April 12, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
Antidumping and Countervailing Duty Operations

SUBJECT: Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Issues and Decision Memorandum for Final Results of Administrative Review

SUMMARY

On November 9, 2015, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from the Socialist Republic of Vietnam (Vietnam). The Department published the preliminary results of that review on October 14, 2016, and has now analyzed comments submitted by parties regarding the Preliminary Results. The period of review (POR) is February 25, 2014, through August 31, 2015. Based on our analysis of the comments received, we made changes to our calculation of the final dumping margin assigned to respondent SeAH Steel VINA Corporation (SSV). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues about which we received comments from the interested parties:

Comment 1: Financial Statements
Comment 2: Brokerage and Handling
Comment 3: Surrogate Value for Water
Comment 4: Inland Insurance
Comment 5: Differential Pricing

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**BACKGROUND**

On October 14, 2016, the Department published the Preliminary Results in the *Federal Register.*

On November 23, 2016, the Department received case briefs from Petitioners and SSV. On December 2, 2016, the Department received rebuttal briefs from Petitioners and SSV.

On February 9, 2017, the Department extended the deadline for issuing the final results by 48 days. Additionally, on March 29, 2017, the Department extended the deadline for issuing the final results by an additional 12 days. The revised deadline for issuing the final results of this review is April 12, 2017.

On March 21, 2017, the Department placed documents on the record of this review related to the value of inland insurance in an administrative review of OCTG from India, invited comments on the source, and provided an opportunity to submit factual information to rebut, clarify, or correct the source. We received responses from Petitioners and SSV.

**SCOPE OF THE ORDER**

The merchandise covered by the order is certain oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited

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2 *See Preliminary Results.*

3 *See Letter from Energex Tube, TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA (collectively, Petitioners) to the Secretary, Re: Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Petitioners’ Case Brief, dated November 23, 2016 (Petitioners Case Brief).*

4 *See Letter from SSV to the Secretary, Re: 2014-15 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Vietnam – Case Brief of SeAH Steel VINA Corporation, dated November 23, 2016 (SSV Case Brief).*

5 *See Letter from Petitioners to the Secretary, Re: Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Petitioners’ Rebuttal Brief, dated December 2, 2016 (Petitioners Rebuttal Brief).*

6 *See Letter from SSV to the Secretary, Re: 2014-15 Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from the Socialist Republic of Vietnam – Rebuttal Case Brief of SeAH Steel VINA Corporation, dated December 2, 2016 (SSV Rebuttal Brief).*


9 *See Letter from the Department to All Interested Parties, Re: Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam, dated March 21, 2017.*


11 *See Letter from SSV to the Secretary, Re: Oil Country Tubular Goods from Vietnam – Comments on the Department’s March 21 Letter, dated March 23, 2017.*
service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

DISCUSSION OF THE ISSUES

Comment 1: Financial Statements

Petitioners’ Comments

In the Preliminary Results, the Department used the financial statements of two Indian producers of OCTG to calculate surrogate financial ratios. Those two Indian companies were APL Apollo Tubes Limited (Apollo) and Surya Global Steel Tubes Limited (Surya). Petitioners argue that these financial statements are not the best available information on the record, and the Department should, therefore, not use them for the calculation of surrogate financial ratios in the final results of review.

With respect to Apollo’s financial statements, Petitioners argue that Apollo’s financial statement is consolidated with three of Apollo’s subsidiaries. However, Petitioners point out that Apollo itself does not produce OCTG and only Apollo’s subsidiary—Lloyds’ Line Pipes Limited (Lloyds)—is certified by the American Petroleum Institute (API) to produce OCTG. Petitioners state that the Department declined to use Apollo’s financial statements in the final determination.
of the less-than-fair-value investigation of this proceeding, and should decline to use them in the final results of this administrative review for the same reason.

Petitioners argue that the Department should not use Surya’s financial statements in the final results of this administrative review. Petitioners note that the Department made a determination in the recently completed antidumping investigation of CWP from Vietnam that Surya’s financial statements were not publicly available. For these final results of review, Petitioners argue that the Department should continue to find that Surya’s financial statements are not publicly available based on our determination in CWP from Vietnam.

Petitioners argue that the best source of information on the record of this review for calculating surrogate financial ratios are the combined financial statements of Technocraft India Industries, Ltd. (Technocraft), Ratnamani Metals and Tubes, Ltd. (Ratnamani), and Maharashtra Seamless Ltd. (Maharashtra). With respect to Technocraft and Ratnamani, Petitioners argue their financial statements should be used because these companies produce “tubing for oil and gas applications through multiple API certified facilities.” With respect to Maharashtra, Petitioners argue that in addition to being certified to produce to API specifications, the company is a producer of OCTG.

Moreover, Petitioners disagree with the preliminary finding that Technocraft, Ratnamani, and Maharashtra benefited from subsidies the Department previously found to be countervailable. With respect to Technocraft, Petitioners argue that the Department has never countervailed the Technology Upgradation Fund program, which is the only subsidy that Technocraft allegedly received. With respect to Ratnamani, Petitioners counter SSV’s allegation that Ratnamani’s financial statement indicates it received “VAT/CST invectives in respect of Kutch Unit” by pointing out that the Department has countervailed only generic tax incentives provided by other Indian states. Furthermore, although Ratnamani’s financial statement also indicates receipt of “cash credit/export packing credit facilities,” it does not evince the company having benefitted from “pre-shipment financing” offered by the Reserve Bank of India. Finally, Petitioners note that the amount of revenue Ratnamani received from the program is only 0.3 percent, and argue that this small amount of revenue should not disqualify Ratnamani as a source for surrogate financial ratios. With respect to Maharashtra, Petitioners argue that the minute amount of duty it saved under India’s Export Promotion Capital Goods (EPCG) scheme was only 0.15 percent of annual revenue, which also should not disqualify Maharashtra as a source for surrogate financial ratios.

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14 Id., at 5.
15 Id., at 6.
16 Id.
Finally, Petitioners argue that the Department must conduct a thorough side-by-side analysis of the financial statements on the record, balancing offhand references to potential subsidies with the more profound deficiencies of the companies preliminarily selected. 17

**Respondent’s Rebuttal Comments**

SSV argues that the Department properly rejected the financial statements of Technocraft, Ratnamani, and Maharashtra.

