

April 22, 2015

Elkay Mfg. Co. v. United States
Court No. 13-00176; Slip Op. 14-150 (CIT 2014)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

A. SUMMARY

The Department of Commerce (“Department”) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”), issued on December 22, 2014, in *Elkay Mfg. Co. v. United States*, Consol. Court No. 13-00176, Slip Op. 14-150 (CIT 2014) (“*Sinks Remand*”). These final remand results concern *Drawn Stainless Steel Sinks From the People’s Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), as amended by *Drawn Stainless Steel Sinks from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 21592 (April 11, 2013), (collectively, “*Final Determination*”).

In *Sinks Remand*, the Court granted the Department’s request for a voluntary remand to reconsider the use of Global Trade Atlas (“GTA”) import data for Thailand to value cold-rolled stainless steel coil, and it also remanded the Department’s treatment of certain selling, general & administrative (“SG&A”) labor expenses when calculating the SG&A ratio.¹

The Department issued the draft remand redetermination and invited comments on March 12, 2015. On March 20, 2015, Guangdong Dongyuan Kitchenware Industrial Company, Ltd.

¹ See *Sinks Remand* at 29.

(“Dongyuan”) submitted its comments on the draft remand,² while Elkay Manufacturing Company (“Petitioner”) concurred with the Department’s decisions and submitted no additional comments.³

B. Whether The Thai Import Data Are Aberrational

Background

For the *Final Determination*, the Department selected GTA’s Thai import data for austenitic grade steel based on certain 11-digit subcategories under Harmonized Tariff Schedule (“HTS”) categories 7219.33 and 7219.34 to value the respondents’ stainless steel coil input.⁴ Additionally, the Department made certain adjustments to the Thai import data to exclude data from non-market economy (“NME”)/unspecified countries, data from countries that maintain generally available export subsidies, and data from countries for which Thailand imposes antidumping duties on this merchandise (*i.e.*, Japan and Taiwan).⁵

In challenging the Department’s use of Thai import data for the *Final Determination*, Dongyuan argued that the Thai data were, *inter alia*, aberrational.⁶ In the *Final Determination*, the Department stated that it conducted an analysis to determine whether the data were aberrational by comparing the Thai data to import data from all other potential surrogate

² See Dongyuan’s submission entitled “Drawn Stainless Steel Sinks from the People’s Republic of China: Comments on Draft Remand,” dated March 20, 2015 (“Dongyuan’s Comments”).

³ See Petitioner’s submission entitled “Drawn Stainless Steel Sinks From The People’s Republic Of China: Petitioner’s Comments On The Draft Results Of Redetermination Pursuant To Court Order (Ct. No. 13-00176),” dated March 20, 2015.

⁴ See *Final Determination* and accompany Issues, Decision and Memorandum (“IDM”) at Comment 2. Specifically, we used data from HTS subcategories 7219.33.00.032, 7219.33.00.034, 7219.33.00.033, 7219.34.00.032, 7219.34.00.033, and 7219.34.00.034.

⁵ See the Department’s memorandum entitled “Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China: Analysis of the Final Determination Margin Calculation for Guangdong Dongyuan Kitchenware Industrial Co., Ltd.,” dated February 19, 2013 (“Dongyuan Final Analysis Memorandum”), Attachment 1; we released to the parties an excel file demonstrating the exclusions of certain data, concurrently with Dongyuan Final Analysis Memorandum.

⁶ See Dongyuan’s letter to the Department entitled “Drawn Stainless Steel Sinks from the People’s Republic of China: Rebuttal Brief,” dated December 18, 2012.

countries.⁷ However, because the record only contained import data from Indonesia, the Philippines, and Thailand,⁸ the Department requested a voluntary remand to place on the record additional GTA import data for this input (under the HTS categories 7219.33 and 7219.34) from Colombia, Peru, South Africa, and Ukraine.⁹ In accordance with *Sinks Remand*, the Department placed on the record GTA import data for HTS categories 7219.33 and 7219.34 from the aforementioned four countries on March 12, 2015.¹⁰

Analysis

For this remand redetermination, the Department calculated an average unit value (“AUV”) of the 6-digit HTS categories 7219.33 and 7219.34 for each of the four countries and summarized them along with the AUVs for Thailand, the Philippines, and Indonesia in the chart below.

Import Country - HTS (7219.33 and 7219.34)	Import Quantity during POI (KG) ¹¹	AUV(USD/KG)
Colombia 6-digit	11,663,084	\$2.81
Indonesia 6-digit ¹²	9,421,757	\$2.10

⁷ See *Final Determination* and accompanying IDM at Comment 2.

⁸ See Letter from Foshan Zhaoshun Trade Co., Ltd. and Zhongshan Superte Kitchenware Co., Ltd. (collectively, “Superte”), entitled “Drawn Stainless Steel Sinks from the China: Rebuttal Comments on Surrogate Values,” dated August 20, 2012 (“Superte SV Rebuttal Comments”), at Exhibit 4 (for Indonesia data) and Exhibit 5 (for Philippines data); and see Dongyuan’s letter entitled, “Stainless Steel Sinks from the People’s Republic of China—Surrogate Country and Value Comments,” dated August 13, 2012 (“Dongyuan SV Comments”) at Exhibit 3 (for Thailand data).

⁹ In the underlying investigation, the Department identified Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine as countries equally comparable to the PRC in terms of economic development as reported in the most current annual issue of *World Development Report* (The World Bank); see the Department’s memorandum entitled “Decision Memorandum for Preliminary Determination for the Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People’s Republic of China,” dated September 27, 2012 (“Preliminary Decision Memorandum”) at 6.

