

determines that such injury does exist, we will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

#### *Destruction of Proprietary Information*

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the APO itself. See 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: September 24, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

#### **Appendix**

##### **List of Issues in the Issues and Decision Memorandum**

- Comment 1:* Comments Regarding the Investigation
- Comment 2:* Alternative Cost Averaging Methodology
- Comment 3:* Cost Recovery Test
- Comment 4:* Model Matching Hierarchy
- Comment 5:* Nacobre's U.S. Date of Sale
- Comment 6:* Treatment of Nacobre's General and Administrative Expense Ratio
- Comment 7:* Nacobre's Weight Basis
- Comment 8:* Treatment of the Negative Value of Certain U.S. Expense Variables for IUSA
- Comment 9:* Treatment of Early Payment Discounts for IUSA's Home Market Sales
- Comment 10:* IUSA's Packing Costs
- Comment 11:* Further Manufactured Line Sets
- Comment 12:* "All Others" Rate

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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: Final Determination of Sales at Less Than Fair Value**

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

**DATES:** *Effective Date:* October 1, 2010.

**SUMMARY:** On May 12, 2010, the Department of Commerce (the "Department") published its preliminary determination of sales at less than fair value ("LTFV") in the antidumping duty investigation of seamless refined copper pipe and tube ("copper pipe and tube") from the People's Republic of China ("PRC").<sup>1</sup> The Department invited interested parties to comment on the *Preliminary Determination*. Based on the Department's analysis of the comments received, the Department has made changes from the *Preliminary Determination*. The Department determines that copper pipe and tube from the PRC is being, or is likely to be, sold in the United States at LTFV as provided in section 735 of the Tariff Act of 1930, as amended (the "Act"). The final dumping margins for this investigation are listed in the "Final Determination" section below.

#### **FOR FURTHER INFORMATION CONTACT:**

Karine Gziryan or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4081 and (202) 482-0679, respectively.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The Department published its *Preliminary Determination* of sales at LTFV and postponement of the final determination on May 12, 2010.

Between May 24, 2010, and June 1, 2010, the Department conducted verification of mandatory respondents Golden Dragon Precise Copper Tube Group, Inc. ("Golden Dragon") and Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., and Hong Kong Hailiang Metal Trading Limited (collectively, the "Hailiang Group").<sup>2</sup>

<sup>1</sup> See *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 26716 (May 12, 2010) ("*Preliminary Determination*").

<sup>2</sup> See the "Verification" section below.

Cerro Flow Products, Inc., KobeWieland Copper Products, LLC, Mueller Copper Tube Company, Inc. (collectively, "Petitioners"), Golden Dragon, and the Hailiang Group submitted case briefs on July 2, 2010.<sup>3</sup> On July 9, 2010, Petitioners, Golden Dragon, and the Hailiang Group filed rebuttal briefs.<sup>4</sup> The Department conducted a public hearing on August 4, 2010.

On August 3, 2010, the Department notified parties that as a result of the recent decision in *Dorbest Ltd. v. United States*, 604 F.3d 1363 (Fed. Cir. 2010) ("*Dorbest*"), issued by the United States Court of Appeals for the Federal Circuit ("CAFC") on May 14, 2010, the Department would be reconsidering its valuation of the labor wage rate in this investigation. The Department placed export data on the record of the investigation and gave parties an opportunity to comment on the narrow issue of the labor wage value in light of the CAFC's decision.<sup>5</sup> On August 9, 2010, Petitioners and Golden Dragon submitted comments regarding the wage rate issue.<sup>6</sup>

#### **Period of Investigation**

The period of investigation ("POI") is January 1, 2009, through June 30, 2009. This period corresponds to the two most recent fiscal quarters prior to the month

<sup>3</sup> See Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China; Investigation; Case Brief of Petitioners" (July 2, 2010); Letter from Golden Dragon to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China" (July 2, 2010); Letter from the Hailiang Group to the Secretary of Commerce, "Seamless Refined Copper Pipe & Tube from the People's Republic of China: The Hailiang Group—Administrative Case Brief" (July 2, 2010).

