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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-964

Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Results of the First Antidumping Duty Administrative Review, and Intent to Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce ("Department") is conducting the first administrative review of the antidumping duty order on seamless refined copper pipe and tube ("copper pipe and tube") from the People's Republic of China ("PRC") for the period November 22, 2010, through October 31, 2011. The Department has preliminarily determined that sales have been made below normal value ("NV") by the mandatory respondent examined in this administrative review. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review ("POR").

EFFECTIVE DATE: August 7, 2012..

FOR FURTHER INFORMATION CONTACT: Zev Primor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4114.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Petitioners¹ and certain PRC exporters, in accordance with 19 CFR 351.213(b), during the anniversary month of November to conduct a review of copper pipe and tube exporters from the PRC. On December 30, 2011, the Department initiated this review with respect to all requested companies.²

On February 6, 2012, Petitioners withdrew their request for an administrative review for Golden Dragon Holding (Hong Kong) International Co., Ltd., Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., Luvata Alltop (Zhongshan) Ltd., Luvata Tube (Zhongshan) Ltd., Ningbo Jintian Copper Tube Co., Ltd., Sinochem Ningbo Import & Export Co., Ltd., Sinochem Ningbo Ltd., Zhejiang Jiahe Pipes Inc., and Zhejiang Naile Copper Co., Ltd. However, Golden Dragon Precise Copper Tube Group, Inc. (“Golden Dragon”) requested a review of itself and did not withdraw its request.

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (the “Act”), directs the Department to calculate individual weighted-average dumping margins for each known exporter or producer of the subject merchandise.³ However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers because of their large number, if it is not practicable to examine all exporters or producers for which the review is initiated.

¹ Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, “Petitioners”).

² See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 76 FR 82268, 82273-74 (December 30, 2011) (“Initiation Notice”).

³ See also 19 CFR 351.204(c) regarding respondent selection, in general.

On January 17, 2012, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order (“APO”) to all interested parties having access to materials released under APO and invited comments regarding the CBP data and respondent selection. The Department received comments regarding respondent selection on January 23, 2012. On February 24, 2012, the Department selected Golden Dragon as the sole mandatory respondent for individual examination in this review.⁴

Questionnaires

On February 27, 2012, the Department issued its initial non-market economy (“NME”) antidumping duty questionnaire to the mandatory respondent Golden Dragon. Golden Dragon timely responded to the Department’s initial and subsequent supplemental questionnaires between March 2012 and June 2012.

Period of Review

The POR is November 22, 2010, through October 31, 2011.

Scope of the Order

For the purpose of the order, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 millimeters “mm”) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter (“OD”), regardless of wall thickness, bore (e.g., smooth, enhanced with inner grooves or ridges), manufacturing process (e.g., hot finished, cold-drawn, annealed), outer surface (e.g., plain or enhanced with grooves, ridges, fins, or gills), end finish (e.g., plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (e.g., plastic, paint), insulation, attachments (e.g.,

⁴ See Memorandum to Abdelali Elouaradia, AD/CVD Operations, Office 4, from Patrick O’Conner, International Trade Compliance Analyst, Office 4, regarding “Respondent Selection in the 1st Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People’s Republic of China,” dated February 24, 2012.

plain, capped, plugged, with compression or other fitting), or physical configuration (e.g., straight, coiled, bent, wound on spools).

The scope of the order covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials (“ASTM”) ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M, ASTM-B280, ASTM-B302, ASTM-B306, ASTM-359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of the order are all sets of covered products, including “line sets” of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase “all sets of covered products” denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

“Refined copper” is defined as: (1) metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

<u>ELEMENT</u>	<u>LIMITING CONTENT PERCENT BY WEIGHT</u>
Ag - Silver	0.25
As - Arsenic	0.5
Cd - Cadmium	1.3
Cr - Chromium	1.4
Mg - Magnesium	0.8
Pb - Lead	1.5
S - Sulfur	0.7
Sn - Tin	0.8
Te - Tellurium	0.8
Zn - Zinc	1.0
Zr - Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of the order are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to the order are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States (“HTSUS”). Products subject to the order may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Intent to Rescind the Review in Part

