

**Yantai Xinke Steel Structure Co., Ltd., Ningbo Jiulong Machinery Co., Ltd. and Ningbo Haitian International Co., Ltd. v. United States and Alabama Metal Industries Corp. and Fisher and Ludlow,
Court No. 10-00240, Slip Op. 12-95
(July 18, 2012)
FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND**

I. Summary

The U.S. Department of Commerce (“the Department”) has prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or “the Court”) in Yantai Xinke Steel Structure Co., Ltd., Ningbo Jiulong Machinery Co., Ltd. and Ningo Haitian International Co., Ltd. v. United States and Alabama Metal Industries Corp. and Fisher and Ludlow, Court No. 10-00240, Slip Op. 12-95 (July 18, 2012) (“Yantai Xinke v. United States”). The CIT remanded two issues from the Final Determination of the investigation¹ to the Department and ordered clarification on remand for a third matter. Specifically, the CIT held that 1) the Department must reexamine the surrogate value (“SV”) data on the record and determine a weighted-average dumping margin for the separate rate respondents Yantai Xinke Steel Structure Co., Ltd. (“Xinke”) and Ningo Haitian International Co., Ltd. (“Haitian”) in light of that analysis, 2) the Department must determine and corroborate a separate adverse facts available (“AFA”) rate for Ningbo Jiulong Machinery Co., Ltd. (“Jiulong”), and 3) the Department must clarify why the lack of reliable mill test certificates would prevent the Department from accurately determining the quantity of Jiulong’s U.S. sales – one of the reasons the Department cited for applying AFA to Jiulong in the Final Determination.

¹ See Certain Steel Grating From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32366 (June 8, 2010), and accompanying Issues and Decision Memorandum (“Final Determination”).

With respect to the calculation of a separate rate for Xinke and Haitian, we have complied under protest² with the Court's order and reviewed the SV data placed on the administrative record after the initiation of the investigation. Where SVs on the administrative record are more contemporaneous than those in the petition and otherwise usable, we have modified our separate rate calculation to include that SV data.

Also, although we respectfully disagree that Jiulong's behavior did not undermine the legitimacy of all of its submissions during the investigation,³ in accordance with the Court's order, we have evaluated Jiulong's submission supporting its eligibility for a separate rate, granted Jiulong a separate rate, and, on the basis of Jiulong's own reported information, concluded that the AFA rate of 145.18 percent is corroborated specifically with respect to Jiulong.

Finally, we have clarified on remand the Department's explanation of its concerns with the reported quantity of Jiulong's U.S. sales in relation to its mill test certificates.

II. Remanded Issues

a. Selection of a rate for the separate rate respondents

Background

In the Final Determination, the Department concluded that Xinke and Haitian warranted separate rate treatment. It is the Department's normal practice to derive a separate rate from the weighted-average dumping margins calculated for the mandatory respondents in an investigation. However, in this case, the Department applied AFA to both mandatory respondents. In such cases, the Department looks to section 735(c)(5) of the Tariff Act of 1930, as amended, (the "Act") for guidance in determining a separate rate. Section 735(c)(5)(B) of the

² See Viraj Group, Ltd. v. United States, 343 F.3d 1371, 1376 (Fed. Cir. 2003) ("Viraj").

³ See id.

Act, which addresses the appropriate method for determining an estimated all-others rate in investigations of market-economy countries, states that “if the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 776 {facts available}, the administering authority may use any reasonable method to establish the estimated all-others rate” The Department, therefore, determined that it was reasonable to determine the separate rate for Xinke and Haitian using an average of “five price-to-Normal Value dumping margins” contained in the petition.⁴ The resulting rate from this calculation is 136.76 percent.

Xinke and Haitian argued before the CIT that the Department’s methodology included calculations that relied on normal values derived from SVs that were non-contemporaneous with the period of investigation (“POI”). Xinke and Haitian argued that many updated SVs were placed on the administrative record following the initiation of the investigation, and the Department unlawfully refused to consider updating its separate rate calculation in light of those more contemporaneous SVs.

The CIT found that in declining to consider the additional SVs on the administrative record, the Department’s “justifications for disregarding surrogate data on the record” were “unpersuasive.”⁵ The Court found that “Commerce’s decision to ignore readily available and possibly more reliable surrogate value information when assigning an antidumping duty rate was not a reasonable one.”⁶ The Court ordered the Department “to consider the complete record in order to determine whether a more accurate antidumping margin could be assigned based on the surrogate data submitted during the investigation.”⁷

⁴ See Final Determination, and accompanying Issues and Decision Memorandum at Comment 14, at p. 33.

⁵ See Yantai Xinke v. United States, at *11.

⁶ See Yantai Xinke v. United States, at *12.

⁷ See id.

Analysis

The Department has complied with the Court's order and reviewed and considered the additional SV data on the record. Where SV data submitted during the course of the investigation is more contemporaneous than the SV data from the petition and is otherwise usable, the Department used the SV data from the record of the investigation in its recalculation of a separate rate for Xinke and Haitian.

Specifically, we reexamined all of the SVs on the record of this investigation, and we determined that there are more contemporaneous SVs on the record for some of the factors of production ("FOPs") used to calculate the petition margins. In order to identify the petition's FOPs and determine which of the SVs the Department could update, the Department examined Exhibit S2-3 of Petitioners'⁸ June 15, 2009, supplement to the petition. In this exhibit, the Petitioners reported the SVs for the required FOPs to produce steel grating, which included hot-rolled steel coil, steel scrap, wire rod, electricity, labor, as well as overhead, selling expenses, general and administrative expenses, and profit.⁹

Next, the Department examined SV information submitted to the administrative record by interested parties during the course of the investigation.¹⁰ For this remand, the Department updated the SVs in the petition with more contemporaneous information for hot-rolled steel coil (in part, see below), steel scrap, wire rod, electricity, labor, and the ratios from the financial

⁸ Petitioners are Alabama Metal Industries Corp. and Fisher and Ludlow.

⁹ See Petitioners' Exhibit S2-3 of the June 15, 2009, Supplement to the Petition.

¹⁰ See Petitioners' May 29, 2009; June 9, 2009; June 15, 2009; November 2, 2009; November 9, 2009; December 7, 2009; December 8, 2009; December 11, 2009; December 16, 2009; January 4, 2010; March 1, 2010; and March 11, 2010, submissions; see also Jiulong's October 16, 2009; November 2, 2009; November 9, 2009; December 14, 2009; December 18, 2009; March 1, 2010; March 11, 2010; and March 30, 2010, submissions; see also Xinke's March 1, 2010; and March 11, 2010, submissions; see also Memorandum from Thomas Martin to Robert Bolling, "Certain Steel Grating from the People's Republic of China- Surrogate Value Memorandum," dated December 28, 2009. Note that while the Department has listed the submissions related to selecting the most appropriate SV, some of these data are not relevant as many of the SV data were submitted on the record to consider for valuing Jiulong's reported FOPs, and not the FOPs from the Petition.

statements for overhead, selling expenses, general and administrative expenses, and profit.¹¹ The Department updated the SVs only on the basis of contemporaneity (i.e., replaced them with more contemporaneous SVs on the record which are specific to the POI).¹² The Department found that the administrative record did not have more contemporaneous SVs corresponding to certain FOPs from the petition: Indian import data for two of the three Harmonized Tariff Schedule (“HTS”) subheadings for the SV for hot-rolled steel coil .

With respect to the SVs based on import data, the Department only updated SVs where the record contained data from the interested parties which corresponded to the descriptions for the FOPs from the petition. First, for hot-rolled steel coil, the Department could only update one of the three HTS subheadings (i.e., 7208.37.30) used in the petition for the Indian import data as the basis for this SV because only this HTS subheading had more contemporaneous data on the record. The Indian import data for remaining two HTS subheadings (i.e., 7208.37.10 and 7208.37.90) for the SV for hot-rolled steel coil from the petition were not updated as more contemporaneous data were unavailable on the record. Second, for steel scrap, the Department updated the Indian import data for HTS subheading 7204.49.00 using more contemporaneous SV data from October 1, 2008 to February 28, 2009. Third, for wire rod, the Department updated the Indian import data for HTS subheading 7213.91.90 using more contemporaneous, POI-specific data. Finally, for electricity and labor, the Department used more contemporaneous, POI-specific data.¹³

¹¹ See Memorandum from Brandon Farlander to Robert Bolling, “Steel Grating from the People’s Republic of China: Surrogate Value Memorandum Pursuant to Draft Remand Redetermination,” dated October 22, 2012 (“Draft Remand Redetermination SV Memo”); see also Memorandum from Brandon Farlander to Robert Bolling, “Steel Grating from the People’s Republic of China: Surrogate Value Memorandum Pursuant to Final Remand Redetermination,” dated October 22, 2012 (“Final Remand Redetermination SV Memo”).

