailing Duty Operations

RE: Oil Country Tubular Goods from the People's Republic of China

SUBJECT: ***American Tubular Products, LLC v. United States*** Ct. No. 13-00029, Slip Op. 14-116 (CIT 2014), Final Results Of Redetermination Pursuant To Remand

SUMMARY

By this cover letter the Department of Commerce places the final results of redetermination referenced above on the record of this segment of the proceeding.

American Tubular Products, LLC v. United States
Ct. No. 13-00029, Slip Op. 14-116 (CIT 2014)
FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND

A. SUMMARY

The Department of Commerce ("Department") prepared these final results of redetermination ("Final Results") pursuant to the remand order of the U.S. Court of International Trade ("CIT" or the "Court"), issued on September 26, 2014, in *American Tubular Products, LLC v. United States*, Ct. No. 13-00029, Slip Op. 14-116 (CIT 2014) ("*ATP I*"). The remand concerns *Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012), as amended by, *Certain Oil Country Tubular Goods From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 9033 (February 7, 2013) (collectively, "*AR 1 Final Results*"), covering the 2010 - 2011 administrative review of the antidumping duty order on oil country tubular goods ("OCTG") from the People's Republic of China ("PRC") ("AR 1").

On December 19, 2014 the Department released the draft of this final redetermination to interested parties for comment.[1] On December 30, 2014, Jiangsu Chengde Steel Tube Share Co., Ltd. ("Chengde") (a producer/exporter) and American Tubular Products, LLC ("ATP") (an

[1] *See* "*American Tubular Products, LLC v. United States*, Ct. No. 13-00029, Slip Op. 14-116 (CIT 2014), Draft Results of Redetermination Pursuant to Remand," dated December 19, 2014 ("*ATP I* Draft").

importer), submitted comments on the *ATP I* Draft.[2] United States Steel Corporation ("Petitioner"), submitted comments on the *ATP I* Draft on December 31, 2014.[3]

In this final redetermination, pursuant to the remand order, the Department recalculated the total quantity of carbon steel billets consumed by Chengde to produce subject merchandise during the period of review ("POR"). Previously, the Department had not included in its carbon steel billets calculation the quantity of carbon steel billets used to produce the subject merchandise reported in the entry documentation submitted with ATP's administrative protective order ("APO") application. In addition, the Department continues to value the steel billets consumed by Chengde to produce subject merchandise covered by contracts [ ] using a surrogate value for alloy steel. The Department values the remaining steel billets consumed to produce subject merchandise using a simple average of the surrogate value used for carbon steel billets and the surrogate value used for alloy steel billets for the *AR 1 Final Results*. In addition, the Department determines that the surrogate value used for carbon steel billets in the *AR 1 Final Results* was not aberrational. We are addressing these issues in detail as set forth below.

BACKGROUND

In *ATP I*, Chengde and ATP argued that the Department erred in the *AR 1 Final Results* with respect to: 1) the Department's choice of surrogate values for Chengde's consumption of steel billets, 2) the decision to deny Chengde a normal value offset for steel scrap produced and sold during the review period, 3) the surrogate value for ocean freight, 4) the surrogate value for inland freight, and 5) the decision to classify thread protectors as a material input rather than a

[2] *See* Chengde and ATP's comments, "Oil Country Tubular Goods from China, Case No. A-570-943: Comments on Draft Remand Redetermination," dated December 30, 2014 ("Chengde and ATP's comments").
[3] *See* Petitioner's comments, "Remand Proceeding Concerning the 2010 – 2011 Administrative Review of Oil Country Tubular Goods from China – Court No. 13-00029," dated December 31, 2014.

packing material. On September 26, 2014, the CIT sustained the Department's determinations on all points except the Department's choice of surrogate values for steel billets.

B. SUMMARY OF THE COURT'S OPINION IN *ATP I*

1. Valuation of Steel Billets

In *ATP I*, the Court found that the Department's valuation of steel billets ". . . was not based in substantial evidence, because Commerce failed to explain why documents proving the chemical makeup of some of Chengde's billet could not also prove the makeup of the remaining billet."[4] Specifically, the CIT instructed the Department to: 1) reevaluate the chemical composition of OCTG sold in contracts [ ], 2) explain whether Chengde's mill test certificates prove the chemical properties of OCTG not specifically covered by those certificates, 3) assess whether Chengde's entry summary as provided in ATP's APO application proves that the OCTG in contract [ ] was carbon steel, and 4) recalculate the percentage of Chengde's steel billets that were alloy steel or carbon steel in accordance with this analysis.[5] In addition, the CIT stated that the Department need not reconsider the chemical makeup of billets used to manufacture the OCTG sold pursuant to contracts [ ], noting that Chengde offered no evidence that these goods were made of carbon steel, and that the Department reasonably found that this OCTG consisted of alloy billets.[6]

2. Surrogate Value for Carbon Steel Billet

In addition, the CIT remanded, at the Department's request, the surrogate value for carbon steel billets to reconsider whether it is aberrational.

[4] *See ATP I* at 5.
[5] *Id*. at 14.
[6] *Id*.