Petitioners timely requested an administrative review for Golden Dragon Holding (Hong Kong) International Co., Ltd., Hong Kong GD Trading Co., Ltd., Luvata Alltop (Zhongshan) Ltd., Luvata Tube (Zhongshan) Ltd., Ningbo Jintian Copper Tube Co., Ltd., Sinochem Ningbo Import & Export Co., Ltd., Sinochem Ningbo Ltd., Zhejiang Jiahe Pipes Inc., and Zhejiang Naile Copper Co., Ltd., companies which do not have a separate rate, and then timely withdrew their requests for review of the above-mentioned companies.⁵ Because these companies have not established their eligibility for a separate rate, they will continue to be considered part of the PRC-wide entity. Although the PRC-wide entity is not under review for these preliminary results, the possibility exists that the PRC-wide entity could be under review for the final results of this administrative review. Therefore, we are not rescinding this review with respect to these companies at this time, but we intend to rescind this review with respect to these companies in the final results if the PRC-wide entity is not reviewed.

⁵ See Petitioners’ letter entitled, “Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Withdrawal of Request for Antidumping Administrative Reviews, dated February 6, 2012.

Non-Market Economy Status

In the original investigation, the Department treated the PRC as an NME.⁶ Moreover, in accordance with section 771(18)(C)(i) of the Act, the designation of a country as an NME remains in effect until it is revoked by the Department. As such, the Department continues to treat the PRC as an NME in this proceeding.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer's factors of production ("FOP") valued in a surrogate market-economy ("ME") country or countries considered appropriate by the Department. The Department will value FOPs, in accordance with section 773(c)(4) of the Act, by using "to the extent possible, the prices or costs of factors of production in one or more market economy countries that are – (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country.

Economic Comparability

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.⁷ Consistent with its practice, as reflected in the Policy Bulletin, the Department found that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are

⁶ See Seamless Refined Copper Pipe and Tube From the People's Republic of China: Final Determination of Sales at Less Than Fair Value ("LTFV Final Determination"), 75 FR 60725, 60727 (October 1, 2010).

⁷ See Memorandum regarding "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube ("CPT") from the People's Republic of China ("China"), dated April 2, 2012.

countries that are at a level of economic development comparable to that of the PRC and, therefore, satisfy the first criterion of section 773(c)(4) of the Act.⁸

Significant Producer of Comparable Merchandise

In order to identify which countries export merchandise comparable to the merchandise under consideration, we reviewed export data submitted by Golden Dragon and Petitioners, along with Global Trade Atlas (“GTA”) data generated by the Department. After reviewing this export data, we have determined that Thailand is a significant producer of subject merchandise in significant quantities.

Data Availability

When evaluating surrogate value (“SV”) data, the Department considers several factors, including whether the SVs are publicly available, contemporaneous with the POR, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.⁹ The record of this proceeding includes Thai SV data for copper cathodes, which is the primary raw material component in the production of subject merchandise.¹⁰ In addition, the record contains two Thai financial statements, *i.e.*, Kobelco & Materials Copper Tube (Thailand) Co., Ltd (“Kobelco”) and Furukawa Metal (Thailand) Public Company Limited (“Furukawa”). However, given that Kobelco’s financial statements were not fully translated, the Department has decided to use the Furukawa’s audited financial statements, a producer of identical merchandise from Thailand. After thoroughly reviewing these data, the Department has determined that the Thai

⁸ See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (“Policy Bulletin”); Memorandum from Maisha Cryor, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, “First Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Selection of a Surrogate Country” (August 1, 2012) (“Surrogate Country Memorandum”) at 2.

⁹ See Policy Bulletin; Surrogate Country Memorandum at 6.

¹⁰ See Section D Response at 2; see also Golden Dragon’s SV Comments and Petitioners’ Supplemental SV Comments.

import data are more complete, with respect to the primary direct raw material input as well as to all other inputs. Therefore, based on the above data considerations, we consider Thailand to have the best available information for use as the primary surrogate country in this administrative review. In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of these preliminary results.