¹² See id.

¹³ See id., at 3-4.

In order to update the financial ratios, the Department evaluated each set of financial statements submitted to the record by interested parties¹⁴ as the basis for calculating these surrogate financial ratios while taking into consideration the Department's criteria for selecting surrogate financial statements.¹⁵ Based on the Department's criteria, the Department determined that the financial statements of the manufacturers of comparable merchandise, Rama Steel Tubes Limited ("Rama"), Good Luck Steel Tubes Limited ("Good Luck"), Vallabh Steels Limited ("Vallabh"), Zenith Birla (India) Limited ("Zenith Birla"), Nezone Tubes Limited ("NTL"), Nezone Industries Limited ("NIL"), North Eastern Tubes Limited ("North Eastern"), and Shri Lakshmi Metal Udyog Ltd ("Shri Lakshmi"), are more contemporaneous than the financial statements used in the petition and the Preliminary Determination.¹⁶

During the underlying less-than-fair value investigation, Petitioners and the other interested parties provided their arguments as to the merits of each of these financial statements as a potential SV.¹⁷ Accordingly, in this remand proceeding, once the Department concluded that it could not use the Greatweld financial statements as an SV, we analyzed the outstanding comments on those remaining financial statements and addressed those comments below. For

¹⁴ The record contains 17 financial statements for the 2008-09 fiscal year (Mekins Agro Products, Ltd.; Greatweld Steel Grating (Pvt.), Ltd.; Bihar Tubes, Ltd.; Rama Steel Tubes, Ltd.; Good Luck Steel Tubes; Stelco Strips; Vallabh Steels, Ltd.; Zenith Birla (India), Ltd.; Nezone Tubes, Ltd.; Nezone Strips, Ltd.; Nezone Industries, Ltd.; North Eastern Tubes, Ltd.; Pratibha Industries, Ltd.; Shri Lakshmi Metal Udyog, Ltd.; Rajratan Global Wire, Ltd.; Visakha Wire Ropes, Ltd.; and Nasco Steels Private, Ltd). The Department does not consider the financial documents for Anand Tekow Aids Engineering India, Limited as complete financial statements. See Exhibit SVFR-5 of Xinke's March 11, 2010, submission.

¹⁵ In the Draft Results of Redetermination Pursuant to Court Remand, dated October 22, 2012, the Department determined that 2008-2009 Greatweld Steel Grating (Pvt.) Ltd. ("Greatweld") financial statements were the most appropriate statements to calculate and update the financial ratios, based on record evidence that Greatweld is the only company whose financial statements are on the record which produces identical merchandise (i.e., steel grating). After considering comments from all interested parties and upon further review of the record, we have determined that the complete Greatweld financial statements are not publically-available, and that the remaining information from Greatweld is not usable for the Department's calculations. For details regarding this analysis, see page 16, below.

¹⁶ See Certain Steel Grating From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 847 (January 6, 2010) ("Preliminary Determination").

¹⁷ See, e.g., Letter to Hon. Gary Locke from Petitioners', "Certain Steel Grating from the People's Republic of China: Rebuttal Brief," dated April 13, 2010, ("Petitioners' Rebuttal Brief"), at 31-47.

this reason, the Department did not invite further comment on the selected surrogate financial statements.

Accordingly, based on the above revisions to the appropriate SVs, we have recalculated the five petition margins, and assigned a weighted-average dumping margin for Haitian and Xinke as the simple average of these five rates. The Department has calculated a revised weighted-average dumping margin of 38.16 percent for the separate rate respondents Xinke and Haitian.^{18,19}

b. Separate Rate Status and Applicable Weighted-Average Dumping Margin for Jiulong

Background

The Court affirmed the Department's application of AFA to Jiulong, but remanded the agency's decision to reject Jiulong's application for a separate rate. In the Final Determination, the Department concluded that "Ningbo Jiulong's pattern of behavior calls into question the reliability of all Ningbo Jiulong's submitted data necessary for the calculation of the dumping margin and determination of separate rate status" and that Jiulong had "failed to demonstrate that it operates free of government control."²⁰ The CIT held that the Department "made no finding that Jiulong's questionnaire responses concerning its separate rate status were deficient in any respect," and, therefore, "the Department's conclusion that the company was part of the PRC-

¹⁸ See Memorandum from Brandon Farlander to Robert Bolling, "Steel Grating from the People's Republic of China: Ningbo Haitian International Co., Ltd. Calculation Memorandum Pursuant to Draft Remand Redetermination," dated October 22, 2012; see also Memorandum from Brandon Farlander to Robert Bolling, "Steel Grating from the People's Republic of China: Ningbo Haitian International Co., Ltd. Calculation Memorandum Pursuant to Remand Redetermination," dated January 18, 2013 ("Ningbo Haitian Final Remand Analysis Memorandum").

¹⁹ See Memorandum from Brandon Farlander to Robert Bolling, "Steel Grating from the People's Republic of China: Yantai Xinke Steel Structure Co., Ltd. Calculation Memorandum Pursuant to Draft Remand Redetermination," dated October 22, 2012; see also Memorandum from Brandon Farlander to Robert Bolling, "Steel Grating from the People's Republic of China: Yantai Xinke Steel Structure Co., Ltd. Calculation Memorandum Pursuant to Remand Redetermination," dated January 18, 2013 ("Yantai Xinke Final Remand Analysis Memorandum").

²⁰ See Final Determination, and accompanying Issues and Decision Memorandum at Comment 3, at p. 17.

wide entity is unsupported by substantial evidence.”²¹ The CIT ordered the Department to determine Jiulong’s separate rate based on the company’s separate rate application and to corroborate any rate based on AFA by demonstrating “that the rate is reliable and relevant to the particular respondent.”²²

Analysis

Consistent with the Court’s order, we have considered the information in Jiulong’s separate rate response. Also consistent with the Court’s order, we have not considered Jiulong’s actions in regard to submitting false mill test certifications from its supplier to the Department throughout the investigation for purposes of our separate rate analysis. Disregarding this information, we have found Jiulong’s separate rate information to be complete. As a result of this analysis, the Department has determined to grant Jiulong a separate rate in accordance with the Court’s direction.

As AFA, the Department has determined that the rate of 145.18 percent, the highest rate alleged from the petition, is both reliable and relevant to Jiulong’s own reported commercial experience, and, therefore, is corroborated pursuant to section 776(c) of the Act. In order to corroborate this rate, the Department examined the product-specific dumping margins calculated in the Preliminary Determination²³ for all products sold by Jiulong during the POI. The Department has found that the 145.18 percent rate from the petition is lower than three product-specific dumping margins, and is thus within the range of the product-specific dumping margins

²¹ See Yantai Xinke v. United States, at *27.

²² See Id., at *27.

²³ See Memorandum from Thomas Martin to The File, “Preliminary Determination Analysis Memorandum for Ningbo Jiulong Machinery Manufacturing Co. Ltd.,” dated December 28, 2009, at Attachment 3, “SAS Program Output,” at 27.

from the preliminary determination for Jiulong's sales of steel grating during the POI.²⁴ Therefore, the Department finds that the 145.18 percent rate is reliable. Because the 145.18 percent rate falls within a range of Jiulong's own product-specific dumping margins for the POI, this rate is relevant to Jiulong's own commercial experience during the POI. Accordingly, we find that this rate is relevant to Jiulong during this period. Consequently, the Department finds that the 145.18 percent rate is both reliable and relevant, and has probative value as the AFA rate for Jiulong for the final determination of this investigation.

