

Golden Dragon Precise Copper Tube Group, Inc., et al. v. United States  
Court No. 14-00116, Slip Op. 15-89 (August 19, 2015)  
**FINAL RESULTS OF REDETERMINATION**  
**PURSUANT TO COURT ORDER**

**I. SUMMARY**

The U.S. Department of Commerce (the “Department”) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (the “Court” or “CIT”) in *Golden Dragon v. U.S.*<sup>1</sup> This litigation pertains to the Department’s second administrative review of the antidumping duty order on seamless refined copper pipe and tube from the People’s Republic of China (“PRC”).<sup>2</sup>

On December 31, 2012, the Department initiated an administrative review of the antidumping order on seamless copper pipe and tube.<sup>3</sup> The petitioner in the review was Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products Inc., and Mueller Copper Tube Company, Inc. (collectively, “Mueller” or “Petitioner”). The mandatory respondent was Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd. (collectively, “Golden

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<sup>1</sup> See *Golden Dragon Precise Copper Tube Group, Inc., et al. v. United States*, Court No. 14-00116, Slip Op. 15-89 (Ct. Int’l Trade, August 19, 2015) (“*Golden Dragon v. U.S.*”).

<sup>2</sup> See *Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 23324 (April 28, 2014) and accompanying Issues and Decision Memorandum (“*Issues and Decision Memorandum*”); *Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 47091 (August 12, 2014) (“*Final Determination*”).

<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 77 FR 77017, 77025 (December 31, 2012); see also *Seamless Refined Copper Pipe and Tube From Mexico and the People’s Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico*, 75 FR 71070 (November 22, 2010).

Dragon” or “Respondent”). Pursuant to the final results of the administrative review, as amended, Golden Dragon received an antidumping duty margin of 4.48 percent.<sup>4</sup>

Following issuance of the Department’s *Final Determination*, Mueller and Golden Dragon challenged certain aspects of the Department’s determination to the CIT. The Court affirmed the Department’s determinations with regard to several issues, but remanded for further explanation the Department’s selection of Thailand as the primary surrogate country, which was challenged by Golden Dragon.<sup>5</sup> In particular, the Court directed Commerce to supply additional explanation of its factual findings regarding the Thai financial statement on the record. For these final redetermination results, we continue to use Thailand as the primary surrogate country, and provide the additional explanation requested by the Court.

The Department issued its draft results of redetermination on February 23, 2016.<sup>6</sup> We received comments on March 1, 2016 from Golden Dragon.<sup>7</sup> Although the Department has evaluated and addressed these comments below, it has made no changes to the conclusions set forth in its *Draft Results*.

## **II. REMAND ISSUE:**

### **The Department’s Decision to Use Thailand as the Surrogate Country**

#### **A. Background**

During the course of the administrative proceedings in this matter, the parties suggested several countries as potential surrogates for valuing factors of production, including Thailand,

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<sup>4</sup> See *Final Determination*.

<sup>5</sup> See *Golden Dragon v. U.S.* at 11, 13-14.

<sup>6</sup> See Draft Results of Redetermination Pursuant to Court Order: *Golden Dragon Precise Copper Tube Group, Inc., et al. v. United States*, Court No. 14-116, Slip Op. 15-89 (February 23, 2016) (“*Draft Results*”).

<sup>7</sup> See Letter from Golden Dragon, “Re: Golden Dragon’s Comments on the Draft Remand Determination,” dated March 1, 2016 (“Golden Dragon Comments”).

Ukraine, South Africa, and Indonesia.<sup>8</sup> Ultimately, the Department determined that Thailand offered the most comprehensive, accurate and contemporaneous source of data for valuing Golden Dragon’s factors of production.

In its *Surrogate Country Memorandum* of November 14, 2013, the Department rejected South Africa and Indonesia as potential surrogates. The Department determined that there was insufficient evidence to demonstrate that the South African and Indonesian financial statements on the record were from companies that produced merchandise identical to the copper pipe and tube produced by Golden Dragon.<sup>9</sup> Given that the Thai statement on the record – the Furukawa Metal Annual Report (“Furukawa statement”) – was from a producer of identical merchandise, the Department declined to use South Africa or Indonesia as surrogates.

The Department also declined to use Ukraine as a surrogate country. Specifically, in its *Surrogate Country Memorandum*, the Department emphasized that the Ukrainian financial statement on the record, the JSC Artemivskyy Plant 2011 Annual Report, was incomplete.<sup>10</sup> Additionally, the record contained no Ukrainian data for valuing copper slag and ash.<sup>11</sup>

In light of the deficiencies associated with the surrogate data from South Africa, Indonesia and Ukraine, the Department considered Thailand to be the best available surrogate country. Although the Furukawa statement indicated that the subject company was eligible for a countervailable subsidy program, there was no direct evidence that the company actually benefitted from the subsidy during the period of review (“POR”).<sup>12</sup> Accordingly, the Department preliminarily selected Thailand as a surrogate country for valuing factors of

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<sup>8</sup> See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office IV, to Abdelali Elouaradia, Director, AD/CVD Operations, Office IV, “Second Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Selection of a Surrogate Country,” dated November 14, 2013 (“*Surrogate Country Memorandum*”).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 10.

production.<sup>13</sup>

In the final results in this matter, the Department continued to rely on Thailand as the surrogate country. Although several of the deficiencies associated with using Ukraine as the surrogate were corrected – namely, Golden Dragon placed the complete Artemivskyy 2012 financial statement (the “Artemivskyy statement”) on the record, and placed Ukrainian data on the record for copper slag and ash – the Department determined that Thailand still offered the best available source of surrogate country data.<sup>14</sup>

As the Department explained in its *Issues and Decision Memorandum* accompanying the final results, it primarily based its decision to continue relying on Thailand on three grounds. First, the record evidence demonstrated that the Furukawa statements unequivocally represented a company that was a producer of identical merchandise, while the Artemivskyy statements did not specify the company’s precise commercial activity.<sup>15</sup> Second, the auditors that prepared an opinion of the Artemivskyy financial statements issued only a qualified opinion.<sup>16</sup> Third, surrogate value data from Thailand was more comprehensive for the period of review, as Ukraine did not offer contemporaneous data for two inputs (copper ash and slag).<sup>17</sup> For these reasons, the Department continued to rely upon Thailand as its source of data for valuing factors of production.

In its case before the CIT, Golden Dragon challenged the propriety of using Thailand as a surrogate country. Golden Dragon argued that: (1) reliance on the Furukawa statement violated

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<sup>13</sup> See *Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Preliminary Results and Partial Rescission of Administrative Review; 2011-2012*, 78 FR 69820 (November 21, 2013) and accompanying Issues and Decision Memorandum; see also *Surrogate Country Memorandum*.

<sup>14</sup> See *Issues and Decision Memorandum* at 15.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* The copper ash and slag data that Respondent placed on the record were from four years prior to the period of review. See Letter from Golden Dragon, “Re: Publicly Available Surrogate Value Information, Seamless Refined Copper Pipe and Tube from China,” dated December 11, 2013, at Exhibit 2.

the Department's preference for using financial statements from companies that did not benefit from countervailable subsidies during the relevant period; (2) there was sufficient record evidence to establish that the Artemivskyy statement belonged to a producer of comparable merchandise; and (3) the Artemivskyy statement was more contemporaneous than the Furukawa statement, as it overlapped with 10 months of the POR while the Furukawa statement overlapped with two months of the POR.