With respect to Technocraft, SSV argues that information on the record does not show that the company produces OCTG but rather shows that Technocraft is a conglomerate that sells engineering services, as well as non-pipe products and services, such as yarns, fabrics, and garments. SSV argues that the Department rejected Technocraft’s financial statement in *CWP from Vietnam*. 18 Furthermore, SSV argues that Technocraft benefited from a “capital subsidy” under the Technology Upgradation Fund Scheme of Government of India. 19 Although the Department did not find this program to be countervailable in *CWP from Vietnam*, SSV argues that given the failure of Technocraft’s financial statements to identify the specific statutory provisions under which the “capital subsidies” were provided, it is not clear whether those capital subsidies fall under any of the programs the Department has previously countervailed. SSV states though that even if the capital subsidies fell under a statutory provision that the Department has not previously considered, Technocraft’s explicit admission that it received capital subsidies should militate against reliance on its statement under a “comparative analysis.”

With respect to Ratnamani, SSV argues that the company’s focus is on stainless steel pipe, and not carbon steel pipe. In addition, SSV argues, Ratnamani derives significant revenues from its wind power electricity generation and “job work” (*i.e.*, services provided to others). Thus, SSV argues, Ratnamani is notably different from SSV, which produces only carbon steel pipes using an electric-resistance welding process and which is not in the electricity-producing business. Thus, SSV argues, there is no reason to expect Ratnamani’s financial ratios would provide an accurate surrogate for the costs that SSV would incur. Furthermore, SSV argues that Ratnamani also received countervailable subsidies during the POR. Specifically, SSV points to the subsidies provided to Ratnamani’s “Kutch Unit.” SSV disagrees with Petitioners’ contention that the Department’s prior decisions concerning VAT/CST incentives have involved only other Indian states. SSV states that the Department has specifically found that sales-tax exemptions in

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17 Petitioners Case Brief at 7, citing *Shenzen Xinboda Indus. Co. v. United States*, 976 F. Supp. 2d 1333, 1384 (CIT 2014) (*Shenzen Xinboda*). In that case, the CIT ordered a remand because the Department had not conducted a meaningful analysis that weighed the strengths and weaknesses of each financial statement, such as suspicion of a subsidy, tea processing vis-à-vis garlic processing, and level of integration.

18 See SSV Rebuttal Brief at 8, citing *CWP from Vietnam*, and accompanying Issues and Decision Memorandum at Comment 1.

19 *Id.* at 9, citing Technocraft’s financial statement at 83 and 121, found in Petitioners’ May 2, 2016 submission (Technocraft’s financial statement) at Exhibit I-E.
the state of Gujarat represent countervailable subsidies.\textsuperscript{20} SSV also states that Ratnamani has received packing credits, which the Department has previously found to be countervailable.\textsuperscript{21}

With respect to Maharashtra, SSV argues that this company’s financial statements would be inappropriate because its OCTG operations are focused on seamless OCTG, whereas SSV produces only welded OCTG. SSV states that production of these two type of OCTG involve different input materials and different production techniques. Furthermore, SSV argues that Maharashtra, unlike SSV, has expanded its business beyond simple pipe production into higher value-added products and services (such as coating and production of fittings and premium connections). SSV states that Maharashtra’s investment in these value-added products and services undoubtedly requires additional investments, presumably generating higher sales and income than the basic pipe production of SSV. Thus, SSV concludes, Maharashtra’s experience does not provide an accurate surrogate for the calculation of SSV’s financial ratios. Moreover, SSV also argues that Maharashtra has received subsidies the Department has previously found to be countervailable. Specifically, SSV argues that Maharashtra has received subsidies under the EPCG scheme as well as investment promotion assistance. SSV states the Department has previously found the EPCG scheme to be countervailable, including in the original antidumping investigation of this proceeding.\textsuperscript{22}

SSV argues that the financial statements the Department used in the \textit{Preliminary Results} continue to be appropriate for use in the final results. First, with respect to Surya, SSV argues the Department erred in its conclusion in \textit{CWP from Vietnam} that Surya’s financial statement was not publicly available. SSV argues that this statement is available from the internet, and can be obtained by registering with the India’s Ministry of Corporate Affairs and by paying a small fee.

With respect to Apollo, SSV argues that its financial statement is the best source on the record for calculating surrogate financial ratios because Apollo is an Indian producer of OCTG, has a production process similar to that of SSV, and its financial statement evinces no receipt of subsidies the Department has found to be countervailable. SSV argues that even though Apollo may have chosen to concentrate its OCTG production in its subsidiary Lloyds, that fact does not make its financial statement any less reflective of the experience of an Indian OCTG producer with operations like SSV than any of the alternatives on the record. Indeed, SSV argues, Technocraft, Ratnamani, and Maharashtra all have substantial production of products that use different inputs and different production processes from SSV. Thus, SSV argues, there is no

\textsuperscript{20} Id., at 11, citing \textit{Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review}, 75 FR 43488 (July 26, 2010), and accompanying Issues and Decision Memorandum at 21-25.

\textsuperscript{21} Id., at 12, citing \textit{CWP from Vietnam}, and accompanying Issues and Decision Memorandum at 20.

\textsuperscript{22} See SSV Rebuttal Brief at 14, citing \textit{Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from India: Final Affirmative Determination}, 81 FR 49932 (July 29, 2016) (\textit{Flat Products from India}), and accompanying Issues and Decision Memorandum at 11; \textit{Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Affirmative Determination of Critical Circumstances}, 79 FR 40712 (July 14, 2014), and accompanying Issues and Decision Memorandum at 14; \textit{OCTG from Vietnam Final Determination}, and accompanying Issues and Decision Memorandum at 19.
basis for rejecting the consolidated Apollo financial statements as a source of surrogate values, or for preferring any of Petitioners’ proposed financial statements.