C. ANALYSIS

1. Valuation of Steel Billets

In AR 1, Chengde submitted a Harmonized Tariff Schedule ("HTS") number covering alloy steel to value the steel billets which it consumed to produce OCTG.[7] Therefore, for the preliminary results, the Department valued all of Chengde's steel billet inputs using a surrogate value for alloy steel billets.[8] Subsequent to the preliminary results, in their case briefs, Chengde and ATP argued that Chengde provided the HTS number for alloy steel billets in error, and that it actually consumed only carbon steel billets to produce OCTG during the period of review.[9] The parties referred to mill test certificates from Chengde on the record of the Department's administrative review which demonstrated that a certain percentage of OCTG produced by Chengde during the POR was made from carbon steel billets. Therefore, in the *AR 1 Final Results*, the Department valued the same percentage of steel billets consumed during the POR using a surrogate value for carbon steel billets and valued the remaining percentage using a surrogate value for alloy steel billets.[10] Chengde and ATP also submitted a Customs entry summary (as part of ATP's APO application) for sales of subject merchandise that were classified as carbon steel;[11] however, the Department did not take this into account in determining the percentage of carbon steel billets consumed.

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[7] *See* Chengde's Sections C and D questionnaire response, "Oil Country Tubular Goods from China; Submission of Sections C and D and Reconciliations Response," dated November 17, 2011 at Exhibit D-5.
[8] *See* the memorandum to the file, "2010-2011 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People's Republic of China: Factor Valuation Memorandum for the Preliminary Results of Review," dated May 30, 2012 at Attachment 1.
[9] *See* Chengde's case brief, "Oil Country Tubular Goods from China; Submission of Jiangsu Chengde's Revised Case Brief," dated August 2, 2012 at 2 and ATP's case brief, "Oil Country Tubular Goods from the People's Republic of China: First Administrative Review; Revised Case Brief" dated August 3, 2012, at 3 – 4.
[10] *See* the memorandum to the file, "Analysis Memorandum, Jiangsu Chengde Steel Tube Share Co., Ltd. ("Jiangsu Chengde"), Taizhou Chengde Steel Tube Co., Ltd. ("Taizhou Chengde"), and Yangzhou Chengde Steel Tube Co., Ltd. ("Yangzhou Chengde") (collectively "the Chengde Group") Final Results," dated December 5, 2012 at 2 and Attachment V (Chengde Analysis Memo).
[11] *See* ATP's APO application, "Oil Country Tubular Goods from the People's Republic of China: First Administrative Review; APO Application," dated July 16, 2012 at Attachment 1 (ATP APO Application).

The Department reviewed the record of the *AR 1 Final Results* including the mill test certificates[12] and the related purchase contracts, contract numbers [ ],[13] and finds that the record is devoid of any evidence as to the chemical composition of the quantities of subject merchandise covered by these sales contracts, but not covered by the sample mill test certificates. There is no statement or indication in the pages of the mill test certificates provided by Chengde as to whether the test results recorded on the mill test certificates are intended to stand for the entire quantity of subject merchandise produced pursuant to a particular contract number.[14] Nor is there a description of the testing procedures which might provide some indication as to the extent the test results might represent the characteristics of the subject merchandise not covered by the mill test certificates.[15] Furthermore, the purchase contracts do not specify whether alloy or carbon steel billets are to be used to produce the subject merchandise.[16] The mill certificates account for only [ ] percent of the sales under review;[17] for some individual contracts, they represented [ ] percent of the products sold pursuant to those contracts,[18] and for [ ] of the [ ] Control Numbers ("CONNUMs") in question, the mill certificates accounted for [ ] of the products sold.[19] Thus, without an explicit affirmative statement as to the representativeness of the mill test certificates, or at least some contextual information, such as a description of the test procedures, the Department can make no conclusion, based on direct

[12] *See* Chengde's second supplemental questionnaire response, "Oil Country Tubular Goods from China; Submission of Jiangsu Chengde's Second Supplemental Response," dated March 15, 2012 at Exhibit S2-13 ("Second Supplemental Response").
[13] *Id*. at Exhibit S2-14.
[14] *Id*. at Exhibit S2-13.
[15] *Id*.
[16] *Id*. at Exhibit S2-14.
[17] *See* Chengde Analysis Memo at 2.
[18] *See* Chengde's supplemental questionnaire response, "Oil Country Tubular Goods from China; Submission of Jiangsu Chengde's Third Supplemental Response," dated May 2, 2012 at Exhibit S3-12; Second Supplemental Response at Exhibit S2-14; *see also ATP I* at 7.
[19] *Id*.

evidence, as to whether the OCTG not covered by the mill test certificates on the record of this review was produced using alloy or carbon steel billets.

Although Chengde had ample opportunity to do so, it failed to fulfil its responsibility to develop the record with respect to the type of steel billets which it consumed to produce subject merchandise. The law sets the burden of supplying record data on the parties.[20]

Early in the conduct of this review, Chengde indicated that it consumed alloy steel billets as a primary factor of production ("FOP") to produce OCTG by suggesting a HTS number for alloy steel to value steel billets.[21] The Department provided Chengde multiple opportunities to provide precise specifications that would allow the Department to determine whether it consumed alloy or carbon steel billets, but Chengde failed to do so. In the initial questionnaire, the Department stated "Appendix VI also includes a spreadsheet for suggested surrogates. The exporter may complete this spreadsheet when filing the questionnaire response, or later in accordance with the deadlines set forth in section 351.301(c)(3) of the Department's regulations."[22] In response, in its "Suggested Surrogate Value Spreadsheet," Chengde suggested HTS 7224.90.0075. Indonesian import statistics were available at the six-digit level, "Commodity: 7224.90, Semifinished Products of Alloy Steel (Other Than Stainless)."[23]