The CIT remanded this matter to the Department to further explain, or reconsider, its decision to rely on the Furukawa financial statement and its selection of Thailand as the surrogate country.<sup>18</sup>

## **B. Analysis**

In nonmarket economy proceedings, the Department values the factors of production using the "best available information" regarding the values of such factors.<sup>19</sup> To establish surrogate financial ratios, the Department calculates such ratios based on publicly available financial statements from producers of identical or comparable merchandise in the surrogate country.<sup>20</sup>

In selecting among competing surrogate value sources, Commerce evaluates potential data for reliability, availability, quality, specificity and contemporaneity.<sup>21</sup> The Department also examines whether the financial statements are complete and fully translated, include a clean audit opinion, and provide sufficient detail for the calculation of overhead, selling, general and

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<sup>18</sup> See *Golden Dragon v. U.S.* at 11, 13-14.

<sup>19</sup> See Section 773(c)(1) of the Tariff Act of 1930, as amended ("the Act").

<sup>20</sup> See 19 CFR 351.408(c)(4).

<sup>21</sup> See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of the Final Determination: Magnesium Metal from the People's Republic of China*, 69 FR 59187, 59195 (October 4, 2004), and accompanying Issues and Decision Memorandum; *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.

administrative expenses and profit.<sup>22</sup> The Department’s practice, however, does not set forth a clear hierarchy to apply in evaluating these criteria. Thus, the Department must evaluate any deficiencies in the statements to determine which set of financial statements constitutes the most reliable source of data available on the record for the purposes of ratio calculations.

Accordingly, the courts have recognized that the Department has broad discretion when choosing appropriate financial statements with which to calculate surrogate financial ratios.<sup>23</sup>

Here, the CIT instructed the Department to further explain, or reconsider, its decision to select the Furukawa statement over the Artemivskyy statement. The Court highlighted several particular points that required further explanation. We address each of the points raised by the CIT in turn.

#### (1) Reference to Subsidy Program

In its reply brief before the CIT, Golden Dragon argued that the Thai financial statements from Furukawa did not provide a reliable source of surrogate financial data because the statements referenced the company’s eligibility for “promotional privileges” under Thailand’s Investment Promotion Act, a subsidy program. The Court highlighted that Note 25 to the Furukawa financial statements indicated that the company “has been granted additional promotional privileges to extend a period of exemption from payment of import duty on raw materials and equipment necessary for the Company’s operation for export until January 2013.” The Court questioned whether the above reference in Furukawa’s financial statements can be reconciled with the finding in the Department’s *Surrogate Country Memorandum* that “{t}here is

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<sup>22</sup> See *Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>23</sup> As the CIT has explained, “when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly.” See *FMC Corp. v. United States*, 27 CIT 240, 241 (2003), *affirmed*, 87 Fed. Appx. 753 (Fed. Cir. 2004) (citing *Technoimportexport, UCF America Inc. v. United States*, 783 F. Supp. 1401, 1406 (Ct. Int’l Trade 1992)).

no indication in the Furukawa financial statement that Furukawa received a countervailable benefit during the fiscal year.”<sup>24</sup> The Court instructed the Department to further explain its conclusion that the Furukawa financial statements did not provide evidence of a countervailable subsidy.

The Department appreciates the opportunity to provide the Court with additional explanation of its practice in evaluating whether financial statements are affected by countervailable subsidies and its evaluation of the Furukawa financial statement. The Final Results did not elaborate upon the Department’s finding that the Furukawa financial statements contained insufficient evidence of countervailable subsidies because the parties did not raise this issue in their case or rebuttal briefs before the Department.<sup>25</sup> The following addresses the argument Golden Dragon raised for the first time in its reply brief before the Court.<sup>26</sup>

The Department has a general preference for relying on financial statements that do not contain evidence of countervailable subsidies, as such subsidies may distort surrogate financial ratios calculations.<sup>27</sup> In determining whether a financial statement comes from a company that benefited from countervailable subsidies, the Department evaluates whether it has previously determined that subsidy program to be countervailable and whether the financial statement contains evidence that the company actually benefited from the countervailable subsidy during the relevant period.<sup>28</sup> Here, however, the Department has determined that the statements do not

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<sup>24</sup> See *Golden Dragon v. United States* at 10 (quoting *Surrogate Country Memorandum* at 10).

<sup>25</sup> Before the Department, Golden Dragon observed only that the Ukrainian financial statement “shows no evidence of subsidy” and did not challenge any aspect of the Department’s analysis in the *Surrogate Country Memorandum* or otherwise argue that the Furukawa financial statements contained adequate evidence of the receipt of countervailable subsidies. Golden Dragon Administrative Case Brief (December 30, 2013) at 18.

<sup>26</sup> See Golden Dragon Reply Brief, *Golden Dragon, et al. v. United States*, Court No. 14-116, Apr. 13, 2015, at 12-13.

<sup>27</sup> See 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”).

<sup>28</sup> See, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip From the People’s Republic of China: Final Results*

contain evidence that Furukawa received benefits from a countervailable subsidy during the period of review.

The Furukawa financial statement makes reference to two Thai government programs: (1) a duty exemption for raw material imports and (2) a duty exemption for imported machinery or equipment imports. As an initial matter, the Department has found the duty exemption program for raw material imports to not be countervailable.<sup>29</sup> Thus, even if Furukawa did receive benefits under this program during the period of review, the Department has previously determined that those benefits are not countervailable.<sup>30</sup>

Second, although the duty exemption program for equipment imports was found to be countervailable,<sup>31</sup> the Furukawa financial statements do not indicate that the company imported machinery/equipment during the POR. The Furukawa financial statements – *i.e.*, what the Department evaluates to determine whether a company benefited during the POR from countervailable subsidies – contain no affirmative evidence that Furukawa benefited during the POR from this program.<sup>32</sup> Moreover, the Furukawa statements include no line items indicating the receipt of rebates for duties paid – under *either subsidy program*.<sup>33</sup> This is critical to the Department’s decision in this matter. This Court recently recognized that “Commerce will not reject a company’s financial statements for use in calculating surrogate financial ratios, on the sole basis that the company’s financials mention a subsidy ... there must also be evidence that a

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*of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 77 FR 14493 (March 12, 2012) and accompanying Issues and Decision Memorandum at Issue 2.

<sup>29</sup> See *Bottle-Grade Polyethylene Terephthalate (PET) Resin from Thailand: Final Negative Countervailing Duty Determination*, 70 FR 13462 (March 21, 2005) and accompanying Issues and Decision Memorandum.

<sup>30</sup> *Id.*

<sup>31</sup> See *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (Dep’t of Commerce August 19, 2013) and accompanying Issues and Decision Memorandum (“*Warmwater Shrimp*”).

<sup>32</sup> See Letter from Golden Dragon, “Surrogate Value Comments, Seamless Refined Copper Pipe and Tube from China,” dated March 29, 2013, Exhibit 13.

<sup>33</sup> *Id.* at 2-7.



benefit has actually been received as a result of the subsidy.”<sup>34</sup> To determine that a set of financial statements should be rejected on the ground that they are affected by countervailable subsidies, the Department examines whether there is a connection between the subsidy program and the company’s financial position.<sup>35</sup> We identified no such connection here.