**Department’s Position:**

In our *Preliminary Results*, we used the financial statements of Apollo and Surya to calculate SSV’s surrogate financial ratios. We used these financial statements because they were contemporaneous with the POR, publicly available, representative of a broad market average, and the only financial statements on the record of companies who produced OCTG during the POR, exclusive of those who received subsidies from Indian programs we have found to be countervailable. In these final results we have used the same criteria in selecting financial statements as we used in the *Preliminary Results*, but have also considered parties’ comments summarized above. As a result, we have modified our selection of financial statements for use in these final results.

In selecting SVs for factors of production, section 773(c)(1) of the Act instructs the Department to use “the best available information” from the appropriate market economy (ME) country. The Department normally will use publicly available information to value factors, pursuant to 19 CFR 351.408(c)(1). In choosing surrogate financial ratios, it is the Department’s practice to use data from ME surrogate companies based on the “specificity, contemporaneity, and quality of the data.” However, when the financial statement in question contains a reference to a program or programs the Department has previously found to be countervailable, the Department may consider that the financial ratios derived from that company’s financial statements are less representative of the financial experience of the relevant industry than the ratios derived from financial statements of a company that do not contain evidence of subsidization. Consequently, the Department does not rely on financial statements that contain references to programs previously found to be countervailable by the Department when there are other sufficiently reliable and representative data on the record for purposes of calculating the surrogate financial ratios. In addition, it is our practice not to reject financial statements on grounds that the company’s financial statement reports the receipt of ‘subsidies’ unless we have previously found the listed subsidy to be countervailable.

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26 *Id.* , at 11.
27 *See*, *e.g.*, Nails from the PRC, and accompanying Issues and Decision Memorandum at 12; Silicon Metal from the PRC and accompanying Issues and Decision Memorandum at 37-38; Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 77 FR 55800 (September 11, 2012), and accompanying Issues and Decision Memorandum at 16; Certain Steel Threaded Rod From the People’s Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 68400 (November 4, 2011), and accompanying Issues and Decision Memorandum at 11-12.
With respect to contemporaneity, all five financial statements at issue cover the period April 2014 through March 2015. They are, therefore, all equally contemporaneous with the POR of this administrative review.

With respect to specificity, we stated in the final determination of the less-than-fair-value investigation of this proceeding that we prefer to use the financial statements of producers of identical merchandise.\textsuperscript{28} Using this criterion, we find that the financial statements of Apollo, Ratnamani, and Technocraft are not the best sources on the record for calculating surrogate financial ratios.

With regard to Apollo, although there is information on the record that OCTG is among this company’s product offerings,\textsuperscript{29} there is no information to conclude that either Apollo or Lloyds is the producer of that OCTG. Indeed, there is no evidence that Apollo or Lloyds produced OCTG at all during the period covered by Apollo’s financial statement. Furthermore, Apollo’s 2014-2015 financial statements do not contain Lloyd’s balance sheet, profit and loss statement, or any other documents for Lloyds. For these reasons, we make the same determination here with respect to Apollo’s financial statement that we made in the investigation of this proceeding, that “we are unable to determine whether financial ratios calculated from it would be representative of the financial ratios of an Indian OCTG producer.”\textsuperscript{30}

With respect to Ratnamani, we find that Petitioners did not provide support to substantiate that Ratnamani produced OCTG during the period covered by the financial statement on the record. Furthermore, as SSV has noted, there is evidence that the focus of Ratnamani’s production is on stainless steel,\textsuperscript{31} which differs from SSV, as SSV produces only carbon steel products. Furthermore, there is record information that Ratnamani received revenues from electricity generation and job work, which is unlike SSV’s experience.\textsuperscript{32} Given these distinguishing facts, we determine that Ratnamani’s financial statement is not the best information on the record for valuing financial ratios.\textsuperscript{33}

With respect to Technocraft, given that we have not found the “capital subsidies” that Technocraft received to be countervailable, we determine that the receipt of these capital subsidies does not disqualify Technocraft’s financial statement from consideration. Nevertheless, we note that less than 40 percent of Technocraft’s revenue is derived from pipe production.\textsuperscript{34} Indeed, it was for this reason, and the fact that the Department had equally qualified financial statements from other companies that produced pipe as their only or primary

\textsuperscript{28} See OCTG from Vietnam Final Determination, and accompanying Issues and Decision Memorandum at Comment 2.
\textsuperscript{29} See SSV’s May 2, 2016 submission at Attachment 8-B-1.
\textsuperscript{30} See OCTG from Vietnam Final Determination, and accompanying Issues and Decision Memorandum at Comment 2.
\textsuperscript{31} See Ratnamani’s annual report found in Petitioners’ May 2, 2016 submission at Exhibit 1-C at 4.
\textsuperscript{32} Id., at 86.
\textsuperscript{33} However, after reviewing Petitioners’ comments, we find that Ratnamani’s financial statement does not evince any receipt of subsidies we have found to be countervailable.
\textsuperscript{34} See Technocraft’s financial statement at 28.
business, that the Department rejected use of Technocraft’s financial statement in CWP from Vietnam.\footnote{See CWP from Vietnam, and accompanying Issues and Decision Memorandum at Comment 1.} Furthermore, we also agree with SSV that there is no record evidence that Technocraft produces OCTG. Therefore, because we prefer companies that produce identical merchandise,\footnote{See OCTG from Vietnam Final Determination, and accompanying Issues and Decision Memorandum at Comment 2.} we find that Technocraft’s financial statement is not the best information on the record for calculating surrogate financial ratios.