<sup>4</sup> See Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China; Investigation; Rebuttal Brief of Petitioners" (July 9, 2010); Letter from Golden Dragon to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China" (July 9, 2010); Letter from the Hailiang Group to the Secretary of Commerce, "Seamless Refined Copper Pipe & Tube from the People's Republic of China: Rebuttal Brief of the Hailiang Group" (July 9, 2010).

<sup>5</sup> See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Wage Data" (August 3, 2010).

<sup>6</sup> See Letter from Petitioners to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from China; Petitioners' Comments on the Surrogate Value for Labor" (August 9, 2010); Letter from Golden Dragon to the Secretary of Commerce, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Golden Dragon Precise Copper Tube Group, Inc." (August 9, 2010).

of the filing of the petition (*i.e.*, September, 2009).<sup>7</sup>

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation, as well as comments received pursuant to the Department's requests, are addressed in the Issues and Decision Memorandum.<sup>8</sup> A list of the issues which parties raised and to which the Department responds in the Issues and Decision Memorandum is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document that is on file in the Central Records Unit, Room 7046 of the main Commerce building and accessible at <http://trade.gov/ia>. The paper copy and electronic version of the memorandum are identical in content.

### Changes Since the Preliminary Determination

#### Changes Applicable to Multiple Companies

1. Pursuant to *Dorbest*, the Department calculated an hourly wage rate by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.<sup>9</sup>

2. The Department made several adjustments to the calculations of the surrogate financial ratios.<sup>10</sup>

#### Changes Specific to Golden Dragon

1. The Department treated Golden Dragon's copper cathode purchases from a certain PRC supplier as market economy purchases.<sup>11</sup>

2. In accordance with section 777A(a)(2) of the Act and 19 CFR 351.413, the Department declined to make certain adjustments to the calculation of indirect U.S. selling expenses for salaries paid to two employees of Golden Dragon who worked in the United States during the POI because these adjustments are insignificant in relation to the price of the merchandise.<sup>12</sup>

3. The Department revised the reported wall thickness for one control number ("CONNUM").<sup>13</sup>

4. The Department revised the reported electricity consumption to account for indirect consumption of electricity.<sup>14</sup>

5. The Department revised the reported indirect labor to account for previously unreported labor hours.<sup>15</sup>

6. The Department revised the reported water consumption to reflect the water consumption calculated in Golden Dragon's cost reconciliation.<sup>16</sup>

7. The Department revised the reported direct labor and electricity consumption to reflect the correct production quantities at all stages of the production process.<sup>17</sup>

8. The Department revised the reported electricity consumption to reflect the correct allocation of electricity to the different inner grooved tubes ("IGT") based on the IGT forming processing stage consumption that corresponds to each type of IGT.<sup>18</sup>

9. The Department adjusted the reported electricity and direct labor consumption for a particular CONNUM to reflect the lower electricity and direct labor usage rates for a nine millimeter (mm) IGT product instead of the higher rates for a seven mm product.<sup>19</sup>

10. The Department revised the reported consumption of plastic plugs, wood boards, rubber plugs, and paper

pads to reflect the weights measured by the Department during verification.<sup>20</sup>

11. The Department revised the distances between Golden Dragon and several of its suppliers.<sup>21</sup>

12. The Department revised the distances between Golden Dragon and several seaports, including the nearest seaport.<sup>22</sup>

13. The Department revised the gross unit price of eight invoices in which the sales amount recorded in the U.S. sales database was less than the sales amount recorded in the records of the U.S. sales staff.<sup>23</sup>

14. The Department revised the reported international freight amount to include a security fee that was not reported in the U.S. sales database.<sup>24</sup>

15. The Department revised the credit period over which the reported credit expenses are based from the period between the date of sale and the payment date to the period between the date of shipment and the payment date.<sup>25</sup>