In other recent cases, the Department has similarly assessed whether alleged benefits from a subsidy program were reflected in a line item within the financial statements in question.<sup>36</sup> In *Kitchen Shelving and Racks*, for instance, the Department considered whether to use statements from a company that potentially benefited from an Export Promotion Capital Goods (“EPCG”) scheme and an Advanced License System (“ALS”) scheme, both of which are related to duty exemptions for exporting firms.<sup>37</sup> Notwithstanding references to these programs, the Department relied on the company’s statements, noting that the record evidence did not demonstrate that the company “received any benefits at any time, before or during the POR, only that it applied for benefits” under the EPCG program.<sup>38</sup> With respect to the ALS program, the Department determined that the company “was granted a license” under the program, but “not

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<sup>34</sup> See *Yantai Xinke Steel Structure Co. v. United States*, Ct. No. 10-240, Slip Op. 13-48 (Ct. Int’l Trade, April 9, 2014); see *Delverde, SrL v. United States*, 202 F.3d 1360, 1364 (Fed. Cir. 2000) (“{T}he Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether {the company} directly or indirectly received both a financial contribution and benefit from a government.”); *DuPont Teijin Films v. United States*, 896 F. Supp. 2d 1302, 1310 (Ct. Int’l Trade, February 7, 2013 (“*DuPont Teijin v. U.S.*”).

<sup>35</sup> *DuPont Teijin Films v. U.S.*, at 1310

<sup>36</sup> 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 accompanying Issues and Decision Memorandum (“*Fresh Garlic*”); see also *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 (“*Kitchen Shelving and Racks*”); *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying Issues and Decision Memorandum (“*Off-Road Tires*”); *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of the Second Administrative Review*, 72 FR 13242 (March 21, 2007), and accompanying Issues and Decision Memorandum (“*Fish Fillets*”).

<sup>37</sup> See *Kitchen Shelving and Racks*, at Comment 2.

<sup>38</sup> *Id.*

that it ever received any benefits under this program.”<sup>39</sup> Similar to the instant case, the record did not contain the positive evidence necessary to reject the company’s financial statements.

Similarly, in *Fresh Garlic*, the Department again considered whether a company received subsidies to determine whether its financial statements were appropriate to use in calculating financial ratios.<sup>40</sup> Consistent with recent administrative reviews, the Department assessed whether the “company’s financial statements *show direct evidence* (*i.e.*, a specific line item) that the company received a subsidy under a countervailable program.”<sup>41</sup> Having not found any direct evidence of such a benefit from the subsidy program, the Department continued to use the company’s financial statements.<sup>42</sup>

The Department’s practice in this regard has been affirmed by the CIT in previous proceedings.<sup>43</sup> In *DuPont Teijin v. U.S.*, a case concerning the Department’s calculation of dumping margins on polyethylene terephthalate film, sheet, and strip from the PRC, the CIT upheld the Department’s decision to rely on a set of financial statements (from JBF Industries Ltd.) to calculate surrogate financial ratios when the statements referenced a subsidy program.<sup>44</sup> There, the Department determined that the reference to subsidy eligibility did not necessarily render the statement unusable. The Court affirmed this determination, explaining that the Department’s approach of relying on JBF’s statements is consistent with Department practice, “because although the {subsidy} scheme is mentioned, the statement does not indicate that JBF benefitted from the scheme.”<sup>45</sup> Accordingly, the Court found that the Department’s decision to

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<sup>39</sup> *Id.*

<sup>40</sup> See *Fresh Garlic*, at Comment 8.

<sup>41</sup> *Id.* (emphasis added).

<sup>42</sup> *Id.*

<sup>43</sup> See *DuPont Teijin v. United States*, 896 F.Supp. 2d 1302, 1310-13 (Ct. Int’l Trade 2013) (*DuPont Teijin*).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

rely on the JBF statements was supported by substantial evidence.<sup>46</sup>

Here, as in the cases discussed above, the financial statements do not show any receipt of a benefit from the programs in question. There was no line item denoting that a benefit was received or displaying the amount of any such benefit. Nor was there any discussion in the notes as to whether the company availed itself of the subsidy programs during the period of review.

*Chloro-Isos*,<sup>47</sup> the case cited by the Court, provides an instructive contrast with the instant case. In *Chloro-Isos*, the Department determined that, because a company's financial statements explicitly detailed how a countervailable subsidy program would be reflected in the financials, the subject statements would not be relied upon.<sup>48</sup> Here, there is no such detail in the Furukawa statement. The statements simply indicate eligibility for a subsidy program, and provide no discussion of how such a program would be reflected in the financials if the company did receive a benefit during the relevant period. Moreover, when the *Chloro-Isos* determination was challenged at the CIT, the Court explained that "one might reasonably infer, as suggested by Plaintiffs, that the references to the subsidies ... did not reflect actual government infusions during the period of review."<sup>49</sup> The Court concluded that, based on the facts of that case, the Department could have reasonably determined that the company did, or did not, benefit from the subsidy program.<sup>50</sup>

With respect to the Furukawa statements, the Department would like to clarify a final point concerning certain passages excerpted from the financial statements by the Court. The Court highlights that the company "has been granted privileges by the Board of Investing

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<sup>46</sup> *Id.*

<sup>47</sup> See *Chlorinated Isocyanurates From the People's Republic of China: Final Results of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 75 FR 70212 (November 17, 2010) ("*Chloro-Isos*"), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>48</sup> *Id.*

<sup>49</sup> See *Clearon Corp. v. United States*, 800 F. Supp. 2d 1355, 1360-61 (Ct. Int'l Trade November 30, 2011).

<sup>50</sup> *Id.*

relating to the manufacturing of seamless copper tube” and the elaboration that Furukawa “has been granted additional promotional privileges to extend a period of exemption from payment of import duty on raw materials and equipment *necessary for the Company’s operation for export* until January 2013.”<sup>51</sup> The Court labels these statements “plain enough” and “in apparent contrast” with the Department’s determination that benefits were available but not necessarily received during the period of review.<sup>52</sup>

We find that these two excerpted statements do not represent evidence that Furukawa benefited from these programs during the relevant period. Specifically, “necessary for the Company’s operation” indicates that the “raw material and equipment” in question, not eligibility for these programs or receipt of benefits under these programs, is “necessary for the Company’s operation.” In other words, the term “necessary” modifies “raw materials and equipment,” rather than “promotional privileges.” We believe these statements do not support the contrary interpretation—*i.e.*, that the benefits are necessary to Furukawa’s operation and, therefore, it must have benefited from them during the period of review. The Department’s interpretation is reinforced by the fact that the financial statements contain no line items or any other affirmative evidence of receipt of benefits under these programs. As such, the language regarding subsidy programs in Note 25 of the Furukawa statement is insufficient for the Department to conclude that the company received a subsidy during the POR.

In short, the mere mention of a subsidy is insufficient to render the Furukawa financial statements unsuitable for use in valuing financial ratios. In light of these considerations, and the additional factors discussed below, the Department will continue to rely on the Furukawa financial statements.

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<sup>51</sup> See *Golden Dragon v. U.S.* at 11.

<sup>52</sup> *Id.* at 10-11.

## (2) Identical versus comparable merchandise

Golden Dragon also argued that, because the Artemivskyy statements are from a company that produces comparable merchandise to the merchandise covered by the order, the statements are appropriate for calculating surrogate financial ratios. The Court – pointing to several lines of the Artemivskyy statements that suggest the company produced comparable merchandise – directs the Department to further explain its decision not to use the Artemivskyy statements. Specifically, the CIT directs the Department to explain why the declarations in the financials that the company engaged in “metals” processing, and had an inventory including “finished products in ingots, round and flat rolled products, sanitary fittings and other,” were insufficiently specific to the subject merchandise.<sup>53</sup>

As noted above, one of the Department’s key goals in choosing financial statements for calculating surrogate financial ratios is to identify companies the operations of which are most comparable to the respondent’s experience.<sup>54</sup> As such, when there are financial statements from a company that produces merchandise identical to the subject merchandise, the Department may consider this fact in deciding whether to select the company’s statements over statements from a producer of comparable merchandise.<sup>55</sup> In conducting this analysis, the Department will also examine the subject company’s product mix to ensure that a substantial portion of the company’s

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<sup>53</sup> See *Golden Dragon v. U.S.*, at 11-12.