¹⁰ See the Department’s memorandum to the File entitled “Placing on the Record GTA Import Data under Categories HTS 7219.33 and 7219.34 from Colombia, Peru, South Africa, and Ukraine Pursuant to *Elkay Mfg. Co. v. United States*, Court No. 13-00176, Slip Op. 14-150 (CIT 2014),” dated March 12, 2015 (“New Record Memorandum”).

¹¹ We excluded data from NME countries, countries that maintain generally available export subsidies, and unspecified countries in this “Import Quantity during the POI” column for all seven countries. For the 11-digit Thai value used in the *Final Determination* of the underlying investigation, we also excluded data from Japan and Taiwan because of the antidumping duty orders imposed by Thailand on these two countries. KG is short for kilogram.

¹² See Superte SV Rebuttal Comments at Exhibit 4.

Peru 6-digit	3,806,440	\$3.08
Philippines 6-digit ¹³	3,813,381	\$2.70
South Africa 6-digit	2,254,584	\$3.21
Ukraine 6-digit	4,831,495	\$3.15
Thailand 6-digit ¹⁴	34,415,219	\$2.65 ¹⁵
Thailand 11-digit used in the <i>Final Determination</i>	374,737	\$3.80 ¹⁶

As shown in the chart above, the AUV of Thailand’s 6-digit HTS categories for stainless steel coil (\$2.65) is not aberrational when compared with the AUVs of other potential surrogate countries at the 6-digit HTS level. Specifically, the AUV of the Thai data at the 6-digit level is within the range of the AUVs of the other potential surrogate countries.

Though the chart shows that the AUV of the Thai 11-digit subcategories is higher than that of the Thai 6-digit subcategories, it is reasonable for subcategories (*i.e.*, 11-digit) to be different without necessarily being aberrational. Record evidence shows that there are several grades of stainless steel coil, including martensitic, ferritic, austenitic ferritic, austenitic, and precipitation hardening, and each grade includes a variety of finishes and chemical compositions.¹⁷ The 6-digit level data reflect a broad basket category that includes all grades and finishes of stainless steel coil imports, while the 11-digit subcategories reflect specific grades with potentially different values. Thus, it is reasonable that the subcategories selected to

¹³ See *id.* at Exhibit 5.

¹⁴ See Dongyuan SV Comments at Exhibit 3.

¹⁵ The record does not contain this AUV; however we calculated it using information contained in Dongyuan SV Comments at Exhibit 3 for purposes of comparison.

¹⁶ In the draft remand, we inadvertently stated that the AUV for Thailand 11-digit used in the *Final Determination* was 3.83 USD/KG.

¹⁷ See Letter from the petitioner entitled, “Drawn Stainless Steel Sinks From The People’s Republic of China: Comments Regarding Surrogate Country Selection,” dated August 13, 2012 (“Petitioner’s SC Comments”) at Exhibit 3; see also Letter from the petitioner entitled, “Drawn Stainless Steel Sinks From The People’s Republic of China: Submission of Surrogate Values,” dated August 13, 2012 (“Petitioner’s SV Submission”) at Exhibit 11.

calculate the surrogate value could be more expensive than the other 11-digit subcategories, and, consequently, that they deviate from the average of those subcategories (*i.e.*, the 6-digit AUV).¹⁸

It is the Department's preference to select data for an input that is specific to the input consumed by a respondent for purposes of calculating surrogate values.¹⁹ Record evidence indicates that the selected 11-digit Thai HTS categories for stainless steel coil are specific to the types, finishes, and grades of stainless steel coil Dongyuan consumed in the production of the subject merchandise.²⁰ Accordingly, it is appropriate for the Department to select the specific 11-digit subcategories over the 6-digit broad, basket categories for purposes of valuing stainless steel coil in this final remand redetermination.

With the additional GTA import data for stainless steel coil now on the record,²¹ the Thai import data continue to be the most specific to the stainless steel coil that Dongyuan consumed. As determined in the *Preliminary Determination*,²² the Indonesian and Philippine data for stainless steel coil do not constitute the best information available to value stainless steel coil because the data from those countries were only available at the 6-digit HTS level and do not make any distinction for grade of stainless steel coil. The same is true of import data for stainless steel coil from Colombia, Peru, and South African, which are also available only under

¹⁸ See, e.g., Letter from the petitioner entitled "Drawn Stainless Steel Sinks From The People's Republic of China: Surrogate Value Rebuttal," dated August 20, 2012 at Exhibit 11 (listing the Thai AUVs of subcategories under a different 6-digit basket category that vary from \$4.57/kg to \$8.87/kg).

¹⁹ See *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008) ("*2008 Hangers Investigation*") and accompanying IDM at Comment 4 (the Department finding that specificity is a compelling reason that supports using data to value inputs).

²⁰ See the Department's Memorandum entitled, "Verification of Sales and Factors Responses of Guangdong Dongyuan Kitchenware Industrial Co., Ltd. in the Antidumping Investigation of Drawn Stainless Steel Sinks from the People's Republic of China," dated November 27, 2012, ("Dongyuan's Verification Report") at 17 (recognizing that Dongyuan uses stainless steel coil grade 304); see also Petitioner's SV Submission at Exhibit 11 (demonstrating that stainless steel coil grades 304 and 201 are austenitic grade stainless steel).

²¹ See New Record Memorandum.