In addition, we believe that using the Department's Preliminary Determination with respect to its corroboration of Jiulong's AFA rate is appropriate. In the Final Determination, the Department determined, and the Court affirmed in its judgment, that Jiulong provided the Department with falsified documents regarding its hot-rolled steel inputs during the investigation, and that the application of total AFA was warranted. In light of these facts, we conclude that, if Jiulong had reported accurate information to the Department, it is reasonable to conclude that dumping margins would have been even higher than those calculated in the Preliminary Determination based on Jiulong's reported, falsified data. The Department, therefore, finds that calculations from the Preliminary Determination establish a reasonable basis to corroborate the 145.18 percent rate as AFA for Jiulong, in accordance with section 776(c) of the Act.

c. Relevancy of mill test certificates to quantity of U.S. sales

Background

The CIT noted in its affirmation of AFA that the Department indicated in its Final Determination that the falsified mill test certificates prevented it from accurately determining the

²⁴ See Memorandum from Brandon Farlander to Robert Bolling, "Steel Grating from the People's Republic of China: Corroboration of the Adverse Facts Available Rate for Ningbo Jiulong Machinery Co., Ltd. in the Draft Remand Redetermination," dated October 22, 2012.

quantity of Jiulong's U.S. sales. The CIT stated that it was "unexplained" why quantity was a concern in the agency's efforts to identify Jiulong's products by control number ("CONNUM"). The CIT ordered the Department to explain how the discrepancies between Jiulong's supplier mill test certificates and those certificates the company prepared for its customers justified using AFA to determine the quantity of Jiulong's U.S. sales.

Analysis

In the general questionnaire dated July 31, 2009, the Department instructed the respondents to assign CONNUMs to each product with a unique combination of product characteristics reported in the "section C" sales data file. The questionnaire stated, "Each unique combination of product characteristics based only on fields 3.1 - 3.n should be assigned a unique control number." Field Number 3.1, the first product characteristic, required the respondents to identify the type of steel based upon HTS definitions, and to code the type as follows: "1 = Non-alloy," "2 = Alloy other than stainless," and "3= Stainless."²⁵

In the Final Determination, the Department concluded, based on Jiulong's own admissions and the statements of its suppliers, that the documents describing Jiulong's steel inputs (i.e., the mill test certificates for the hot-rolled steel strip and wire rod) had been falsified. Without a reliable mill test certificate on the record, the Department could not confirm the type of steel, the principal physical characteristic of the subject merchandise sold in the United States.

The inaccuracy of the reported steel-type physical characteristic is significant. When the Department makes comparisons in an antidumping investigation, it does so using average export prices (or constructed export prices). The groups of U.S. sales, for which averages are calculated, are defined by, among other parameters, the reported CONNUM in the sales data. If the CONNUM is inaccurate because one of the physical characteristics has been falsely reported,

²⁵ See Section C of the Department's questionnaire to Jiulong, dated July 31, 2009, at page 35.

then the sales which are grouped together to calculate the average U.S. price may commingle with sales of products with different, inaccurate steel types. This will result in not only an inaccurate average U.S. price, but also an inaccurate U.S. sales quantity for the averaging group, which is used when aggregating comparison results to calculate the weighted-average dumping margin for Jiulong. Further, the falsely reported CONNUM will result in an inaccurate comparison result because the erroneous steel type will cause incorrect SVs to be used to calculate the normal value. Therefore, the Department cannot calculate an accurate weighted-average dumping margin without accurate mill test certificates and correctly reported CONNUMs.

In sum, because Jiulong submitted falsified information to the Department regarding the type of steel used to manufacture its product, the Department was unable to determine whether each of its U.S. sales observations was correctly reported with respect to each sale's product characteristics and CONNUM. Accordingly, this was one of the reasons Jiulong's submission of falsified mill test certificates warranted the application of total AFA to Jiulong, as affirmed by the Court.²⁶

III. Comments from Interested Parties

Comment 1: Whether to Examine and Revise Certain Surrogate Value Data and Provide a Revised Separate Rate for Xinke and Haitian

a) Surrogate Value Data Other Than Financial Statements

Petitioners stated that it was inappropriate for the Department to revise the separate rates of Xinke and Haitian, and that it was not compelled by the Court's opinion. Petitioners argued that the Department's calculation of the separate rate in the Final Determination, based on an average of the petition rates, was consistent with the statute and the Department's practice, citing

²⁶ See Yantai Xinke v. United States, at *12-26.

prior Department cases.²⁷ Petitioners stated that since the record contained no calculated weighted-average dumping margins, it was appropriate for the Department to resort to any reasonable method to calculate a separate rate.

Petitioners argued that the Department's use of a simple average of the petition rates that were revised and corroborated to calculate a separate rate was reasonable in light of the Department's duty to determine rates as accurately as possible. The Department was only required to revise the separate rate, Petitioners argued, if a more accurate weighted-average dumping margin could be assigned. Petitioners contended that the Department has not demonstrated that the recalculation of separate rates for Xinke and Haitian in the draft remand redetermination was more accurate than its rates for these same separate rate respondents in the Final Determination.

In response to the draft remand redetermination, Xinke contended that the Department correctly reconsidered the SVs that were used as the basis for Xinke's separate rate. However, Xinke argued that the Department did not select all of the proper SVs when recalculating the five petition margins in the draft remand redetermination. Xinke argued that the Department should not have used the Indian import data for the three HTS subheadings under 7208.37 as the basis for the SVs for hot-rolled steel coil in its draft remand redetermination. Instead, Xinke contended that the Department should have used the Indian import data for HTS subheadings

²⁷ 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), and accompanying Issues and Decision Memorandum at Comment 7; Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China, 73 FR 6479 (February 4, 2008), and accompanying Issues and Decision Memorandum at Comment 2; Final Determination of Sales at Less Than Fair Value: Raw Flexible Magnets from the People's Republic of China, 73 FR 39669, 39671 (July 10, 2008); Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China, 70 FR 7475 (February 14, 2005), and accompanying Issues and Decision Memorandum at Comment 4; and Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Crepe Paper From the People's Republic of China, 69 FR 70233 (December 3, 2004).

7211.14.50 and 7211.19.50 because these data were used in the preliminary determination to value the hot-rolled steel coil, and the Department has not explained why it used the Indian import data for the three HTS subheadings under 7208.37 from the petition as the SVs for the hot-rolled steel coil. Xinke stated that Petitioners' support in the petition for using the Indian import data for the three HTS subheadings under 7208.37 was from an expert familiar with the production of steel grating in the United States and not India or the People's Republic of China ("PRC"). Rather, Xinke contended that the Department should use the Indian import data for HTS subheadings 7211.14.50 and 7211.19.50 as the SV for the hot-rolled steel coil as this is supported by Jiulong's verification report, where the Department wrote that none of the coils of steel examined were greater than 480 millimeters in width. Xinke noted that this hot-rolled steel coil width of 480 millimeters is less than the 600 millimeter minimum steel coil width provided for in HTS heading 7208.37.

Furthermore, Xinke argued that the Department did not explain its selection of SVs nor address the issues raised in the briefs of all parties relating to these SVs. Xinke argued that the Department adopted SVs in the draft remand redetermination without reaching the issues raised during the administrative briefing which were, incorrectly, characterized as moot.

Finally, Xinke claimed that the Department did not address the problem of double remedy in the draft remand redetermination and the application of both countervailing and antidumping duties to the PRC.

Department's Position:

The Department disagrees with Petitioners' contention that the Department should not have revised Xinke's and Haitian's separate rate. As instructed by the Court, the Department has

complied with the Court's order to review and consider all of the SV data on the record, and to recalculate the five petition margins and the separate rate for Xinke and Haitian as appropriate.²⁸

The Department disagrees with Xinke's argument that the Department improperly used the Indian import data for the three HTS subheadings under 7208.37 as the basis for the SV for the hot-rolled steel coil FOP. On May 29, 2009, the Department received the petition from Alabama Metal Industries and Fisher and Ludlow requesting the imposition of antidumping and countervailing duties on steel grating imported from the PRC. In the petition, Petitioners submitted the FOPs using the production experience of a producer of a domestic like product, as a surrogate for a PRC producer. This methodology is routinely accepted by the Department for petitions.²⁹ The submitted FOPs encompassed the POI and corresponded to the period for which Petitioners obtained U.S. pricing information on PRC steel grating. As noted above, these FOPs were hot-rolled steel coil, steel scrap, wire rod, electricity, labor as well as overhead, selling expenses, general and administrative expenses, and profit.