<sup>54</sup> See *Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 28801 (May 16, 2013), and accompanying Issues and Decision Memorandum at Comment 2; see also *Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011 -2012*, 79 FR 44008 (July 29, 2014), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>55</sup> See *Certain Kitchen Appliances Shelving and Racks From the People’s Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying Issues and Decision Memorandum at Comment 1; see also *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.A; *Persulfates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 68030 (December 5, 2003), and accompanying Issues and Decision Memorandum at Comment 1; *Persulfates From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 66 FR 42628 (August 14, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

production is devoted to identical merchandise.<sup>56</sup> Such an analysis weighs in favor of selecting the Furukawa statements here – the statements, in two separate instances, note that the company focuses its production on copper pipe and tube.<sup>57</sup>

To the Court’s query about the “level of precision” required in a financial statement, the Department did not simply reject the Ukrainian financial statement for lack of specificity or failure to demonstrate production of comparable merchandise.<sup>58</sup> Rather, in comparing the Artemivskyy and Furukawa financial statements, the Department identified product specificity as a reason to prefer the Furukawa financial statement.<sup>59</sup> Whereas the Furukawa financial statement makes clear that Furukawa produced products identical to the subject merchandise, the Artemivskyy financial statement establishes at most the production of comparable merchandise.<sup>60</sup>

Indeed, the Department does not dispute that the Artemivskyy statements are from a company that appears to produce comparable merchandise. The company’s statements indicate that it processes metals,<sup>61</sup> and may produce end products comparable to those that are the subject of this order. As the Court observes, the financial statements indicate that Artemivskyy produced “finished products in ingots, round and flat rolled products, sanitary fittings and

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<sup>56</sup> See *Certain Steel Nails From the People’s Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and accompanying Issues and Decision Memorandum at Comment 2A (“*Steel Nails*”).

<sup>57</sup> Note 1 to the Furukawa financial statements reads: “*The principal business of the Company is manufacturing and distributing of seamless copper tube, which is an important component for air-conditioners and refrigerator equipment.*” See Letter from Golden Dragon, “Refiling of Golden Dragon’s Surrogate Value Rebuttal Comments, Seamless Refined Copper Pipe and Tube from China,” dated May 29, 2013, Exhibit 13, page 9 (emphasis added). Additionally, Note 19 reads: “Management considers that the Company operates in a single line of business, namely seamless copper tube, and has, therefore, only one major business segment.” *Id.* at 33.

<sup>58</sup> See *Issues and Decisions Memorandum* at 15.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> In several instances, the financial statements indicate that the company is engaged in non-ferrous metals processing. In one instance, the translation appears to suggest that the company also produces “plant-treated ferrous metals.” See Letter from Golden Dragon, “Re: Publicly Available Surrogate Value Information, Seamless Refined Copper Pipe and Tube from China,” dated December 11, 2013, Exhibit 1, at 2 (English translation).

other.”<sup>62</sup>

Whereas the record establishes only that Artemivskyy produces comparable merchandise, the production profile on the record for Furukawa demonstrates that the company produced identical merchandise during the period of review.<sup>63</sup> The Furukawa statements unambiguously belong to a producer devoted to the production of identical merchandise, as the financials explicitly state that “the Company operates in a single line of business, namely seamless copper tube” – the precise merchandise that is the subject of the order here.<sup>64</sup> Commerce therefore determined Furukawa produced merchandise more specific to the subject merchandise than did Artemivskyy.

Given that the record established only that Artemivskyy produced comparable rather than identical merchandise, and the fact that Furukawa produces identical merchandise, the Department will continue to rely on the Furukawa statements for valuing the surrogate financial ratios.

### (3) Contemporaneity

The Court did not specifically direct the Department to explain further its analysis regarding the contemporaneity of the Thai and Ukrainian financial statements on the record.<sup>65</sup> However, the Department addresses this point as part of its overall determination that the Thai financial statement is superior to the Ukrainian financial statement. Golden Dragon argued before the CIT that the Artemivskyy financial statements constituted more contemporaneous data

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<sup>62</sup> See *Golden Dragon v. U.S.* at 11-12 (quoting Letter from Golden Dragon, “Re: Publicly Available Surrogate Value Information, Seamless Refined Copper Pipe and Tube from China,” dated December 11, 2013, Exhibit 1, at Notes (English translation)). As the Court suggests in its remand order, Golden Dragon might have provided a clearer explanation of the company’s production through other sources that are not part of the administrative record before Commerce. *Id.* at 11, fn.3.

<sup>63</sup> See Letter from Golden Dragon, “Refiling of Golden Dragon’s Surrogate Value Rebuttal Comments, Seamless Refined Copper Pipe and Tube from China,” dated May 29, 2013, Exhibit 13, page 33.

<sup>64</sup> *Id.*

<sup>65</sup> See *Golden Dragon v. U.S.* at 9.

to use in calculating surrogate values, as they overlapped with a greater portion of the POR. In support of its position, Golden Dragon cites *Sebacic Acid From the People's Republic of China*, where one reason the Department cited for preferring one data source over another was that the preferred data source covered more months of the POR.<sup>66</sup> It is well-established that the Department considers data that overlap any portion of the POR to be contemporaneous.<sup>67</sup>

Additionally, it is not even the case that the contemporaneity consideration clearly favors Ukrainian over Thai data. The Department observed in its *Final Determination* that the Ukrainian data for two inputs, copper ash and slag, predated the period of review by four years. The Thai data for these inputs, on the other hand, was contemporaneous with the period of review.<sup>68</sup>

Thus, in the context of the full set of criteria considered in its comparison of the Artemivskyy and Furukawa statements, this factor does not override the Department's broader determination that the Furukawa statements provide a better source for valuing surrogate financial ratios. No one factor is dispositive when conducting this analysis. As the CIT has recently noted, "{t}his Court does not decide ... whether contemporaneity should be valued over specificity."<sup>69</sup> Here, we have determined that the specificity of the Furukawa statements – and the additional factors that favor the Thai statements – outweigh the fact that the Artemivskyy financial statements are more contemporaneous with the POR.

#### (4) Qualified Auditor Opinion

A final point highlighted by the CIT concerns the opinion of the auditor of the

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<sup>66</sup> *Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537 (August 14, 2000).

<sup>67</sup> *See Utility Scale Wind Towers From the Socialist Republic Vietnam: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 55333 (September 15, 2015), at Comment 4.B.

<sup>68</sup> *See Issues and Decision Memorandum* at 15-16.

<sup>69</sup> *See Hangzhou Spring Washer Co. v. United States*, 387 F. Supp. 2d 1236, 1250 (Ct. Int'l Trade, July 6, 2005).



Artemivskyy financial statements. As the Court observed, the auditor expressed a qualified opinion on the statements, as it “was not able to observe the inventory of existing fixed assets, reserves, other non-current assets and liabilities since the inventory took place before the appointment of our auditors.”<sup>70</sup> The auditor added that it “performed procedures to obtain alternative and appropriate audit evidence regarding the quantity of fixed assets,”<sup>71</sup> though certain minor deviations “may exist in quantities of fixed assets.”<sup>72</sup> Additionally, the auditor stated it was unable to perform alternative procedures on all qualified balance sheet areas because of “the nature of the accounting records.”<sup>73</sup>

The Department determined that these qualifications contributed to its decision not to rely on the Artemivskyy statements. The auditor’s note regarding the inventory of fixed assets is directly related to the Department’s calculation of surrogate financial ratios, as the schedule of fixed assets is essential to the Department’s calculation of depreciation expenses.<sup>74</sup> Specifically, fixed asset depreciation expenses are used in the overhead ratio calculation. Moreover, even if there are only “minor” deviations resulting from the fact that the auditors were not present for the inventory, this is certainly relevant to the Department’s treatment of the financial statements.