²² See the Department's memorandum entitled "Factor Valuation Memorandum for Preliminary Determination in the Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China," dated September 27, 2012 ("Preliminary FOP Memorandum").

the 6-digit HTS level and do not make any distinction for grade of stainless steel coil.²³ Ukraine reports import data under 10-digit HTS subcategories for stainless steel coil; however, the Department cannot discern from the descriptions of those categories whether those subcategories are of the same or similar grade of the stainless steel coil that Dongyuan consumed.²⁴

Accordingly, the Department continues to find that the Thai import data are not aberrational and consequently constitute the best information available. The Thai data at the 11-digit level, though higher in value, are more specific to and representative of the input that Dongyuan consumed.²⁵ Thus, the Department continues to find in this final remand redetermination that the Thai 11-digit data are the best available information to value the stainless steel coil input that Dongyuan consumed.

C: Labor Adjustments to SG&A Ratios

Background

For the *Final Determination*, the Department changed the source to value labor from the 2005 Chapter 6A data for Thailand published by the International Labor Organization (“ILO”) to the “Industrial Census 2007” data published by the Thailand National Statistics Office (“NSO”) because the NSO data were more product-specific, more contemporaneous, and provided a broader market average.²⁶ Additionally, the Department excluded certain labor costs identified in the three surrogate financial statements as “SG&A labor costs” from the numerators of the

²³ See New Record Memorandum at Attachment I.

²⁴ Additionally, the Department is placing on the record the descriptions of the 10-digit HTS categories for stainless steel coil from the World Trade Organization’s website for Ukraine because the descriptions from the GTA are not in English; see New Record Memorandum at Attachment II.

²⁵ See 2008 *Hangers Investigation* and accompanying IDM at Comment 4.

²⁶ See IDM at Comment 3.

SG&A ratios and included those costs in the denominators of those ratios to avoid double-counting those costs in the calculation of normal value (“NV”).²⁷

In *Sinks Remand*, the CIT held that the Department’s decision to adjust the SG&A ratios to avoid double-counting was not supported by substantial record evidence.²⁸ In particular, the Court held that though the record supported finding that the NSO labor rate was derived from an average remuneration paid for “persons engaged” in various production-related and non-production-related activities and a much broader average than one representing only wages and salaries,²⁹ the record data did not support an actual finding that the NSO labor rate was higher—or by what percentage it was higher—than it would have been had it been derived solely from data on production labor.³⁰ Hence, the Court ruled that the Department’s reliance on the extent of any double-counting was “too much a matter of speculation.”³¹

Analysis

We determine that the salary of administrative and sales personnel should be more appropriately considered SG&A expenses in this final remand redetermination. In *2014 Wooden Bedroom Furniture*,³² the Department determined that it had no basis to include the wages and salaries of administrative and sales personnel as labor expenses in calculating the surrogate financial ratio.³³ There, the Department explained that the labor expenses included in the denominator of the surrogate financial ratios were direct and indirect expenses related to

²⁷ See *Final Determination* and accompanying IDM at Comment 4. We averaged the three surrogate SG&A ratios to obtain the surrogate value for SG&A ratio.

²⁸ See *Sinks Remand* at 19.

²⁹ See *id.* at 21.

³⁰ See *id.* at 22.

³¹ See *id.*

³² See *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review: 2012*, 79 FR 51954 (September 2, 2014) (“2014 Wooden Bedroom Furniture”).

³³ See *id.* and accompanying IDM at Comment 6.

manufacturing.³⁴ Additionally, because the administrative and sales personnel were not employed in manufacturing products, the Department there determined that their wages were more appropriately considered SG&A expenses.³⁵ In the instant underlying investigation, the Department selected three Thai companies' financial statements to calculate the surrogate financial ratios, including the SG&A ratio.³⁶ The record demonstrated that in all three companies' financial statements, the salary for selling and administrative staff and/or welfare benefits were unambiguously classified under a separate section (*e.g.*, selling and administrative expenses) from the cost-of-production or cost-of-good-sold section (which included labor costs).³⁷ Hence, for this final remand redetermination, the Department does not find it appropriate to treat the SG&A labor expenses as anything but SG&A expenses.

Notwithstanding that the record shows that the NSO labor rate was derived from an average remuneration paid for persons engaged in various manufacturing and non-manufacturing activities, it does not follow that the labor expenses calculated using the NSO labor rate capture all labor expenses. This is because under the factors of production ("FOP") methodology for calculating NV, labor expenses capture the labor cost only for manufacturing—obtained by multiplying a respondent's reported direct and indirect labor hours to manufacture subject merchandise by the surrogate labor rate (*e.g.*, the NSO labor rate or the ILO Chapter 6A labor rate). The respondents did not report labor hours associated with the selling and administrative staff, and the Court held that there is not substantial evidence to find that the NSO labor rate is

³⁴ *See id.*

³⁵ *See id.*

³⁶ *See* the Department's memorandum entitled, "Factor Valuation Memorandum for Preliminary Determination in the Antidumping Duty Investigation of Drawn Stainless Steel Sinks from the People's Republic of China," dated September 27, 2012. We continued to rely on the same three companies' financial statements to calculate the financial ratios in the *Final Determination*. *See* the *Final Determination* and accompanying IDM at Comment 6.

