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February 8, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Gary Taverman
Senior Adviser
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China covering the Period January 23, 2009, through October 31, 2010

Summary

We have analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC) covering the period January 23, 2009, through October 31, 2010. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments and rebuttal comments by parties:

1. *Separate Rate*
2. *Corporate Affiliation*
3. *Respondent Selection*
4. *Surrogate Values*
   Air Freight
   Brokerage and Handling
   Cores
   Diamond Powder
   Electricity
   Financial Ratios
   Gasoline
   Paraffin Wax
   Steel Types 1, 2, 3, and 6
   Tin Powder
5. *Status of the Order*

Company Abbreviations

ATM Single Entity – Advanced Technology & Materials Co., Ltd. (ATM), Beijing Gang Yan Diamond Products Co. (BGY), HXF Saw Co., Ltd. (HXF), AT&M International Trading Co., Ltd. (ATMI), and Cliff International Ltd.
Bosun – Bosun Tools Co., Ltd.
CISRI – China Iron & Steel Research Institute
Ehwa – Ehwa Diamond Industrial Co., Ltd.
Hebei – Hebei Husqvarna-Jikai Diamond Tools Co., Ltd.
Hyosung – Hyosung Diamond Industrial Co., Ltd.
KCS – Korean Customs Service
Qingdao Shinhan – Qingdao Shinhan Diamond Industrial Co., Ltd.
SASAC – State-Owned Assets Supervision and Administration Commission of the State Council of the People's Republic of China
Shinhan – Shinhan Diamond Industrial Co., Ltd. and SH Trading, Inc.
The petitioner – Diamond Sawblades Manufacturers Coalition
Weihai – Weihai Xiangguang Mechanical Industrial Co., Ltd.

Other Abbreviations

CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – Court of International Trade
CVD – countervailing duty
EP – export price
Federal Circuit – Court of Appeals for the Federal Circuit
FOPs – factors of production
GTA – Global Trade Atlas
I&D Memo – Issues and Decision Memorandum adopted by a *Federal Register* notice of final determination of an investigation or final results of review
ITC – International Trade Commission
LTFV – less than fair value
LTFV Final – Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006)
NME – non-market economy
NV – normal value
POR – period of review
SAA – Statement of Administrative Action accompanying the URAA, H.R. Doc. 103-316, Vol. 1 (1994)

SG&A – selling, general, and administrative expenses
SOE – State-Owned Enterprise
The Act – The Tariff Act of 1930, as amended
URAA – Uruguay Round Agreements Act
USTR – United States Trade Representative
VAT – value-added tax
WTO – World Trade Organization

Background

On December 6, 2011, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades from the PRC.[1] We extended the due date for the final results of review to June 4, 2012.[2]

We invited interested parties to comment on the *Preliminary Results*. We received case and rebuttal briefs for the *Preliminary Results* from various parties to this administrative review. Upon interested parties' requests, we held a hearing on February 23, 2012.

On March 29, 2012, the petitioner filed an allegation that Korean respondents Ehwa, Shinhan, and Hyosung, and Ehwa's and Shinhan's respective Chinese subsidiaries, Weihai and Qingdao Shinhan, sold diamond sawblades into the United States bearing false country of origin designations. On April 4, 2012, the Department rejected the petitioner's March 29, 2012 submission due to bracketing deficiencies, but accepted the petitioner's amended submission dated April 5, 2012, in which the petitioner requested that the Department take information related to this allegation into consideration in both the first and second administrative reviews.

On June 4, 2012, the Department deferred the final results of both the Republic of Korea (Korea) and PRC reviews in order to address the petitioner's fraud allegations.[3] Between October 8, 2012, and November 2, 2012, we conducted verifications of Weihai, Qingdao Shinhan, and their Korean parent companies, and met with the KCS concerning the petitioner's fraud allegations. On December 10, 2012, we issued the cost verification reports for Ehwa and Shinhan. On December 21, 2012, we issued the KCS meeting reports and sales verification reports for Weihai, Qingdao Shinhan, and their Korean parent companies. On January 8, 2013, we issued the post-preliminary analysis memorandum in which, based on the verification reports and the KCS meeting report, we preliminarily found that the respondents' sales and cost data are reliable and not affected by the circumstances that were the bases of the petitioner's fraud allegations in

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part*, 76 FR 76135 (December 6, 2011) (*Preliminary Results*).
[2] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 77 FR 14733 (March 13, 2012), and *Diamond Sawblades and Parts Thereof From the Republic of Korea and the People's Republic of China: Extension of Time Limits for the Final Results of the Antidumping Duty Administrative Reviews*, 77 FR 20788 (April 6, 2012) (collectively *Final Extension Notices*).
[3] *See* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled "Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Deferral of the Final Results of the First Antidumping Duty Administrative Reviews" dated June 4, 2012.

these administrative reviews.[4] On January 8, 2013, we also issued a revised tentative schedule for the completion of this review and the companion Korea review, in which we set February 8, 2013, as the intended due date for the final results of this review.[5] On January 15, 2013, Qingdao Shinhan filed comments supporting our Post-Preliminary Analysis Memorandum. No other parties commented on our Post-Preliminary Analysis Memorandum.

Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, the Department included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border Protection (CBP).[6]

The tariff classification is provided for convenience and customs purposes; however, the written

[4] *See* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled "2009/2010 Review of the Antidumping Duty Orders on Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Post-Preliminary Analysis" dated January 8, 2013 (Post-Preliminary Analysis Memorandum).

[5] *See* Memorandum to Susan Kuhbach, Senior Office Director for AD/CVD Operations, Office 1, entitled "Revised Schedule for the Deferred Final Results of Administrative Reviews" dated January 8, 2013.

[6] *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011).

description of the scope of the order is dispositive.

Discussion of the Issues

SEPARATE RATE

Comment 1: The petitioner argues that ATM Single Entity is not eligible for a separate rate because of its affiliation with CISRI. The petitioner states that CISRI owned a controlling stake in ATM Single Entity with slightly more than 41 percent of ATM's shares and that no other shareholder held more than 1.18 percent of ATM's stock during the POR. The petitioner also explains that CISRI and ATM maintained a close investment relationship by virtue of shared board members during the POR and that they engaged in significant financial dealings during the POR.

The petitioner explains that, according to CISRI's website, CISRI was founded in 2006 under the auspices of SASAC, a central governmental body that oversees important state assets. According to the petitioner, SASAC was created in 2003 to represent the state's shareholder interests in SOEs. The petitioner describes the foundation of SASAC as a retrenchment of significant state intervention in the SOEs' commercial decisions with respect to, *inter alia*, their strategies, management, and investments. The petitioner explains that, since its creation, SASAC has controlled many of the PRC's largest SOEs, including CISRI's predecessor.

The petitioner acknowledges that the Department has found SOEs that are "owned by all people" to qualify for a separate rate. The petitioner contends, however, that CISRI is not "owned by all people." Instead, CISRI is controlled by SASAC which, the petitioner claims, wielded significant legal authority over CISRI. The petitioner also claims that SASAC has full control over CISRI's Boards of Directors and Supervisors. Citing ATM's 2009 and 2010 annual reports, the petitioner argues that SASAC is ATM's "*de-facto* controlling entity." Citing ATM Single Entity's November 14, 2011, submission, the petitioner explains that this designation is given under Chinese laws to entities that are "able to hold actual control of the acts of the company by means of investment relations, agreements, or any other arrangements" while not holding any of the company's shares.

The petitioner argues that ATM Single Entity has not demonstrated the absence of *de jure* government control. According to the petitioner, the Department found an absence of *de jure* control over ATM Single Entity based on (1) ATM Single Entity's business and export licenses and articles of association and (2) certain Chinese laws (including the 1994 Company Law of the People's Republic of China (Company Law), as amended, and the Foreign Trade Law of the People's Republic of China), which the Department has found to indicate that the government has decentralized control over Chinese companies. The petitioner contends that more recently enacted Chinese laws indicate that the Chinese government has undertaken a program aimed at recentralizing control over SOEs and their assets. The petitioner argues that, because members of ATM Single Entity are subject to such recently enacted legal controls, these laws are relevant to the question of ATM Single Entity's eligibility for a separate rate.

According to the petitioner, in accordance with State Council Decree 378, the Chinese

government owns the SOEs' assets and ensures that there is no distinction between SOEs and the Chinese government. The petitioner claims that the State Council, through SASAC, wields all the rights and powers of an investor over SOEs, including CISRI, "to hire and fire, to receive and dispose of profits, and to direct and approve investment, mergers, spin-offs, *etc*."

The petitioner argues that, in accordance with Chinese regulations, SASAC can perform the duties of an investor with respect to SOEs through the Company Law, which governs business forms in the PRC and lays out the rights of investors. The petitioner claims that, according to the Company Law, investors, including the Chinese government, "have the power to (1) decide on a company's business policy and investment plans, (2) elect and recall directors and supervisors, (3) examine and approve directors' reports, budgets, financial plans, and distributions, (4) adopt resolutions regarding a company's registered capital, the issuance of bonds, the assignment of capital contributions, and/or mergers, liquidations and acquisitions, and (5) amend the articles of association of the company."

The petitioner claims further that the Chinese regulations regarding SOEs charge SASAC with (1) appointing and removing SOEs' directors and managers, (2) improving the Chinese government's controlling power over state-owned assets, (3) approving and directing SOEs' articles of association and their mergers, stock offers, asset sales, *etc*. The petitioner contends that the Chinese government had all of these rights and power over CISRI during the POR. Citing ATM Single Entity's November 14, 2011, submission, the petitioner claims that the Chinese government had full control over CISRI's board and management during the POR.

The petitioner explains that, according to the regulations promulgated pursuant to State Council Decree 378, CISRI's shares in ATM Single Entity were state assets. The petitioner explains further that, even in the absence of such regulations, the Chinese government controls CISRI's assets, including its shares in ATM Single Entity, because the Chinese government is CISRI's shareholder, as reflected in ATM's financial statements.

Citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754, 61757-60 (November 19, 1997), the petitioner states that the Department's rationale behind the separate rates test is to prevent an NME government from circumventing an antidumping duty order later by controlling the flow of subject merchandise through exporters with the lowest margin. The petitioner contends that the Chinese government, through its ownership of CISRI, has the legal power to funnel exports through ATM Single Entity because, among other reasons, the Chinese government owns CISRI and CISRI has a controlling stake in ATM Single Entity and is eligible to nominate directors to ATM's board.

The petitioner explains that the Chinese government's *de jure* control of ATM Single Entity is sufficient for the Department to assign the PRC-wide rate to ATM Single Entity. Alternatively, according to the petitioner, ATM Single Entity provided minimal evidence to support its claim for the absence of *de facto* control, particularly with respect to its personnel decisions and its ability to retain the proceeds of export sales. According to the petitioner, for example, the information on the record contains no board resolutions or minutes of any meetings with respect to profits or the selection of personnel. The petitioner claims that the information on the record

indicates that the Chinese government controls ATM Single Entity's decisions on disposition of profits and personnel, especially with respect to directors and senior managers.

According to the petitioner, in ATM, shareholders select directors and supervisors, members of the board of directors select the general manager, and the general manager selects various senior-level managers. The petitioner explains that, as ATM's controlling shareholder, CISRI also appears to control the selection of personnel at other member companies of ATM Single Entity through the companies' articles of association stating that their shareholders have the power to select their directors and managers. The petitioner states that the selection of BGY's directors and managers is also subject to CISRI's control because of CISRI's control of ATM Single Entity in general.

The petitioner contends that ATM Single Entity's certification that its members enjoy autonomy over the selection of their personnel does not constitute substantial record evidence demonstrating the absence of *de facto* government control. The petitioner argues that, beyond ATM Single Entity's certification, the information on the record contains no evidence suggesting independent selection of directors and managers, but instead indicates that the selection of directors and managers was subject to Chinese government control.

The petitioner argues that, as a shareholder, CISRI controls ATM Single Entity's export proceeds, profits, assets, and its ability to take out loans. According to the petitioner, ATM distributed a significant amount of profits to CISRI during the POR. The petitioner claims that, among other things, CISRI received approximately 35 million renminbi in cash dividends from ATM in 2010 and additional stock shares as part of ATM's profit distribution program. The petitioner contends that CISRI's *de facto* control was not limited to ATM. The petitioner states that the information on the record reveals that the Chinese government, through CISRI, had the *de facto* control of ATM Single Entity's proceeds, profits, *etc*., and that a significant portion of ATM Single Entity's proceeds and profits flowed directly to CISRI.

ATM Single Entity requests that the Department continue its practice and assign a separate rate for ATM Single Entity. Citing the Department's Policy Bulletin 05.1, ATM Single Entity argues that the Department focuses on the absence of *de jure* and *de facto* control by the Chinese government over a respondent's export activities, specifically "on controls over the decision making process on export-related investment, pricing, and output decisions at the individual firm level," not on general independence from all governmental influence. ATM Single Entity explains that prior to the issuance of Policy Bulletin 05.1, the Department found that the Chinese government's shareholding and ownership did not result in denial of separate rates. ATM Single Entity further explains that there is a distinction between government ownership and the type of government control which would lead to the denial of a separate rate to a company. ATM Single Entity points to *Qingdao Taifa Group Co., Ltd. v. United States*, 637 F. Supp. 2d 1231, 1244 (CIT 2009), in which the CIT held that local government ownership of shares in a respondent is not sufficient to support the application of the PRC-wide rate to the respondent because "local government ownership is of some limited relevance to the analysis" but "government ownership is not tantamount to government control."

ATM Single Entity argues that the Department's rationale for calculating a separate rate for the

company in the *Preliminary Results* is consistent with its past practice. According to ATM Single Entity, the Department found in the *Preliminary Results* that none of ATM Single Entity's business licenses, export licenses, and articles of association "contained restrictions with respect to export activities" and that ATM Single Entity provided evidence of its legal right to set prices and export the subject merchandise independent of all government control and oversight. ATM Single Entity explains that the Department restated its longstanding practice and precedent in the *Preliminary Results* that (1) the Company Law indicates a lack of the *de jure* government control over export activities and (2) Foreign Trade Law of the People's Republic of China grants autonomy to foreign-trade operators in management decisions and establishes the foreign-trade operators' accountability for profits and losses, thus indicating a lack of government control over export activities.

ATM Single Entity contends that, in the absence of laws or regulations not just allowing for the possibility but actually compelling the Chinese government's *de jure* or *de facto* control over a respondent, the mere appearance, possibility, or potential of such control is not a sufficient basis to find *de jure* or *de facto* control. According to ATM Single Entity, there is no *de jure* control by the Chinese government because the language of the Company Law and other Chinese legal provisions does not compel government control but set limits on control by any shareholder.