The Department used Indian import data for HTS subheadings 7208.37.10, 7208.37.30 and 7208.37.90 because these were submitted in Petitioners' original petition as the best information reasonably available which corresponded to the FOP for hot-rolled steel coil from the production experience of a producer of a domestic like product. Additionally, Petitioners provided a dumping margin calculation using the methodology required by 19 CFR 351.202(b)(7)(i)(C) and 19 CF. 351.408, and calculated normal values for steel grating products

²⁸ See the discussion in the remand redetermination.

²⁹ See, e.g., Xanthan Gum From Austria and the People's Republic of China: Initiation of Antidumping Duty Investigations, 77 FR 39210, 39212 (July 2, 2012); Steel Wire Garment Hangers From the Socialist Republic of Vietnam and Taiwan: Initiation of Antidumping Duty Investigations, 77 FR 3731, 3734 (January 25, 2012); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Antidumping Duty Investigation, 76 FR 70960, 70962 (November 16, 2011); Galvanized Steel Wire From the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations, 76 FR 23548, 23552 (April 27, 2011).

based on the FOPs from the domestic like products in the petition.³⁰ Also, the Department initiated this investigation on Petitioners' calculated normal values and U.S. price information, which is cited in the initiation checklist.³¹ In the draft remand redetermination, the Department was able to update SVs with more contemporaneous information on the record for HTS subheading 7208.37.30, but more contemporaneous information was not available on the record to update HTS subheadings 7208.37.10 or 7208.37.90.

Xinke argued that the Department should have used Indian import data for HTS subheadings 7211.14.50 and 7211.19.50, but Xinke's arguments are based on Jiulong's production process and FOPs, not the production process and FOPs reflected in the petition. Petitioners stated in the petition that they provided the best available information on the FOPs from their surrogate for a PRC producer at the time the petition was filed, and nothing on the administrative record undermines that claim. Therefore, the Department based the SV for hot-rolled steel coil on Indian import data for HTS subheadings provided in the petition which corresponded to the FOP for this surrogate producer. The petition states:

The usage rates of those factors of production (*i.e.*, quantities of raw materials consumed, and number of man-hours required) should be based upon the consumption rates of the Chinese manufacturer. However, because information regarding the quantities of inputs consumed by Zhejiang Hengzhou is not reasonably available to Petitioner, we have used the product-specific production costs and/or consumption rates of a []—the Chinese Surrogate—for the period October 2008 through March 2009. This is the most recent information available to Petitioners. Petitioners utilized the time period for [] because it provides the most recent information reasonably available to Petitioners, encompasses the POI, and encompasses

³⁰ See Petitioners' Exhibit S2-3 of June 15, 2009, Supplement to the Petition.

³¹ See the Import Administration Antidumping Duty Investigation Initiation Checklist, dated June 18, 2009, at 8-11.

the period for which Petitioners obtained U.S. pricing information.³²

Contrary to Xinke's claim that the Department has not explained why it used Indian import data for HTS subheadings 7208.37.10, 7208.37.30, and 7208.37.90 to value the hot-rolled steel coil FOP, the Department used these HTS categories because they were the categories provided in the petition and which corresponded to the FOP.³³ The petition alleged that Zhejiang Hengzhou Steel Grating Co., Ltd. ("Zhejiang Hengzhou") (the Chinese exporter who provided the U.S. price quote offers) and the producer of the domestic like product both use "high voltage welding to press pre-twisted steel crossbars onto the bearing bars to yield a fully welded and functional steel section of"³⁴ steel grating and that in this manufacturing process, the producer of the domestic like product used specifically steel that would fall within the description of these HTS subheadings.³⁵ It was, therefore, reasonable for the Department to conclude that the FOPs included in the petition for the producer of the domestic like product are reasonable estimations of the inputs required to produce the steel grating models which were offered for sale to Petitioners by Zhejiang Hengzhou. For these reasons, the Department used Indian import data for HTS subheadings 7208.37.10, 7208.37.30, and 7208.37.90 as the basis for the SV for the hot-rolled steel coil FOP.

In addition, the Court has instructed the Department to review and consider all of the SV information on the administrative record, and where appropriate, to update the SVs used to value FOPs which were used as the basis for the normal values and dumping margins in the petition.

However, if the Department considered using the Indian import data for HTS subheadings

³² See Certain Steel Grates from the People's Republic of China, Petitioner for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as amended, Volume II ("The Petition, Volume II") at 13-14, May 29, 2009.

³³ See the Draft Remand Redetermination, at 4-6; see also Draft Remand Redetermination SV Memo, at 1-2.

³⁴ See The Petition, Volume II, at 16.

³⁵ See The Petition, Volume I, at 19.

7211.14.50 and 7211.19.50, as argued by Xinke, then this would involve a redefinition of the petition's FOP for hot-rolled steel coil. This goes beyond the instructions from the Court in updating the SVs for the petition margins where appropriate, and, therefore, the Department further rejects Xinke's arguments.

The Department also disagrees that the evidence on the record pertaining to the steel inputs used by Jiulong somehow demonstrates that all PRC producers of subject merchandise use one particular type of steel to produce subject merchandise. As an initial matter, the probative value of the documents describing Jiulong's steel inputs are seriously called into question because of the known falsification of documents related to Jiulong's steel inputs. The Court specifically upheld as reasonable the Department's determination that Ningbo Jiulong knowingly submitted false mill test certificates to the Department, and that mill test certificates are key in determining the type of hot-rolled steel coil consumed.³⁶ In any event, the production experience of one PRC producer does not demonstrate that all PRC producers use the same steel input in producing subject merchandise. As discussed above, Petitioners alleged that Zhejiang Hengzhou, a PRC producer of subject merchandise, uses the same manufacturing process as the producer of the domestic like product, who unquestionably incorporates that type of steel coil into the steel grating it manufactures.

To the extent that Xinke's argument can also be understood to allege that the production process and FOPs reflected in the petition do not mirror its own specific production experience, as a separate rate respondent, Xinke was only required to provide a quantity and value response and a separate rate application, and not production-specific information, including the FOPs it used to make steel gratings. Further, the Court did not order the Department to conduct a separate less than fair value investigation of Xinke, wherein it would collect Xinke's production-

³⁶ See Yantai Xinke v. United States, at *25-*26.

specific data, along a great deal more of information, and verify that information. Accordingly, Xinke's production experience was not included in the Department's calculation of a separate rate in this redetermination.

The Department also disagrees with Xinke that the Department did not explain its selection of SVs nor address issues raised in the briefs of all parties related to the SVs. The Department explained in detail in its draft remand redetermination that we updated SVs for the FOPs from the petition where there were more contemporaneous SV data on the record (in addition to labor and the financial ratios).³⁷ This analysis is included in full in the analysis section of Section II above, at pages 2-7.

Finally, with respect to Xinke's double remedy argument, this issue was not within the scope of the Court's remand order, and, therefore, we have not addressed Xinke's arguments on this point.

b) The Surrogate Financial Statements

In the Draft Remand Redetermination, to update the SV financial ratios used to calculate the petition margins, the Department used the financial statements of Greatweld, because Greatweld was the only company for which we had financial statements that included the POI and that appeared to reflect that the company manufactured merchandise identical to the subject merchandise. Xinke argued, however, that these financial statements contained numerous problems and appeared to be unreliable. Xinke emphasized, in particular, the inability of Petitioners to demonstrate that Greatweld's financial statements were publicly available. Also Xinke claimed that Greatweld might not be a producer of steel gratings and that it has intertwined operations with another Indian company, Anand Teknow Aids Engineering India,

³⁷ See the Draft Remand Redetermination, at 4-6; see also Draft Remand Redetermination SV Memo, at 1-2. For the Department's revised SV calculations, see Final Remand Redetermination SV Memo, at 1.

Ltd., which makes it impossible to determine which company bears which costs and whether these costs may be distorted between companies.