³⁷ *See* Petitioner's SV Submission at Exhibit 10, at 9, 11 (for Diamond Brand Co., Ltd.); *see id.*, at 46 (for Stainless Steel Home Equipment Manufacturing Co., Ltd.); *see* Dongyuan's submission entitled "Stainless Steel Sinks from the People's Republic of China—Rebuttal Surrogate Values for the Preliminary Results," dated August 20, 2012, at Exhibit 5 at 19 (for Advance Stainless Steel Co. Ltd.).

high enough to compensate for those unreported hours.³⁸ Hence, the staff's labor costs must be included in the SG&A expenses, and the SG&A labor expenses in each surrogate company's financial statement must be included in the numerator of the SG&A ratio associated with that company. In other words, the SG&A labor expenses listed in those three companies' financial statements must be respectively classified under the SG&A expenses and included in the respective numerator of the SG&A ratio calculation (not as labor expenses as we did in the *Final Determination*).

Further, it is the Department's practice to treat labor in its financial ratio calculations in the same manner the surrogate company disaggregates its labor costs.³⁹ This is because the nature of the information that serves as the source for financial ratio calculations in NME cases (*i.e.*, surrogate financial data from a company that is not a party to the proceeding) does not allow the Department to "go behind" a surrogate financial statement to determine precisely what each item includes or to what activity it relates.⁴⁰ Therefore, when assigning various line items to particular categories for financial ratio calculations, the Department prefers to rely on the classification of these items from the surrogate financial statements, unless there is good reason to believe the classification is not accurate.⁴¹ As stated above, in all three companies' financial statements, the salary for selling and administrative staff and/or welfare benefits were classified under the selling and administrative expense section, separate from the cost-of-production or

³⁸ See *Sinks Remand* at 22 and 28.

³⁹ See *Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2012-2013, 79 FR 71743 (December 3, 2014) and accompanying IDM at Comment 3.

⁴⁰ See *id.*

⁴¹ See *id.*

cost-of-good-sold section. Thus, for the final remand redetermination, we treat the SG&A labor costs as SG&A expenses in each company's surrogate financial ratio calculation.⁴²

In *Labor Methodologies*,⁴³ the Department addressed concerns of double-counting labor costs when it stated that it would adjust “the surrogate financial ratios when the available record information – in the form of itemized indirect labor costs – demonstrates that labor costs are overstated.”⁴⁴ However, after reexamining the record of this underlying investigation, the Department determined that the labor costs in the NV calculation are not overstated. Though the record supports that the NSO data includes labor expenses for persons engaged in various manufacturing and non-manufacturing activities, there is not substantial evidence establishing that, as the Court held, “the NSO labor rate was higher—or by what percentage it was higher—than it would have been had it been derived solely from Thai data on production labor rather than from a combination of Thai data on production labor and various types of non-production labor.”⁴⁵ Thus, after reexamining the record, the Department does not find it appropriate to re-classify the labor-related SG&A expenses in the surrogate financial statements for purposes of avoiding double-counting in the final remand redetermination, and we included SG&A labor in the SG&A ratio calculation for this final remand redetermination.

For the reasons discussed above, for purposes of the final redetermination, the Department finds it appropriate to treat the SG&A labor items as SG&A expenses in each company's surrogate financial ratio calculation.

D: Discussion of Interested Parties' Comments

⁴² See the Department's memorandum entitled “Antidumping Duty Investigation of Drawn Stainless Sinks from the People's Republic of China: Analysis of the Draft Remand Redetermination Margin Calculation for Guangdong Dongyuan Kitchenware Industrial Company, Ltd. (“Dongyuan's Draft Remand Analysis Memorandum”),” dated March 12, 2015.

⁴³ *Antidumping Methodologies in Proceedings Involving Non-Market Economics: Valuing the Factors of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

⁴⁴ See *id.*, 76 FR at 36092-94.

⁴⁵ See *Sinks Remand* at 22.

As discussed above, on March 20, 2015, Dongyuan submitted comments opposing the Department's decisions in the draft remand. In particular, Dongyuan objected to our selection of Thai import data to value cold-rolled stainless steel coil. Additionally, Dongyuan disagreed with the inclusion of SG&A labor expenses from the three surrogate financial statements in the calculation of the respective SG&A ratios. Petitioner concurred with the Department's decisions and did not comment on the draft redetermination.

Comment 1: Surrogate Value of Cold-Rolled Stainless Steel Coil

At the outset, Dongyuan argues that the Department should reconsider its decision to reopen the record because it unfairly complicated the final determination.

Dongyuan argues that the Department's steel surrogate value decision is not supported by substantial evidence and proffered six arguments. First, Dongyuan claimed that the comparison in the draft remand is misleading because the AUV (\$2.65) and the quantity (34,415,219 KG) for the Thai 6-digit HTS provided in the chart include all of the dumped steel imports into Thailand from Taiwan and Japan. According to Dongyuan, the AUV (\$3.61)⁴⁶ for the Thai 6-digit HTS which the Department should have used for the comparison is not within the range of the other countries on the surrogate country list because the AUV is 23 percent higher than the simple average of the AUVs of all countries including Thailand and 33 percent higher than the simple average of the AUVs of all countries excluding Thailand.

Second, Dongyuan argues that the Department should examine the "small" quantity of imports, not the value of imports, when considering whether they are aberrational, citing *Shakeproof*.⁴⁷ Dongyuan claims that the Thai import values used to value steel do not replicate

⁴⁶ Dongyuan's Comments at 4 (the AUV for the Thai 6-digit HTS (7219.33 and 7219.34) excluding imports from countries on which Thailand imposes antidumping duty orders for cold-rolled stainless steel.

