U.S. Court of Appeals for the Federal Circuit

CHANGZHOU HAWD FLOORING CO., LTD., DUNHUA CITY JISEN WOOD INDUSTRY CO., LTD., DUNHUA CITY DEXIN WOOD INDUSTRY CO., LTD., DALIAN HUILONG WOODEN PRODUCTS CO., LTD., KUNSHAN YINGYI NATURE WOOD INDUSTRY CO., LTD., KARLY WOOD PRODUCT LIMITED, FINE FURNITURE (SHANGHAI) LIMITED, LUMBER LIQUIDATORS SERVICES, LLC, ARMSTRONG WOOD PRODUCTS (KUNSHAN) CO., LTD., Plaintiffs-Appellants HOME LEGEND, LLC, Plaintiff v. UNITED STATES, THE COALITION FOR AMERICAN HARDWOOD PARITY, Defendants-Appellees

Appeal No. 2015–1899, 2015–1901, 2015–1903, 2015–1904

Appeals from the United States Court of International Trade in No. 1:12-cv-00020-DCP, Judge Donald C. Pogue.

Dated: February 15, 2017

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Before LOURIE, TARANTO, and CHEN, Circuit Judges.

TARANTO, Circuit Judge.

This case arises from the U.S. Department of Commerce's antidumping-duty investigation of multilayered wood flooring imports from the People's Republic of China. The appellants here are Chinese entities that Commerce found had demonstrated their inde-

pendence from the Chinese government and so deserved a "separate" antidumping-duty rate, not the so-called China-wide rate that applies to entities that had not shown their independence from the Chinese government. Commerce did not individually investigate appellants to determine firm-specific dumping margins. Instead, it assigned them a rate that, though not specified numerically, was declared to be more than *de minimis*, even though it found zero or *de minimis* dumping margins for all three of the Chinese firms that it had individually investigated. The Court of International Trade affirmed that determination.

Appellants contend that they are entitled to a *de minimis* rate. After the Court of International Trade rendered its decision in this case, our court made clear that the "separate rate" method used by Commerce here is a departure from the congressionally approved "expected method" applicable when all of the individually investigated firms have a zero or *de minimis* rate, which is the case here, and that certain findings are necessary to justify such a departure. *Albemarle Corp. & Subsidiaries v. United States*, 821 F.3d 1345, 1348 (Fed. Cir. 2016). Under the "expected method," appellants would be entitled to a *de minimis* rate. Because Commerce did not make the findings needed to justify departing from the expected method, we vacate the Court of International Trade's judgment, and we remand.

I

In 2010, the Department of Commerce initiated an antidumping-duty investigation of multilayered wood flooring from China, based on a petition filed by the Coalition for American Hardwood Parity under 19 U.S.C. § 1673a(b). Multilayered Wood Flooring from the People's Republic of China: Initiation of Antidumping Duty Investigation, 75 Fed. Reg. 70,714 (Dep't of Commerce Nov. 18, 2010). In order to select particular Chinese firms to be individually investigated as mandatory respondents, Commerce sent questionnaires to the Chinese exporters and producers identified in the petition, asking about the quantities and value of the goods at issue sent to the United States. *Id.* at 70,717–18. Of the 190 recipients of the questionnaire, 80 timely responded. Multilayered Wood Flooring from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, 76 Fed. Reg. 30,656, 30,657 (Dep't of Commerce May 26, 2011). Commerce selected "the three largest exporters (by volume)" as mandatory respondents. *Id.* at 30,658. Although several firms offered to be individually investigated as voluntary respondents, *id.*, the three mandatory respondents are the only firms that Commerce individu-

ally investigated in this investigation. *See Changzhou Hawd Flooring Co. v. United States*, 44 F. Supp. 3d 1376, 1389 n.31, 1390 (Ct. Int'l Trade 2015).

Commerce deems China to be a nonmarket economy, and it presumes that each Chinese exporter and producer is state-controlled, and thus covered by a single China-wide antidumping-duty rate, but a firm may rebut the presumption. *See Changzhou Wujin Fine Chem. Factory Co. v. United States*, 701 F.3d 1367, 1370 (Fed. Cir. 2012). Here, Commerce determined that 74 firms established their independence from the Chinese government. *See* Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 Fed. Reg. 64,318, 64,321–22 (Dep't of Commerce Oct. 18, 2011). For those 74 firms—not individually investigated, but not covered by the China-wide rate—Commerce had to calculate a "separate rate."