Further, the auditor also stated that it was unable to confirm certain records “{d}ue to the nature of the accounting records.”<sup>75</sup> The statement does not identify any particular portion of the financials as deficient, but it does suggest uncertainty concerning the records and accounting documents more generally. Just as where the Department has expressed skepticism regarding

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<sup>70</sup> See *Golden Dragon v. U.S.*, at 12.

<sup>71</sup> *Id.* at 12-13.

<sup>72</sup> *Id.* at 13.

<sup>73</sup> *Id.*

<sup>74</sup> See *Lightweight Thermal Paper From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008), and accompanying Issues and Decision Memorandum at Comment 2.

<sup>75</sup> *Id.* at 15.

financials that are missing information,<sup>76</sup> qualifications regarding the organization of the statements can similarly raise doubts about the statements' reliability for calculating factor of production data.

### **C. Conclusion**

In consideration of the factors discussed above, the Department has determined that the Furukawa statements provide a reliable source of data for calculating surrogate financial ratios. The reference to a subsidy program, without more, does not persuade the Department that the statements are deficient or distorted. As the CIT recently held, the decision of "whether to rely on particular financial statements (even ones tainted, *arguendo*, by subsidies) is record-dependent."<sup>77</sup> Given the lack of record evidence suggesting that the company availed itself of the referenced subsidy programs, and in light of Department and judicial precedent discussed above, we continue to rely on the Furukawa financial statements for calculating the surrogate financial ratios.

Additionally, there are numerous factors that make the Furukawa statements preferable to the alternative statements from the Ukrainian company, JSC Artemivskyy. The Department has emphasized its concerns regarding the degree of comparability of the merchandise produced by Artemivskyy and that covered by the order. Further, the qualified nature of the auditor opinion raises questions with respect to the statements' suitability. Finally, the Department's long-standing preference is to select a surrogate country that can provide complete and

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<sup>76</sup> See *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 41374 (August 17, 2009) and accompanying Issues and Decision Memorandum at Comment 14; see also *Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 14499 (March 12, 2012) and accompanying Issues and Decision Memorandum at Comment 2; *High Pressure Steel Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>77</sup> See *Juancheng Kangtai Chem. Co. v. United States*, Ct. No. 13-00073, Slip Op. 15-93 (Ct. Int'l Trade, August 21, 2015), at 38.

contemporaneous data for all surrogate values, where possible.<sup>78</sup> Given the lack of contemporaneous Ukrainian data for two of the inputs (as mentioned above), the Department has multiple reasons for preferring Thailand as a surrogate country. When viewed in aggregate, these factors continue to compel the Department to rely on Thailand as the surrogate country for valuing factors of production.

### **III. INTERESTED PARTY COMMENTS**

Only Golden Dragon submitted comments concerning the Draft Remand Results. We address in turn the specific points submitted by Golden Dragon, each of which pertains to the Department's surrogate country selection determination.

(1) The Furukawa Statements' Reference to a Subsidy Program

**Golden Dragon's Comments:**

- Golden Dragon argues that the Department's analysis with respect to the Furukawa (Thai) financial statement was unnecessary. More specifically, Golden Dragon asserts that the Department's analysis as to whether Furukawa received a countervailable subsidy during the POR was unnecessary, given the presence of an alternate financial statement on the record.<sup>79</sup>
- Golden Dragon cites *Kitchen Shelving and Racks*, *Off-Road Tires* and *DuPont Teijin v. U.S* for the proposition that the Department only considers whether a potential surrogate financial ratio company received subsidies if the financial statement of that company is the only available source of financial ratio data on the record.<sup>80</sup> Golden Dragon asserts that the Department should not have examined the Furukawa financial statements for

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<sup>78</sup> See 19 CFR 351.408(c)(2) (the Department normally will value factors in a single surrogate country); 19 CFR 351.408(c)(4) (the Department will normally use information from the surrogate country to value manufacturing, overhead, general expenses, and profit).

<sup>79</sup> *Golden Dragon Comments* at 3.

<sup>80</sup> *Id.* at 3-6.

affirmative evidence that the company received a subsidy, because the type of subsidy in question was unlikely to be reflected in the statements.<sup>81</sup>

- Moreover, Golden Dragon argues that the Furukawa financial statement does evince benefit from a subsidy during the period of review because of a reference in the statement to exemption from payment of the relevant import duty.<sup>82</sup> According to Golden Dragon, the nature of the program in question—a duty exemption—means that benefits from the program would not necessarily appear as a line item in the statement.<sup>83</sup>

### **Department’s Position:**

The Department disagrees with Golden Dragon’s contention that the Furukawa statement contained evidence that the company received a countervailable subsidy, as opposed to mere eligibility for a subsidy program. We also disagree with Golden Dragon’s assertion that the Department need not assess whether the financial statements contained affirmative evidence of subsidization and that evidence of eligibility alone functions to disqualify a given financial statement from consideration.

In our *Draft Results*, the Department cited several cases in support of our position, including *Kitchen Shelving and Racks*, *Off-Road Tires*, *Fresh Garlic*, *Fish Fillets* and *Chloro-Isos*, as well as the opinion of the CIT in the case of *DuPont Teijin v. U.S.*<sup>84</sup> In their comments, Golden Dragon focused its discussion on *Kitchen Shelving and Racks*, *Off-Road Tires* and *DuPont Teijin v. U.S.* A further examination of these cases indicates that the Department’s selection of the Furukawa statement was consistent with past practice.

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<sup>81</sup> *Id.* at 7.

<sup>82</sup> *Id.* at 6.

<sup>83</sup> *Id.* at 7.

<sup>84</sup> See *Kitchen Shelving and Racks* at Comment 2, *Off-Road Tires* at Comment 17A, *Fresh Garlic* at Comment 8, *Fish Fillets and Chloro-Isos* at Comment 3; see generally *Draft Results* at 7-12.

In *Kitchen Shelving and Racks*, the Department had to choose between six financial statements on the record. Ultimately, the Department based its financial ratio calculations on an average of three: the Mekins Agro Products Ltd. (“Mekins”) statement, the Bansidhar Granites Private Limited (“Bansidhar”) statement, and the Sterling Tools Limited (“Sterling”) statement.<sup>85</sup> The Department selected these three statements “because each of these financial statements is contemporaneous with the POR, complete and reliable, and these producers make a range of products . . . comparable to the subject merchandise.”<sup>86</sup> There, the respondent argued that the Sterling and Mekins statements were tainted by subsidies, and emphasized that the subsidies referenced in the Sterling statement had previously been countervailed by the Department. Despite having another usable statement on the record – *i.e.*, the Bansidhar statement – the Department nonetheless relied on *all three* statements for calculating surrogate financial ratios because these statements constituted the best available evidence.<sup>87</sup> Contrary to Golden Dragon’s contention, the Department determined that a financial statement that references a subsidy program can be used to calculate financial ratios when the circumstances warrant – even when there are other options available. As in the instant case, the Department evaluated the record to determine whether eligible companies in fact *received* benefits under a countervailable subsidy program.<sup>88</sup>

In *Off-Road Tires*, the Department relied on financial statements from CEAT Limited (“CEAT”), Falcon Tyres Ltd. (“Falcon”), Goodyear India Limited (“Goodyear”) and TVS Srichakra Limited (“TVS”) for calculating financial ratios.<sup>89</sup> The CEAT and Falcon statements

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<sup>85</sup> *Kitchen Shelving and Racks* at Comment 2.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* (noting, for example that “Wireking has only demonstrated that Sterling was granted a license, not that it ever received any benefits under {the CVD program in question}”).