Section 773(c)(1) of the Act directs the Department to base the valuation of the FOPs on “the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate . . .” The Department’s criteria for choosing company information to calculate surrogate financial ratios involves considering the public availability, contemporaneity, and quality of the financial statements, as well as their comparability to the respondent’s experience.³⁸ Furthermore, 19 CFR 351.408(c)(4) states that, for the selection of manufacturing overhead, general expenses and profit in the calculation of normal value of merchandise from non-market economy countries, the Department will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

The Department therefore sought clarification by issuing a supplemental questionnaire to Petitioners following receipt of Xinke’s arguments, and received a response on November 27, 2012. In this supplemental questionnaire, the Department requested that Petitioners provide a detailed step-by-step explanation of how they obtained Greatweld’s 2008-09 financial statements, and that the steps provided should be of sufficient detail so that any party would be able to replicate these steps to acquire Greatweld’s 2008-09 financial statements. If such a step-by-step explanation could not be provided, the Department requested that Petitioners provide a detailed explanation of why they could not provide such information. In addition, the Department also asked Petitioners to provide a detailed explanation as to the reason they

³⁸ See Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review, 77 FR 21734 (April 11, 2012), and accompanying Issues and Decision Memorandum at Comment 2; and Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 3.

believed Greatweld's 2008-09 financial statements were properly described as publicly available and, in providing their response, to indicate if Greatweld was required under Indian law to publicly file its 2008-09 financial statements with any governmental authority.

In their response, Petitioners provided a step-by-step explanation of the means by which they acquired Greatweld's annual report and balance sheet from the publicly accessible website of the Government of India's Ministry of Corporate Affairs' Registrar of Companies ("MCARC").³⁹ Petitioners explained that, using the information from the MCARC, they asked a foreign market research company in India to "obtain Greatweld's entire financial statement."⁴⁰ Petitioners then stated that the foreign market research company, using its relevant sources in India, obtained Greatweld's financial statements.⁴¹ However, Petitioners did not provide a detailed explanation of how the foreign market research company acquired Greatweld's complete financial statements, despite the Department's request for this information as evidence that Greatweld's financial statements are publicly available.

Next, Petitioners stated that to confirm that Greatweld's financial statements are publicly available, Petitioners obtained a Business Information Report for Greatweld from an independent research company in India called Brisk Intelligence, India ("Brisk").⁴² When Petitioners compared the financial data from Brisk to its Greatweld financial statements, these data were identical, which Petitioners claimed supported the conclusion that Greatweld's financial statements were publicly available, since that data could be acquired by third parties, such as individuals, market research companies, and ratings bodies.⁴³ Finally, Petitioners stated that they

³⁹ See Petitioners' November 27, 2012, clarification supplemental questionnaire response, at 3-4.

⁴⁰ See *id.*, at 4.

⁴¹ See *id.*

⁴² See *id.*

⁴³ See *id.*, at 4-5.

obtained Greatweld's profit, turnover, and other key data from the ICRA Limited debt rating agency.⁴⁴

In responding to the Department's question regarding why Petitioners think that Greatweld's financial statements are properly described as publicly available, Petitioners stated that pursuant to 19 CFR 351.105(b)(1), public information includes factual information of a type that has been published or otherwise made available to the public by the person who submitted it.⁴⁵ Petitioners also contended that even if Greatweld is a private company this does not make its financial statements per se proprietary, citing past Department determinations.⁴⁶ Also, Petitioners noted that in several cases, the Department has determined that financial statements of private companies filed with Indian Registrar of Companies are in the public realm.⁴⁷ Petitioners then argued that the Department has stated that where the annual reports of privately held companies in question are available from the Indian government website, MCARC, even for a small fee, then these financial statements are publicly available.⁴⁸ Therefore, for these reasons, Petitioners contended that Greatweld's 2008-09 financial statements are publicly available. Further, Petitioners argued in the alternative that if the Department did not use Greatweld's

⁴⁴ See id., at 5-6.

⁴⁵ See id., at 6.

⁴⁶ See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 68 FR 6712 (February 10, 2003), and accompanying Issues and Decision Memorandum at Comment 8 and Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 11085 (March 16, 2009), and accompanying Issues and Decision Memorandum at Comment 1.

⁴⁷ See 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), and accompanying Issues and Decision Memorandum at Comment 1 and Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results and Final Rescission in Part, of Antidumping Duty Administrative Review, 76 FR 36083 (June 21, 2011), and accompanying Issues and Decision Memorandum at Comment 2.

⁴⁸ See 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), and accompanying Issues and Decision Memorandum at Comment 1 and 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 accompanying Issues and Decision Memorandum at Comment 10.

2008-09 financial statements in the Final Remand Results, the Department should use the 2008-09 financial statements of Mekins Agro Products, Limited for calculation of financial ratios.

After thoroughly reviewing Petitioners' November 27, 2012, submission, Department officials had a telephone conference call with Petitioners' counsel on December 21, 2012, to further clarify whether they were able to access Greatweld's entire 2008-09 financial statements from MCARC's website. Petitioners' counsel stated that they were able to obtain the following Greatweld 2008-09 financial documentation from the MCARC website: 1) annual return; 2) balance sheet; 3) schedules; 4) auditor's report; 5) director's report; and 6) notice. Then, Department officials asked Petitioners' counsel what Greatweld documents were obtained by the market research company. Petitioners' counsel responded that it obtained Greatweld's profit and loss statement from the market research company.⁴⁹

Department's Position:

Based on the evidence on the record, we determine that Greatweld's 2008-09 financial statements are not publicly available, and, therefore, not usable in the Department's calculations. While we agree with Petitioners that Greatweld's 2008-09 financial statements on the record are complete, Petitioners did not, despite several requests by the Department, provide a step-by-step explanation on how its market research company acquired Greatweld's 2008-09 profit and loss (income statement) statement. Also, Petitioners did not explain why they were unable to provide such information. Because the other interested parties to the proceeding, as well as the Department itself, do not know the steps necessary to acquire Greatweld's 2008-09 income statement, and, therefore, could not acquire that data themselves, we have determined that Greatweld's profit and loss statement is not publicly available. The use of non-publicly available

⁴⁹ See Memorandum to the File from Brandon Farlander, "Phone Call with Counsel for Alabama Metal Industries Corp. and Fisher & Ludlow ("Petitioners")," dated December 26, 2012.

information would be inconsistent with 19 CFR 351.408(c)(4), which states that for purposes of manufacturing overhead, general expenses and profit, the Department will “normally” use “non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.”

Furthermore, without a profit and loss statement which is publicly available, Greatweld’s 2008-09 financial statements are materially incomplete, as the Department is unable to determine whether Greatweld made a profit for the 2008-09 fiscal year. The Department has a long-standing practice of not using financial statements where the company records a loss.⁵⁰ Since the Department does not know if Greatweld made either a profit or a loss for the 2008-09 fiscal year based upon public information, we have determined that Greatweld’s 2008-09 financial statements is not usable. In addition, while Petitioners submitted financial data from ICRA Limited debt rating agency and Brisk, these data are not complete financial statements and are thus not usable to calculate financial ratios.

Thus, the Department has determined that there are no publicly available financial statements for manufactures of merchandise identical to the subject merchandise on the administrative record. Accordingly, we have determined to calculate the revised surrogate financial ratios using information from producers of comparable merchandise in India. Specifically, for these Final Remand Results, the Department has determined that the following financial statements, covering the period 2008-2009, are the best, publicly available, financial

⁵⁰ See, e.g., 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), and accompanying Issues and Decision Memorandum at Comment 2; Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review, 72 FR 52052 (September 12, 2007), and accompanying Issues and Decision Memorandum at Comment 2.B

statements of Indian manufactures of merchandise comparable to steel grating: Rama,⁵¹ Good Luck,⁵² Vallabh,⁵³ NTL,⁵⁴ NIL,⁵⁵ North Eastern,⁵⁶ and Shri Lakshmi,⁵⁷ and Zenith Birla.⁵⁸

The Department has previously found the steel pipe and tube industry to be a comparable industry to manufacturing steel grating⁵⁹ and multiple financial statements from Indian steel pipe and tube producers were placed on the record. In regard to the Rama, Good Luck, NTL, NIL, North Eastern and Zenith Birla financial statements, Petitioners argued in the underlying investigation that the production process of steel pipe and tube is significantly more advanced than that of steel grating, because more sophisticated machinery, technical skill, expense, and sophistication is required for the production of steel grating, and that these companies perform their own galvanizing.⁶⁰ We disagree with Petitioners that the production process of this industry is such as to make it not comparable, and continue to find the steel pipe and tube industry to be a comparable industry. The International Trade Commission (“ITC”) stated, in its final injury determination, that steel grating is a fabricated product distinguished by two sets of components– the slitting and cutting of hot-rolled steel strip “bearing bars,” and the wire rod “crossbars” that are welded transversely across the bearing bars to form a steel grating panel.⁶¹ Producers can purchase the bearing bars already pre-cut to size from either steel coil or steel flat

⁵¹ See Surrogate Value Submission of Ningbo Jiulong Machinery Manufacturing Co., Ltd., dated March 1, 2010 (“Ningbo Jiulong March 1, 2010 SV Submission”), at Exhibits 2a.