Commerce published its Final Determination on October 18, 2011, finding that the subject merchandise was being sold at less than fair value (dumped) in the United States. *Id.* at 64,318. Commerce determined that one of the three mandatory respondents had a *de minimis* dumping margin, but it assigned margins of 3.98% and 2.63% to the other two mandatory respondents. *See id.* at 64,323. After a voluntary remand from the Court of International Trade, Commerce revised the mandatory respondents' dumping margins, finding all three to be zero or *de minimis*. J.A. 101941. Commerce calculated the "separate rate," not by simply using the zero/*de minimis* rates for the three mandatory respondents, but by averaging those three zero figures with the 25.62% rate it adopted as the China-wide rate—yielding a separate rate of 6.41%. J.A. 101942.

On review, the Court of International Trade affirmed the dumping margins for the mandatory respondents but remanded for further explanation of how the separate rate related to economic reality. *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 971 F. Supp. 2d 1333, 1336 (Ct. Int'l Trade 2014). On remand, Commerce reasoned that the separate rate for the period of investigation should not be drawn *entirely* from the three mandatory respondents, all having a *de minimis* rate. Commerce gave two reasons. First, Commerce said, "if [any of] the 110 companies [that did not respond to the quantity-and-value questionnaires] had chosen to cooperate, the examined company's rate would have been above *de minimis* . . . and would have been assigned to the separate rate plaintiffs as a separate

rate in the *Final Determination*." J.A. 102099.[1] Second, merely as confirmation, Commerce pointed to the recent results of its first administrative review under 19 U.S.C. § 1675, in which Commerce found dumping even for imports made after the announcement of the antidumping-duty order, notwithstanding that "the discipline of an antidumping order often results in lower or no margins . . . as companies may change their pricing practices to eliminate the price discrimination found in the period of investigation." J.A. 102100. That result, Commerce said, confirmed the likelihood that it would have found above-*de minimis* dumping had it investigated more individual firms during the investigation. *Id.* On that basis, although Commerce did not reaffirm its 6.41% rate for the "separate rate" (not individually investigated) Chinese entities, it declared that they would be subject to a rate that it did not specify but declared to be more than *de minimis*.[2]

Appellants challenged that determination in the Court of International Trade. That court affirmed, concluding that "Commerce's determination regarding the group . . . is based on a reasonable reading of the law and record evidence." *Changzhou Hawd Flooring*, 44 F. Supp. 3d at 1380. The court held that Commerce's methodology was permissible because the statute allows "any reasonable method." *Id.* at 1384. After one further remand, which brought Changzhou Hawd Flooring within the "separate rate" applicable to government-independent but not individually investigated firms, the Court of International Trade entered a final judgment. *Changzhou Hawd Flooring Co. v. United States*, 77 F. Supp. 3d 1351, 1359–60 (Ct. Int'l Trade 2015).[3]

Appellants, who are separate-rate entities, have timely appealed the above-*de minimis* separate rate, arguing for a *de minimis* separate rate. They assert that, although no rate was numerically speci-

[1] Of the 110 entities that did not respond to the quantity-and-value questionnaires, Commerce removed one, located in Taiwan, from the investigation. J.A. 101424.

[2] Commerce also determined that it need not calculate a specific separate rate for all but one of the separate-rate litigants (appellant Changzhou Hawd Flooring Company) because "the rate determined in the first administrative review supersedes the cash deposit rate established in the final determination of the investigation." J.A. 102100. As to Changzhou Hawd Flooring, Commerce announced that it would conduct an individual investigation, J.A. 102102, but it decided to delay the actual investigation until after the Court of International Trade reviewed the remand determination. *See Changzhou Hawd Flooring*, 44 F. Supp. 3d at 1382 & n.13.

[3] In *Changzhou Hawd Flooring*, 44 F. Supp. 3d at 1390, the court held to be arbitrary and capricious Commerce's decision to conduct a full individual investigation of Changzhou Hawd Flooring so late in the investigation. On remand, Commerce applied the same above-*de minimis* but unspecified separate rate to Changzhou Hawd Flooring that it applied to the other separate-rate firms. The Court of International Trade approved that decision. *Changzhou Hawd Flooring*, 77 F. Supp. 3d at 1359. Commerce does not challenge the rejection of its attempt to individually investigate Changzhou Hawd Flooring.