<sup>89</sup> *Off-Road Tires* at Comment 17A.

referenced subsidy programs, but there was no evidence that the companies actually received countervailable subsidies during the POR. The Goodyear statement referenced two subsidy programs,<sup>90</sup> one of which was a program previously countervailed by the Department. There was no evidence that TVS received countervailable subsidies during the period. Despite the multiple usable alternate financial statements on the record which did not contain any reference to countervailable subsidies – *i.e.*, the CEAT, Falcon and TVS statements – the Department still determined that it would use the Goodyear statement, explaining that “the Department has used financial statements with some evidence of subsidies when the circumstances of the particular case warranted.”<sup>91</sup> Golden Dragon’s suggestion that a financial statement that references a subsidy program can only be used when there is no other option available does not accurately reflect Department practice. As reflected in both *Kitchen Shelving and Racks* and *Off-Road Tires*, the Department may, based upon its evaluation of the record evidence, opt to use a financial statement that references a subsidy program even when the record contains useable financial statements that do not reference a subsidy program.

Additionally, in *Fresh Garlic*, the Department was faced with choosing between the financial statements of Tata Tea and Garlico Industries Limited (“Garlico”).<sup>92</sup> The Department determined that Tata Tea was a producer of comparable merchandise, and noted that Tata Tea’s merchandise was more similar to respondent’s merchandise than Garlico’s. Although Tata Tea’s financial statements referenced subsidy programs, the Department relied on the statements, explaining that “{c}onsistent with recent NME administrative reviews, the Department evaluated

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<sup>90</sup> The two referenced subsidy programs were export incentive programs titled “Target Plus” program and “Duty Entitlement Passbook Scheme.” The former was never found to be countervailable by the Department, and the latter was found countervailable. *See id.*

<sup>91</sup> *Id.* Specifically, the Department found that the TVS statement contained no evidence of subsidies, and that the CEAT and Falcon statements referenced subsidy programs—but there was no evidence that these subsidy programs were previously countervailed by the Department. *See id.*

<sup>92</sup> *Fresh Garlic* at Comment 8.

whether a company's financial statements show direct evidence (*i.e., a specific line item*) that the company received a subsidy under a countervailable program."<sup>93</sup> Because the Tata Tea statements did not contain affirmative evidence regarding receipt of a subsidy, the Department used the statements for ratio calculations. Similarly, the Furukawa statement relied upon here did not provide direct evidence of receipt of countervailable subsidies. As such, the Department appropriately relied on the Furukawa statement.

Golden Dragon also points to language in *DuPont Teijin* that it interprets as support for its position that financial statements referencing subsidies can only be used where no other usable financial statements are on the record.<sup>94</sup> In particular, Golden Dragon quotes the *DuPont Teijin* court's conclusion that "Commerce's determination that JBF {Industry Ltd}'s statement is the best available information is supported by substantial evidence because it is the financial statement least likely to have been affected by countervailable subsidies."<sup>95</sup> Golden Dragon reads the sentence to mean that Commerce can *only* rely on financial statements that reference a subsidy program when all other potential financial statements have clear evidence of subsidization.

Golden Dragon's reading overlooks the subsequent portion of the Court's discussion, which addressed the Department's analysis concerning whether the subject statement (of JBF Inindustry Ltd.) contained evidence of a countervailable subsidy. There, the Court upheld Commerce's finding that there was no evidence of subsidization, noting that "Commerce's finding in the Final Results that JBF's financial statement does not suggest that a benefit from a countervailable subsidy may have been received is supported by substantial evidence." The Court went on to explain, that "{a}lthough the statement mentions how countervailable subsidies

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<sup>93</sup> *Id.* (emphasis added).

<sup>94</sup> *Golden Dragon Comments* at 5.

<sup>95</sup> *DuPont Teijin*, 896 F.Supp. 2d at 1311.

would be accounted for, the statement does not indicate that any benefit was received in the 2010-2011 fiscal year.”<sup>96</sup> Without additional affirmative evidence of the receipt of a subsidy, the Court upheld the Department’s conclusion that JBF did not receive a subsidy. The facts of *DuPont Teijin* are analogous to those here: the Furukawa statements mention a subsidy, however, there is no evidence on the statements that the company availed itself of the subsidy during the POR.<sup>97</sup>

As the CIT noted in *Clearon Corp.*, there are cases in which “one might reasonably infer ... that the references to the subsidies ... did not reflect actual government infusions during the period of review.”<sup>98</sup> In *Clearon Corp.*, the Court concluded that, based on the facts of that case, the Department could have reasonably determined that the company did – or did not – benefit from the subsidy program.<sup>99</sup> Golden Dragon’s position would essentially deprive the Department of the opportunity to assess whether the financial statements on the record here contain evidence regarding the actual receipt of benefits from the referenced subsidy program.

Golden Dragon asserts that the type of subsidy at issue here may not yield benefits that are reflected in the company’s financial statements.<sup>100</sup> Specifically, Golden Dragon argues that the program yields an exemption from duties, *i.e.*, revenue forgone. This type of benefit, Golden Dragon argues, would not be recorded in the company’s financial statement. As such, Golden Dragon suggests that the Department’s search for more evidence – evidence beyond the mere mention of a subsidy program – was inappropriate.

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<sup>96</sup> *Id.* (emphasis added).

<sup>97</sup> *Id.* at 1312 (citing *Consolo v. Fed. Mar. Comm’n*, 383 U.S. 607, 620 (1966)). The Court in *DuPont* rejected the petitioner’s argument that the financial statements which referenced a subsidy program were necessarily tainted, finding that “ultimately, Plaintiffs’ argument fails because it requires the court to choose between two reasonable interpretations of the financial statement.” *Id.*

<sup>98</sup> *Clearon Corp. v. United States*, 800 F. Supp. 2d 1355, 1360-61 (Ct. Int’l Trade Nov. 30, 2011).

<sup>99</sup> *Id.*

<sup>100</sup> *Golden Dragon’s Comments* at 7-8.



However, the cases discussed above do not support this position. *Kitchen Shelving and Racks* is particularly instructive. In that case, the programs referenced in Sterling’s financial statements were India’s Export Promotion Capital Goods (“EPCG”) scheme and Advanced License System (“ALS”) program.<sup>101</sup> Both programs relate to duty exemptions for imported equipment and inputs. In this case, the Department searched for affirmative evidence in the financial statements indicating that the company benefited from the programs during the POR. The Department did not find such evidence, and continued to rely on the statements for surrogate financial ratios. Accordingly, here the Department acted consistently with past practice by conducting an assessment as to whether Furukawa actually benefited from a subsidy during the applicable period.

Golden Dragon also disputes the Department’s interpretation of language in Note 25 of Furukawa’s financial statement that:

{Furukawa} has been granted additional promotional privileges to extend a period of exemption from payment of import duty on raw materials and equipment necessary for the Company’s operation for export until January 2013.<sup>102</sup>

Golden Dragon argues that the above passage indicates that benefits under the program were available to Furukawa and were necessary to Furukawa’s operations. As explained above, the Department does not dispute that Furukawa was eligible to receive benefits under the program. The operative question, however, is whether Furukawa in fact received such benefits during the POR. The above passage, in conjunction with the fact that the financial statements are devoid of any evidence of receipt of benefits under this program, merely establishes the availability of benefits. Although Golden Dragon questions the Department’s desire to “parse” the text of the Furukawa financial statement, it does not actually contest the Department’s finding that

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<sup>101</sup> *Kitchen Shelving and Racks* at Comment 2.