#### Changes Specific to the Hailiang Group

1. The Department determined that the Hailiang Group has failed to cooperate because it has not acted to the best of its ability to comply with the Department's requests to provide factors of production ("FOP") on a product-group specific basis. Therefore, pursuant to section 776(b) of the Act, the Department has found that, in selecting from among the facts otherwise available ("FA"), an adverse inference is appropriate for the Hailiang Group.<sup>26</sup>

2. The Department revised the weighted-average per-unit FOP for water to include the FOP for water reported on a cubic meter per kilogram basis.<sup>27</sup>

<sup>7</sup> See 19 CFR 351.204(b)(1).

<sup>8</sup> See Memorandum from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (September 24, 2010) ("Issues and Decision Memorandum").

<sup>9</sup> See Issues and Decision Memorandum at Comment 1; Memorandum to the File from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, "Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Surrogate Value Memorandum," (September 24, 2010) ("Final Surrogate Value Memorandum") at 2, Attachment 3.

<sup>10</sup> See Issues and Decision Memorandum at Comment 2; Final Surrogate Value Memorandum at 2, Attachment 4.

<sup>11</sup> See Issues and Decision Memorandum at Comment 4; Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Analysis Memorandum for Golden Dragon Precise Copper Tube Group, Inc." (September 24, 2010) ("Golden Dragon's Final Analysis Memorandum") at 1-2, Attachment 1.

<sup>12</sup> See Issues and Decision Memorandum at Comment 8; Golden Dragon's Final Analysis Memorandum at 2, Attachment 3.

<sup>13</sup> See Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Verification of the Questionnaire Responses of Golden Dragon Precise Copper Tube Group, Inc." (June 15, 2010) ("Golden Dragon's Verification Report") at 3; Golden Dragon's Final Analysis Memorandum at 2.

<sup>14</sup> *Id.*

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

<sup>16</sup> See Golden Dragon's Verification Report at 3; Golden Dragon's Final Analysis Memorandum at 3.

<sup>17</sup> See Golden Dragon's Verification Report at 2, 29; Golden Dragon's Final Analysis Memorandum at 3.

<sup>18</sup> See Issues and Decision Memorandum at Comment 9; Golden Dragon's Final Analysis Memorandum at 3.

<sup>19</sup> *Id.*

<sup>20</sup> See Golden Dragon's Verification Report at 33; Golden Dragon's Final Analysis Memorandum at 3.

<sup>21</sup> See Golden Dragon's Verification Report at 32; Golden Dragon's Final Analysis Memorandum at 3-4, Attachment 4.

<sup>22</sup> *Id.*

<sup>23</sup> See Golden Dragon's Verification Report at 2, 18; Golden Dragon's Final Analysis Memorandum at 4.

<sup>24</sup> See Golden Dragon's Verification Report at 2, 22; Golden Dragon's Final Analysis Memorandum at 4.

<sup>25</sup> See Golden Dragon's Verification Report at 2, 22-23; Golden Dragon's Final Analysis Memorandum at 4.

<sup>26</sup> See Issues and Decision Memorandum at Comment 12; Memorandum from Karine Gziryan, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Analysis Memorandum for the Hailiang Group" (September 24, 2010) ("Hailiang Group's Final Analysis Memorandum") at 2.

<sup>27</sup> See Issues and Decision Memorandum at Comment 13; Hailiang Group's Final Analysis Memorandum at 2.

3. The Department revised the weighted-average per-unit FOP for wooden crate.<sup>28</sup>

4. The Department revised its normal value calculation to include carbon soot, scale-like graphite, hydrogen, and mold oils as direct materials.<sup>29</sup>

5. The Department revised its normal value calculation to exclude polythene, colorant, and anti-aging master batch.<sup>30</sup>

6. The Department revised its normal value calculation to include nitrogen, kerosene and charcoal as direct inputs.<sup>31</sup>

7. The Department revised its normal value calculation to include the labor hours reported in the two additional indirect labor fields from the Hailiang Group's post-verification sales database.<sup>32</sup>

8. The Department incorporated all changes from the Hailiang Group's minor corrections in the final calculation of the Hailiang Group's antidumping margin.<sup>33</sup>

### Scope of Investigation

For the purpose of this investigation, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 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., plain, capped, plugged, with compression or other fitting), or physical configuration (e.g., straight, coiled, bent, wound on spools).