fied, the assignment of an above-*de minimis* rate harms them because it subjects them to the antidumping-duty order and its continuing consequences, including subsequent periodic reviews under 19 U.S.C. § 1675, whereas assigning them a *de minimis* rate in this investigation would remove them from the order and relieve them from its consequences. *See* 19 C.F.R. § 351.204(e)(1) (excluding from final determination "any exporter or producer for which the Secretary determines an individual weighted-average dumping margin . . . rate of zero or *de minimis*"); *Dupont Teijin Films USA, LP v. United States*, 407 F.3d 1211, 1216 (Fed. Cir. 2005); *Tung Mung Dev. Co. v. United States*, 354 F.3d 1371, 1375 n.3 (Fed. Cir. 2004); *see also* 19 U.S.C. §§ 1673b(b)(3), 1673d(a)(4) (disregarding weighted dumping margin that is *de minimis*). Commerce does not disagree that appellants have a stake in challenging the above-*de minimis* rate. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

II

"Commerce's determination will be sustained unless it is unsupported by substantial evidence on the record, or otherwise not in accordance with law." *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1377 (Fed. Cir. 2013); 19 U.S.C. § 1516a(b)(1)(B)(i). Appellants argue that Commerce erred by not relying on the three mandatory respondents' zero/*de minimis* rates to generate a *de minimis* "separate rate." We agree that Commerce has not justified its departure from that method.

In investigations involving exporters from market economies, 19 U.S.C. § 1673d(c)(5) establishes the method for determining the rate for entities that are not individually investigated, the so-called all-others rate. Commerce has relied on that statutory provision in determining the separate rate for exporters and producers from non-market economies that demonstrate their independence from the government but that are not individually investigated. *See Albemarle*, 821 F.3d at 1348.

The statute says that where the "estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins, or are determined entirely under [19 U.S.C. § 1677e]," Commerce "may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." 19 U.S.C. § 1673d(c)(5)(B). But the Statement of Administrative Action accom-

panying the Uruguay Round Agreements Act—which Congress has deemed "authoritative," 19 U.S.C. § 3512(d)—states that the "expected method" is to "weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available." Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Rep. No. 103–316, vol. 1, at 873 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4201 (quoted in *Albemarle*, 821 F.3d at 1352 & n.5).[4] If Commerce reasonably concludes that "this method is not feasible" or would result "in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers," it "may use other reasonable methods." *Id.*

Albemarle explains that Congress thus expressed a preference for the expected method, 821 F.3d at 1351–54, a preference reflecting how Commerce selects mandatory respondents, *id.* at 1353. Here, Commerce chose the exporters whose quantity-and-value questionnaires indicated that they were the largest exporters by volume, as expressly authorized by 19 U.S.C. § 1677f-1(c)(2) (2010).[5] *Albemarle* explains: "The very fact that the statute contemplates using data from the largest volume exporters suggests an assumption that those data can be viewed as representative of all exporters." 821 F.3d at 1353. "The statute assumes that, absent [evidence that the largest exporters are not representative], reviewing only a limited number of exporters will enable Commerce to reasonably approximate the margins of all known exporters." *Id.* "[T]he representativeness of the investigated exporters is the essential characteristic that justifies an 'all others' rate based on a weighted average for such respondents." *Id.* (quoting *Nat'l Knitwear & Sports-wear Ass'n v. United States*, 779 F. Supp. 1364, 1373–74 (Ct. Int'l Trade 1991)). And, recognizing that the presumption of representativeness may be overcome, *Albemarle* holds that, in order to depart from the expected method, "Commerce

[4] The language of "margins determined pursuant to the facts available" refers to margins determined under 19 U.S.C. § 1677e. The statutory context, 19 U.S.C. § 1673d(c)(5)(B), makes clear that the language refers to margins so determined for firms that are individually investigated. Commerce has not suggested that, in the present case, there are any such § 1677 e-based margins to be included in the average. Thus, only "zero and *de minimis* margins" are part of the average here.

In this respect, the case is unlike *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370 (Fed.Cir. 2013), where Commerce calculated a "separate rate" by averaging the two individually investigated firms' rates—one *de minimis*, the other a high § 1677e-based rate. This court held Commerce's result to be unreasonably high on the record in the particular case. *Id.* at 1377–81. Here, in contrast, there is no issue of an unreasonably high average of the individually investigated firms' rates; as in *Albemarle*, 821 F.3d at 1349, the average in this case is zero or *de minimis*.

[5] The section was amended in 2012, but the relevant language is unchanged. 19 U.S.C. § 1677f-1(c)(2).

must find based on substantial evidence that there is a reasonable basis for concluding that the separate respondents' dumping is different." *Id.*

Pointing to *Albermarle*'s observation that the mandatory respondents in that case accounted for "a majority of the market," *id.* at 1353, Commerce argues that *Albemarle*'s requirement of a showing of unrepresentativeness for departing from the expected method does not apply where the mandatory respondents do not account for "a majority of the market." Appellee's Br. 22. But that argument takes too narrow a view of *Albemarle*. The court did not rely for its statutory analysis on the observation that the particular respondents accounted for a "majority of the market." It relied on the statutory standards for selecting mandatory respondents under § 1677f1(c)(2), which, the court held, make the mandatory respondents representative unless evidence shows otherwise. *Albemarle*, 821 F.3d at 1353. The statutory standards—involving either a statistical sample, 19 U.S.C. § 1677f-1(c)(2)(A), or the largest exporters by volume, *id.* § 1677f-1(c)(2)(B)—are not tied to a "majority" share of a "market," of the imports at issue, or any other class or collection.