In its first supplemental questionnaire, the Department requested that Chengde ". . . provide a complete technical description of each of the inputs used to produce the subject

[20] *See ATP I* at 27, citing *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Fed. Cir. 2011) (quoting *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 16 CIT 931, 936, 806 F. Supp. 1008, 1015 (1992)) ("{T}he burden of creating an adequate record lies with {interested parties} and not with Commerce.").
[21] *See* Chengde C&D Response at Exhibit D-5.
[22] *See* page E-5 of the Questionnaire.
[23] *See* Chengde's first supplemental questionnaire response, "Oil Country Tubular Goods from China; Submission of Jiangsu Chengde's Supplemental Response," dated January 10, 2012 ("First Supplemental Response") at Exhibit S1-17, Second Supplemental Response at Exhibit D-5 and the memorandum to the file "First Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the People's Republic of China: Analysis of the Amended Final Results Margin Calculation for Jiangsu Chengde Steel Tube Share Co., Ltd., Taizhou Chengde Steel Tube Co., Ltd., and Yangzhou Chengde Steel Tube Co., Ltd. (collectively "the Chengde Group")) Final Results," dated January 10, 2013 at Attachment I (electronic version) ("Amended Final Results Analysis Memo").

merchandise during the POR. Include *chemical specifications*, purity, grades/standards, and *mineral/metal content, etc.*, for each reported {FOP}."[24] The Department also requested supporting documents for the first purchase of each FOP during the POR, including sample purchase contracts, invoices, packing lists, and certificates of assay.[25] Chengde responded with exhibits that included technical descriptions of Chengde's FOPs and sales contracts from a billet supplier, which list three American Society of Mechanical Engineers specifications for Chengde's billets, SA106C, 28Mn2, and SA210C, but do not indicate whether Chengde's billets were carbon or alloy steel.[26]

In our second supplemental questionnaire, we asked Chengde to "submit sample product quality certificates and mill test reports/certificates for all control numbers ('CONNUMS') sold during the POR. Submit one product quality certificate and one mill test report *for each CONNUM for each month during the POR in which that CONNUM was produced*."[27] Chengde submitted its U.S. purchase contracts and the first pages of ten "sample mill test certificates," which listed the chemical properties of OCTG sold during the POR, but did not tie these to CONNUMS as requested.[28] As noted above, Chengde referred to the mill test certificates it submitted as "sample mill test certificates," but gave no indication that these "sample mill test certificates" covered "*each CONNUM for each month during the POR in which that CONNUM was produced*" as the Department requested.[29] Thus, the Department cannot conclude that the

[24] *See* the first supplemental questionnaire, "Oil Country Tubular Goods from the People's Republic of China," dated December 12, 2011 at 6, Item 13 (emphasis added) ("First Supplemental").
[25] *Id*.
[26] *See* Chengde's First Supplemental Response at 8-9; *see also* Chengde's letter, "Oil Country Tubular Goods from China; Submission of Exhibits 1, 6, 14, 15 and 16 of Jiangsu Chengde's January 9, 2011 Supplemental Response," dated January 11, 2012 at Exhibits S1-4 and S1-5.
[27] *See* the Department's second supplemental questionnaire, "Oil Country Tubular Goods from the People's Republic of China, Supplemental Questionnaire Due February 29, 2012," dated February 15, 2012 at 4, Item 15 (emphasis added).
[28] *See* Second Supplemental Response at 12, Item 15.
[29] *Id*. and Exhibit S2-13.

"sample mill test certificates" cover all subject merchandise sold by Chengde during the POR. Furthermore, Chengde did not explain how or why it selected and submitted the mill test certificates which it did submit, nor did it explain why it did not submit the mill test certificates for subject merchandise that the Department found was produced using alloy steel billets (a finding affirmed by the CIT).[30] Whether or not Chengde chose the mill test certificates which it did submit to the Department in a selective manner to support its contention that it used only carbon steel billets to produce subject merchandise or chose them at random, it is evident that mill test certificates were not submitted for at least one grade of OCTG, *i.e.*, grade [ ], covered by contracts [ ].

With respect to contract [ ], the Department previously overlooked the entry summary accompanying ATP's APO application which cites contract [ ] and describes the merchandise being entered as seamless non-alloy casing, HS 7304.29.2030.[31] We agree that the entry summary establishes that the OCTG, and, therefore, the steel billet input used to produce it, were composed of non-alloy steel.

Thus, based on the evidence on the record, we used a weighted-average surrogate value for high-carbon and low-carbon steel to value the percentage of steel billets for which there is direct evidence that carbon steel billets were consumed, *i.e.*, mill test certificates or the entry summary, based on the production quantity of OCTG covered by the mill test certificates and the sales quantity indicated on the entry summary included in ATP's APO application.

With respect to contracts [ ], the CIT held that the Department reasonably found that subject merchandise produced under these contracts was made from alloy steel

[30] *See ATP I* at 14.
[31] ATP APO Application at Attachment 1 and ATP's case brief, "Oil Country Tubular Goods from the People's Republic of China: First Administrative Review; Revised Case Brief," dated August 3, 2012, at 4, footnote 4.

billets,[32] and we are thus continuing to value steel billets used to produce this merchandise using a surrogate value for alloy steel billets.