⁴⁷ See *Shakeproof Assembly Components Div. of Illinois Tool Works v. United States*, 59 F. Supp. 2d 1354 (CIT 1999) ("*Shakeproof*").

Dongyuan's commercial experience and do not reflect commercial quantities because Dongyuan alone purchased over five times more stainless steel than what was fairly traded into Thailand during the POI.

Third, Dongyuan argues that the Thai data cannot be the "best available information" because 93 percent of the Thai import data under the relevant HTS categories was excluded from the surrogate value calculation due to antidumping duty ("AD") orders, export subsidies, and government involvement in the country of export (*i.e.*, the NME status of the exporting country). Dongyuan contrasts that "overall distortion" with the higher quantities and smaller portions of data excluded from the Philippines and Indonesia import data.

Fourth, Dongyuan avers that the Department's own policies require a finding that the Thai import data is unreliable. Dongyuan asserts that the Department deems prices to be unreliable when it "believes or suspects" that they may be subsidized and further cites the Department's policy of excluding a country's domestic and import prices as benchmarks in countervailing ("CVD") cases when it concludes that the market in question is distorted by "government involvement." According to Dongyuan, these policies necessitate a finding that the Thai steel market is unreliable where 93 percent of the import market is distorted and 100 percent of the domestic market is distorted by "government involvement" (*i.e.*, steel subsidies).

Fifth, Dongyuan argues that in light of the Department's revised policy not to use the market economy purchase price to value all of a company's inputs when those purchases represent less than 85 percent of its purchases (raised from 33 percent previously), the Department cannot now rely on a small subset of the Thai import data (*i.e.*, 374,737 KG) as a source to value cold-rolled steel for Dongyuan, which purchased approximately 2 million KG of cold-rolled steel during the POI. Dongyuan avers that if the Thai import quantities/values are

used at all, the Department must weight-average the AUVs of all surrogate countries of record to be consistent with the market economy purchases policy.

Finally, Dongyuan argues that the Department's reliance on the Thai import data is unreasonable because evidence shows that the Thai Customs authority manipulated entered values of imported merchandise. For support, Dongyuan points to World Trade Organization ("WTO") and U.S. Trade Representative ("USTR") reports, as well as the FedEx Country Report of Thailand, all of which discussed the Thai Customs authority's manipulation of entered values of imported merchandise. Dongyuan asserts that this evidence of the Thai Customs authority's manipulation of import prices is sufficient to disregard all Thai import data, just as the Department disregards exports from countries that it "believes or suspects" maintain broadly available, non-industry-specific export subsidies.

Department's Position:

As an initial matter, the CIT granted the Department's voluntary remand to reopen the record in this case. We requested that remand because information on which we relied in making our final determination was not on the record, and the CIT agreed that our request was appropriate.⁴⁸ Thus, we decline to reconsider our decision to reopen the record for purposes of the final remand.

We disagree with Dongyuan's assertion that our comparison of the AUV (\$2.65) for the 6-digit Thai imports of cold-rolled steel including those from Taiwan and Japan was misleading. Rather, our comparison demonstrates that Thailand imported a large volume (*i.e.*, 34,415,219 KG) of cold-rolled stainless steel coil relative to other potential surrogate countries during the POI, and that the AUV for all of the Thai imports under this 6-digit HTS category is within range of the AUVs of the 6-digit HTS categories of other countries on the surrogate country list.

⁴⁸ See *Sinks Remand* at 10.

Having demonstrated those two facts, we removed additional potential distortions from that pool of imports by excluding imports from countries on which Thailand imposes ADs for the input, leaving us with an adjusted quantity under the 6-digit categories that is considered significant in terms of quantity (*i.e.*, 2,786,140 KG). Indeed, that adjusted 6-digit quantity is still within the range of quantities imported by four of the other potential surrogate countries, including Peru (3,806,440 KG), the Philippines (3,813,381 KG), South Africa (2,254,584 KG), and Ukraine (4,831,495 KG). We further narrowed those imports to certain 11-digit categories because those subcategories are more specific to the input Dongyuan used than the 6-digit basket categories, a fact that Dongyuan does not refute. Thus, contrary to Dongyuan's assertions, we did not rely on a misleading comparison, but instead relied on a distortion-free subset of data that represents a significant quantity of imports at non-aberrational prices.

Further, our reliance on the 11-digit Thai import data to value the cold-rolled steel coil input does not conflict with our acknowledgement in *Shakeproof* that we generally disregard small quantity import data when determining whether data are aberrational if the per-unit value is substantially different from the per-unit values of the large quantity imports of that product from other countries.⁴⁹ We acknowledge that the resulting import quantity for the 11-digit HTS subcategories is less than that for the 6-digit HTS basket categories. However, there is no evidence that the quantity reflected in the Thai 11-digit categories is smaller than the quantity of the same merchandise contributing to the basket category quantities in the other countries. Even if there were such evidence, a small quantity does not necessarily mean that the data is unreliable

⁴⁹ See *Shakeproof*, 59 F. Supp. 2d at 1360.

or aberrational,⁵⁰ and the difference in Thailand's AUVs and the AUVs for countries with larger quantities do not support such a finding in this case.