ATM Single Entity disagrees with the petitioner's argument that rests on, as described by ATM Single Entity, "an attenuated control structure that somehow PRC government amorphously controls the day-to-day export activities" of BGY through the SASAC, CISRI, and ATM. ATM Single Entity contends that the petitioner completely ignores Policy Bulletin 05.1 concerning separate rates and the criteria established therein. According to ATM Single Entity, the petitioner does not claim that the Chinese government or SASAC has any control over ATM Single Entity's daily export activities. Rather, according to ATM Single Entity, the petitioner's argument that the Chinese government, through SASAC and CISRI, has the legal power to funnel exports *via* ATM Single Entity is based on pure conjecture and an admission that there is no law in place that compels such acts.

ATM Single Entity contends that the petitioner ignores the Chinese laws that limit government controls over companies. ATM Single Entity explains that the Code of Corporate Governance for Listed Companies (Corporate Governance Code), Article 2, requires "fair treatment toward all shareholders, especially minority shareholders. All shareholders are to enjoy equal rights and to bear the corresponding duties based on the shares they hold." In its explanation of Articles 19-21 of the Corporate Governance Code, ATM Single Entity argues that Article 21 limits the controlling shareholders from directly or indirectly interfering "with the company's decisions or business activities conducted in accordance with laws" or impairing "the listed company's or other shareholders' rights and interests."

ATM Single Entity explains that, in the Corporate Governance Code, Article 22 specifically requires that a listed company "shall be separated from its controlling shareholders in such aspects as personnel, assets and financial affairs, shall be independent in institution and business, shall practice independent business accounting, and shall independently bear risks and obligations" and Article 23 compels that "{t}he personnel of a listed company shall be independent from the controlling shareholders. The management, financial officers, sales

officers and secretary of the board of directors of the listed company shall not take posts other than as a director in the controlling shareholder." ATM Single Entity explains further that Article 25 provides that "{c}ontrolling shareholders shall respect the financial independence of the company and shall not interfere with the financial and accounting activities of the company" and Article 26 states, *inter alia*, that "{t}here shall be no subordination relationship between, on the one hand, a listed company or its internal offices and, on the other hand, the company's controlling shareholders or their internal offices, and the latter shall not give plans or instructions concerning the listed company's business operation to the former, nor shall the latter interfere with the independent operation of the former in any other matter." Finally, ATM Single Entity explains that Article 27 states that "{a} listed company's business shall be completely independent from that of its controlling shareholders."

ATM Single Entity contends that the petitioner does not rebut or refute the existence of these Chinese laws or that these laws address the issue of government control that the Department takes into consideration in its separate rate analysis. ATM Single Entity contends further that the information on the record does not support the petitioner's claim that SASAC's activities resulted in a retrenchment of significant state intervention. According to ATM Single Entity, the petitioner's submission dated May 20, 2011, states that the number of central level SOEs has declined over time and that, in some cases, the market position of the remaining SOEs has been strengthened. ATM Single Entity argues that CISRI's shareholding in ATM Single Entity has decreased from the time of the investigation when the Department found no *de jure* or *de facto* control. According to ATM Single Entity, the petitioner ignores that the PRC's WTO accession agreement, which the petitioner included in its submission dated May 20, 2011, requires that the Chinese government "would not influence the commercial decisions of state-owned and state-invested enterprises." ATM Single Entity contends that, since the Chinese government cannot influence the commercial decisions of SOEs and state-invested enterprises, the Department cannot assume that the Chinese government has *de jure* or *de facto* control over ATM Single Entity's export decisions. Citing the petitioner's submission dated May 20, 2011, ATM Single Entity claims that article 10 of the SASAC regulations states that SASAC "shall support the independent operation of enterprises according to law, and shall not interfere in their production and operation activities, apart from performing the responsibilities of investor." With respect to the petitioner's assertion that "responsibilities of investor" give SASAC significant control, ATM Single Entity explains that the SASAC regulations specifically limit the type of control the Department considers in its separate rate analysis.

ATM Single Entity states that the petitioner's assertion that CISRI "is the only stockholder" eligible to nominate members of ATM's board of directors is "not untruthful" but "severely misleading." ATM Single Entity states that CISRI is the only single stockholder eligible to nominate members of ATM's board of directors but article 101 of ATM's articles of association "allows for the Board of Directors to nominate directors and shareholders that jointly have more than 10 percent of the company's shares." ATM Single Entity contends that, even in cases in which the Department found more evidence of government control and influence than in this review, the Department found no government control within the meaning of the separate rates provision.