Thus, the mandatory respondents in this matter are assumed to be representative. Under *Albemarle*, Commerce could not deviate from the expected method unless it found, based on substantial evidence, that the separate-rate firms' dumping is different from that of the mandatory respondents. But it has not done so.

Commerce did articulate a reason addressing firms that did *not* respond to the quantity-and-value questionnaires: it said that those firms likely "would have cooperated with the Department's investigation if they could have obtained a low rate." J.A. 102119. But that rationale does not suggest the needed inference about the separate-rate firms, all of which did respond to the questionnaires. Indeed, under Commerce's reasoning, the separate-rate firms' decisions to respond to the questionnaires might suggest that they are more similar to other firms, like the mandatory respondents, that responded. And Commerce may have suggested the same when, in its first "final determination," it calculated the separate rate by averaging the rates of the two mandatory respondents that had margins above *de minimis*. Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 Fed. Reg. at 64,322.

III

Because Commerce has not made the findings necessary to justify departing from the "expected method" here, we vacate the judgment of the Court of International Trade, and we remand with instructions to remand to Commerce for it to reconsider its separate-rate determination. We find it unnecessary to address appellants' other challenges to the separate-rate determination.

Costs awarded to appellants.

VACATED AND REMANDED

AMERICAN TUBULAR PRODUCTS, LLC, JIANGSU CHENGDE STEEL TUBE SHARE CO., LTD., Plaintiffs-Appellants v. UNITED STATES, UNITED STATES STEEL CORPORATION, TMK IPSCO, WHEATLAND TUBE COMPANY, V & M STAR L.P., Defendants-Appellees

Appeal No. 2016–1127

Appeal from the United States Court of International Trade in No. 1:13-cv-00029-RWG, Senior Judge Richard W. Goldberg.

Dated: February 13, 2017

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Before NEWMAN, MAYER, and LOURIE, Circuit Judges

LOURIE, Circuit Judge.

American Tubular Products, LLC ("ATP") and Jiangsu Chengde Steel Tube Share Co., Ltd. ("Chengde") (collectively, "the Appellants") appeal from the decisions of the United States Court of International Trade ("the Trade Court") affirming the Department of Commerce's ("Commerce") antidumping duty calculations in the first administrative review of an antidumping duty order directed to certain oil country tubular goods ("OCTG") from the People's Republic of China. *See Am. Tubular Prods., LLC v. United States*, No. 13–00029, 2015 WL 5236010 (Ct. Int'l Trade Aug. 28, 2015) ("*ATP II*") (affirming Commerce's remand results); *Am. Tubular Prods., LLC v. United States*, No. 13–00029, 2014 WL 4977626 (Ct. Int'l Trade Sept. 26, 2014) ("*ATP I*") (affirming in part and remanding in part Commerce's final results). In that administrative review, Commerce ultimately calculated a weighted average dumping margin of 137.62% for Chengde. *See Am. Tubular Prods., LLC v. United States*, No. 13–00029, ECF No. 102 (Ct. Int'l Trade Jan. 28, 2015) ("*Remand Results*"). Because we agree with the Trade Court that Commerce's antidumping duty calculations were supported by substantial evidence and otherwise in accordance with law, we *affirm*.

BACKGROUND

OCTG are steel tubing products used in oil and gas drilling. Chengde is a Chinese producer and exporter of OCTG, and ATP is the importer of record during the relevant period. In June 2011, Commerce initiated the first administrative review of the antidumping duty order directed to OCTG from China. *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 76 Fed. Reg. 37,781 (Dep't of Commerce June 28, 2011); *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 76 Fed. Reg. 53,404 (Dep't of Commerce Aug. 26, 2011) (correcting the period of review). Commerce selected Chengde as a mandatory respondent.