Separate Rates

In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the NME country are subject to government control and thus should be assessed a single antidumping duty rate.¹¹ In the Initiation Notice, the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews.¹² It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent so as to be entitled to a separate rate.¹³ Exporters can demonstrate this independence through the absence of both de jure and de facto government control over export activities.¹⁴ The Department analyzes each entity's export independence under a test first articulated in Sparklers and as further developed in Silicon Carbide.¹⁵ However, if the Department determines that a company is wholly foreign-owned or

¹¹ See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303, 29307 (May 22, 2006).

¹² See Initiation Notice, 76 FR at 88269.

¹³ See id.

¹⁴ See id.

¹⁵ See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) ("Sparklers"); and Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

located in an ME, then a separate rate analysis is not necessary to determine whether it is independent from government control.¹⁶

The Department received a separate rate certification from Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., and Shanghai Hailiang Copper Co., Ltd. (collectively “Hailiang”).¹⁷ Additionally, the Department received completed responses to the Section A portion of the NME questionnaire from Golden Dragon which contained information pertaining to Golden Dragon’s eligibility for a separate rate.¹⁸

Separate Rate Recipients

1. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Golden Dragon and Hailiang, the separate rate applicants in this administrative review, stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies.¹⁹ In accordance with its practice, the Department has analyzed whether the separate-rate applicants have demonstrated the absence of de jure and de facto governmental control over their respective export activities.

a. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter’s business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the

¹⁶ See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People’s Republic of China, 72 FR 52355, 52356 (September 13, 2007).

¹⁷ See Separate Rate Certification of Hong Kong Hailiang Metal Trading Limited, dated March 6, 2012 (“Hailiang SRC Response”).

¹⁸ See Golden Dragon’s Section A Questionnaire Response, dated March 28, 2012.

¹⁹ See Golden Dragon’s Section A Questionnaire Response at A-1 – A-2 and Hailiang SRC Response at 4.

government decentralizing control of companies.²⁰ The evidence provided by Golden Dragon and Hailiang supports a preliminary finding of an absence of de jure government control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.²¹

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to de facto government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.²² The Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Golden Dragon and Hailiang supports a preliminary finding of an absence of de facto government control based on the following: (1) the companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other

²⁰ See Sparklers, 56 FR at 20589.

²¹ See Golden Dragon's Section A Questionnaire Response at A-4 – A-6 and Hailiang SRC Response at 7-8.

²² See Silicon Carbide, 59 FR at 22586-87; see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.²³ Therefore, the Department preliminarily finds that Golden Dragon and Hailiang have established that they qualify for a separate rate under the criteria established by Silicon Carbide and Sparklers.

Rate for Respondents Not Individually Examined

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates which are zero, de minimis or based entirely on facts available. Accordingly, the Department's usual practice has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, de minimis, or based entirely on facts available.²⁴ Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, de minimis, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including "averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated."

²³ Golden Dragon's Section A Questionnaire Response at A-6 – A-10 and Hailiang SRC Response at 8-10.

²⁴ See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

In previous administrative reviews, the Department has determined that a "reasonable method" to use when the rates for the respondents selected for individual examination are zero, de minimis, or based entirely on facts available, is to apply to those respondents not selected for individual examination (and eligible for a separate rate in an NME review) the average of the most recently-determined weighted-average dumping margins that are not zero, de minimis, or based entirely on facts available. These rates may be from the investigation, a prior administrative review, or a new shipper review.²⁵ If any such non-selected respondent had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected respondent in the instant review, including when that rate is zero, de minimis.²⁶

In this administrative review, there is one non-selected respondent, Hailiang, which is under review and is eligible for a separate rate. Hailiang received its own calculated rate that is contemporaneous with or more recent than the most recent rates determined for other respondents that are not zero, de minimis, or based entirely on facts available. Accordingly, we have concluded in this administrative review that a reasonable method for determining the rate for Hailiang is to apply its most recent, individually-calculated, rate. Pursuant to this method, we have assigned a rate of 60.85 percent to Hailiang, its weighted-average dumping margin in the

²⁵ See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review, 76 FR 8338, 8342 (February 14, 2011), unchanged in Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940 (August 19, 2011); see also Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460, 49463 (August 13, 2010), and Amanda Foods (Vietnam) Ltd. v. United States, 774 F. Supp. 2d 1286 (CIT 2011).