ATM Single Entity explains that, in *Preliminary Determination of Sales at Less Than Fair Value*

and Postponement of Final Determination: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products From The People's Republic of China, 65 FR 1117 (January 7, 2000), the Department found no *de jure* control of a respondent that was not publicly listed in a Chinese stock exchange and was owned by the whole people after the Department reviewed, *inter alia*, the two documents the respondent placed on the record: "Law of the People's Republic of China on Industrial Enterprises Owned By the Whole People" adopted on April 13, 1988, and "'Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises" issued on December 31, 1992, by the Ministry of Foreign Economic Relations and Trade of the People's Republic of China. ATM Single Entity explains further that the Department found in *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 49632 (September 28, 2001), and the accompanying I&D Memo at Comment 1, that evidence of the Chinese government's control over a specific industry sector is insufficient to presuppose the Chinese government's company-specific control over the company's export activities and, thus, insufficient to show a *de jure* control. ATM Single Entity states that the Department found in *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews*, 71 FR 54269 (September 14, 2006), and the accompanying I&D Memo at Comment 3, that SASAC's potential control over CISRI is not sufficient to show any actual control of the Chinese government over individual export decisions when the respondent's operations were governed by the Company Law and when the respondent submitted, *inter alia*, business licenses and export licenses to demonstrate an absence of restrictive stipulations and decentralization of control of the company.

Citing *Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Third Antidumping Duty Administrative Review, and Preliminary Rescission in Part*, 76 FR 23978 (April 29, 2011) (which, according to ATM Single Entity, states that government ownership alone does not warrant denying a separate rate to a company when there is no evidence of actual government control of the company's export activities or of the government-controlled or -owned shareholders' control the selection of the company's management in greater proportion than their voting shares allow), ATM Single Entity contends that the petitioner continues to assert the existence of *de facto* control even after the petitioner acknowledges that ATM Single Entity provided all certifications and information requested by the Department to demonstrate the absence of *de facto* control over the company's export activities. ATM Single Entity states that nothing on the record of this review indicates that (1) the Chinese government had *de facto* control over ATM Single Entity's export decisions, (2) any company exercised voting shares in greater proportion than the shares it owned, or (3) any shareholder received a disproportional amount of dividend or profit relative to what the shareholder would have received based on the number of shares the shareholder owned. ATM Single Entity explains that it acted as any other publicly traded company would in the best interest of its investors.

ATM Single Entity states that the Department found no *de facto* control in the *LTFV Final* and the accompanying I&D Memo at Comment 16 or in the *Preliminary Results*. ATM Single Entity argues that, even if the information on the record shows that the Chinese government controlled ATM Single Entity, there is no basis to assign the PRC-wide rate to ATM Single Entity because ATM Single Entity has cooperated to the best of its ability and because there is no evidence

showing that any other Chinese companies that produced the subject merchandise are state controlled. ATM Single Entity describes the petitioner's allegation of the existence of *de facto* control as a repeat of its allegation of the existence of *de jure* control. ATM Single Entity reiterates that there is no information on the record demonstrating that the Chinese government controls, through SASAC, CISRI, and ATM, BGY's export activities.

Department's Position: In order to obtain a separate rate, a company must demonstrate an absence of *de jure* and *de facto* control over export activities, as stated in Policy Bulletin 05.1., at 4. Regarding *de jure* control, the Department considers the following criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of the companies; and (3) other formal measures by the government decentralizing control.[7]

The evidence provided by ATM Single Entity supports finding an absence of *de jure* government control. Specifically, ATM Single Entity has submitted its business licenses, export licenses, and a copy of its articles of association. None of these documents indicates any restrictions with respect to export activities.

We have copies of the Company Law and the Foreign Trade Law of the People's Republic of China on the record. The Department has previously found that the Company Law indicates a lack of *de jure* government control over export activities.[8] The Department has made the same finding with respect to the Foreign Trade Law of the People's Republic of China.[9] In particular, this law identifies the rights and responsibilities of organizations engaging in foreign trade, grants autonomy to foreign-trade operators in management decisions, and establishes the foreign-trade operator's accountability for profits and losses.[10] In its arguments, the petitioner contends that these documents are insufficient to demonstrate an absence of *de jure* control because of the more recent enactment, the Decree of the State Council of the People's Republic of China No. 378: Interim Regulations on Supervision and Management of State-owned Assets of Enterprises.[11] We disagree.

Articles 1 and 2 of the Interim Regulations state that the law is intended to be applicable to SOEs and assets. Article 6 clarifies that SASAC performs "the responsibilities of investors according to law, supervise and administer State-owned assets of enterprises according to law," and, hence, is empowered to act in the capacity of representative of the state's role as "investor."[12] Article 7 of the Interim Regulations provides for the "separation of government functions from enterprise

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[7] *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991).

[8] *Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 34100, 34103 (June 16, 2010) (*Crawfish from the PRC*), unchanged in *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative and New-Shipper Reviews*, 75 FR 79337 (December 20, 2010).

[9] *Id.*

[10] *Id*.

[11] *See* the petitioner's submission of factual information dated May 20, 2011, at Exhibit 2 (Interim Regulations) at Articles 1 and 2.

[12] *See id.*, at Article 6.

management and separation of ownership from management."[13] Article 10 states further that those companies operating under SASAC "enjoy autonomy in their operation" and that SASAC "shall support the independent operation of enterprises according to law, and shall not interfere in their production and operation activities…."[14] SASAC plays a role in approving the development of certain investment and business plans to ensure that these plans are in line with the PRC's industrial policy objectives as well as in the appointment of the board and certain key senior management positions.