Although the Department specifically requested information that would have allowed it to determine whether the steel billets which Chengde consumed to produce subject merchandise and which were not covered by the "sample mill test certificates" were made of carbon or alloy steel, Chengde failed to provide this information or otherwise develop the record with information to form the basis for such a determination. The necessary information is simply not on the record of this segment of the proceeding. Thus, due to the dearth of information on the record as to the chemical content of the remaining percentage of steel billets, the Department is valuing the percentage of steel billets with unknown chemical content using a simple average of the surrogate value used for carbon steel billets and the surrogate value used for alloy steel billets from the *AR 1 Final Results*.

2. Surrogate Value for Carbon Steel Billet – Aberrational Analysis

In *AR 1 Final Results*, we calculated a weighted-average surrogate value for carbon steel billets using HTS numbers 7207.19 "low-carbon" and HTS number 7207.20 "high-carbon" based on Indonesian import data under these two HTS headings (U.S. dollars ("USD") 566.64/metric ton ("MT") and USD 1,149.40/MT, respectively). We excluded from our calculation of the surrogate value import data from non-market economy ("NME") countries, countries that maintain generally available non-industry specific export subsidies, export country-specific data with missing quantities or values, and aberrational exporter country-specific values.[33] In their case briefs, respondents challenged the surrogate value for carbon steel billets as aberrational. We addressed this argument in the Issues and Decision Memorandum

[32] *See ATP I* at 11.
[33] *See* Amended Final Results Analysis Memo at Attachment I.

("IDM") accompanying the *AR 1 Final Results*; however, our analysis of whether the selected surrogate value was aberrational was based on data submitted by the Petitioner, which was raw data, not adjusted in accordance with our practice, *i.e.*, by removing import data from NME countries, countries that maintain generally available non-industry specific export subsidies, and export country-specific data with missing quantities or values.[34] Since this analysis was not in accordance with our practice, we requested a voluntary remand to reconsider whether the selected surrogate value for carbon steel billets was aberrational.

For these final redetermination results, we calculated average unit values ("AUVs") for HTS 7207.19 ("low-carbon" steel billets) and 7207.20 ("high-carbon" steel billets) for all countries on the surrogate country list[35] for the POR using Indonesian import data provided by Global Trade Atlas ("GTA"), and excluded import data from NME countries,[36] countries that provide generally available non-industry specific export subsidies,[37] and export country-specific data with missing quantities or values, consistent with our practice. We compared these AUVs to our selected surrogate value for carbon steel billets based on Indonesian import data. The AUVs for HTS 7207.19 ("low-carbon" steel billets) for all countries on the surrogate country list range from USD 600.58/MT (Ukraine) to USD 48,113.71/MT (Thailand), with the second highest value of the countries on the surrogate country list being USD 1,582.41/MT

[34] *See* U.S. Steel's submission "First Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People's Republic of China," dated July 16, 2012 at Exhibits D – H.
[35] *See* "First Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People's Republic of China: Request for Comments on the Selection of a Surrogate Country and Surrogate Values," dated December 5, 2011, at Attachment I. The surrogate country list included: Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine.
[36] S*ee, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final determination*, 74 FR 9591, 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656 (July 24, 2009) and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order*, 74 FR 46971 (September 14, 2009) ("*Kitchen Racks Investigaton*").
[37] *See Omnibus Trade and Competitiveness Act of 1988*, H.R. Rep. No. 576, 100th Cong., 2d Sess. 590 (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547.

(Philippines).[38] The adjusted AUV for Indonesian import data of low-carbon steel billets of USD 566.63/MT, as used in the *AR 1 Final Results*, is lower than (though close in value to) the AUVs for this HTS number from the other countries on the surrogate country list. The AUVs for HTS 7207.20 ("high-carbon" steel billets) from all countries on the surrogate country list range from USD 567.55/MT (Thailand) to USD 2,211.14 (Philippines). The adjusted AUV for Indonesian import data of high-carbon steel billets is USD 1,149.40, which is within the range of the AUVs of the other countries on the surrogate country list for this HTS number.[39] Based on these analyses, we find that the Indonesian AUVs for "low- carbon" and "high-carbon" steel billets are not aberrational, and, consequently, that the weighted-average surrogate value for carbon steel billets of USD 813.86/MT is not aberrational.

DISCUSSION OF INTERESTED PARTIES' COMMENTS

As discussed above, on December 19, 2014, the Department released the *ATP I* Draft to interested parties for comment. On December 30, 2014, Chengde and ATP submitted comments on the *ATP I* Draft. Petitioner submitted comments on the *ATP I* Draft on December 31, 2014.

Comment 1: Whether Mill Test Certificates on the Record Establish the Chemical Composition of the Merchandise Not Covered by the Mill Test Certificates and Entry Summary

Petitioner's Comments

Petitioner argues that the following record evidence is sufficient in itself to determine that mill test certificates on the record do not establish the chemical composition of the merchandise that is not covered by the mill test certificates: (1) the mill test certificates do not indicate

[38] We did not include the USD 48,113.71/MT AUV of imports of low-carbon steel billets into Thailand in our analysis because it is magnitudes higher than the AUVs for the other countries on the surrogate country list and appears to be aberrational.

[39] *See* "Analysis Memorandum, Draft Redetermination Pursuant to Court Remand, *American Tubular Products, LLC and Jiangsu Chengde Steel Tube Share Co., Ltd., v. United States*," dated December 19, 2014 ("Draft Analysis Memo").

whether they are intended to stand for the entire quantity of the merchandise produced pursuant to a particular contract number; (2) there is no description of the testing procedures on the record which shows whether the test results represent the chemical composition of the merchandise not covered by the mill certificates; and (3) the mill certificates account for only [ ] percent (by quantity) of the sales under review.