⁵² See Ningbo Jiulong March 1, 2010 SV Submission, at Exhibit 3a.

⁵³ See Ningbo Jiulong March 1, 2010 SV Submission, at Exhibit 5a.

⁵⁴ See Ningbo Jiulong March 1, 2010 SV Submission, at Exhibit 7a.

⁵⁵ See Ningbo Jiulong March 1, 2010 SV Submission, at Exhibit 9a.

⁵⁶ See Ningbo Jiulong March 1, 2010 SV Submission, at Exhibit 10a.

⁵⁷ See Ningbo Jiulong March 1, 2010 SV Submission, at Exhibit 12a.

⁵⁸ See Ningbo Jiulong March 1, 2010 SV Submission, at Exhibit 6a.

⁵⁹ See Certain Steel Grating From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 847, 855 (January 6, 2010) (“Preliminary Determination”).

⁶⁰ See Petitioners’ Rebuttal Brief, at 34.

⁶¹ See Certain Steel Grating from China (Inv. Nos. 701-TA-465 and 731-TA-1161 (Final), USITC Publication 4168, July 2010) at I-6. (“ITC final injury determination”)

bars, and the crossbars pre-cut and pre-twisted from steel rods, albeit reportedly at a significant cost premium over the uncut steel mill products bought in bulk.⁶² The dimensions and spacing of both the bearing bars and crossbars are designed for a wide variety of load-bearing and load-distribution applications, meaning that steel grating panels with more bearing bars and smaller spaces between them can bear heavier loads than panels of the same dimensions with fewer bearing bars.⁶³ The ITC also notes that one type of steel grating, specifically riveted grating products, use reticulated bars riveted between the bearing bars, and do not utilize wire rod as cross bars.⁶⁴ The ITC obtained this information chiefly from the petition itself.⁶⁵ Thus, bearing bars, which are made of hot-rolled steel strip, are a significant component of steel grating. Similarly, steel pipe and tube is manufactured by cutting hot-rolled steel coil into strips, shaping the strips into a pipe or tube, and welding the seam.⁶⁶

Petitioners also challenged the use of the Vallahb financial statements in the underlying investigation, arguing that Vallahb is an integrated steel producer that also produces cold-rolled steel and iron sponge, and not comparable merchandise.⁶⁷ We disagree with this assessment of the evidence on the administrative record -- the Vallahb financial statements reflect that Vallahb is primarily a manufacturer and seller of steel pipe and tube, which it manufactures from

⁶² See *id.*, at I-8.

⁶³ See *id.*

⁶⁴ See *id.*, at I-8.

⁶⁵ See Certain Steel Grates from the People's Republic of China, Petitioner for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as amended, Volume I ("The Petition, Volume I"), at 8-9., May 29, 2009.

⁶⁶ See, e.g., the website materials of Good Luck Steel Tubes Limited, Surrogate Value Submission of Ningbo Jiulong Machinery Manufacturing Co., Ltd., dated March, 1 2010, at Exhibit 3c.

⁶⁷ See Petitioners' Rebuttal Brief, at 37.

purchased hot-rolled steel coils.⁶⁸ Accordingly, we have used the Vallabh financial statements in our SV analysis as well.

With regard to the Shri Lakshmi financial statements, Petitioners argued in the underlying investigation that because Shri Lakshmi was acquired by Bihar Tubes Limited (“Bihar”),⁶⁹ during the fiscal year, and Bihar received countervailable subsidies, then the Department should consider Shri Lakshmi’s financial statements to be distorted by Bihar ownership, because Shri Lakshmi’s management would function differently as a subsidiary of Bihar than it would have prior to its acquisition.⁷⁰ For this reason, Petitioners argued that Department should not use those financial statements. The Department agrees with Petitioners that Bihar benefitted from export incentives under the Duty Entitlement Pass Book scheme (“DEPS”), which the Department has found to be a countervailable subsidy⁷¹ from a program previously investigated by the Department (see the Department’s discussion of Bihar, below) and that Congress has directed the Department to “avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices.”⁷² Further, we agree that where the Department has a reason to believe that a company received countervailable subsidies, the Department may find that the financial ratios derived from that company’s financial statements are less representative of the financial experience of the company or the relevant industry compared to ratios derived from financial statements that do not contain evidence of subsidies. However, Petitioners’ assertion that Shri Lakshmi’s management would “function differently” if

⁶⁸ The Vallabh financial statements note at Annexure ‘S’ “Notes on Accounts,” Part 11, that during the fiscal year, the company produced and sold more steel pipe than other products, and there is no evidence that the hot rolled steel that it consumed was self-produced.

⁶⁹ See Ningbo Jiulong March 1, 2010 SV Submission, at Exhibit 1a.

⁷⁰ See Petitioners’ Rebuttal Brief, at 44.

⁷¹ See Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 75 FR 43488 (July 26, 2010), and the accompanying Issues and Decision Memorandum at Part II.A.4.

⁷² See Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988).

influenced by another company that received countervailable subsidies, is not a sufficient basis for the Department to find that Shri Lakshmi's financial experience is not representative of the relevant industry, i.e., the steel pipe industry.

Petitioners also argued in the underlying investigation that because Shri Lakshmi was acquired by Bihar during the fiscal year, and Bihar received countervailable subsidies, the Department should consider Shri Lakshmi's financial statements to be distorted by Bihar, if Shri Lakshmi purchased subsidized finished steel pipe from Bihar.⁷³ However, the Department does not assume the existence of subsidy pass-through simply by virtue of affiliation. Rather, the Department examines financial statements for explicit evidence that a company benefited from a specific subsidy that the Department has countervailed, in order to make a determination whether the company's financial experience is too distorted to be representative. In the Shri Lakshmi financial statements, the Department only finds a reference to "Export incentive receivable,"⁷⁴ and there is no indication that these incentives involve a particular program that the Department has determined to provide a countervailable subsidy from a program previously investigated by the Department. Accordingly, because Shri Lakshmi was a producer of comparable merchandise, and we find the financial statements are otherwise usable, the Department will use the Shri Lakshmi financial statements in our analysis.

Petitioners also argued in the investigation that the Department should not use the Zenith Birla financial statements because: 1) a high demand for pipe products by the oil and gas industry reported by Zenith Birla was out of step with the world economy; and 2) Zenith Birla's financial statements allegedly must be distorted by the high salary and benefits received by its

⁷³ See Petitioners' Rebuttal Brief, at 45.

⁷⁴ The Shri Lakshmi financial statements refer to these export incentives at Schedule F.

company director.⁷⁵ We disagree with Petitioners, however, that there is evidence in the Zenith Birla financial statements, or elsewhere on the record, to determine that the financial experience of Zenith Birla was distorted or not reflective of the steel pipe industry. Whether or not current conditions in the industry in question are relevant to this analysis, there is no evidence on the administrative record to supports Petitioners' assertion that the-market conditions surrounding the oil and gas industry would call into question these financial statements. Furthermore, with regard to the Petitioners' second claim, pertaining to the company director's salary, there is no evidence on the administrative record that the company director's salary and benefits, alone, would distort the Zenith Birla financial statements in a way that is meaningful to the Department's analysis. Accordingly, the Department does not find these arguments undermine the ability of the agency to use Zenith Birla's financial statements as a surrogate in this case.

Petitioners also argue that galvanization performed by Zenith Birla render the company an inappropriate source of SVs for a producer of steel grating.⁷⁶ However, the petition⁷⁷ and the ITC final injury determination⁷⁸ support the Department's determination that the steel grating industry manufactures galvanized product.

Petitioners also contended that Zenith Birla is too diversified among various products that are produced by subsidiaries located in several countries.⁷⁹ However, the Department has reviewed the Zenith Birla financial statements, and determined that Zenith Birla is only an Indian manufacturer of steel pipe and cutting tools. Specifically, Zenith Birla performs its manufacturing in India, and not in other countries; its overseas affiliates in the United Arab

⁷⁵ See Petitioners' Rebuttal Brief, at 38.

⁷⁶ See Petitioners' Rebuttal Brief, at 39.