Because China is considered a nonmarket economy ("NME") country, Commerce selected Indonesia, a market economy ("ME") country, as the primary surrogate country from which it would use surrogate values to ascertain Chengde's factors of production. *Certain Oil Country Tubular Goods from the People's Republic of China*, 77 Fed. Reg. 34,013 (Dep't of Commerce June 8, 2012) ("*Preliminary Results*"). In the *Final Results*, as later amended, Commerce assigned Chengde a dumping margin of 162.69%. *Certain Oil Country Tubular Goods from the People's Republic of China*, 77 Fed. Reg. 74,644 (Dep't of Commerce Dec. 17, 2012) ("*Final Results*"), as amended by *Certain Oil Country Tubular Goods from the People's Republic of China*, 78 Fed. Reg. 9,033 (Dep't of Commerce Feb. 7, 2013). The Appellants appealed to the Trade Court, raising three issues that are relevant in this appeal. We provide further factual and procedural background for each of those issues in turn.

A. STEEL BILLETS

The first issue pertains to Commerce's valuation of steel billets used in the production of OCTG. Steel billets may be composed of carbon steel or the more expensive alloy steel. In its initial questionnaire, Commerce requested Chengde to "[d]escribe each type and grade of material used in the production process." J.A. 168. Chengde responded that it consumed steel billets, and its counsel listed a Harmonized Tariff Schedule ("HTS") subheading that covers products of alloy steel as the proper tariff subheading for its steel billets. J.A. 669.

Commerce then issued supplemental questionnaires, requesting sample mill test certificates for various control numbers ("CONNUMs"). A CONNUM is a code used to identify distinct products within the class of subject merchandise under review. Chengde submitted the sample mill certificates. J.A. 1720–25, 3161–71. Those certificates contained information on the chemical composition of the sampled OCTG, which constituted a portion, but not all, of OCTG sold

in sixteen of nineteen sales made by Chengde during the period of review. In addition, Commerce requested clarification of the technical descriptions of Chengde's raw material inputs. J.A. 886. Chengde again responded with a general description of its steel billet input. J.A. 950–51.

In the *Preliminary Results*, Commerce valued steel billets using a surrogate value for alloy steel. Chengde then argued that Commerce should have used a surrogate value for carbon steel. Chengde explained that its counsel's prior reference to the HTS number for alloy steel was an inadvertent error, and that it in fact used carbon steel billets. Chengde called Commerce's attention to the mill certificates on the record, which showed that the tested OCTG were all made of carbon steel.

In the *Final Results*, as amended, Commerce used a carbon-steel surrogate value, but only for the portion of OCTG directly shown to be made of carbon steel by the mill certificates. For the remaining OCTG, Commerce continued to value the steel billet input using an alloy-steel surrogate value.

On appeal, the Trade Court remanded Commerce's selection of surrogate values for steel billets. For the sixteen sales partially supported by the mill certificates, the court directed Commerce to "explain whether Chengde's mill certificates prove the chemical properties of OCTG not specifically tested." *ATP I*, 2014 WL 4977626, at *7. Moreover, the court found that Commerce had failed to consider a Customs entry summary relating to an additional (seventeenth) transaction,[*] which classified the OCTG as carbon steel. The court directed Commerce to assess whether the entry summary proved that the OCTG sold in that transaction were carbon steel. *Id.*

On remand, Commerce explained that it was unable to conclude that the OCTG not specifically tested were necessarily carbon steel, noting the uncertainties in Chengde's sampling process and its failure to provide the requested technical descriptions of its steel billet input. Commerce found, however, that the Customs entry summary established that the entered OCTG were composed of carbon steel. Commerce thus continued to use a carbon-steel surrogate value to value the portion of steel billets for which there was direct evidence, *viz.*, the mill certificates or entry summary, to show that carbon steel billets were consumed. As for the remaining portion of steel billets at

[*] As to the remaining two of the nineteen sales covered by the review, the Trade Court affirmed Commerce's use of an alloy-steel surrogate value based on evidence of a screenshot of Chengde's website, which showed that the OCTG sold in those two transactions were composed of alloy steel. The Appellants do not challenge that aspect of the Trade Court's decision.

issue, Commerce used a *simple average* of the surrogate values for carbon steel billets and alloy steel billets. Accordingly, Commerce recalculated Chengde's weighted average dumping margin as 137.62%.