Moreover, Petitioner argues that additional evidence on the record, taken in its entirety, demonstrates that merchandise not covered by the mill test certificates or the Entry Summary, was produced using alloy steel billets. Petitioner argues that (1) Chengde itself stated at the outset of the review that its steel billets should be valued using an HTS number for alloy steel billets, (2) Chengde withheld mill test certificates that would have shown it used alloy steel billets, with the logical inference being that merchandise not covered by the mill certificates submitted by Chengde was produced using alloy steel billets, and (3) Chengde's own website states that its subject merchandise consists of alloy steel.

In addition, Petitioner argues that it is unclear how reliable Chengde's mill certificates are in the first place for providing accurate descriptions of the subject merchandise. For example, one of the mill test certificates that Chengde submitted to the Department incorrectly described a product as [ ] instead of a [ ].

Chengde and ATP's Comments:

Chengde and ATP argue that the *ATP I* Draft fails to address why the mill certificates on the record are not adequate to demonstrate that all subject merchandise was produced using carbon steel billets.

Chengde and ATP argue that their submissions were not deficient, and that a mill test certificate would never include a statement or indication of what might be included on another

mill test certificate. Chengde and ATP argue that the Department itself requested a *sample* mill test certificate for each product.

Furthermore, Chengde and ATP argue that "the Department received exactly what it requested - sample mill certificates for each CONNUM for each month - when provided with a sample mill certificate for every sales contract, each of which consists of only one product which was all sold at the same unit price."[40] Chengde and ATP continue to claim that Chengde's suggested HTS number for alloy steel to value steel billets was made in error.[41]

Department's Position: The Department continues to find that the record evidence is unclear as to whether the quantities of subject merchandise not covered by the mill test certificates were produced using carbon steel billets or alloy steel billets. Therefore, the Department is continuing to value the percentage of steel billets not covered by the mill test certificates or the Entry Summary using a simple average of the surrogate value used for carbon steel billets and the surrogate value used for alloy steel billets in the *AR 1 Final Results*.

With respect to Petitioner's arguments, while the information described above by the Petitioner may be somewhat compelling, it is not conclusive. Complete source documentation showing the chemical content for all steel billets consumed to produce subject merchandise and the finished subject merchandise itself is not on the record.

We also disagree with Chengde and ATP's assertion that the Department failed to state in *ATP I* Draft why the mill certificates on the record are not adequate to demonstrate that all subject merchandise was produced using carbon steel billets. As stated above, without an explicit affirmative statement as to the representativeness of the mill test certificates, or at least some contextual information, such as a description of the test procedures, the Department can

[40] *See* Chengde and ATP's comments on the *ATP I* Draft at 4.
[41] *See* Chengde and ATP's comments on the *ATP I* Draft at footnote 2.

make no certain conclusion, based on evidence on the record, as to whether the OCTG not covered by the mill test certificates was produced using alloy or carbon steel billets. Furthermore, Chengde and ATP themselves state that, "{a} mill certificate provides very specific information about a *particular quantity of merchandise*: its physical dimensions, its chemical content, what tests have been performed, etc." (emphasis added.).[42] This statement indicates that the mill test certificates "provide very specific information about a particular quantity," *i.e.*, the quantity specified on the mill test certificate. We cannot assume that the test mill certificates apply to the quantity of merchandise that was not accounted for simply based on Chengde and ATP's assertions, especially when their own statements indicate that the test certificates were, in fact, quite limited in their applicability.

With respect to Chengde and ATP's argument that Chengde's submissions were not deficient and that the Department received exactly what it asked for, we disagree. The mill test certificates were incomplete and not fully representative of the finished merchandise. Chengde submitted its U.S. purchase contracts and the first pages[43] of ten "sample" mill test certificates, which listed the chemical properties for specified quantities of OCTG sold during the POR.[44] As noted above, Chengde referred to the mill test certificates it submitted as "sample" mill test certificates, but made no statement that the "sample" mill test certificates covered "*each CONNUM for each month during the POR in which that CONNUM was produced*" as the Department requested.[45] In fact, mill test certificates were not submitted at all for CONNUMs [ ], *i.e.*, the merchandise sold in contracts [ ] that

[42] *See* Chengde and ATP's comments on the *ATP I* Draft at 3.
[43] For example, only page 1 of 12 was submitted for contract [ ]. *See* Exhibit S2-13 of the Second Supplemental Response.
[44] *See* Second Supplemental Response at 12, item 15.
[45] *Id*. at 12, item 15 and Exhibit S2-13 (emphasis added).

the Department previously found to be made from alloy steel billets.[46] In addition, two CONNUMs, [ ],[47] were sold in two non-contiguous months, indicating production in two different, distinct periods of time;[48] however, Chengde submitted only one mill test certificate for each of these CONNUMS, rather than one for each month of production as requested.[49] These omissions not only demonstrate that Chengde and ATP are incorrect as to their claim that Chengde was fully responsive and provided the information requested, but that the submitted mill certificates *cannot* be representative of all untested CONNUMs because *not* all OCTG sold during the review period was, in fact, made from carbon steel billets.[50]