Therefore, there are contradictions in the Interim Regulations with respect to the separation of the government from the enterprise management. Although SASAC may play a role in overseeing the overall regulation, development, and structure of the state-owned sector, based on the record, SASAC's reach would not extend to ATM Single Entity's export pricing.

In addition, Article 42 of the Interim Regulations states that "organizational form, organizational structure, rights and obligations…shall be governed by the Company Law,"[15] which, as explained above, we have previously found to demonstrate an absence of *de jure* control over export activities, including pricing.[16]

Therefore, although SOEs may be shareholders in ATM, even where SASAC is the ultimate representative of the SOE holding shares, the record does not support a finding that that SASAC's role would extend to control over export activities, including pricing, in ATM Single Entity. Therefore, we find that the laws placed on the record of this review establish the absence of *de jure* control of ATM Single Entity, whose shareholders include SOEs.

Turning to *de facto* government control of an enterprise's export functions, the Department examines: (1) whether the export prices are set by, or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[17]

In its responses, ATM Single Entity has asserted the following: (1) its export prices are not set by, and are not subject to, the approval of a governmental agency; (2) it has authority to negotiate and sign contracts and other agreements; (3) it has autonomy from the government in making decisions regarding the selection of management; and (4) it retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.

As there is no evidence on the record that demonstrates the contrary, and in keeping with our precedent outlined above, we find that ATM Single Entity has demonstrated an absence of *de*

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[13] *See id.*, at Article 7.
[14] *See id.*, at Article 10.
[15] *See id.*, at Article 42.
[16] *See, e.g., Crawfish from the PRC*, 75 FR at 34102-3.
[17] *See Preliminary Results*, 76 FR at 76138.

jure and *de facto* control, and is thus eligible for a separate rate.

Comment 2: ATM Single Entity asserts that the Department cannot continue the presumption that all Chinese companies are state-controlled entities while treating the PRC as an NME in CVD proceedings. Specifically, ATM Single Entity cites to the Department's memorandum to Assistant Secretary David M. Spooner entitled "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion Are Applicable to China's Present-Day Economy," dated March 29, 2007 (Georgetown Memo), which states at 5, "that market forces now determine the prices of more than 90 percent of products traded in China" and that China's "current *Labor Law* grants the right to set more wages above the government-set minimum wage to all enterprises, including foreign invested enterprises ('FIE'), SOEs and domestic private enterprises." ATM Single Entity insists that the Department's rationale for conducting NME CVD investigations contradicts its presumption in antidumping duty proceedings that all companies within an NME country are subject to government control and, therefore, should all be assigned a single, NME-wide rate unless a respondent can demonstrate an absence of *de jure* and *de facto* control over its export activities. ATM Single Entity argues that, at a minimum, the Department's decision to apply the CVD law to NME countries indicates that, at least with respect to *de jure* control, interference by the government in companies' exports activities cannot be presumed.

ATM Single Entity explains further that the Department's finding in the Georgetown Memo "that market forces now determine the prices of more than 90 percent of products traded in China" reverses any presumption that the PRC government *de facto* controls companies' pricing decisions; instead, under this finding, the only justifiable presumption is that the PRC government does not interfere in companies' pricing decisions. According to ATM Single Entity, the Department in the Georgetown Memo, at 10, has found "in recent years that many more companies' export activities are independent from the PRC government in comparison with the early- to mid-1990s."

ATM Single Entity maintains that the inconsistency between the presumption of state control in antidumping duty proceedings and the Department's factual findings to justify NME CVD proceedings is obvious because the Department's antidumping presumption of government control is just the opposite of the findings that the Department used to justify bringing NME CVD cases. ATM Single Entity claims that the Department's presumption of state control in the antidumping duty proceedings implies that the PRC economy is nothing less "than the traditional communist economic system of the early 1980s, *i.e.*, the so-called 'Soviet-style economies'" which the Department rejected for NME CVD proceedings in the Georgetown Memo, at 4.

Department's Position: ATM Single Entity has conflated the concepts of the "NME-wide entity" for duty assessment purposes with the "single economic entity" that characterized those economies in *Georgetown Steel Corp. v. United States*, 801 F.2d 1308, 1310 (Fed. Cir. 1986) (*Georgetown Steel*). The Department's analysis in the Georgetown Memo focused only on the latter concept. The CAFC and the Department characterized those economies "as economies with a marked absence of market forces, in which: (p)rices are set by central planners. 'Losses' suffered by production and foreign trade enterprises are routinely covered by government transfers. Investment decisions are controlled by the state. Money and credit are allocated by

the central planners. The wage bill is set by the government. Access to foreign currency is restricted. Private ownership is limited to consumer goods."[18] In other words, the government is the entire economy for all intents and purposes. Given the reforms discussed in the Georgetown Memo, the Department found that the PRC's economy is no longer comprised of a single central authority and that the policy that gave rise to the *Georgetown Steel* litigation does not prevent the Department from concluding that the PRC government has bestowed a countervailable subsidy upon a Chinese producer.