⁷⁷ See The Petition, Volume I, at 15.

⁷⁸ See ITC final injury determination, at I-8.

⁷⁹ Id.

Emirates and the United States are resellers of the Indian manufactured products.⁸⁰ We have also determined that Zenith Birla is not too diversified in its production experience to warrant the rejection of its financial statements from our analysis because Zenith Birla manufactures a significant quantity of steel pipe, and consumes hot-rolled steel coil in its manufacturing process.⁸¹ Zenith Birla is, therefore, a manufacturer of comparable merchandise to steel grating, and we have, therefore, determined to use its financial statements in our analysis as well.

On the other hand, the Department does not find that Rajratan Global Wire Limited (“Rajratan”) and Visakha Wire Ropes Limited (“Visakha”)⁸² produce comparable merchandise as required by 19 CFR 351.408(c)(4). Rajratan produces tire bead wire out of wire rod.⁸³ Visakha produces wire rope out of wire rod.⁸⁴ Thus, Rajratan and Visakha produce two finished products that are less comparable to steel grating than steel pipe.

Specifically, Rajratan and Visakha produce bead wire and wire rope by processing wire rod, in a manner comparable to the processing of wire rod to produce the wire rod “crossbars” manufactured by steel grating producers as an interim step.⁸⁵ As the ITC has noted, steel grating manufacturers may opt to purchase pre-cut and pre-twisted steel rods from producers similar to Rajratan and Visakha.⁸⁶ In contrast to the production of Rajratan and Visakha, steel grating production includes a further step of combining processed wire rod with hot-rolled steel strips in

⁸⁰ The Zenith Birla financial statements note that its overseas affiliates are resellers of Indian manufactured steel pipe in (1) the Directors’ Report for Zenith (USA) Inc. at 48, and (2) the Independent Auditors Report for Zenith Middle East FZE Dubai at 52.

⁸¹ The financial statements identify Zenith Birla’s product categories and raw materials consumed at Schedule 20.

⁸² See Surrogate Value Submission of Ningbo Jiulong Machinery Manufacturing Co., Ltd., dated March, 1 2010, at Exhibits 13a and 14a.

⁸³ The Rajratan financial statements state Rajratan’s finished goods and raw materials consumed at Schedule XXIV, part I.16, subpart 6(d) and (h).

⁸⁴ The Visakha financial statements state Visakha’s finished goods and raw materials consumed at Schedule P, part B(5)(c) and (f).

⁸⁵ For a discussion of the manufacturing process of Rajratan’s bead wire, see Jiaying Brother Fastener Co. v. United States, 774 F. Supp. 2d 1303 (CIT 2011) (upholding the Department’s decision that the further processing of wire rod performed by Rajratan is comparable to the further processing performed by manufacturers of steel threaded rod).

⁸⁶ See ITC final injury determination, at I-8.

a welding process.⁸⁷ The Department rejects financial statements of surrogate producers whose production process less comparable to the respondent's production process when better, publicly available information is available from surrogate producers with more comparable production processes.⁸⁸ Thus the Department finds Rajratan's and Visakha's production to be less comparable to steel grating production than steel pipe production, and we have, therefore, determined not to use those companies' financial statements in our calculations.

Similarly, the Department does not find that Stelco Strips Limited ("Stelco")⁸⁹, a producer of steel strips, produces comparable merchandise as required by 19 CFR 351.408(c)(4). Specifically, Stelco produces steel strips by processing hot rolled steel coils,⁹⁰ in a manner comparable to the processing of hot rolled steel coils to produce the bearing bars manufactured by steel grating producers and steel pipe producers as an interim step. As the ITC has noted, steel grating manufacturers may opt to purchase the bearing bars already pre-cut to size from either steel coil or steel flat bars from producers similar to Stelco.⁹¹ In contrast to Stelco's production, steel grating production includes a further step of combining processed wire rod with hot-rolled steel strips in a welding process.⁹² Thus the Department finds Stelco's production to be less comparable to steel grating production than steel pipe production, and we have, therefore, determined not to use Stelco's financial statements in our calculations.

Petitioners argued in the underlying investigation that Mekins Agro Products Limited ("Mekins") is a manufacturer of wire decking, and that wire decking is comparable to steel

⁸⁷ Id.

⁸⁸ See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.

⁸⁹ See Ningbo Jiulong March 1, 2010 SV Submission, at Exhibit 4a.

⁹⁰ The Stelco financial statements discuss its raw materials and finished goods in the Directors' Report, Part 'a.'

⁹¹ See ITC final injury determination, at I-8.

⁹² Id.

grating.⁹³ The Department finds, regardless of such alleged comparability, that there is insufficient evidence on the record to indicate that Mekins actually manufactured wire decking during the fiscal year. Although the Department used Mekins' financial statements in the Preliminary Determination,⁹⁴ after reviewing the information on the administrative record, including the financial statements of Mekins, the Department now finds that the record does not support finding that any of Mekins' products are comparable to steel grating. Mekins manufactures materials handling equipment, pallets, bins, trolleys, perforated sheets, wheels, agricultural implements, retention cages and wire.⁹⁵ Nowhere among these listed products, or products categories, is there explicit or reliable evidence that Mekins manufactured wire decking during the fiscal year.

Similarly, the Department is unable to determine based on the financial statements of Nasco Steels Private Limited ("Nasco")⁹⁶ that the merchandise that Nasco produces could be considered comparable to the steel grating described in the scope of the antidumping investigation. The Nasco statements list Nasco's products as "hing(e)s, nails, washers, M.S. wire, plough parts and c.c. blade."⁹⁷ Nowhere among these listed products, or products categories, is there explicit or reliable evidence that Nasco manufactured merchandise comparable to steel grating during the fiscal year. Accordingly, we have not used those financial statements in our SV analysis.

⁹³ See Petitioners' Rebuttal Brief, at 23.

⁹⁴ See Preliminary Determination, 75 FR at 855.

⁹⁵ See Surrogate Value Submission of Yantai Xinke Steel Structure Co., Ltd., dated March 1, 2010 at Exhibit FSV-1(e), page 7, Mekins "Memorandum of Association" listing its various business lines; see also "Petition Supplement: Certain Steel Grating from the PRC," dated June 9, 2009, the prior fiscal year financial statements of Mekins, "Itemwise Sales For The Year 2007-2008."

⁹⁶ See Ningbo Jiulong March 1, 2010 SV Submission at Exhibit 15a.

⁹⁷ The Nasco financial statements list the products manufactured by Nasco at "Annexure to Schedule 16 Forming Part of Balance Sheet and Manufacturing Trading & Profit & Loss A/C for The Year Ended 31st March 2009."

In the investigation, Petitioners also argued that the financial statements of Good Luck, NTL, NIL, North Eastern, Bihar, Pratibha Industries Limited (“Pratibha”),⁹⁸ and Nezone Strips Limited (“NSL”)⁹⁹ should be excluded from the Department’s calculation of surrogate financial ratios, on the basis that each company benefited from countervailable subsidies. Specifically, Petitioners argued that Good Luck received “export incentives” in the form of income, loans and benefits,¹⁰⁰ and NIL and North Eastern received “State Capital Investment” subsidies, “Central Capital Investment” subsidies, and “Development” subsidies,¹⁰¹ that should disqualify their financial statements for use in the Department’s calculations.

We disagree with Petitioners that there are disqualifying subsidies in the financial statements of Good Luck, NTL, NIL, North Eastern. It is our policy normally to reject financial statements on grounds that the company received a countervailable subsidy from a program that has previously been investigated by the Department¹⁰² and Petitioners did not cite any specific subsidy program that the Department has found to be countervailable, with respect to Good Luck, NIL or North Eastern. Petitioners argued that that NTL received benefits pursuant to the DEPS program. However, the NTL financial statements only refer to receipt of “Duty Entitlement on Exports,” which is not an explicit reference to the DEPS.¹⁰³ Accordingly, the Department does not find any evidence of a specific countervailable subsidy in NTL’s financial statements. Therefore, absent any evidence of disqualifying subsidies by those companies, the Department has included the financial statements of Good Luck, NTL, NIL, North Eastern in its calculations.

⁹⁸ See Ningbo Jiulong March 1, 2010 SV Submission at Exhibit 11a.

⁹⁹ See Ningbo Jiulong March 1, 2010 SV Submission, at Exhibit 8a.