As previously discussed, the Thai AUV for the 6-digit HTS categories is within the range of, and thus not "substantially different" from, other countries on the surrogate country list. Dongyuan noted that the Thai AUVs for the adjusted 6-digit categories (\$3.61) range from 23 to 33 percent higher than the 6-digit AUV averages of the other countries.⁵¹ However, the data also reveals that substantial variations exist from country to country within those 6-digit AUVs, ranging from as low as two percent (between South Africa and Ukraine) to as high as 52 percent (between Indonesia and South Africa). Thus, the variations between the adjusted Thai 6-digit categories and the average AUVs for the other countries do not rise to the "uniquely extreme degree" such that they should be considered aberrational. And, to the extent that the AUV for the selected 11-digit categories is slightly higher than the adjusted 6-digit Thai data, we note that those categories cover fewer products and are more specific to the respondents' steel inputs than the basket categories.⁵²

Notwithstanding Dongyuan's attempt to undermine the monthly quantities of the 11-digit Thai imports with comparisons to its own purchasing history, our statutory obligation to rely on "the best available information" permits us to rely on a surrogate value that most accurately represents the input in question, even where the underlying data does not reflect the "exact

⁵⁰ The CIT has affirmed the Department's determination that numerical difference in quantities alone does not necessarily indicate that the price data are distorted or misrepresentative in *Trust Chem Co. Ltd. v. United States*, 791 F. Supp. 2d 1257 (CIT 2011).

⁵¹ See Dongyuan's "Comments on Draft Redetermination," dated March 20, 2015, at 4.

⁵² See *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 28 CIT 1185, 1200 (2004), where the court considered a surrogate value that was 8.5 times higher than the average of the AUVs of imports into other potential surrogate countries to be aberrational.

production experience” (*i.e.*, the consumption levels) of the respondent.⁵³ As stated above, the Thai import data for those 11-digit subcategories are more specific than data for the 6-digit basket category and hence more representative of the input consumed by Dongyuan to produce subject merchandise. And, as stated above, relying on the Thai import data for certain 11-digit subcategories is reasonable because that import quantity is a subset of a significant quantity of distortion-free 6-digit import data (*i.e.*, 2,786,140 KG). The record does not contain import data at the 11-digit level of specificity for either the Philippines or Indonesia, and, as a result, we find that those 6-digit level AUVs are not as representative of Dongyuan’s inputs as the selected 11-digit level Thai AUVs.

We also disagree with Dongyuan’s argument that the Thai domestic market is distorted. For support, Dongyuan pointed to the 2011 annual report of a Thai manufacturer of cold-rolled stainless steel, POSCO, which states that the company received benefits from the Thai government under programs that we have found to be countervailable (*e.g.*, “exemption from import duty on imported machinery and equipment” under the Investment Promotion Act (“IPA”)). Additionally, Dongyuan pointed to the fact that Petitioner also objected the use of POSCO’s financial statement because Petitioner submitted that Thailand has broadly available export subsidies undermining the accuracy and reliability of the financial statement.

Notwithstanding this evidence, however, we determine that the record lacks evidence indicating

⁵³ See *Nation Ford Chem. Co. v. United States*, 166 F.3d. 1373, 1377 (Fed. Cir. 1999) (“The statute is more flexible: it mandates that Commerce value the factors of production on the basis of ‘*the best available information regarding the values*’ of such factors in a market economy country.” 19 U.S.C. § 1677b(c)(1) (emphasis added). The ‘best available information’ concerning the valuation of a particular factor of production may constitute information from the surrogate country that is directly analogous to the production experience of the NME producer . . . or it may not. Whether such analogous information from the surrogate country is ‘best’ will necessarily depend on the circumstances, including the relationship between the market structure of the surrogate country and a hypothetical free-market structure of the NME producer under investigation. . . {W}]hile ‘a surrogate value must be as representative of the situation in the NME country as is feasible,’ Commerce need not ‘duplicate the exact production experience of the {Chinese} manufacturers at the expense of choosing a surrogate value that most accurately represents the fair market value of {the input} in a {hypothetical} market-economy {China}.’”) (quoting *Nation Ford Chem. Co. v. United States*, 985 F. Supp. 133, 137 (Ct. Int’l Trade 1997)).

that the cold-rolled steel market in Thailand as a whole is distorted because of this subsidization. Though we found sections of the IPA to be countervailable in a previous determination,⁵⁴ we never initiated a countervailing duty investigation of POSCO itself, nor have we made a determination that POSCO is a public authority whose presence in the cold-rolled steel market is so dominant that it distorts import prices into Thailand.

Further, when investigating the provision of goods or services provided at less than adequate remuneration, the Department calculates a benefit by identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services in accordance with 19 CFR 351.511(a)(2). This section of the Department's regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided at 19 CFR 351.511(a)(2), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation. This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government *owns* or *controls* the majority or a substantial portion of the market for the good or service, the Department will consider such prices to be significantly distorted and not an appropriate basis of comparison for

⁵⁴ See *Certain Frozen Warmwater Shrimp From Thailand; Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (“*2013 Thailand Shrimp CVD Investigation*”).

determining whether there is a benefit.⁵⁵ However, Dongyuan’s argument in this regard is misplaced because we have never made a determination that the Thai government owns or controls the majority or a substantial portion of the market for cold-rolled stainless steel via POSCO or any other entity. Thus, there would be no reason to disregard the transactions within (or import data into) Thailand for cold rolled stainless steel because we cannot conclude from the record of this investigation that the domestic market of cold-rolled stainless steel coil in Thailand is distorted in such a manner.