The Appellants again appealed to the Trade Court. The court sustained Commerce's *Remand Results*, finding that Commerce reasonably chose to use a simple average of the surrogate values of carbon and alloy steel billets for the untested OCTG. *ATP II*, 2015 WL 5236010, at *6–9. The court agreed with Commerce that OCTG under the same contract or CONNUM could have different chemical compositions, *id.* at *7, and that Chengde's mill certificates lacked sufficient detail to establish that the untested OCTG were made of carbon steel, *id.* at *8. The court further noted that Chengde could have shown that its billets were carbon steel by answering Commerce's questionnaires "with exactness," but it failed to do so. *Id.*

B. BYPRODUCT OFFSET

The second issue pertains to byproduct offset. The production of OCTG may generate steel scrap, which may be sold for revenue to offset the raw material cost for producing the OCTG that generated the scrap. In its initial questionnaire, Commerce requested information on the quantity of byproduct "produced, sold, reintroduced into production, or otherwise disposed of," as well as records demonstrating the *production* of byproduct during one month of the period of review. J.A. 169. In response, Chengde explained that it did not measure or record steel scrap production at the time it was produced, but rather measured the scrap quantity when it was sold. J.A. 651–52. Chengde provided the quantities of monthly scrap sales for the period of review. J.A. 685–86. Commerce did not request further information regarding scrap offset.

In the *Preliminary Results* and the *Final Results*, Commerce declined to allow any scrap offset because Chengde had failed to quantify the amount of scrap produced. On appeal, the Trade Court sustained Commerce's denial of scrap offset as supported by substantial evidence and in accordance with law, finding that Chengde had failed to meet Commerce's requirements to secure a scrap offset. *ATP I*, 2014 WL 4977626, at *9–12.

C. INTERNATIONAL FREIGHT

The third issue pertains to Commerce's valuation of Chengde's international freight expense. Chengde reported that most of its OCTG exports to the United States were shipped by carriers based in South Korea, an ME country, and that it paid for ocean freight in U.S. dollars. Chengde showed that it remitted the freight expense via a

Chinese freight forwarder, which in turn paid the Chinese agents of the Korean carriers, and those agents then paid the carriers in U.S. dollars. However, Chengde did not provide any evidence on the *amount* paid by the Chinese agents to the Korean carriers. It instead submitted certifications from two Chinese agents stating that payments were made in U.S. dollars, and that actual payment documentation was proprietary.

In the *Preliminary Results*, Commerce calculated international freight using a surrogate value, as if it was purchased from an NME supplier. Commerce continued to do so in the *Final Results*, finding that Chengde had failed to establish that the Korean carriers set the freight price. On appeal, the Trade Court sustained Commerce's use of a surrogate value to calculate international freight. The court observed that "there is no proof that the Korean shippers hired the Chinese agents to collect Chengde's fees," and thus "there is little reason to believe that the price paid to the agents equaled the price remitted to the shippers." *ATP I*, 2014 WL 4977626, at *13.

After the Trade Court affirmed Commerce's *Remand Results*, the Appellants appealed to this court. We have jurisdiction under 28 U.S.C. § 1295(a)(5).

DISCUSSION

In trade cases, we apply the same standard of review as the Trade Court, upholding Commerce's determinations unless they are "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). Although we review the decisions of the Trade Court *de novo*, "we give great weight to the informed opinion of the [Trade Court] . . . , and it is nearly always the starting point of our analysis." *Ningbo Dafa Chem. Fiber Co. v. United States,* 580 F.3d 1247, 1253 (Fed. Cir. 2009) (internal quotation marks, brackets, and citations omitted).

The Appellants challenge three aspects of Commerce's antidumping duty calculations: (1) Commerce's decision to use a simple average of surrogate values for carbon steel billets and alloy steel billets for the untested OCTG; (2) its denial of scrap byproduct offset; and (3) its treatment of international freight as NME transactions. We address each of those issues in turn.

A. STEEL BILLETS

We first consider whether Commerce erred in using a simple average of surrogate values for carbon steel billets and alloy steel billets for the untested OCTG.

The Appellants argue that the sample mill certificates demonstrate that the untested OCTG were composed of carbon steel, not alloy

steel. They emphasize that the untested OCTG were sold in the same transactions under the same CONNUMs as the tested OCTG. They criticize Commerce for not finding the mill certificates representative of the untested OCTG because Commerce requested only sample mill certificates. According to the Appellants, for the seventeen transactions at issue, there is no evidence that Chengde consumed alloy steel billets. They assert that Commerce improperly relied on the erroneous HTS number provided by Chengde's former counsel.

The United States, United States Steel Corporation, TMK IPSCO, Wheatland Tube Co., and V & M Star L.P. (collectively, "the Appellees"), filing three separate briefs, respond that Commerce's selection of surrogate value for steel billet input was supported by substantial evidence. The Appellees contend that the record is inconclusive as to the chemical content of the untested OCTG, and that Chengde failed to prove that all of its steel billets were made of carbon steel. The Appellees note that Chengde used both carbon steel billets, as shown by the mill certificates and entry summary, and alloy steel billets, as shown by Chengde's website, to produce OCTG. They argue that Commerce therefore reasonably valued the steel billets by averaging the surrogate values.