In proceedings involving NME countries such as the PRC, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. This presumption stems not from an economy comprised entirely of the government (*e.g.*, a firm is nothing more than a government work unit), but rather from the NME-government's use of a variety of legal and administrative levers to exert influence and control (both direct and indirect) over the assembly of economic actors across the economy. As such – and contrary to ATM Single Entity's assertions – this presumption is patently different from a presumption that all firms are one-and-the-same as the government, such that they comprise a monolithic economic entity. Moreover, the presumption underlying the separate rates test was upheld in *Sigma Corp v. United States*, 117 F.3d 1401, 1405- 06. (Fed. Cir. 1997), where the CAFC affirmed the Department's separate rates test as reasonable, stating that the statute recognizes a close correlation between an NME and government control of prices, output decisions, and the allocation of resources. The CAFC also stated that it was within the Department's authority to employ a presumption of state control for exporters in an NME-country and to place the burden on the exporters to demonstrate an absence of central government control.

Firms that do not rebut the presumption are assessed a single antidumping duty rate, *i.e.*, the NME-Entity rate.[19] However, in recognition that parts of the PRC's economy are transitioning away from the state-controlled economy, the Department has developed the separate rates test. In an economy comprised of a single, monolithic state entity, it would be impossible to identify separate firms, let alone rebut government control. Rather, the PRC's economy today is neither command-and-control nor market-based; government control and/or influence is omnipresent (which gives rise to the presumption) but not omnipotent (and hence, the presumption is rebuttable).[20]

ATM Single Entity's reliance on a partial quote regarding prices in the PRC is misplaced. Georgetown Memo states that "although price controls and guidance remain on certain 'essential' goods and services in China, the PRC Government has eliminated price controls on most products; market forces now determine the prices of more than 90 percent of products traded in China."[21] This quote is a reference to deregulation of prices, *i.e.*, phasing out of the direct, administrative price-setting common in command-and-control economies. It is not a

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[18] *See* Georgetown Memo at 4, citing *Georgetown Steel* quoting *Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination*, 49 FR 19375, 19376 (May 7, 1984).

[19] *See* 19 CFR 351.107(d), which provides that "in an antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers."

[20] *See* Georgetown Memo at 9.

[21] *See* Georgetown Memo at 5, *citing* The Economist Intelligence Unit, Country Commerce: China, 2006 at 73.

reference, for example, to an absence of direct government control over resource allocations or government control or influence over economic actors that can fundamentally distort the price formation process. Therefore, it is not relevant to our requirements that NME companies seeking a separate rate demonstrate the absence of *de jure* or *de facto* control.

CORPORATE AFFILIATION

Comment 3: The petitioner requests that the Department collapse ATM Single Entity with CISRI in order to prevent potential manipulation of price and/or production. The petitioner explains that the Department's collapsing analysis, as described in 19 CFR 351.401(f), focuses on whether the degree of common ownership, interlocked boards, and intertwined operations between affiliated companies poses a significant potential for the manipulation of price or production. The petitioner argues that each of these criteria supports collapsing ATM Single Entity with CISRI.

With respect to the degree of common ownership, the petitioner states that the Department has preliminarily found that ATM and ATMI are subject to CISRI's common legal control. According to the petitioner, this common legal control flows to all other members of ATM Single Entity through ATM's ownership of BGY and HXF at certain levels. The petitioner claims that, because members of ATM Single Entity are subject to CISRI's common ownership and control, ATM Single Entity should be collapsed into CISRI. With respect to the degree of interlocked boards, the petitioner states that information on the record concerning ATM's board justifies the inclusion of CISRI in ATM Single Entity. With respect to the degree of intertwined operations, the petitioner argues in favor of collapsing CISRI into ATM Single Entity. According to the petitioner, during the POR, CISRI and ATM engaged in significant transactions and CISRI received from ATM significant cash dividends that were based not only on ATM's profits but also on the profits of its consolidated subsidiaries such as BGY.

The petitioner claims that CISRI has a close relationship with members of ATM Single Entity through which CISRI can sell subject merchandise to the United States at a very low separate rate. The petitioner urges the Department to prevent CISRI, which the petitioner claims is ineligible for a separate rate due to its status as a government entity, and the Chinese government from manipulating price and/or production through their relationship with members of ATM Single Entity. For this, the petitioner requests that the Department collapse CISRI with ATM Single Entity and assign the collapsed entity the PRC-wide rate of 164.09 percent.

ATM Single Entity asserts that there are flaws in the petitioner's analysis of 19 CFR 351.401(f). Primarily, ATM Single Entity argues that collapsing under 19 CFR 351.401(f) is for producers, not shareholders. ATM Single Entity claims that the petitioner does not show that the affiliation at issue could result in significant potential for manipulation. ATM Single Entity explains that there is no information on the record showing that CISRI is a producer of subject merchandise because CISRI is not a producer of subject merchandise. According to ATM Single Entity, there is no indication that CISRI owns any other producers of diamond sawblades that would allow for collapsing pursuant to the Department's regulations. Citing *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323 (CIT 2003), ATM Single Entity explains that there is no basis on which to collapse or include CISRI with ATM Single Entity.