<sup>102</sup> Golden Dragon Surrogate Value Comments, Mar. 29, 2013, at 35.

“necessary” modifies “raw material and equipment” rather than “promotional privileges.”<sup>103</sup>

However, as explained above, that Furukawa was eligible to receive benefits under this program and that “raw material and equipment” are “necessary” does not demonstrate that during the POR Furukawa actually received benefits under this program through the importation of exempt raw materials and equipment.

For these reasons, we disagree with Golden Dragon’s argument that the Department should discard a financial statement without regard to whether it contains affirmative evidence that the company-in-question received a countervailable subsidy during the period of review. The cases discussed above all recognize the practical reality that the Department must make a case-specific analysis regarding the presence of countervailable subsidies. Golden Dragon’s position would, in contravention of past practice, strip the Department of its ability to make such a determination.

(2) Artemivskyy’s Production of Identical or Comparable Merchandise

**Golden Dragon’s Comments:**

- Golden Dragon asserts that the regulatory scheme, under 19 CFR 351.408(c)(4), does not require a financial statement from a producer of identical merchandise.<sup>104</sup>
- Golden Dragon contends that the Department “cites no legal authority for its conclusion that ‘only’ producing comparable merchandise justifies setting aside the financial statement.”<sup>105</sup>
- Golden Dragon argues that, in any event, the Department should find that Artemivskyy produces identical merchandise, based on record evidence.

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<sup>103</sup> See Golden Dragon’s Comments at 6.

<sup>104</sup> *Golden Dragon’s Comments* at 8.

<sup>105</sup> *Id.*

## Department's Position:

We disagree with Golden Dragon. As an initial matter, the Department does not dispute Golden Dragon's contention that a producer of comparable merchandise can provide a usable source of surrogate financial ratios. This proposition is well-established.<sup>106</sup>

However, Golden Dragon's argument on this point misstates the Department's position. The Department does not contend that it must set aside financials from producers of comparable merchandise. Rather, the Department *prefers* to rely on statements from producers of identical merchandise where possible. Here, having determined that the Furukawa statement is usable, and is unambiguously from a producer of identical merchandise, the Department determined that the statement was the best source of financial ratios. The Department cited numerous cases that reflect its practice of preferring producers of identical merchandise in the *Draft Results*.<sup>107</sup>

Golden Dragon also asserts that "the Department has not yet addressed this record evidence {concerning Artemivskyy's production line} in the Draft Remand," and cites to purported support for the proposition that Artemivskyy produces identical merchandise.<sup>108</sup> Specifically, Golden Dragon relies upon its own surrogate country rebuttal comments in the administrative proceedings.<sup>109</sup> These comments contain Golden Dragon's own description of the merchandise produced by Artemivskyy, ostensibly based on product descriptions that are found on Artemivskyy's website, as "copper tubes that are identical in function and dimension to the

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<sup>106</sup> See 19 C.F.R. § 351.408(c)(4).

<sup>107</sup> See, e.g., *Certain Kitchen Appliances Shelving and Racks From the People's Republic of China; 2010-2011*, 78 FR 5414, and accompanying Issues and Decision Memorandum at Comment 1; see also *Persulfates from the People's Republic of China*, 68 FR 68030, and accompanying Issues and Decision Memorandum at Comment 1; *Persulfates From the People's Republic of China*, 66 FR 42628, and accompanying Issues and Decision Memorandum at Comment 5.

<sup>108</sup> See Letter from Golden Dragon to the Secretary of Commerce, "Refiling of Golden Dragon's Surrogate Value Rebuttal Comments, Seamless Refined Copper Pipe and Tube from China" (May 29, 2013), at 2-3.

<sup>109</sup> *Id.*

copper tubes produced by Golden Dragon.”<sup>110</sup> However, Golden Dragon’s assertion did not support this claim with record evidence.<sup>111</sup> Rather, Golden Dragon’s comments merely provide a link to a website.<sup>112</sup> Pursuant to the Department’s practice, affirmed by this Court, such a reference does not incorporate the contents of the website into the record of this case.<sup>113</sup> Rather, to place information on the record of an administrative segment such that the Department may consider that information in making its determination, a party must submit the appropriate pages from the relevant website.<sup>114</sup> Golden Dragon did not and, as a result, the record of this proceeding does not include the content of the website for which Golden Dragon provided a website link. The Department made its determination concerning the Furukawa and Artemivskyy production lines based on record evidence.<sup>115</sup> In particular, we relied on the general statements in the Artemivskyy financials that the company was engaged in “copper production,” “Non-Ferrous Metals Processing,” and “plant-treated ferrous metals.”<sup>116</sup> Additionally, a note to the financial statements explained that inventory included “finished products in ingots, round and flat rolled products, sanitary fittings and other.” Although these

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<sup>110</sup> *See id.*

<sup>111</sup> *See id.*

<sup>112</sup> *Id.*

<sup>113</sup> *See Clearon Corp. v. United States*, Ct. No. 13-73, Slip Op. 15-91 (Ct. Int’l Trade, August 20, 2015) (“That the website addresses are on the record does not mean that all of the data on the websites are on the record. If a party wants evidence from a website on the record of a Commerce proceeding, it must submit the appropriate pages from the website; otherwise, the information is not on the record of the proceeding.”); *see also Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Countervailing Duty Administrative Review*, 76 FR 22868 (April 25, 2011) (“In this case, {respondent} USIMINAS/COSIPA merely identified an internet link. Thus, the information on the BNDES website cannot be considered part of this case record.”); *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review*, 2011-2012, 78 FR 562112 (September 12, 2013) (“Finally, with respect to the Mandatory Respondents’ comment regarding the weight of a container listed on the website [foreign-trade.com/reference/ocean.cfm](http://foreign-trade.com/reference/ocean.cfm), the website is not on the record and, thus, we cannot consider it.”)

<sup>114</sup> *See id.*

<sup>115</sup> As noted in the *Draft Results*, the Department will also examine the subject company’s product mix to ensure that a substantial portion of the company’s production is devoted to identical merchandise. *See Draft Results* at 14; *see also Steel Nails* at Comment 2A. In addition to the insufficient record evidence demonstrating that Artemivskyy is a producer of identical merchandise, there is absolutely no evidence with respect to the proportion of the company’s sales devoted to comparable merchandise. This stands in contrast with the selected (Furukawa) statement, which clearly indicated that the company produced exclusively identical merchandise.

<sup>116</sup> *Issues and Decision Memorandum* at 14-15.

statements may suffice to demonstrate the production of comparable merchandise, they are not sufficiently precise to indicate that the company produced *identical* merchandise, *i.e.*, copper pipe and tube that is covered by this order.<sup>117</sup>

Further, Golden Dragon attempts to circumvent the limitations of the record by arguing that the “Department confirmed its understanding of these facts {concerning Artemivskyy’s production line} in the preliminary results,”<sup>118</sup> and cites to the Department’s *Surrogate Country Memorandum*. The passage relied upon by Golden Dragon, titled “Comments and Rebuttal Comments,” simply consists of the Department’s summary of the arguments of the parties.<sup>119</sup> The Department’s recitation of the parties’ arguments does not constitute an implicit agreement with the parties’ positions or an adoption of the underlying sources for such comments.