Having eliminated the financial statements of Apollo, Ratnamani, and Technocraft as not the best information on the record, we are left with the financial statements of Surya and Maharashtra. Both companies list “steel tubes and pipes”\footnote{See Maharashtra’s 2014-2015 financial statement at 22, found in Petitioners’ May 2, 2016 submission at Exhibit I-D (Maharashtra’s financial statement); Surya’s 2014-2015 financial statement at 1, found in SSV’s May 2, 2016 submission at Attachment 8-A-11 (Surya’s financial statement).} as their principle product, and both produce OCTG.\footnote{See SSV’s May 2, 2016 submission at Attachment 8-B-11; SSV’s May 9, 2016 submission at Attachment 1.} Therefore, both producers meet the “specificity” criterion. However, Maharashtra’s financial statement indicates that it received subsidies under the EPCG scheme and the Mega Project Industrial Promotion Subsidy (Mega Project).\footnote{See Maharashtra’s financial statement at 71.} The Department has previously found both of these programs to be countervailable.\footnote{See Flat Products from India, and accompanying Issues and Decision Memorandum at 12.} As we stated in the final determination of the investigation of this proceeding, “It is the Department’s practice to disregard financial statements of companies that evidence receipt of countervailable subsidies and where there are other usable data on the record.”\footnote{See OCTG from Vietnam Final Determination at 2.} Petitioners have argued that the amount of the subsidy is small; however, it is not the Department’s practice to consider the amount of the benefit received when analyzing surrogate financial statements. Because these financial statements show receipt of subsidies previously found by the Department to be countervailable, we must consider whether there is better information on the record.

As stated above, Surya is an Indian producer of merchandise identical to the merchandise under review in this proceeding. Its financial statements are contemporaneous with the POR, and show no receipt of subsidies previously found to be countervailable. However, in CWP from Vietnam, the Department found that it was not publicly available.\footnote{See CWP from Vietnam, and accompanying Issues and Decision Memorandum at Comment 1.} Nevertheless, upon our review of the record of this proceeding, we find that the facts of the instant record are different from those in
**CWP from Vietnam.** In *CWP from Vietnam*, the Department requested information from the party who submitted Surya’s financial statement regarding the manner in which the financial statement was obtained. The Department found the party’s response in that case to be vague, and determined that additional information was needed before it could replicate the process to obtain the financial statement independently.

In this administrative review, although the Department did not request any information on the source of the financial statement from the party who submitted it, SSV provided sufficient information regarding how the financial statement could be obtained from public sources. While part of that process may involve paying a fee, the Department has found that a financial statement need not be free of charge for it to be publicly available. Therefore, given the facts on the record of this administrative review, we find no evidence that Surya’s financial statements are not publicly available.

Accordingly, we determine that Surya’s financial statements represent the best information available on the record for calculating surrogate financial ratios because they meet all the Department’s criteria for surrogate values and, unlike the financial statements of Maharashtra, evince no receipt of subsidies we have previously found to be countervailable. Therefore, in these final results of review, we have used only the financial statement of Surya for calculating the surrogate financial ratios.

**Comment 2: Brokerage and Handling**

**SSV Comments**

SSV argues the Department erred in its calculation of brokerage and handling (B&H) costs, its selection of a surrogate value (SV) source for B&H, and, in some instances, in valuing B&H at all.

With respect to B&H on raw material imports, SSV argues the Department erred by adding a B&H SV to the SV used to value imports from non-market economy (NME) countries. Adding a SV to account for B&H from NME countries, SSV argues, violates the Department’s practice.

Similarly, SSV argues the Department erred by adding a SV to account for B&H costs incurred on imports from market-economy (ME) countries. SSV argues that when a company’s accounting records do not allow materials handling costs to be identified specifically with particular raw material items in inventory, the costs may be classified as materials overhead. For such companies, the handling costs would already be captured in the relevant financial ratios as

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43 See *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 10545 (March 11, 2009) at Comment 1; See also *Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission in Part*, 76 FR 56732 (September 14, 2011), and accompanying Issues and Decision Memorandum at Comment 4; *Certain Steel Nails From the People's Republic of China: Preliminary Results and Partial Rescission of the Third Antidumping Duty Administrative Review*, 77 FR 53845, 53852 (September 4, 2012).

44 SSV Rebuttal Brief at 16, citing *CWP from Vietnam*, and accompanying Issues and Decision Memorandum at 27.
part of overhead, which means that adding them separately to direct materials costs would result in double counting.

With respect to the source of the SV, SSV argues the Department erred by using Doing Business 2014: India (Doing Business 2014) as the source of the surrogate value. SSV argues that this source was inappropriate because the data is reported to be “current as of June 1, 2013,”45 which means it is not contemporaneous with the POR. Therefore, in order to use data that is contemporaneous with the POR, SSV argues that, with respect to exports, the Department should instead value B&H using information from the administrative review of OCTG from India, relating to GVN Fuels, Ltd. (GVN). SSV argues that using the GVN data would be consistent with CWP from Vietnam, where the Department used the GVN data to value B&H, rather than Doing Business 2014, because the GVN data was the most contemporaneous data on the record.46 With respect to B&H on imports, SSV argues that if the Department does assign a SV to account for B&H, it should use data from either Maersk Line or the Orient Overseas Container Line because these data, like the GVN data, are contemporaneous with the POR.

Furthermore, SSV argues that if the Department values B&H using data from Doing Business 2014, it should omit the category “Document Preparation” from the summation of B&H costs for both exports and imports. SSV states that no documents included in the category “Document Preparation” in Doing Business 2014 are prepared by SSV’s broker, but are, instead, prepared either by SSV’s administrative personnel or (in the case of services or inputs obtained from ME suppliers) by an ME supplier. With respect to the costs incurred by its administrative personnel, SSV states that these costs would be included in the financial ratios the Department calculates from surrogate financial statements. Thus, including them in B&H would double count them.

SSV also argues the Department should eliminate the expense category “ports and terminal handling” from the calculation of B&H on imports. SSV states that it does not incur this expense because it does not import steel coils in containers.

Moreover, SSV argues that if the Department utilizes Doing Business 2014 to value B&H, it should use a different allocation methodology than it used in the Preliminary Results. In the Preliminary Results, SSV states, the Department used a methodology that assumes that B&H costs double based on the assumed weight of the shipping container. In the Department’s calculation, the assumed weight was 10 MT. SSV argues that this methodology (with respect to export B&H costs) was reviewed and rejected as “contrary to common sense and commercial reality” by the Court of International Trade (CIT) in CS Wind47 (in which “document preparation” costs were at issue) and DuPont Teijin48 (in which “customs clearance and technical control” costs, as well as document preparations costs, were at issue). In both of these cases, SSV states, the Department agreed upon remand to allocate the costs at issue based on the

46 Id., at 7, citing CWP from Vietnam, and accompanying Preliminary Decision Memorandum at 19.
average volume per export transaction. SSV argues therefore that the Department should perform the allocation for B&H costs in accordance with this judicial precedent.