²⁶ See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part, 77 FR 21529, 21530-31 (April 10, 2012).

antidumping investigation.²⁷ In assigning this separate rate, we did not impute the actions of other respondents to the behavior of Hailiang, but based this determination on record evidence that may be deemed reasonably reflective of the potential margin of dumping for Hailiang in this administrative review.

Date of Sale

Golden Dragon reported the invoice date as the date of sale because it claims that for its U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date.²⁸ After evaluating Golden Dragon's claim in light of record evidence, the Department, in accordance with 19 CFR 351.401(i) and its long-standing practice of determining the date of sale,²⁹ preliminarily determines that the invoice date is the most appropriate date to use as Golden Dragon's date of sale.

Fair Value Comparisons

Pursuant to section 773(c) of the Act and 19 CFR 351.414(c)(1) and (d), the Department compared weighted-average export price or weighted-average constructed export price to the weighted-average NV, as described in the "U.S. Price," and "Normal Value" sections below.³⁰

²⁷ See LTFV Final Determination, 75 FR at 60729.

²⁸ See Golden Dragon's Section C Questionnaire Response at C-18.

²⁹ See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

³⁰ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012) ("Final Modification for Reviews"). In particular, the Department compared monthly weighted-average export prices (or constructed export prices) with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

U.S. Price

Export Price

We considered the U.S. prices of certain sales by Golden Dragon to be export price (“EP”) sales in accordance with section 772(a) of the Act, because these were the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States.

We calculated EP based on the price to unaffiliated purchaser(s) in the United States. We deducted movement expenses from the gross unit U.S. sales price in accordance with section 772(c)(2)(A) of the Act. These movement expenses include foreign inland freight from the plant to the port of exportation. For a detailed description of all adjustments, see Golden Dragon’s Preliminary Analysis Memorandum.³¹

Constructed Export Price

In accordance with section 772(b) of the Act, constructed export price (“CEP”) is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. We considered sales made by Golden Dragon’s U.S. affiliate in the United States to be CEP sales. We calculated CEP based on prices to unaffiliated purchasers in the United States. In accordance with sections 772(c)(2)(A) and 772(d)(1) and of the Act, where applicable, we made deductions from the

³¹ See Memorandum from Zev Primor, Analyst, to Robert Bolling, Program Manager, Regarding Golden Dragon’s Preliminary Results Analysis Memorandum, dated August 1, 2012 (“Golden Dragon Preliminary Analysis Memo”).

starting price for movement expenses, and commissions, credit expenses, inventory carrying costs, warranty expenses, and indirect selling expenses which relate to commercial activity in the United States. Movement expenses included, where applicable, foreign inland freight from the plant to the port of exportation, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight from the port to the warehouse, U.S. freight from the warehouse to the customer, U.S. customs duty and U.S. warehousing expenses. In addition, we deducted CEP profit from U.S. price in accordance with sections 772(d)(3) and 772(f) of the Act. As a CEP adjustment and in accordance with section 773(a) of the Act, we calculated Golden Dragon's credit expenses and inventory carrying costs based on short-term interest rates. Because Golden Dragon did not incur short-term U.S. dollar borrowings during the POR, we based its interest rate on the short-term interest rate from the Federal Reserve. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, see Golden Dragon's Preliminary Analysis Memo, for a detailed description of all adjustments.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but

are not limited to: (1) hours of labor required; (2) quantities of raw materials employed; and (3) representative capital costs. The Department used FOPs reported by Golden Dragon for materials, labor, packing and by-products.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Golden Dragon for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value each FOP, but when a producer sources an input from an ME and pays for it in an ME currency, the Department normally will value the factor using the actual price paid for the input.³² To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting SVs, the Department considered the quality, specificity, and contemporaneity of the data.³³ As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to import SVs surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).