Further, our reliance on a subset of basket categories of the Thai import data to value cold-rolled stainless steel is not contradictory to our “85 percent-by-volume” requirement for using market economy purchase (“MEP”) prices to value the entire input. As stated above, in NME cases, companies’ own purchase prices (domestic or import) for an input are presumed to be unreliable because of “the government’s extensive role in the economy,” and thus we require a high proportion of the total purchases from a market economy supplier in order to use MEP prices to value the entire input.⁵⁶ In comparison, we do not have the same concern when relying on import data from ME countries, *e.g.*, Thailand, because we presume that government control of input prices is not present in ME countries. The distortions that Dongyuan alleges are not equivalent to the systemic NME distortions underlying our MEP purchase policy; hence, we cannot conclude that the Thai import data for cold-rolled stainless steel coil are unreliable for purposes of valuing the input in this proceeding simply because a Thai producer received

⁵⁵ See *Countervailing Duties; Final Rule*, 63 FR 65347, 65377 (November 25, 1998) (“We normally do not intend to adjust {market-determined prices stemming from *actual* transactions} to account for government distortion of the market. While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless *the government provider* constitutes a majority or, in certain circumstances, a substantial portion of the market.”).

⁵⁶ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799, 46802 (August 2, 2013).

subsidies and certain imports *not included in our surrogate value calculation* were distorted by other circumstances.

Finally, to the extent that Dongyuan urges us to weight-average the Thai data with data from other potential surrogate countries, it is our practice to rely on data from a single country to value inputs in order to minimize distortion, unless the specific data for an input is not available or unreliable in that surrogate country.⁵⁷ Here, we determined that the Thai import data for cold-rolled steel coil is not aberrational and constitutes the best information available. In addition, as noted above, 11-digit level data is not available for other countries, meaning that the proffered weight-average would inappropriately weight basket categories against the input-specific data from Thailand. Accordingly, we decline to rely on import data from multiple countries.

We disagree with Dongyuan's concerns over the reliability of the Thai import data as outlined in the USTR reports. In two recent cases, *Xanthan Gum Investigation*⁵⁸ and *2013 Steel Threaded Rod Review*,⁵⁹ the Department determined that those USTR reports do not render all Thai import data unreliable, and we declined to conclude that all Thai import data should be rejected due to the reports. Additionally, these USTR reports do not address any of the raw material inputs that are consumed by the respondents in this investigation but instead present generalized concerns with respect to the practices of Thailand's Customs Department officials. As a result, the Department cannot conclude from this report that the entirety of the Thai import data should be rejected or that, specifically, the steel import data relied on in this investigation was subject to the manipulation alleged. Similarly, because neither the WTO reports nor the

⁵⁷ See 19 CFR 351.408(c)(2); see also, e.g., *Clearon Corp. v. United States*, 2013 CIT LEXIS 27, Slip Op. 13-22, Ct. No. 08-00364 (February 20, 2013) at 12 (upholding the Department's preference for valuing SVs from a single surrogate country).

⁵⁸ See *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013) ("*Xanthan Gum Investigation*") and accompanying IDM at Comment 1.

⁵⁹ See *Certain Steel Threaded Rod From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2011-2012*, 78 FR 66330 (November 5, 2013) and accompanying IDM at Comment 1 ("*2013 Steel Threaded Rod Review*").

FedEx Country reports address any of the material inputs consumed by the respondents but instead present concerns regarding the importation of certain merchandise unrelated to this investigation (*e.g.*, cigarettes and alcohol), the Department cannot conclude from these reports that the entirety of the Thai import data should be rejected.

We also disagree with Dongyuan's argument that Thai Customs' manipulation of import prices is analogous to countries that maintain broadly available, non-industry-specific export subsidies. When calculating import-based, per-unit SVs, the Department disregards import prices that it has reason to believe or suspect may be dumped or subsidized.⁶⁰ It is the Department's practice, guided by the legislative history, not to conduct a formal investigation to ensure that such prices are not dumped or subsidized; rather, the Department bases its decision on information that is available to it at the time it makes its determination.⁶¹ That said, the Department must find specific and objective evidence to support its reason to believe or suspect the existence of dumping or subsidies.⁶² As explained above, we cannot conclude from the reports that the entirety of the Thai import data under consideration should be rejected as unreliable because, while these reports express concern about Thailand's Customs Department's valuation of imports, they do not provide conclusive evidence regarding steel imports (or imports of any other input used by the respondents) to reject the entirety of the Thai import data used in this investigation as unreliable.

Accordingly, for the reasons stated above, we continue to determine that the Thai import data are not aberrational. The Thai data at the 11-digit level, though higher in value, are more specific to the input consumed by Dongyuan and constitute the best information available.

⁶⁰ See *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71743 (December 3, 2014) and accompanying IDM at 6.

⁶¹ *Id.*, at 6-7.

⁶² *Id.*, at 7.

Therefore, we continue to rely on the Thai 11-digit import data to value the stainless steel coil in the final remand.

Comment 2: Labor Adjustments to SG&A Ratios

Dongyuan argues that the CIT’s remand instructions were premised on the incorrect assumption that the 2005 Thai data from Chapter 6A of the ILO that we relied on in the *Preliminary Determination* was a valid data source when in fact the ILO disavowed the 2005 Thai manufacturing labor cost data and removed the data from the ILO statistical database.

Additionally, Dongyuan argues that the record evidence shows that factory production and packing laborers earned considerably less than sales, administrative, and managerial personnel, which supports the argument that the NSO labor rate derived from a combination of production and non-production labor was higher than if it had been derived from production labor alone. Further, Dongyuan claims that our treatment of SG&A labor expenses invalidates our *Labor Methodologies* by creating a second test for reallocating those labor expenses.