In sum, the record evidence does not support Golden Dragon’s argument that Artemivskyy in fact produced identical rather than comparable merchandise. The record evidence indicates that Furukawa produced identical merchandise but that Artemivskyy produced comparable merchandise weighs in favor of using the Furukawa financial statement.

### (3) The Contemporaneity of the Furukawa and Artemivskyy Statements

#### **Golden Dragon’s Comments:**

- Golden Dragon argues that the Artemivskyy statements are “more contemporaneous” with the POR. Because the Artemivskyy financial statements cover 10 months of the period of review, compared to Furukawa’s two month overlap, Golden Dragon asserts that the Department should rely on the Artemivskyy statements.

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<sup>117</sup> Moreover, these references certainly do not indicate the proportion of the company’s production devoted to each product line.

<sup>118</sup> *Golden Dragon’s Comments* at 9-10.

<sup>119</sup> *Surrogate Value Memorandum*, Nov. 14, 2013, at 3. The Department’s position begins at “Analysis” on page six of the document.

### **Department's Position:**

We disagree with Golden Dragon. As noted in the *Draft Results*, the Department does not dispute that both statements are contemporaneous with the POR, as both statements overlap with the POR.<sup>120</sup> Nor does the Department dispute that it may consider the relative contemporaneity (*i.e.*, the extent of overlap with the POR) of financial statements. However the Department does not find that considerations of contemporaneity are sufficient to warrant a change in its analysis here.

First, the Department does not find that the contemporaneity of the Artemivskyy statements outweighs the several advantages associated with the Furukawa statement. Contrary to Golden Dragon's assertion, the Department is not ignoring the fact that the Artemivskyy statement covers more months during the POR. Rather, the Department has considered this fact, but not to the exclusion of all other considerations, such as undisputed record evidence that Furukawa produces identical merchandise.

Second, selecting the Furukawa statement (and Thailand as a surrogate country) allows the Department to have contemporaneous data for all factors of production and financial ratios. Golden Dragon's preferred course of action (in selecting Ukraine as a surrogate country) would require the Department to rely on surrogate value data for two factors of production that are from several years prior to the POR.<sup>121</sup>

In the alternative, Golden Dragon proposes that the Department rely on Ukraine (Artemivskyy) as a source for financial ratios, but use factor of production data from Thailand. The Department's regulations, however, specifically indicate that the Department prefers to

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<sup>120</sup> *Draft Results* at 15-17.

<sup>121</sup> Specifically, Ukraine did not offer contemporaneous data for two inputs (copper ash and slag). *See Draft Results* at 4; *see also Golden Dragon v. U.S.* at 13.

“value all factors in a single surrogate country.”<sup>122</sup> As the CIT has recently explained, “{w}hile Commerce normally prefers to source all surrogate FOP values from a single (‘primary’) surrogate country, the agency will use data from a different surrogate country *if data from the primary surrogate country are unavailable or unreliable.*”<sup>123</sup> Thailand offers complete data for valuing all of Golden Dragon’s factors of production. Accordingly, the circumstances here do not warrant a deviation from the Department’s established practice of relying on a single surrogate country where possible.

(4) The Auditors’ Qualified Opinion of the Artemivskyy Financial Statement

**Golden Dragon’s Comments:**

- Golden Dragon argues that the auditors’ qualified opinion of the Artemivskyy statements is of minor significance, as the auditors took steps to overcome the limitations associated with the statements.<sup>124</sup>
- Golden Dragon asserts that, because the Department does not require audited financial statements for surrogate financial ratios, it should not give great weight to the fact that the Artemivskyy statements received a qualified audit opinion.<sup>125</sup>

**Department’s Position:**

The Department disagrees with Golden Dragon’s characterizations regarding the qualified auditor opinion on the Artemivskyy statements.

While the Department does not require audited statements for calculating surrogate financial ratios, it has repeatedly considered the extent to which auditors express concerns with

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<sup>122</sup> 19 C.F.R. § 351.408(c)(2).

<sup>123</sup> *Ad Hoc Shrimp Trade Action Comm. v. United States*, Court No. 13-346, Slip Op. 16-07 (January 21, 2016), at 23 (internal citations omitted) (emphasis added).

<sup>124</sup> *Golden Dragon’s Comments* at 11-12.

<sup>125</sup> *Id.*

the preparation and/or accuracy of financial statements.<sup>126</sup> In some cases, such qualifications are an important consideration in rejecting the use of the statements in question.<sup>127</sup> As such, the Department was consistent with past practice in conducting an assessment regarding the extent to which the statements were qualified.

The Department is not persuaded by Golden Dragon’s characterizations of the auditors’ concerns by noting that the likely discrepancies are minor. As the Court noted in its remand decision, the auditors indicated that “{w}e believe that certain minor deviations may exist in quantities of fixed assets. Due to the nature of the accounting records, we were unable to confirm the number of records using other audit procedures.”<sup>128</sup> The auditors were not present for the inventory, and took steps to attempt and obtain the required information through other means.<sup>129</sup> They explicitly acknowledged that this process may have led to “minor deviations.”<sup>130</sup> Additionally, the auditors noted a more general concern with the “nature of the accounting record.”<sup>131</sup> The precise impact that these qualifications would have on the accuracy of financial ratios based on the Artemivskyy statement cannot be discerned by the Department. In previous

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<sup>126</sup> See *Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41478 (June 15, 2015) (“{T}he Department has determined that Eiwlee’s 2013 financial statements are not the best available information from which to calculate financial ratios because the auditor issued a qualified opinion regarding the estimate employee retirement benefit obligations, and this opinion is related to wages and salaries which affect certain elements of our financial ratio calculations. For this reason, and because Eiwlee’s 2012 financial statements do not contain a qualified opinion, the Department has used Eiwlee’s 2012 financial statements for these final results.”) (“*Wood Flooring*”); *Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011) (“Despite the fact that Mueller’s 2009 financial statements were audited, the auditors qualified their opinion ... When an auditor qualifies an opinion, the auditor is stating that the company’s financial statements do not reflect GAAP with regard to the items mentioned.”) (internal citations omitted) (“*Steel Pipe*”).

<sup>127</sup> *Wood Flooring* (noting that an auditor’s qualification was one reason, among several, to reject a financial statement from use in calculating financial ratios); see also *Frontseating Service Valves From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 27954 (May 13, 2013), at section titled “Factor Valuations.”

<sup>128</sup> *Golden Dragon v. U.S.* at 11-12; see Letter from Golden Dragon to the Department of Commerce: “Publicly Available Surrogate Value Information, Seamless Refined Copper Pipe and Tube from China,” dated December 11, 2013 (“*SV Data Submission*”), at Exhibit 1.

<sup>129</sup> *SV Data Submission* at Exhibit 1.

<sup>130</sup> *Id.*


<sup>131</sup> *Id.*



cases, the Department has hesitated to rely on financial statements where there was uncertainty regarding their accuracy or completeness.<sup>132</sup> For this reason, as well as the additional factors discussed in these *Final Results*, the Department will continue to rely on the Furukawa statement.

#### IV. FINAL RESULTS OF REDETERMINATION

In light of the discussion above, the Department will continue to assign Golden Dragon a weighted-average dumping margin of 4.48 percent.

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

21 MARCH 2016  
Date

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<sup>132</sup> See *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (November 7, 2006) (“We note that Habas’ 2004 audited consolidated financial statements contain a qualified opinion with respect to the presentation of a member of the Habas group of companies, as required by Turkish GAAP. Because the impact of this qualification cannot be quantified, it is inappropriate to use that income statement for the financial expense ratio calculation.”); see also *Wood Flooring; Steel Pipe*.