For the preliminary results, except where noted below, we used data from the Thai import statistics in the GTA and other publicly available Thai sources in order to calculate SVs for

³² See 19 CFR 351.408(c)(1); see also Shakeproof Assembly Components Div of Ill Tool Works v. United States, 268 F.3d 1376, 1382-83 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

³³ See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

Golden Dragon’s FOPs (i.e., direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department’s practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.³⁴ The record shows that Thai import statistics obtained through GTA are contemporaneous with the POR, product-specific, and tax-exclusive.³⁵ In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Thai Producer Price Index (“PPI”) or Consumer Price Index (“CPI”), as published in the International Monetary Fund’s International Financial Statistics.³⁶

In accordance with legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.³⁷ In this regard, the Department has previously found that it is appropriate to disregard such import statistics from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export

³⁴ See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warm water Shrimp from the Socialist Republic of Vietnam, 69 FR 71005 (December 8, 2004).

³⁵ See Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People’s Republic of China: Surrogate Value Memorandum (“Surrogate Value Memorandum”) at 2.

³⁶ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 9600 (March 5, 2009), unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less than Fair Value, 74 FR 36656 (July 24, 2009).

³⁷ Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

subsidies.³⁸ Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, we have not used prices from India, Indonesia, South Korea and Thailand in calculating the import-based SVs.

Additionally, we disregarded prices from NME countries.³⁹ Finally, imports that were labeled as originating from an “unspecified” country were excluded from the average value, because we could not be certain that they were not from either an NME country or a country with generally available export subsidies.⁴⁰

We valued truck freight expenses using a price list for domestic shipments from the Thailand Board of Investment. The rates were in effect prior to the POR, so we adjusted them to be contemporaneous with the POR, using PPI.⁴¹

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping duty proceedings.⁴² In Labor Methodologies, the Department determined that

³⁸ See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia: Final Results of Expedited Sunset Review, 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20; Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand, 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

³⁹ See, e.g., Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final determination, 74 FR 9591, 9600 (March 5, 2009), unchanged in Certain Kitchen Appliance Shelving and Racks From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 36656 (July 24, 2009) and Certain Kitchen Appliance Shelving and Racks from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order, 74 FR 46971 (September 14, 2009).

⁴⁰ See *id.*

⁴¹ See Surrogate Value Memorandum at 6 and Exhibits 1 and 7.

⁴² See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011) (“Labor Methodologies”).

the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).

The Department valued labor using the methodology described in Labor Methodologies. Specifically, to value the respondents’ labor the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook for the total manufacturing wage data. Although the Department found that the two-digit description under ISIC-Revision 3.1 (“Manufacture of Machinery and Equipment NEC”) is the best available information on the record with which to value labor because it is specific to the industry being examined, and is, therefore, derived from industries that produce comparable merchandise, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing wage data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor value using total labor data reported by Thailand to the ILO in 2005, in accordance with section 773(c)(4) of the Act.⁴³ Because these rates were in effect before the POR, we are adjusting the average value for inflation using CPI. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memorandum. The ILO data from Chapter 6A of the Yearbook, which was used to value labor, reflects all costs related to labor, including wages, and indirect labor costs such as benefits, housing, and training. The financial statements used to calculate the surrogate financial ratios do not include itemized details

⁴³ See Labor Methodologies, 76 FR at 36094, n.11; see also Small Diameter Graphite Electrodes From the People’s Republic of China: Preliminary Results and Partial Rescission of Administrative Review, 77 FR 13284, 13292-93 (March 6, 2012) (relying upon national data reported by ILO Chapter 6A in the absence of Chapter 6A industry-specific data), unchanged in Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of Administrative Review, 77 FR 40854 (July 11, 2012).

regarding the indirect labor costs incurred. Therefore, the Department has not made adjustments to the surrogate financial ratios.⁴⁴

Because water was used by Golden Dragon in the production of seamless copper pipe and tube, the Department considers water to be a direct material input rather than overhead.⁴⁵ We valued water using data from the Metropolitan Waterworks Authority. We did not inflate this rate since it is contemporaneous with the POR.⁴⁶

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand as reported in “Doing Business 2012: Thailand” published by the World Bank.⁴⁷

We valued marine insurance using a marine insurance rate offered by RJG Consultants. The rate is a percentage of the value of the shipment; thus we did not inflate or deflate the rate.⁴⁸

We were unable to segregate and, therefore, were unable to exclude energy costs from the calculation of the surrogate financial ratios. Accordingly, for the preliminary results, we have disregarded the respondents’ energy inputs (electricity) in the calculation of NV, in order to avoid

⁴⁴ See Labor Methodologies, 76 FR at 36094.