We agree with the Trade Court and the Appellees that substantial evidence supports Commerce's decision to use an average surrogate value of carbon steel and alloy steel. Commerce reasonably concluded that the record did not demonstrate whether the untested OCTG were produced exclusively from carbon steel or alloy steel billets. Rather, it is undisputed that Chengde's website showed that it sold OCTG made of alloy steel under two contracts during the period of review, whereas the sample mill certificates and entry summary showed that Chengde used carbon steel billets for some of its OCTG. Faced with this record, Commerce reasonably used a simple average of the surrogate values for alloy and carbon steel for the portion of the billets for which the type of steel was not apparent. Substantial evidence thus supports Commerce's decision.

As Commerce correctly found, the sample mill certificates submitted by Chengde were limited. They did not indicate whether they represented the entire quantity of a sales contract, and did not provide context for their relevance to the untested products by describing the testing procedures. The certificates represented limited quantities of the sales contracts or CONNUMs involved. Moreover, as Commerce found, the OCTG under each contract could be produced in multiple heats, *i.e.*, production runs or batches, and that the mill certificates did not list all of the required test results for each heat.

Thus, we agree with Commerce and the Trade Court that the mill certificates were not representative of the untested OCTG.

As the Trade Court noted, Commerce repeatedly requested technical descriptions of Chengde's raw material input, but Chengde failed to provide a straightforward and sufficient description of the chemical composition of its steel billets. Chengde's other submissions, including the sample mill certificates, were insufficient to establish the nature of its steel billet input as to the untested OCTG. Given this record, Commerce reasonably valued the untested steel billets by averaging the surrogate values of both carbon and alloy steel. *See Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1337–38 (Fed. Cir.2016) (explaining that "the burden of creating an adequate record lies with interested parties and not with Commerce" (internal quotation marks and citation omitted)).

We therefore conclude that Commerce's use of a simple average of surrogate values of carbon and alloy steel billets for the untested OCTG is supported by substantial evidence and otherwise in accordance with law.

B. BYPRODUCT OFFSET

We next consider whether Commerce erred in declining to make any scrap byproduct offset because Chengde failed to provide any records to establish the quantity of scrap produced, rather than the quantity of scrap sold.

The Appellants raise numerous arguments challenging Commerce's denial of scrap offset. *First*, they argue that Commerce acted arbitrarily in this case because, in previous cases, it has allowed byproduct offsets based on information similar to that provided by Chengde. *Second*, they argue that 19 U.S.C. § 1677b(f)(1)(A) requires that Commerce base its cost calculations on the books and records of the producer unless it determines that the information does not "reasonably reflect" actual costs, and that Commerce failed to make such a finding here. *Third*, they argue that under 19 U.S.C. § 1677m (d), when Commerce finds that information submitted by a respondent is deficient, it must notify the party of the deficiency and provide an opportunity for correction, and that Commerce failed to do so here. *Fourth*, they argue that the scrap sales data submitted by Chengde satisfy all of the statutory requirements of 19 U.S.C. § 1677m(e), and thus that Commerce may not decline to consider the information even if it did not comply with all of Commerce's requirements. *Finally*, they argue that Commerce's refusal to make *any* byproduct offset constituted a *de facto* application of adverse facts available, without any finding that Chengde had failed to cooperate to the best of its ability.

The Appellees respond that Commerce reasonably denied Chengde's request for scrap offset because Chengde failed to show that the scrap sold was generated from the production of OCTG, not some other products, and that the scrap was in fact produced during the period of review. The Appellees maintain that Commerce's denial of scrap offset in this case is consistent with its standard practice. The Appellees contend that the statute is silent on scrap offset, and Commerce has filled that gap with regulations. The Appellees also respond that Chengde informed Commerce that it did not account for the quantities of scrap as produced, and thus Commerce was not required to continue asking for that information or to accept Chengde's deficient evidence. Finally, the Appellees respond that Commerce did not apply any adverse inference; rather, according to the Appellees, Commerce simply concluded that Chengde did not meet its burden of establishing the requested scrap offset.

We agree with the Trade Court and the Appellees that Commerce did not err in declining to allow any scrap offset in this case. Chengde did not establish the quantity of scrap generated from the production of OCTG during the period of review. It simply failed to satisfy its evidentiary burden, and Commerce properly decided not to grant the requested offset.

The statute governing the calculation of normal value, 19 U.S.C. § 1677b(c), does not discuss the treatment of byproducts. Commerce promulgated regulations stating that it may make adjustments to normal value, but that "[t]he interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment." 19 C.F.R. § 351.401(b). Accordingly, Chengde bears the burden of establishing its entitlement to a scrap offset.