Furthermore, SSV argues that we should reach the same conclusion that the CIT reached in CS Wind and Dupont Teijin with respect to export B&H costs. It defies “common sense,” SSV states, to assume that an exporter will have to create a completely new set of documents or make an entirely new customs clearance for every ten tons imported.

Additionally, SSV argues there is record evidence that “document preparation” and “customs clearance and technical control” fees are set as a fixed amount per transaction, which do not vary with the tonnage being exported or imported. Specifically, SSV states that in its May 9, 2016 surrogate value submission, it submitted the actual price lists for companies that provide B&H services at Indian ports. SSV insists that these price lists confirm that all documentation and administration charges are assessed as a fixed amount per bill of lading. Furthermore, SSV states, the price lists also show that terminal and handling charges are assessed as a fixed amount per container. The price lists, SSV contends, do not indicate that any charges are assessed as an amount per ton.

Therefore, SSV concludes in these circumstances, that there is no basis for the Department to calculate a per-ton cost for B&H based on the assumption that the costs for “documents processing” and “customs clearance and technical control” would vary with the weight of the shipment. SSV argues that instead of dividing by 10 MT, the Department should: (1) allocate “document preparation” and “customs clearance and technical control” fees using SSV’s respective average export and import quantities; and (2) for export B&H, allocate “terminal handling and port charges” based on average shipment quantity for non-OCTG pipe products (SSV states it shipped OCTG in bulk, not in containers). With respect to “ports and terminal handling” charges on imports, SSV states that the Department should allocate this expense using either the average weight per container of SSV’s exports of circular welded pipe products or the maximum weight per container set forth in published shipping documents.

Petitioners’ Rebuttal Comments

With respect to adding a B&H SV to the SV used to value imports from NME countries, Petitioners argue that the precedent SSV cites, CWP from Vietnam, is distinguishable from the instant case in that in CWP from Vietnam, the Department valued hot-rolled coil using only Indian SVs.49 Here, Petitioners state SSV purchased some inputs from ME suppliers. Thus, Petitioners argue the Department should include B&H for SVs from Indian import data in the final results.

With respect to the source of the SV, Petitioners argue that the Department properly valued B&H using Doing Business 2014. Petitioners state that in the final determination of the LTFV

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49 See Petitioners Rebuttal Brief at 4, citing CWP from Vietnam, and accompanying Issues and Decision Memorandum at 27.
investigation of this proceeding the Department rejected this same argument, and confirmed the agency practice of using *Doing Business 2014* as the best available source for the SV of B&H.50

Furthermore, Petitioners argue that the *Doing Business 2014* data meet the Department’s normal criterion of being representative of a broad market average, whereas the GVN data does not, because they are from a single Indian company.

Petitioners also disagree that the Department should eliminate any of the expense categories in the B&H SV. First, Petitioners argue that SSV’s argument is inconsistent with the U.S. Court of Appeals for the Federal Circuit having long recognized that “the process of constructing foreign market value for a producer in a nonmarket economy country is difficult and necessarily imprecise.”51 Second, Petitioners argue the Department has already rejected this argument from SSV as well in the investigation of this proceeding.52

Petitioners also state that SSV’s argument that the Department improperly used a standard container weight in performing the calculation is another argument that the Department already rejected in the final determination of the investigation.53

Furthermore, Petitioners state that SSV’s reliance on the *CS Wind* remand is misplaced because the situation there involved a completely different factual predicate. Specifically, in *CS Wind*, the Department stated, “we find that it is appropriate in this case to calculate a per-kilogram B&H SV using the actual weight of {respondent} CSWG’s shipments because of the unique type of product involved: wind tower segments that cannot be shipped in containers.”54 Here, Petitioners state, SSV has made no argument, let alone made an evidentiary demonstration, that OCTG cannot be shipped in containers.

**Department’s Position:**

With respect to SSV’s argument that the Department erred by adding a B&H SV to the SV used to value imports from NME countries, we agree with SSV. The Department affirmed its practice in *CWP from Vietnam* that we do not add a SV to account for B&H for imports from NME countries.55 We have corrected this error in these final results of review. That SSV had imports from both NME and ME countries does not affect this correction for the imports from NME countries.

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50 Id., at 2, citing *OCTG from Vietnam Final Determination*, and accompanying Issues and Decision Memorandum at 6.
51 Id., at 3, citing *Sigma Corporation v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997).
52 Id., at 3, citing *OCTG from Vietnam Final Determination*, and accompanying Issues and Decision Memorandum at 7.
53 Id., at 4, citing *OCTG from Vietnam Final Determination*, and accompanying Issues and Decision Memorandum at 8.
54 Id., citing *CS Wind Vietnam v. United States Results of Redetermination Pursuant to Court Order* (July 28, 2014) at 21, found at [http://enforcement.trade.gov/remands](http://enforcement.trade.gov/remands) (*CS Wind*).
55 See *CWP from Vietnam*, and accompanying Issues and Decision Memorandum at Comment 6.
With respect to the imports from ME countries, we disagree with SSV’s argument that a B&H SV should not be added. We addressed this issue in the *OCTG from Vietnam Final Determination*, where we stated: 56

We agree with petitioner that we should add B&H and import fees to the market-economy purchase price of the hot-rolled coils because the record indicates that SSV incurred cost for B&H and SSV does not dispute this cost. SSV has presented no evidence that the B&H costs are included in the overhead reported on any of the financial statements on the record.

For these same reasons, we have continued to assign a SV to B&H on imports from ME countries in these final results.

Regarding the source of the SV, we have stated, “The Department’s practice when selecting the best available information for valuing {factors of production}, in accordance with section 773(c)(l) of the Act, is to select surrogate values which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and free of taxes and duties.” 57 Therefore, we agree with SSV that we should seek a SV that is contemporaneous with the POR.