¹⁰⁰ See Petitioners’ Rebuttal Brief, at 35.

¹⁰¹ See Petitioners’ Rebuttal Brief, at 41.

¹⁰² See, e.g., Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Notice of Final Determination of Sales at Less Than Fair Value, 77 FR 64483 (October 22, 2012), and the accompanying Issues and Decision Memorandum at Comment 2.

¹⁰³ The NTL financial statements refer to “Duty Entitlement on Exports” at Schedule K.

As stated above, where the Department has a reason to believe that a company received subsidies, the Department may find that the financial ratios derived from that company's financial statements are less representative of the financial experience of the company or the relevant industry compared to ratios derived from financial statements that do not contain evidence of subsidies. Consistent with the Department's practice, we do not use financial statements of a company we have reason to believe or suspect may have received subsidies that the Department has found to be countervailable, because financial ratios derived from that company's financial statements do not constitute the best available information with which to value financial ratios.¹⁰⁴ The Department has evaluated the financial statements of Bihar, Pratibha, and NSL, in response to Petitioners' arguments, and agrees, for purposes of these Final Remand Results, that those financial statements are not the best available information from which to derive an SV. Bihar and Pratibha receive export incentives under the DEPS,¹⁰⁵ which the Department has found to be a countervailable subsidy.¹⁰⁶ Regarding NSL, the Department finds that the company received a short-term bridge loan from the West Bengal Industrial

¹⁰⁴ See Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order, 77 FR 34346 (June 11, 2012), and the accompanying Issues and Decision Memorandum at Comment 8; see also Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 576, 100th Cong., 2nd Sess., at 590-91 (1988) at 590 (directing the Department to "avoid using any prices which it has reason to believe or suspect may be dumped or subsidized prices")

¹⁰⁵ The Bihar financial statements report the subsidies at Schedule K, the Pratibha financial statements report the subsidies at Schedules I and M.

¹⁰⁶ See Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Countervailing Duty Administrative Review, 75 FR 43488 (July 26, 2010), and the accompanying Issues and Decision Memorandum at Part II.A.4.

Development Corporation,¹⁰⁷ pursuant to the West Bengal Incentive Scheme 2000,¹⁰⁸ which the Department has found to be a countervailable subsidy.¹⁰⁹

Finally, regarding the 2008-2009 financial statements of Anand Teknow Aids Engineering India Limited (“Anand Teknow”),¹¹⁰ the Department has found the submitted copies of that company’s documents to be incomplete. The financial documents that Xinke has submitted for Anand Teknow are actually tax records, which do not include the type of accounting notes, schedules, balance sheet and other details that are typically contained in a company’s financial statements, and which would allow the Department to evaluate whether the company financial information constitutes the best available information.¹¹¹ For this reason, the Department has not included the financial information for Anand Teknow in the calculation of the surrogate financial ratios.

Accordingly, for the reasons stated above, the Department finds that steel pipe and tube production reflects the production process of comparable merchandise, and that an average of the financial ratios based on the Rama, Good Luck, Vallahb, NTL, NIL, North Eastern, Shri Lakshmi, and Zenith Birla financial statements represents the “best available information” for purposes of use as an SV in accordance with section 773(c) (1) of the Act. The Department has, therefore, averaged the financial ratios derived from these financial statements, to recalculate the

¹⁰⁷ The NSL statements report bridge loans from West Bengal Industrial Development Corp. at Schedule C, secured against subsidies receivable reported at Schedule F. The NSL statements report subsidies received pursuant to the West Bengal Incentive Scheme 2000, at page 13.

¹⁰⁸ See Silicon Metal From the People’s Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order, 76 FR 3084 (January 19, 2011), and the accompanying Issues and Decision Memorandum at Comment 9.

¹⁰⁹ See Final Affirmative Countervailing Duty Determination: Bottle-Grade Polyethylene Terephthalate (PET) Resin From India, 70 FR 13460 (March 21, 2005), and the accompanying Issues and Decision Memorandum at Part III.A.2.c.; and Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review, 65 FR 31515 (May 18, 2000), and the accompanying Issues and Decision Memorandum at Part IV.A.

¹¹⁰ See Surrogate Value Rebuttal Submission of Yantai Xinke Steel Structure Co., Ltd., dated March 11, 2010, at Exhibit SVFR-5.

¹¹¹ The financial documents of Anand Teknow that are on the record are Indian tax Form 23ACA “Form for filing Profit and Loss account and other documents with the Registrar,” and Form 20B, “Form for filing annual return by a company having a share capital with the Registrar.”

surrogate financial ratios, the normal values, the five petition rates, and the separate rate for Xinke and Haitian.¹¹²

Comment 2: Whether to Grant Jiulong a Separate Rate

Petitioners state that the Department appropriately corroborated Jiulong's AFA rate by examining the product-specific dumping margins calculated in its Preliminary Determination and correctly determined that the rate is reliable because the 145.18 percent AFA rate was lower than three of Jiulong's product-specific dumping margins. Also, Petitioners argue that as a result of receiving falsified mill certificates, it was reasonable for the Department to conclude that Jiulong would have been subject to higher dumping margins than those calculated in the Preliminary Determination. Therefore, Petitioners conclude, the Department's AFA rate is properly corroborated.

However, Petitioners contend the Department erred in granting Jiulong a separate rate. Petitioners argue that Jiulong's withholding of mill certificates, submission of false supplier mill test certificates, and deceptive behavior, calls into question the reliability of its separate rate questionnaire responses. Petitioners argue that the Department has consistently denied a respondent a separate rate where it has failed to cooperate to the best of its ability.¹¹³

Jiulong did not comment on the Department's draft remand redetermination.

Department's Position: We disagree with Petitioners that the Department was permitted on remand to consider Jiulong's eligibility for a separate rate. The Court held that "Because {the Department} has made no finding that Jiulong's questionnaire responses concerning its separate

¹¹² See Final Remand Redetermination SV Memo, at Exhibit 1..

¹¹³ See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 11085 (March 16, 2009), and accompanying Issues and Decision Memorandum at Comment 1; Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of 2005-2006 Administrative Review, 73 FR 43684 (July 28, 2008), and accompanying Issues and Decision Memorandum at Comment 1; Since Hardware (Guangzhou) Co., Ltd. v. United States, Slip Op. 10-108 (2010); and Qingdao Taifa Group Co. v. United States, 637 F. Supp. 2d 1231 (CIT 2009).

rate status were deficient in any respect, the Department’s conclusion that the company was part of the PRC-wide entity is unsupported by substantial evidence. Accordingly, the Department is *required* to determine Jiulong’s separate rate based on the company’s questionnaire responses.” {emphasis added}.¹¹⁴ This language requires the Department to calculate a separate rate for Jiulong, which we have done.

Comment 3: Relevancy of Mill Test Certificates

Petitioners fully agree with the arguments put forth by the Department on this issue. Petitioners state that, based on Jiulong’s failure to provide reliable mill test certificates, the Department reasonably concluded that it was unable to calculate an accurate weighted-average dumping margin.

Jiulong did not comment on the Department’s draft remand redetermination.

Department’s Position: We agree with Petitioners comments and, therefore, have not changed our position from the draft remand redetermination.

IV. Conclusion

Pursuant to the CIT’s instructions, the Department has: (1) recalculated the separate rate for Xinke and Haitian to be 38.16 percent after updating the SVs and the five dumping margins calculated in the petition;¹¹⁵ (2) determined to grant Jiulong a separate rate, and to assign Jiulong an AFA rate of 145.18 percent, the highest rate from the petition, and corroborated the AFA rate with Jiulong’s own information; and (3) clarified why falsified mill test certificates prevented the Department from accurately determining the quantity of Jiulong’s U.S. sales.

¹¹⁵ See Ningbo Haitian Final Remand Analysis Memorandum; see also Yantai Xinke Final Remand Analysis Memorandum.

¹¹⁵ See Ningbo Haitian Final Remand Analysis Memorandum; see also Yantai Xinke Final Remand Analysis Memorandum.

FINAL RESULTS OF REDETERMINATION

We have implemented all changes discussed above. As a result of this final remand redetermination, the weighted-average dumping margin for Xinke and Haitian is 38.16 percent, and the weighted-average dumping margin for Juilong is 145.18 percent.



Paul Piquado
Assistant Secretary
for Import Administration

18 JANUARY 2013

(Date)