Dongyuan argues that under *Labor Methodologies*, “disaggregated overhead and selling, general and administrative expense items” in the financial statement already covered by the labor rate would be removed by the Department, and our refusal to do so now abandons that policy.

Finally, Dongyuan claims that we have no alternative but to revert to the ILO Chapter 5B manufacturing labor wage rate that we used prior to the “new” labor methodology.

Department's Position:

Dongyuan's allegation that our treatment of SG&A labor expenses in calculating the surrogate financial ratio invalidates *Labor Methodologies* is misplaced. Including SG&A labor expenses in the calculation of SG&A ratio in this proceeding did not invalidate our labor methodology, nor did we create a second test as alleged by Dongyuan. In *Labor Methodologies*, we explained the reasons why we changed our preferred labor data source from ILO Chapter 5B to ILO Chapter 6A. Because Chapter 5B data reflects only direct compensation and bonuses, we were concerned with under-counting labor costs when indirect labor costs items (such as employee pension benefits and worker training) are not itemized in financial statements and not (by definition) reflected in Chapter 5B data.⁶³ The Department thus decided to change to the use of Chapter 6A data on the rebuttable presumption that Chapter 6A data better accounts for all direct and indirect labor costs than Chapter 5B does. In switching the labor source from Chapter 5B to Chapter 6A, we stated,

If there is evidence submitted on the record by interested parties demonstrating that the NME respondent's cost of labor is overstated, the Department will make the appropriate adjustment to the surrogate financial statements subject to the available information on the record. Specifically, when the surrogate financial statements include disaggregated overhead and selling, general and administrative expense items that are already included in the ILO's definition of Chapter 6A data, the Department will remove these identifiable costs items.⁶⁴

However, removing SG&A labor expenses from the calculation of the SG&A surrogate financial ratio, as we erroneously did in the *Final Determination*,⁶⁵ is different from making adjustments for indirect labor costs, as described in *Labor Methodologies*. The concern with double counting indirect labor costs contemplated in *Labor Methodologies* are those indirect

⁶³ See *Labor Methodologies*, 76 FR at 36093.

⁶⁴ *Id.*, 76 FR at 36094.

⁶⁵ See *Final Determination* and accompanying IDM at Comment 4.

costs associated with *manufacturing* included in the Chapter 6A data (such as benefits, housing, training, etc.), not SG&A activities for any given company.

As stated above, under our FOP methodology for calculating the normal value for subject merchandise, labor costs capture the labor expenses associated with manufacturing, not SG&A. Thus, the SG&A labor expenses which are part of a company's SG&A costs and listed in a surrogate financial statement, as in this investigation, must be included in the surrogate SG&A ratio calculation. Thus, regardless of which labor source we relied upon to derive the surrogate labor rate (the NSO, ILO Chapter 6A, or ILO Chapter 5B), the SG&A labor expenses listed in the surrogate financial statement must be accounted for and thus be included when calculating a surrogate financial ratio.

Our decision not to remove certain costs items from the SG&A ratio calculation in this case does not depart from our commitment to make necessary adjustments contemplated in *Labor Methodologies*. When we rely on ILO Chapter 6A data (or, in this case, NSO data), we will make the necessary adjustments to the financial ratios if they are warranted. As stated in the *Final Determination*, we determined that the NSO labor rates for manufacturing,⁶⁶ like the ILO Chapter 6A labor rates discussed in the *Labor Methodologies*, capture social security and fringe benefits for manufacturing personnel. Hence, we would have excluded those indirect labor cost items if they were to appear, *e.g.*, under either the cost of manufacturing in the financial statements, or the SG&A section with a clear link to manufacturing. But none of the indirect labor cost items in the three financial statements are listed in that manner,⁶⁷ and we do not, as stated above, go behind a company's surrogate financial statement to determine whether any of

⁶⁶ We selected the NSO data over ILO Chapter 6A data in the *Final Determination* because we determined that the NSO data are the most product-specific and contemporaneous, and provide a broader market average among all the data parties placed on the record; see *Final Determination* and accompanying IDM at Comment 4.

⁶⁷ See *supra* fn. 36.

the indirect labor cost items—and by what percentage—are associated with manufacturing workers.

Further, although the record supports the contention that salaries for sales clerks are higher than those for certain manufacturing workers, we cannot discern from the data on the record how much higher the NSO labor rate for the metal manufacturing industry is than it would have been without including sales clerks, nor what percentage of the NSO labor rate is made up of wages of sales clerks in order for us to make an appropriate adjustment to the NSO rate. Thus, we are unable to make an adjustment to the NSO labor rate, nor have we changed the source of the labor surrogate value. Finally, though Dongyuan argues that we have no alternative but to revert to the ILO Chapter 5B manufacturing labor wage rate, we note that the Chapter 5B labor data is not on the record, and, in any event, is not necessary for an accurate calculation of labor costs.

Accordingly, we continue to treat the SG&A labor items as SG&A expenses in each company's surrogate financial ratio calculation for this final remand redetermination.

E. FINAL RESULTS OF REDETERMINATION

For the foregoing reasons, the Department made no change to the weighted-average dumping margins calculated in the draft remand redetermination as a result of Dongyuan's comments on the draft remand redetermination. Pursuant to *Sinks Remand*, the Department revised the dumping margin calculation to include the SG&A labor expenses in the surrogate financial ratio calculation. These final results of redetermination resulted in final weighted-average dumping margins of 36.59 percent for Dongyuan, 50.11 percent for Superte, and 43.35 percent for the separate rate respondents.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

22 APRIL 2015
Date