The scope of this investigation 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-B359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also included within the scope of this investigation 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:

Element	Limiting content percent by weight
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 this investigation are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to this investigation 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 this investigation 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 this investigation is dispositive.

### Scope Comments

The Department has not received comments on the scope of this investigation since the publication of the *Preliminary Determination*.

### Verification

As provided in section 782(i) of the Act, the Department verified the information submitted by Golden

Dragon and the Hailiang Group for use in the final determination. The Department used standard verification procedures including examination of relevant accounting and production records and original source documents provided by the respondents.<sup>34</sup>

### Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy ("NME") country.<sup>35</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, the Department continues to treat the PRC as an NME country for purposes of this final determination.

### Surrogate Country

In the *Preliminary Determination*, the Department stated that it selected India as the appropriate surrogate country to use in this investigation for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; and (3) the Department has reliable data from India that it can use to value the FOPs.<sup>36</sup> The Department received no comments on this issue after the *Preliminary Determination* and the Department has not made changes to its findings with respect to the selection of a surrogate country for the final determination.

### Separate Rates

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus,

<sup>34</sup> See Memorandum from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the File, "Verification of the Sales and Factors Responses of Zhejiang Hailiang Co., Ltd.; Shanghai Hailiang Co., Ltd.; and Hong Kong Hailiang Co., Ltd. in the Antidumping Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China" (June 18, 2010); Memorandum from Shawn Higgins, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Verification of the Questionnaire Responses of Golden Dragon Precise Copper Tube Group, Inc." (June 15, 2010).

<sup>35</sup> See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

<sup>36</sup> See *Preliminary Determination*, 75 FR at 26719.

<sup>28</sup> See Issues and Decision Memorandum at Comment 14; Hailiang Group's Final Analysis Memorandum at 3.

<sup>29</sup> See Issues and Decision Memorandum at Comment 15; Hailiang Group's Final Analysis Memorandum at 3.

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

<sup>31</sup> See Issues and Decision Memorandum at Comment 15; Hailiang Group's Final Analysis Memorandum at 4.

<sup>32</sup> See Issues and Decision Memorandum at Comment 17; Hailiang Group's Final Analysis Memorandum at 4.

<sup>33</sup> See Issues and Decision Memorandum at Comment 18; Hailiang Group's Final Analysis Memorandum at 4.

should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>37</sup>

In the *Preliminary Determination*, the Department found that the following companies demonstrated eligibility for separate-rate status: Luvata Tube (Zhongshan) Ltd.; Ningbo Jintian Copper Tube Co. Ltd.; Zhejiang Naile Copper Co., Ltd.; Zhejiang Jiahe Pipes Inc.; and Luvata Alltop (Zhongshan) Ltd. (collectively, the "Separate Rate Applicants").<sup>38</sup> Since the publication of the *Preliminary Determination*, no party has commented on the eligibility of the Separate Rate Applicants for separate-rate status. For the final determination, the Department continues to find that the evidence placed on the record of this investigation by the Separate Rate Applicants demonstrates both *de jure* and *de facto* absence of government control with respect to each company's respective exports of the merchandise under investigation. Thus, the Department continues to find that the Separate Rate Applicants are eligible for separate-rate status.

The separate rate is determined based on the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available ("AFA").<sup>39</sup> In this investigation both mandatory respondents, Golden Dragon and the Hailiang Group, have estimated weighted-average dumping margins which are above *de minimis* and which are not based on total AFA. Therefore, because there are only two relevant weighted-average dumping margins for this final determination and because using a weighted average risks disclosure of business proprietary information, the separate rate is a simple-average of these two values, which is 36.05 percent.<sup>40</sup>

<sup>37</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as further developed in *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).