⁴⁵ See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People’s Republic of China, 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 11.

⁴⁶ See Surrogate Value Memorandum at 5 and Exhibit 3.

⁴⁷ See Surrogate Value Memorandum at 6 and Exhibit 6.

⁴⁸ See Surrogate Value Memorandum at 6 and Exhibit 8.

double-counting energy costs that have necessarily been captured in the surrogate financial ratios.⁴⁹

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements for the year ending December 2011 of Furukawa Metal (Thailand) Public Company Limited, a producer of identical merchandise from Thailand.⁵⁰ The Department has not used for these preliminary results the financial statement from Kobelco & Materials Copper Tube (Thailand) Co., Ltd., that is on the record because that financial statement is incomplete and not fully translated.⁵¹ The Department may consider other publicly available financial statements for the final results, as appropriate.

Golden Dragon reported that it recycles copper scrap and sells a small amount of copper slag and copper ash; therefore, the Department has granted a by-product offset for the quantities of Golden Dragon's reported by-products, valued using Thai GTA data.⁵²

Currency Conversion

Where appropriate, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

⁴⁹ See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, 74 FR 16838 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁰ See Surrogate Value Memorandum at 5 and Exhibit 5 and 1.

⁵¹ See Surrogate Value Memorandum at 5.

⁵² See Golden Dragon's Preliminary Analysis Memo at 8.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Rate
Golden Dragon	0.00 (<u>de minimis</u>)
Hailiang	60.85

Disclosure

The Department intends to disclose calculations performed for these preliminary results to the parties within 10 days of the date of the public announcement of the results of this review in accordance with 19 CFR 351.224(b).

Comments

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.⁵³ Rebuttal comments must be limited to the issues raised in the written comments and may be filed no later than five days after the time limit for filing the case briefs.⁵⁴ Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System ("IA ACCESS"). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the

⁵³ See 19 CFR 351.309(c)(1)(ii).

⁵⁴ See 19 CFR 351.309(d).

date of publication of this notice.⁵⁵ Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and location to be determined.⁵⁶ Parties should confirm by telephone the date, time, and location of the hearing. The Department intends to issue the final results of the administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with section 751(a)(3)(A) of the Act, unless the time limit is extended.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by the review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of the review. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to the review.

Where the respondent reports reliable entered values, we calculate importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).⁵⁷ Where an importer (or customer)-specific ad valorem rate is greater than de minimis, we will apply the assessment rate to the entered value of the

⁵⁵ See 19 CFR 351.310(c).

⁵⁶ See 19 CFR 351.310.

⁵⁷ See 19 CFR 351.212(b)(1).

importers'/customers' entries during the POR.⁵⁸ Where we do not have entered values for all U.S. sales, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). To determine whether the duty assessment rates are above de minimis, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem ratios based on the entered value. Where an importer (or customer)-specific ad valorem rate is zero or de minimis, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.⁵⁹

The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (i.e., at that exporter's rate) will be liquidated at the NME-wide rate. For a full discussion of this practice, see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties, 76 FR 65694 (October 24, 2011).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered or withdrawn from warehouse, for consumption, on or after the publication date, as

⁵⁸ See 19 CFR 351.212(b)(1).

⁵⁹ See 19 CFR 351.106(c)(2).

provided by section 751(a)(2)(C) of the Act: (1) for Golden Dragon the cash deposit rate will be its rate established in the final results of this review; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent segment; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied those non-PRC exporters. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and (3) and 777(i) of the Act, and 19 CFR 351.213.

Paul Piquado
Assistant Secretary
for Import Administration

July 31, 2012
Date

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