Furthermore, Chengde purchased steel billets from [ ] different sources during the POR.[51] The precise chemical content of steel billets supplied by each source likely varied to some extent. In turn, the chemical content of the OCTG produced using these billets would vary as well. OCTG was produced pursuant to the same purchase contract using an unknown combination of steel billets supplied by the [ ] billet suppliers. Furthermore, OCTG produced pursuant to the same purchase contract can be produced in multiple heats, *i.e.*, production runs or batches, further increasing the possibility of variation of the chemical content of the finished OCTG. Because of these potential variations, Chengde provided ten mill test certificates for ten different purchase orders. These mill test certificates cover [ ] heats;[52] thus, the International

[46] The Court upheld this finding as reasonable based on evidence from Chengde's website. *See ATP I* at 11.
[47] *See* the Second Supplemental Response at Exhibit S2-14 for the contract/purchase order – CONNUM linkage.
[48] *Id.*; *see also* the electronic U.S. sales database for the *AR 1 Final Results*.
[49] CONNUM [ ] was sold in [ ], with the mill test certificate covering merchandise sold only in [ ]. CONNUM [ ] was sold in [ ], with the mill test certificate covering merchandise sold only in [ ]. *See* the Second Supplemental Response at Exhibit S2-14 and U.S. sales database for the *AR 1 Final Results*.
[50] *See ATP I* at 9 ("{T}he record does not support Plaintiffs' claim that all billet consumed to make OCTG was carbon steel.").
[51] *See* First Supplemental Response at Exhibit S1-19.
[52] *See* Second Supplemental Response at Exhibit S2-13.

Organization for Standardization ISO ("ISO") standards stipulates that [ ] tubular products, two for each heat, were to be tested.[53]

The mill test certificates appear to show only [ ] test result per heat. However, ISO standards required that two tubular products *from each heat* must be tested. The mill test certificates (by purchase order number) covered the following number of heats [ ] covered [ ] heat, [ ] covered [ ] heats, [ ] covered [ ] heats, [ ] covered [ ] heats, [ ] covered [ ] heat, [ ] covered [ ] heats, [ ] covered [ ] heat, [ ] covered [ ] heats, [ ] covered [ ] heat, and [ ] covered [ ] heats. Thus, there should have been [ ] heat tests, while the mill test certificates include only the results for [ ] tests. Furthermore, the mill test certificates do not state for which heats the chemical content was reported. This renders the mill test certificates covering multiple heats submitted on the record not to be in accordance with industry standards, and, thus, unreliable. In this instance, where the mill test certificates cover multiple heats, instead of representing the analysis of each heat, the mill test certificates appear to be a sort of summary, and the chemical content shown appears to be at best an average of random heats of the steel billets used to product the subject merchandise. Therefore, pursuant to ISO standards, mill test certificates that show only the results of [ ] test per heat cannot be representative of any one of the multiple heats required to produce the quantity of subject merchandise required by a given purchase contract.

Furthermore, these documents should have been readily available to Chengde and ATP. Mill test certificates were [ ] as specified in its purchase contracts.[54] ISO standards require that mill test certificates be provided by the manufacturer to the purchaser upon

[53] *See* First Supplemental Response at Exhibit S1-9, item 10.3.3.
[54] *See, e.g.*, ATP's purchase contract, "Jiangsu Chengde Steel Tube Share Co., Ltd. December-2009," covering purchase orders [ ], Documents Presented at D, submitted in Chengde's Second Supplemental Response at Exhibit S2-14.

request. Subsection 10.3.2 "Heat analyses," of section 10.3 of the ISO standard "Testing of chemical composition," states that ". . . when requested by the purchaser, the manufacturer shall furnish a report giving the heat analysis of each heat of steel used in the manufacture of pipe, coupling stock and couplings furnished on the purchase agreement. In addition, the purchaser, upon request, shall be furnished the results of quantitative analyses for other elements used by the manufacturer to control mechanical properties."[55]

Furthermore, Chengde failed to avail itself of other opportunities to develop the record by submitting requested documents. Chengde did not submit certificates of assay for purchases of steel billets as requested,[56] and it submitted sales contracts which did not describe their chemical content.[57] These sales contracts were incomplete.[58] The contracts specified that technical standards are [ ] but the [ ] was not submitted.[59] Furthermore, billet purchase contract number [ ] specifies that "[ ]," but the [ ] was not submitted.[60] In short, Chengde failed to develop the record by providing relevant documents that would likely include chemical content and other relevant information necessary to determine whether Chengde consumed alloy or carbon steel billets to produce the subject merchandise.

With respect to Chengde and ATP's argument that the Department itself requested a *sample* mill certificate for each product, and thus considered a sample to be adequate, the mill test certificates were requested for the purpose of corroborating reported U.S. sales data, not to

[55] *See* First Supplemental Response at Exhibit S1-9, at item 10.3.2.
[56] *See* First Supplemental at 6, Item 13.c.iv.
[57] *Id.* at Item 13.c.i.
[58] *See* First Supplemental at Exhibit S1-16.
[59] *Id.*
[60] *See* Second Supplemental Response at Exhibit S2-15. Presumably, a [ ] is similar to a certificate of assay.

establish the characteristics of Chengde's reported FOPs.[61] As explained above, a sample was appropriate in the corroboration context, but could not substitute for direct FOP information. Indeed, Chengde failed to respond to the relevant question where we specifically requested the chemical properties of the steel billets it used to produce subject merchandise, thus failing to fulfill its obligation to develop the record.[62]