<sup>38</sup> See *Preliminary Determination*, 75 FR at 26720.

<sup>39</sup> See section 735(c)(5)(A) of the Act.

<sup>40</sup> See *Steel Wire Garment Hangers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587, 47591 (August 14, 2008).

#### Use of FA and AFA

Section 776(a) of the Act provides that the Department shall apply FA if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying FA when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

#### Hailiang Group

In the *Preliminary Determination*, the Department determined, pursuant to section 776(a)(1) and (2)(B) of the Act, that it was appropriate to base the Hailiang Group's preliminary dumping margin, in part, on FA because (1) the Hailiang Group's own information on the record indicates that it had the ability to report its FOPs on a product-group specific basis,<sup>41</sup> and (2) the Hailiang Group continued to report FOP values that are identical for all CONNUMs, despite the Department's multiple requests to provide this data on a more specific basis.<sup>42</sup> On April 29, 2010, the Department issued a

<sup>41</sup> See Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (March 19, 2010) at Exhibit 6; Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe & Tube from the People's Republic of China: Supplemental Section D Questionnaire Response of Hailiang Group" (April 12, 2010) at Exhibit 12.

<sup>42</sup> See Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Third Supplemental Questionnaire" (April 28, 2010) at 2-3; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to the Hailiang Group, "Sections C&D Supplemental Questionnaire" (February 26, 2010) at 8-9; Letter from Robert Bolling, Program Manager, AD/CVD Operations, Office 4, to Zhejiang Hailiang, "Antidumping Duty Investigation of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Request for Information" (December 4, 2009) at D-2.

questionnaire that requested the Hailiang Group to report product-specific FOPs for different production stages and, if the Hailiang Group believed that this were not possible, to comment on the product-group specific processing yields that are on the record of this investigation. However, the Hailiang Group neither reported product-specific FOPs for different production stages nor explained why these product-group specific processing yields are incorrect and cannot be applied in the calculation of product-group specific FOPs.<sup>43</sup> The Hailiang Group had multiple opportunities both before and after the *Preliminary Determination* to explain why the cumulative yields that were calculated by Petitioners and used in the *Preliminary Determination* were flawed and could not be used in the final determination. The Hailiang Group, however, did not provide such an explanation.

Because the Hailiang Group has continued to report FOP values that are identical for all CONNUMs, despite the Department's multiple requests to provide this data on a more specific basis, all the information necessary for the Department to calculate an accurate dumping margin for the Hailiang Group is not on the record and available for use in the final determination. Since the Hailiang Group did not provide the requested FOPs on a product-group specific basis, this necessary information was not available on the record and, therefore, the Department has determined, pursuant to section 776(a)(1) and (2)(B) of the Act, that it continues to be appropriate to base the Hailiang Group's dumping margin, in part, on FA. Furthermore, the Department determines that the Hailiang Group has failed to cooperate because the Hailiang Group has not acted to the best of its ability to comply with the Department's requests both before and after the *Preliminary Determination* to provide FOPs on a product-group specific basis or to explain why the cumulative yields calculated by Petitioners and used in the *Preliminary Determination* could not be used in the final determination. Therefore, pursuant to section 776(b) of the Act, the Department finds that, in

<sup>43</sup> See Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe and Tube from the People's Republic of China: Third Supplemental Section D Questionnaire & Part 1 of Post-Preliminary FOP Response of Hailiang Group" (May 11, 2010); Letter from the Hailiang Group to the Secretary of Commerce, "Certain Seamless Refined Copper Pipe and Tube from China: Part 2 of Post-Preliminary FOP Response of the Hailiang Group" (May 14, 2010).

selecting from among FA, an adverse inference is appropriate for the Hailiang Group.<sup>44</sup>

#### PRC-Wide Entity

In the *Preliminary Determination*, the Department determined that certain PRC exporters/producers did not respond to the Department's requests for information.<sup>45</sup> Thus, the Department treated these PRC exporters/producers as part of the PRC-wide entity and found that the PRC-wide entity did not respond to our requests for information.<sup>46</sup> No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination*. Since the PRC-wide entity did not provide the Department with requested information, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find it appropriate to base the PRC-wide rate on FA.