Here, although we did not consider the information for purposes of the *Preliminary Results*, upon reexamination of the record, we find that the record contains data from *Doing Business 2016: India (Doing Business 2016)*, 58 which is both contemporaneous with our POR and representative of a broad market average, unlike the GVN data. *Doing Business 2016* states, “The data in this report are current as of June 1, 2015.” 59 Thus, we find that these data are contemporaneous with the POR. Furthermore, *Doing Business 2016* is more representative of a broad market average than are data from a single Indian company (i.e., GVN). We, therefore, conclude that *Doing Business 2016* is the best source available for valuing B&H.

We do not agree with SSV, however, that it is appropriate to remove any of the cost categories from the summation of B&H in *Doing Business 2016*. In the *OCTG from Vietnam Final Determination*, we stated: 60

The Department will sometimes make an adjustment to surrogate value data to reflect an individual exporter’s experience, including to B&H surrogate value data, but normally only when the item’s amount is clearly identified in the “Doing Business” report and the factors of production for self-preparation are accounted for.

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56 *See OCTG from Vietnam Final Determination*, and accompanying Issues and Decision Memorandum at Comment 10.
57 *See Certain Oil Country Tubular Goods from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012), and accompanying Issues and Decision Memorandum at Comment 3.
58 *See SSV’s May 12, 2016 submission at Attachment 5.
60 *See OCTG from Vietnam Final Determination*, and accompanying Issues and Decision Memorandum at Comment 1 (citations omitted).
Such is not the case here with respect to the individual items SSV has identified because the costs for each item are not indicated in the “Doing Business” report.

As in *OCTG from Vietnam Final Determination*, we are unable to make an adjustment for individual documents because *Doing Business 2016* does not provide costs for individual documents. Moreover, a document that SSV placed on the record (for which SSV has requested proprietary treatment) indicates that some B&H work, including document preparation, is done for SSV by NME sources, and not, as SSV claims, entirely by either SSV’s internal personnel or by ME suppliers.\(^6\) Therefore, we find that it is appropriate to value these expenses with a surrogate value.

With respect to its argument that we should eliminate the expense category “terminal handling charge” from the calculation of B&H for imports of steel coil, we disagree. We find that record evidence fails to show that SSV did not incur this expense on its imports of steel coils, or that it does not import them in containers.

With respect to the allocation methodology, we continue to find that the methodology we employed in the *OCTG from Vietnam Final Determination* and in our *Preliminary Results* is appropriate. As we stated in *OCTG from Vietnam Final Determination*:

The Department finds that it should continue to use the weight of 10 MT for a standard container because this is the weight used in the *Doing Business* publication and thus the SV calculation must be internally consistent with the original data’s reporting basis. The Department finds that mixing different sources of data in the B&H calculation would add inconsistency to the ratio calculation, which would yield a distorted result.

Using 10 MT in the per-unit calculation maintains the relationship between cost and quantity from the survey (which is important because the numerator and the denominator of the calculation are dependent upon one another), makes use of data from the same source, and is consistent with the Department’s practice.\(^6\)

However, in the *Doing Business 2016* data, the shipment weight is assumed to be 15 MT, rather than 10 MT as in *Doing Business 2014*.\(^6\) Therefore, we have used 15 MT as the denominator in calculating the per-unit cost.

Moreover, while SSV is correct that the Indian B&H price lists it placed on the record do not show charges assessed as an amount per ton, other B&H information SSV placed on the record does show charges assessed as an amount per ton.\(^6\)

\(^6\) See SSV’s July 15, 2016 submission at Exhibit SC-2.

\(^6\) See *OCTG from Vietnam Final Determination*, and accompanying Issues and Decision Memorandum at Comment 1 (citations omitted).

\(^6\) *Id.*, at 2, 4.

\(^6\) See SSV’s July 15, 2016 submission at Appendix SC-2.
In *CS Wind*, the Department used the actual weight of the respondents’ shipments, but explained, “We find that it is appropriate in this case to calculate a per-kilogram B&H SV using the actual weight of {respondent} CSWG’s shipments because of the unique type of product involved: wind tower segments that cannot be shipped in containers.”\(^{65}\) Here, there is no evidence on the record that OCTG cannot be shipped in containers. Furthermore, in *Doing Business 2016*, the B&H data for exports is based on an assumed non-containerized shipment.\(^{66}\)

*DuPont Teijin* is also inapposite. In *DuPont Teijin*, the CIT based its ruling on the allegation that “Commerce has failed to explain why document preparation and customs clearance costs would change depending on the size or weight of the shipment.”\(^{67}\) Here, we have explained that there is record evidence (cited above) that documentation preparation and customs clearance costs can change depending on the size of the shipment. Therefore, in these final results of review we have used the same allocation methodology as in the *Preliminary Results*.

**Comment 3: Surrogate Value for Water**

SSV Comments

SSV argues the Department erred by counting water as a direct cost. SSV states that water is not incorporated in the subject merchandise during the production process, and water is normally considered a part of factory overhead. In fact, SSV states, at least one of the financial statements utilized by the Department to calculate “financial ratios” explicitly listed “water charges” as a separate item of manufacturing expenses. Thus, because the cost of water is likely to be included in the factory overhead rates calculated from the financial statements of Indian producers of comparable merchandise, the inclusion of a value for water as a direct cost double counts the cost of water.

Furthermore, SSV argues that even if the Department decides to include water as a direct expense, it should revise its computation from that used in the *Preliminary Determination*. In the *Preliminary Determination*, the Department valued water using data downloaded from the website of Maharashtra Industrial Development Corporation (MIDC). The downloaded information included separate figures for water for “Inside Industrial Area for Industrial Use” and for “Outside Industrial Area for Industrial Use.” The Department took the average of the two.

SSV argues that the computation described above was an error because of SSV’s location in an industrial area. SSV alleges the information obtained from MIDC confirms that the cost of water provided for industrial zones is lower than the cost in other areas, presumably because such zones can have dedicated infrastructure and other economies of scale that reduce the supplier’s costs. SSV states that there is no reason to believe the industrial zones in Vietnam do not benefit

\(^{65}\) See *CS Wind Vietnam v. United States Results of Redetermination Pursuant to Court Order* (July 28, 2014) Remand at 21.