Likewise, the Department requested a certificate of assay for FOP input materials[63] for the "*first purchase only*" of the input during the POR.[64] The CIT noted that the Department "itself suggested that testing a fraction of Chengde's products could prove the chemical makeup of unsampled OCTG"[65]; however, we requested the certificates of assay to *corroborate*—not establish—the "chemical specifications, purity, grades/standards, and mineral/metal content, *etc.*, for each reported FOP" requested in Item 13 of the First Supplemental. Specifically, we requested "a complete technical description of each of the inputs used to produce the subject merchandise during the POR. Include chemical specifications, purity, grades/standards, and mineral/metal content, etc."[66] Chengde failed to provide the requested information in its First Supplemental Response.[67] In addition, as noted above, Chengde failed to provide complete steel billet purchase contracts as requested by the Department because it lacked the [

] and [ ]. Again, in this respect a sample is appropriate to establish that information on the record is consistent and was a typical spot-check approach like that normally employed at onsite verifications.[68] It is often impossible or impractical to require and examine all potentially relevant documentation for purposes of

[61] *See* the Second Supplemental at 4, item 15.
[62] *See First Supplemental Response* at 8, Item 13 and Exhibits S1-15 and S1-16.
[63] *See ATP I* at 6.
[64] *See* the First Supplemental at item 13.c.iv (emphasis added).
[65] *See ATP I* at 12.
[66] *See* First Supplemental at Item 13.
[67] *See* First Supplemental Response at 8 at Item 13 and Exhibits S1-15 and S1-16.
[68] Verification was not conducted in this segment of the proceeding.

corroboration. This method is employed only as a spot check of the accuracy of the relevant information specifically requested, in this case, chemical and mineral content of the FOP.[69] However, Chengde failed to provide the information the certificates of assay were intended to corroborate. Specifically, Chengde did not provide "chemical specifications, purity, grades/standards, and mineral/metal content, *etc*." for steel billets, as requested.[70]

Finally, we continue to disagree that Chengde's original suggestion for valuing steel inputs with HTS 7224.90 (*i.e.*, alloy steel billets) was made in error, and we continue to find that the statement supports our finding that Chengde consumed alloy steel billets. Thus, in spite of the shortcomings in Chengde's submissions with respect to the chemical content of the steel billets used to produce subject merchandise, information necessary to value steel billets was on the record of the review: Chengde's affirmative, explicit, suggested HTS number for alloy steel billets.[71] Moreover, the history of this proceeding suggests that Chengde's selection of the HTS number for alloy steel billets was deliberate. Chengde explained in its case brief that "{t}he reason that Jiangsu Chengde suggested this category was because Commerce had used that category in the preliminary results of the initial investigation:"[72,73] however, that category was not used in the *Final Determination*.[74] An HTS number for high-carbon steel billets was used to value steel billets in the *Final Determination* of the less than fair value investigation, yet

[69] We note that the certificates of assay were requested as a subsection of Item 13, to support Chengde's response to Item 13.
[70] *See* First Supplemental Response at 8.
[71] *See* Chengde's Section D Questionnaire Response at Exhibit D-5.
[72] *See* "Oil Country Tubular Goods from China; Submission of Jiangsu Chengde's Revised Case Brief," dated August 2, 2012 at 2.
[73] *See Certain Oil Country Tubular Goods From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination*, 74 FR 59117 (November 17, 2009) ("*Preliminary Determination*").
[74] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) ("*Final Determination*").

Chengde ignored that HTS number and chose to suggest the HTS number for alloy steel billets used in the *Preliminary Determination* for use in this administrative review.[75]

Comment 2: Whether the Surrogate Value for Carbon Steel Billets is Aberrational

Chengde and ATP claim in their comments on the *ATP I* Draft that the aberrational analysis utilized by the Department, described above, is simplistic.[76]

Chengde and ATP argue that the surrogate value for carbon steel billets is aberrational because the AUV for Indonesian imports under HTS 7207.20 (high-carbon) was USD 1,149.40/MT, which was more than double the AUV of USD 566.64/MT for HTS 7207.19 (low-carbon). Also, Chengde and ATP argue that the AUV for high-carbon steel billets of USD 1,149.40/MT for HTS 7207.20 was higher than the AUV of USD 1,120.13/MT calculated by the Department for alloy steel billets under HTS 7224.90. In addition, Chengde and ATP argue that this average value is twice as high as the prices quoted on the London Metals Exchange ("LME") for carbon steel billets.

Furthermore, Chengde and ATP argue that USD 1,149.40 is an aberrational AUV because it is twice as high as the simple average of five of the AUVs calculated for imports of high-carbon steel billets into other countries on the surrogate country list.[77]

Department's Position: The Department continues to find that the surrogate value for carbon steel billets is not aberrational. The aberrational analysis utilized by the Department, described above, is consistent with the Department's longstanding practice.[78] Chengde itself notes this in its case brief where it states "{t}o determine whether a potential surrogate value is aberrational

[75] *See also* Maverick's Rebuttal Brief at 4 – 6.
[76] *See* Chengde and ATP's comments on the *ATP I* Draft at 7.
[77] *Id.* at 5.
[78] *See, e.g, Certain Preserved Mushrooms from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 55808 (September 11, 2012) and accompanying Issues and Decision Memorandum at Comments 3 and 4.