The Department determines that, because the PRC-wide entity did not respond to our requests for information, the PRC-wide entity has failed to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department finds that, in selecting from among the FA, an adverse inference is appropriate for the PRC-wide entity.

Because the Department begins with the presumption that all companies

within an NME country are subject to government control, and because only Separate Rate Applicants have overcome that presumption, the Department is applying a single antidumping rate (*i.e.*, the PRC-wide entity rate) to all other exporters of subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate.<sup>47</sup> The PRC-wide entity rate applies to all entries of subject merchandise except for entries from Golden Dragon, the Hailiang Group, and the Separate Rate Applicants.

#### Selection of the AFA Rate for the PRC-Wide Entity

In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner."<sup>48</sup> Further, it is the Department's practice to select a rate that ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>49</sup> It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation.<sup>50</sup> In the instant

investigation, as AFA, the Department has assigned to the PRC-wide entity the highest rate on the record of this proceeding, which is the 60.85 percent weighted-average margin calculated for the Hailiang Group.<sup>51</sup> The Department determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA.

The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of merchandise under investigation from the exporter/manufacturer combinations listed in the chart in the "Final Determination" section below.

#### Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation.<sup>52</sup> This practice is described in *Policy Bulletin 05.1*, available at <http://www.trade.gov/ia>.

#### Final Determination

The Department determines that the following dumping margins exist for the period January 1, 2009 through June 30, 2009:

Exporter	Producer	Weighted-average percent margin
Golden Dragon Precise Copper Tube Group, Inc	Golden Dragon Precise Copper Tube Group, Inc	11.25
Zhejiang Hailiang Co., Ltd.; Hong Kong Hailiang Metal Trading ... Limited; Shanghai Hailiang Copper Co., Ltd	Zhejiang Hailiang Co., Ltd.; Shanghai Hailiang Copper Co., Ltd	60.85
Zhejiang Naile Copper Co., Ltd	Zhejiang Naile Copper Co., Ltd	36.05
Zhejiang Jiahe Pipes Inc	Zhejiang Jiahe Pipes Inc	36.05
Luvata Tube (Zhongshan) Ltd	Luvata Tube (Zhongshan) Ltd	36.05
Luvata Tube (Zhongshan) Ltd	Luvata Alltop (Zhongshan) Ltd	36.05
Luvata Alltop (Zhongshan) Ltd	Luvata Alltop (Zhongshan) Ltd	36.05
Ningbo Jintian Copper Tube Co. Ltd	Ningbo Jintian Copper Tube Co. Ltd	36.05
PRC-Wide Entity	PRC-Wide Entity	60.85

#### Disclosure

The Department will disclose the calculations performed within five days of the date of publication of this notice

<sup>44</sup> See Issues and Decision Memorandum at Comment 12; Hailiang Group's Final Analysis Memorandum at 6.

<sup>45</sup> See *Preliminary Determination*, 75 FR at 26722.

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

<sup>47</sup> See, e.g., *Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000).

<sup>48</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access*

to parties in this proceeding in accordance with 19 CFR 351.224(b).

*Memory Semiconductors From Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>49</sup> See *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005) (quoting the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session at 870 (1994)).

<sup>50</sup> See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon*

#### Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection ("CBP") to continue to

*Quality Steel Products From The People's Republic of China*, 65 FR 34660 (May 31, 2000) and accompanying Issues and Decision Memorandum at "Facts Available."

<sup>51</sup> See Hailiang Group's Final Analysis Memorandum at 1, Attachment III.