Here, Chengde submitted documentation of its scrap sales to Commerce, but it could not document the quantity of scrap produced during the period of review. Chengde's proposed offset calculation instead equated total scrap sold during the period of review with total scrap produced during the period of review. However, as Commerce explained, Chengde failed to present any evidence to show either that the production of OCTG, the subject merchandise, actually generated the scrap sold, or that the scrap sold was indeed produced during the period of review. Absent evidence linking the scrap sold with any scrap generated resulting from the production of OCTG during the period of review, Commerce properly found that Chengde's submissions were insufficient and properly denied the requested offset.

We find the Appellants' remaining arguments to be unavailing. First, this case is factually distinct from the cases cited by the Appel-

lants. In those cases, Commerce had additional information linking the requested byproduct offset to the production of subject merchandise during the period of review. Chengde failed to make that showing in this case. Second, the statutory provisions cited by the Appellants are inapposite. In this review, Commerce requested Chengde to provide records demonstrating the *production* of OCTG during the period of review. Chengde unambiguously responded that it did not measure or record steel scrap production at the time it was produced. On this record, Commerce was not obligated to accommodate Chengde's failure to document scrap production; nor was Commerce obligated to continue asking for information that Chengde clearly stated it did not record. Lastly, we agree with the Appellees that Commerce did not apply any adverse inference in its denial of scrap offset. Rather, Chengde simply failed to satisfy its evidentiary burden of establishing the requested offset, as the regulation requires. *See* 19 C.F.R. § 351.401(b).

Accordingly, we conclude that Commerce's denial of steel scrap offset is supported by substantial evidence and otherwise in accordance with law.

C. INTERNATIONAL FREIGHT

We last consider whether Commerce erred in finding that Chengde's international freight transactions constituted NME transactions. The Appellants argue that the record evidence shows that Chengde's ocean freight was in fact furnished by ME carriers and that Chengde paid for the freight in U.S. dollars. They argue that Commerce acted unreasonably in finding that Chengde purchased ocean freight from an NME supplier.

The Appellees respond that Chengde failed to satisfy Commerce's requirements to prove that its ocean freight constituted ME purchases. Specifically, the Appellees argue that Chengde failed to provide any documentation to establish the amount paid by the Chinese agents to the Korean shippers, or to otherwise show that the price it paid for ocean freight was set by ME shippers. The Appellees also argue that Commerce has consistently required respondents such as Chengde to link the amount paid to an NME intermediary or agent with that paid to an ME carrier.

We agree with the Trade Court and the Appellees that Commerce properly calculated Chengde's ocean freight expenses using a surrogate value. The statute presumes that government action distorts the prices that NME exporters pay for their inputs. *See* 19 U.S.C. §§ 1677(18), 1677b(c)(1). In limited circumstances, however, pursuant to the regulation in effect at the relevant time, Commerce would "nor-

mally" value an input purchased from an ME supplier and paid for in an ME currency using "the price paid to the [ME] supplier." 19 C.F.R. § 351.408(c)(1) (2012). Accordingly, "under the regulation, merely establishing that the factor was purchased from [an ME] supplier is not enough; rather, the amount paid to the supplier must be documented." *Yantai Oriental Juice Co. v. United States*, 26 Ct. Int'l Trade 605, 615 (2002).

Here, Chengde failed to properly establish the price paid to the ME shippers or to otherwise show that the price it paid for ocean freight was set by the ME shippers. The record shows that Chengde paid its ocean freight expenses to a freight forwarder in China, who then paid the Chinese agents of Korean carriers, who in turn paid the Korean carriers. Because the first two transactions were between Chinese entities, Chengde is required to link the price it paid to the freight forwarder to the price paid to the Korean shippers. However, Chengde failed to make that showing. It only provided declarations that the Chinese agents paid the Korean shippers in U.S. dollars.

Accordingly, the only prices on the record relating to ocean freight are those between Chinese entities, not the prices paid to the Korean carriers. On this record, Commerce properly declined to value Chengde's international freight as an ME input and properly used a surrogate value to calculate international freight costs. *See Nan Ya*, 810 F.3d at 1337–38. We therefore conclude that Commerce's decision is supported by substantial evidence and otherwise in accordance with law.

CONCLUSION

We have considered the Appellants' remaining arguments, but find them to be unpersuasive. For the foregoing reasons, we conclude that Commerce's antidumping duty calculations were supported by substantial evidence and otherwise in according with law. We therefore affirm the Trade Court's decisions sustaining Commerce's antidumping duty calculations.

AFFIRMED