or would yield an unreasonable result, Commerce will normally compare the surrogate value in question to the average unit values calculated in the same period and for historical periods from other potential surrogate countries."[79]

Chengde and ATP argue that the AUV calculated for high-carbon steel billets of USD 1,149.40 using HTS number 7207.20, is aberrational because it is higher than that for HTS number 7224.90, USD 1,120.13, covering alloy steel. However, this is not informative. Chengde and ATP fail to recognize that the line separating carbon steel and alloy steel is very thin based on minor differences in chemical content.[80] Depending on the particular production processes used for each type of steel, and market conditions for commodity products, prices for carbon steel and alloy steel can overlap or vary widely, regardless of carbon content, and prices for alloy steel may, in fact, be lower than those for high-carbon steel. For example, information on the record shows that during the POR the AUV for imports of alloy steel into Indonesia was USD 1.12/kilogram ("kg"),[81] where the AUV for high-carbon steel was USD 1.20/kg[82] during the period of investigation. Furthermore, the surrogate value calculated for high-carbon steel in this segment of the proceeding for 7207.20 "high-carbon" based on Indonesian import data, USD 1.15/kg, is not significantly different from the USD 1.20/kg AUV calculated in the *Final Determination*.

[79] *See* Chengde's revised case brief at 5, where it cites *Certain Frozen Warmwater Shrimp from China*, 77 FR 12801, 12807-08 (March 2, 2012), and *Lightweight Thermal Paper from China*, 73 FR 57329 at Comment 10 (October 2, 2008).
[80] *See* Petitioner's surrogate value rebuttal information, "First Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People's Republic of China," dated July 16, 2012.
[81] *See* the memorandum, "First Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People's Republic of China," dated January 18, 2012 at tab A, Attachment 1: "INDONESIA IMPORTS OF SEMI-FINISHED ALLOY STEEL, OTHER UNDER HTS 7224900000," where the AUV for alloy steel is USD 1.12/kg.
[82] *See* Petitioner's submission, "First Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the People's Republic of China," dated July 16, 2012 at Exhibit I, the final determination analysis memorandum for Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation Final Determination Analysis Memorandum for Tianjin Pipe (Group) Corporation and Tianjin Pipe International Economic and Trading Corporation (collectively "TPCO"), where the AUV for 72072090, high-carbon steel is USD 1.20/KG.

In addition, Chengde and ATP argue that the AUV calculated for high-carbon steel billets of USD 1,149.40, is aberrational because it is twice as high as the prices quoted on the LME.[83] However, as explained in the *AR 1 Final Results* Issues and Decision Memorandum at Comment 1, "{t}he LME data are not only from non-economically comparable countries, they also contain data from countries the Department would not consider viable sources: NME countries and countries that may receive generally available export subsidies." [84,85] Thus, LME data are not an appropriate benchmark or source of surrogate value data.

Moreover, Chengde argues that USD 1,149.40 is an aberrational AUV because it is twice as high as the simple average of five of the AUVs calculated for imports of high-carbon steel billets into other countries (except the Philippines) on the surrogate country list.[86] This sort of analysis is not the Department's practice, and Chengde has neither explained why this approach, which merely assumes that two out of seven countries are aberrational as opposed to variations from the average, would be valid, nor has it provided any relevant citations. In addition, "twice as high" is not a variation "to a uniquely extreme degree."[87]

Comment 3: Whether the Department Made an Error in the Calculation of the Surrogate Value for Carbon Steel Billets of Unknown Chemical Content

Chengde and ATP's Comments

[83] *See* Chengde and ATP's comments on the *ATP I* Draft at 5.
[84] *See Kitchen Racks Investigation.*
[85] *See Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *see also Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review*, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *see also Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; *see also Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand*, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.
[86] *See* Chengde and ATP's comments on the *ATP I* Draft at 5.
[87] *See Hebei Metals & Minerals Import & Export Corp. v. United States*, 28 CI. 1185, 1200 (2004), where the court considered a surrogate value that was eight and a half times higher than the average of the AUVs of imports into the other potential surrogate countries to be aberrational.

Chengde and ATP argue that the Department stated it was calculating a surrogate value for billets consumed to produce subject merchandise not covered by the mill test certificates, entry documents or subject merchandise found to be produced from alloy steel billets, using a simple average of the surrogate value used for carbon steel billets and alloy steel billets in the *AR 1 Final Results*. Specifically, in the *ATP I* Draft, the Department calculated a simple average of USD 816.85/MT (the AUV for carbon steel billets) and USD 1,120.13/MT (the AUV for alloy billet) resulting in a surrogate value of USD 968.49. Chengde and ATP argue that the Department should have used an AUV of USD 813.86 for carbon steel billets, the value actually used in the *AR I Final Results*.

Department's Position: We agree with Chengde and ATP that the Department erred in this calculation. We recalculated the simple average to be used as the surrogate value for the steel billets of unknown chemical content using the formula (USD 813.86 + USD 1,120.13) / 2 to derive a surrogate value of USD 966.995.[88]

FINAL RESULTS OF REDETERMINATION

Following the Court's directive, we revised the surrogate values for the steel billets consumed by Chengde to produce subject merchandise for which we did not have direct

[88] *See* Draft Analysis Memo at 2.

evidence as to whether these steel billets were made of carbon or alloy steel, as described above, as well as for the sales associated with the Entry Summary submitted with ATP's APO application. Chengde's revised weighted-average dumping margin is 137.62 percent as a result of this revision.

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

28 January 2015
Date