\(^{66}\) See “Doing Business Across Borders Methodology,” found in SSV’s May 12, 2016, submission at Attachment 6, at 4.

\(^{67}\) See *DuPont Teijin*, 7 F. Supp. 3d at 1350.
from equivalent efficiencies. Consequently, to the extent that it is necessary to assign a value to water, SSV argues the Department should use the figures for usage “Inside Industrial Area for Industrial Use.”

**Petitioners’ Rebuttal Comments**

With respect to the surrogate value itself, Petitioners argue the Department correctly calculated the surrogate value by including the values for both “Inside Industrial Area for Industrial Use” and “Outside Industrial Area for Industrial Use.” They state that even if SSV is located entirely within an industrial zone, there is no evidence on the record that facilities in this zone are entitled to a lower water usage rate. Petitioners also point out that in the countervailing duty investigation of circular welded carbon-quality steel pipe from Vietnam, the Department specifically found that SSV “paid the applicable tariff rates for their water {charged by the provider}” and that “there was no separate tariff rate for companies located within the industrial zones.” Petitioners note too that SSV raised this same argument in the LTFV investigation segment of this proceeding, and also in *CWP from Vietnam*, and both times the Department rejected it. Petitioners assert the Department should do so here as well.

**Department’s Position:**

We agree with Petitioners. As we did in *OCTG from Vietnam Final Determination*, we have determined to value water as a direct input in this administrative review. Although water may sometimes be classified as overhead, the Department has stated, “Normally, the Department values water directly and not in factory overhead when water is used for more than incidental purposes, is required for a particular segment of the production process, or appears to be a significant input in the production process.” Although water is not incorporated in the subject merchandise, it is used in the production process of OCTG. Therefore, because water is an integral part of the production process for OCTG, we have included water as a direct input.

Furthermore, we disagree that the SV for water should be limited to only the category “Inside Industrial Area for Industrial Use.” In the final determination of the LTFV investigation segment of this proceeding, we determined that although Vietnamese companies located within industrial areas may benefit from economies of scale that reduce the supplier’s costs, there was no record evidence that Vietnamese producers located entirely within industrial areas are charged

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69 Id., at 5, citing *OCTG from Vietnam Final Determination*, and accompanying Issues and Decision Memorandum at 21-23.

70 Id., citing *CWP from Vietnam*, and accompanying Issues and Decision Memorandum at 23.

71 See *OCTG from Vietnam Final Determination*, and accompanying Issues and Decision Memorandum at Comment 4.

72 Id. See also *Automotive Replacement Glass Windshields from the People’s Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004).

lower water consumption rates.\textsuperscript{74} Indeed, in the 2012 countervailing duty investigation of CWP from Vietnam, we found that there was no separate tariff water rate for companies located within industrial zones.\textsuperscript{75} The record here is likewise devoid of information establishing a separate tariff rate for companies located within industrial zones in Vietnam. Therefore, in these final results we have not revised our calculation of the SV for water.

**Comment 4: Inland Insurance**

Petitioners’ Comments

Petitioners argue that the inland freight contract that SSV had with its freight forwarder included an insurance provision, and that the Department should assign a SV to that insurance using the data from the company Agro Dutch. They argue that doing so would be consistent with the Department’s remand redetermination in which the Department valued inland insurance using the very same Agro Dutch data at issue on the record here.

SSV’s Comments

SSV argues that common law establishes that truckers and other common carriers “commonly bear the risk of loss” for losses during transport. SSV states that in the Preliminary Results the Department valued inland insurance using the truck costs that shipping companies charge their customers. SSV states that before the Department can add a charge for inland insurance to those amounts, it must find, based on record evidence, that unlike U.S. trucking companies, Indian trucking companies would not be liable as virtual insurers for loss or damage to the goods they transport. SSV alleges that there is no evidence on the record to support such a conclusion. Furthermore, SSV argues that even though SSV’s contract with its freight forwarder does not include a force majeure provision, the Vietnam commercial code does supply such a provision, and it exempts carriers from liability in such cases.

SSV acknowledges that in the redetermination on remand relating to the LTFV investigation of this case, the Department asserted that the contract between SSV and its freight forwarder constituted an insurance agreement between SSV and its freight forwarder. Nevertheless, SSV asserts the Department failed to explain how making the transport company liable for losses up to the value of the invoice is different from the normal assignment of losses under U.S. or Indian law, both of which make the transport company liable for losses up to the full value of the cargo.

With respect to the documents the Department placed on the record regarding inland insurance value, SSV states they are largely illegible. Further, SSV argues that the surrogate value the Department calculated from these documents in the past is unreliable and aberrational, and does not reflect the cost of inland insurance in India for transport of steel pipe products. Additionally,

\textsuperscript{74} See OCTG from Vietnam Final Determination, and accompanying Issues and Decision Memorandum at Comment 4.

\textsuperscript{75} See Steel Pipe from Vietnam, and accompanying Issues and Decision Memorandum at 5 (“Hongyuan and SeAH VINA sourced their water from industrial development companies. We verified that both companies paid the applicable tariff rates for their water and there was no separate tariff rate for companies located within the industrial zones”).
the Department’s documents indicate that the value for inland insurance includes inland insurance and marine insurance. As such, SSV states, the use of those figures without adjustment would double count the marine insurance costs that SSV already reported.

SSV also argues that the questionnaire responses submitted by the Indian respondents in the OCTG from India LTFV investigation and the first administrative review of OCTG from India confirm that none of the Indian exporters incurred inland insurance costs for transport from their plants to the port of exportation. The absence of such costs, SSV states, is consistent with the provisions of Indian law making common carriers liable for any losses during transport. However, SSV argues that the record of the OCTG from India proceeding contains information on insurance costs for home market shipments. SSV argues that these data show that the Agro Dutch data the Department placed on the record are unreliable and aberrational, and must be corrected. SSV argues the Department should use the insurance costs from the respondents in the proceeding of Indian OCTG to value inland insurance in this proceeding if it decides to value inland insurance.