<sup>52</sup> See *Seamless Refined Copper Pipe and Tube From the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations*, 74 FR 55194, 55199 (October 27, 2009) ("*Initiation Notice*").

suspend liquidation of all entries of copper pipe and tube from the PRC, as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption on or after May 12, 2010, the date of publication of the *Preliminary Determination* in the **Federal Register**. The Department will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

#### International Trade Commission Notification

In accordance with section 735(d) of the Act, the Department has notified the International Trade Commission ("ITC") of the final affirmative determination of sales at LTFV. As the Department's final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

#### Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: September 24, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

#### Appendix I

##### Issues for Final Determination

- Comment 1: Whether the Department should revise its labor rate calculation.  
 Comment 2: Whether the Department should revise its calculation of the surrogate financial ratios.  
 Comment 3: Whether the Department should issue cash deposit instructions that contain *ad valorem* rates or specific rates.

##### *Issues Specific to Golden Dragon Precise Copper Tube Group, Inc.*

- Comment 4: Whether the Department should treat copper cathode purchases by Golden Dragon from a certain supplier in the Peoples's Republic of China as non-market economy purchases.  
 Comment 5: Whether the Department should recalculate Golden Dragon's copper cathode cost based on the bonded and general trade copper cathode purchases during the period of investigation.  
 Comment 6: Whether the Department should revise the surrogate value for plywood batten consumed by Golden Dragon.  
 Comment 7: Whether the Department should consider solvent consumed by Golden Dragon to be a direct material input.  
 Comment 8: Whether the Department should include salaries paid to two employees of Golden Dragon who worked in the United States during the period of investigation as indirect U.S. selling expenses.  
 Comment 9: Whether the Department should adjust the factor of production for electricity for 7 mm and 9 mm inner-grooved tube products.  
 Comment 10: Whether the Department should make certain minor corrections.

##### *Issues Specific to Zhejiang Hailiang Co., Ltd., Shanghai Hailiang Copper Co., Ltd., and Hong Kong Hailiang Metal Trading Limited*

- Comment 11: Whether to use facts available with regard to the Hailiang Group's line set sales.  
 Comment 12: Whether to use of facts available with regard to the Hailiang Group's factors of production.  
 Comment 13: Whether to correct the water usage factor of production used in the *Preliminary Determination*.  
 Comment 14: Whether the Department should accept the post-preliminary correction of the consumption of Shanghai Hailiang's wooden crates.  
 Comment 15: Whether to continue considering certain raw materials as factors of production or exclude them from the calculation of the Hailiang Group's normal value.  
 Comment 16: Whether to continue using the actual weight reported by the Hailiang Group in its United States sales database.  
 Comment 17: Whether to include two additional categories of indirect labor as labor inputs.

Comment 18: Whether the Department should make certain minor corrections.

[FR Doc. 2010-24720 Filed 9-30-10; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-552-802]

#### Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review

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

**DATES:** *Effective Date:* October 1, 2010.

**SUMMARY:** The Department of Commerce ("Department") has determined that a request for a new shipper review ("NSR") of the antidumping duty order on certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam"), received on August 26, 2010, meets the statutory and regulatory requirements for initiation. The period of review ("POR") for this NSR is February 1, 2010–July 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-0413.

#### SUPPLEMENTARY INFORMATION:

##### Background

The notice announcing the antidumping duty order on shrimp from Vietnam was published in the **Federal Register** on February 1, 2005.<sup>1</sup> On August 26, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("Act"), and section 351.214(c) of the Department's regulations, the Department received a NSR request from Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd. ("Quoc Viet"). Quoc Viet's request was properly made during August 2010, which is the semi-annual anniversary of the *Order*. Quoc Viet certified that it is a producer and exporter of the subject merchandise upon which the request was based.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and section 351.214(b)(2)(i) of the Department's regulations, Quoc Viet

<sup>1</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam*, 70 FR 5152 (February 1, 2005) ("*Order*").