Furthermore, SSV argues that the preliminary results of this review were signed on October 5, 2016, which means the deadline for submitting SVs in this review was September 5, 2016. As of September 5, 2016, SSV argues, there was no basis for SSV to believe that the Department would include any value for inland insurance in its calculations because in the Department’s only decision on that issue prior to September 5, 2016, the Department stated that it did not consider the contract between SSV and its freight forwarder to provide insurance coverage. In these circumstances, SSV argues, due process and fundamental fairness require that the Department allow SSV to provide factual information to establish the SV to be used in the event the Department decides to include a value for inland insurance in its calculations.

**Department’s Position**

Upon review of the interested party comments, we determine that it is appropriate to assign a value to represent inland insurance costs. As noted above, on March 21, 2017, we placed Agro Dutch inland insurance data on the record and both parties commented on it. After consideration of those comments, we find that the Agro Dutch data are not the best information on the record with which to value inland insurance.

The information SSV placed on the record from the OCTG from India proceeding demonstrates that Indian OCTG producers sometimes insure their shipments. Specifically, the company Jindal SAW, Ltd. (Jindal SAW) stated in its section B response in the original antidumping investigation, “Jindal SAW maintains an insurance policy covering the loss of finished goods shipped to any destination in the world including the domestic market.”76 Thus, Jindal SAW’s U.S. OCTG shipments are covered by an inland insurance contract.

76 See Letter from Jindal SAW, Ltd., to the Secretary, Re: OCTG from India: Response to Sections B, C, and D, dated November 15, 2013, at 29, found in SSV’s March 23, 2017 submission (Jindal SAW response) at Attachment 5-A.
In our redetermination on remand from the LTFV investigation segment of this proceeding, we stated:77

Upon review of the record, we determine that the Service Contract between SeAH VINA and its freight forwarder includes language to insure SeAH VINA against “any accidental or any damage to cargoes” for the full amount of the invoice. Therefore, in accordance with the CIT’s instructions, we have reclassified SeAH VINA’s freight contract as being inclusive of an insurance contract, and have included a surrogate value for domestic inland insurance in our revised margin calculations.

As the same information from the investigation is on this record, our interpretation of SSV’s freight contract as being inclusive of an insurance provision that we should value separately from the freight costs remains unchanged.

With respect to which SV to use to value the insurance costs, we have chosen the value that GVN reported for home market inland insurance in the first administrative review of OCTG from India. It is a contemporaneous, publicly available figure that represents Indian inland insurance costs for OCTG shipments. Therefore, it meets the Department’s criteria for selection as a SV. The Agro Dutch data, in contrast, is from 2005, and thus predates the POR by approximately ten years. Therefore, we determine the GVN data are the best information on the record to value inland insurance.

We agree with SSV’s argument that use of the Agro Dutch data would result in the double counting of marine insurance expenses; as such, we have valued SSV’s inland insurance using the GVN data, which is not inclusive of marine insurance. Therefore, we have made no changes to the marine insurance surrogate value.

Comment 5: Differential Pricing

SSV’s Comments

SSV states that the Department’s use of the differential pricing analysis is contrary to basic statistical principles and the requirements of the statute. SSV acknowledges that its concerns about the differential pricing analysis are moot because the Department used the average-to-average (A-to-A) method in the Preliminary Results. Regardless, SSV expounds on the Department’s differential pricing analysis in general.

First, SSV states the Department’s use of Cohen’s $d$, and the 0.8 cut-off for finding a “large” effect, in its differential pricing analysis is not consistent with the use of Cohen’s $d$ in ordinary statistical analysis. It states that the Cohen’s $d$ test is meant to apply only to random, independently drawn samples under the assumption that the populations sampled are normally distributed.

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Second, SSV states that as the Department is not applying the Cohen’s \(d\) test correctly it cannot rely on the 0.8 percent cut-off to identify if the difference between prices for target and non-target groups is large in the absence of further justification. SSV states that the Department has not provided such a justification.

Third, SSV states there is nothing in Professor Cohen’s work that supports the 33 percent and 66 percent “pass rate” cut-offs the Department uses in the second stage of the differential pricing analysis. In these circumstances, SSV states, the Department must explain why, based on the evidence on the record, those “pass rate” cut-offs are appropriate. To date, SSV states, the Department has not done so.

Fourth, SSV states it has submitted calculations that indicate that the Department’s differential pricing analysis would find patterns in purely random numbers. It states that these calculations demonstrate that the differential pricing analysis is susceptible to such errors, and is not sufficient to distinguish between patterns and random fluctuations.

Fifth, SSV states that even if the Department had justified the cut-offs it uses based on substantial evidence on the record, its differential pricing analysis fails to adequately address the statutory requirement that the Department “explain why such differences cannot be taken into account using” an A-to-A or transaction-to-transaction calculation methodology.\(^78\)

Sixth, SSV argues that the World Trade Organization (WTO) Appellate Body recently issued a decision holding that the “Differential Pricing Analysis” and use of “zeroing” is not consistent with the requirements of the WTO Agreement.\(^79\) Thus, SSV states, any finding of dumping based on differential pricing analysis would be inconsistent with U.S. obligations under the WTO Agreement.

Petitioners’ Rebuttal Comments

Petitioners argue the courts have upheld the Department’s differential pricing methodology against the same claims made by SSV.\(^80\) With respect to U.S. obligations under the WTO Agreement, Petitioners argue that the CIT ruled over a decade ago that “Commerce is not bound by the determination of the WTO Appellate Body.”\(^81\)


\(^81\) Id. at 7, citing Slater Steel Corp. v. United States, 27 CIT 1775, 1782 (2006) (emphasis omitted).
Department’s Position:

For these final results, the Department has found that the A-to-A method, applied to all U.S. sales, is the appropriate comparison method to use to calculate the weighted-average dumping margin for SSV. Accordingly, we have not addressed SSV’s arguments concerning the speculative use of another comparison method (average-to-transaction) in our analysis.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final results and the final dumping margin in the Federal Register.

☐ □

Agree Disagree

4/12/2017

Ronald K. Lorentzen

Signed by: RONALD LORENZEN

Ronald K. Lorentzen
Acting Assistant Secretary
For Enforcement and Compliance