Department's Position: For the final results, we did not collapse CISRI with ATM Single Entity under 19 CFR 351.401(f). Pursuant to 19 CFR 351.401(f)(1), we collapse "two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities" and if we conclude "that there is a significant potential for the manipulation of price or production." CISRI itself is not a producer of subject merchandise.

Moreover, we have no information showing that (1) CISRI manipulated the prices or export decisions with regards to ATM Single Entity's sales of subject merchandise or (2) CISRI possesses significant potential to manipulate export or pricing decisions of ATM Single Entity. We have no information on the record showing that CISRI's employees directed or could have directed ATM Single Entity's employees to make certain pricing and/or export decisions. In the absence of such information, we cannot find that significant potential for manipulation of price exists.[22]

RESPONDENT SELECTION

Comment 4: Citing *Zhejiang Native Produce & Animal By-Products Import & Export Corp. v. United States*, 637 F. Supp. 2d 1260, 1262 (CIT 2009) (*Zhejiang*), Bosun contends that the Department's decision in its February 18, 2011, respondent selection memorandum (Respondent Selection Memo) to select two respondents for individual examination due to heavy caseload in several cases and anticipated future workload is impermissible. Bosun argues that, if the Department only considers the caseload in this review and does not take into account caseloads in other reviews in its decision to select respondents for individual examination, then it must be able to select at least one more respondent for individual examination in this review because very few exporters requested to be selected for individual examination in this review. Citing, *inter alia*, *Zhejiang*, Bosun contends that selecting less than four respondents for individual examination in this review would be legally deficient.

Bosun requests that the Department re-examine its caseload in this administrative review only and select Bosun for individual examination in this review. Bosun claims that, because it is the only unselected respondent that filed its questionnaire response, it would be appropriate and minimally burdensome to select it for individual examination. Bosun claims further that, because it filed its questionnaire response, the Department can calculate an antidumping duty margin for the company as accurately as possible.

Bosun requests that, in the alternative, the Department accept Bosun as a voluntary respondent in accordance with section 782(a) of the Act and 19 CFR 351.204(d)(1). Bosun distinguishes this review from *Longkou Haimeng Machinery Co. v. United States*, 581 F. Supp. 2d 1344 (CIT 2008), in which, according to Bosun, the CIT upheld the Department's decision not to accept a voluntary respondent in addition to the three respondents already under the same review because accepting a voluntary respondent would produce an undue burden on the Department. Citing *Grobest & I-Mei Industrial (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342 (CIT 2012), Bosun argues that the Department may not use the workload that limited the selection of respondents for individual examination to deny requests for voluntary respondent status because

[22] *See Hontex Enterprises, Inc.*, 248 F. Supp. 2d, at 1346.

the examination of the burden with respect to accepting voluntary respondents is a separate test involving a higher standard. Bosun contends that section 782(a) of the Act compels the Department to accept at least one voluntary respondent because the burden analysis contemplates a weighing of whether acceptance of multiple voluntary respondents would hinder the timely completion of the review.

Bosun reiterates that the Department can easily use its response and calculate an antidumping duty margin. Bosun asserts that the Department's examination of Bosun's data requires very little additional analysis of surrogate values because most of the surrogate values applicable to Bosun are common to those of the selected respondents. Bosun argues that the Department should review its response because its high rate was established very long ago and because the POR is unusually long.

The petitioner argues that the Department should not use Bosun's questionnaire responses to calculate an individual margin for Bosun. The petitioner contends that, because Bosun's responses were not subject to supplemental questionnaires or a possibility of verification, it is uncertain whether Bosun's responses and surrogate value recommendations are sufficiently reliable for the Department to calculate a reliable individual margin for Bosun.

Department's Position: With respect to our decision not to select Bosun for individual examination, section 777A(c)(2) of the Act provides that when we are faced with a large number of companies such that its individual examination of all companies would be impracticable, we may limit our individual examination of companies to a reasonable number of such companies. In addition, section 777A(c)(2) of the Act permits us to determine margins for a reasonable number of exporters by limiting our examination either (1) through a sampling of exporters, producers, or types of products or (2) by selecting the exporters accounting for the largest volume of the subject merchandise.

In selecting respondents for individual examination, we took into consideration resources such as current and anticipated workload, and deadlines expected to coincide with the segment in question. *See* Respondent Selection Memo. In the Respondent Selection Memo, we explained that it would not be practicable in this review to examine all 58 companies for which we had requests for review in light of, *inter alia*, our limited resources. Thus, in accordance with section 777A(c)(2) of the Act, we selected a reasonable number of respondents, specifically ATM Single Entity (comprising several companies) and Weihai, the two respondents accounting for the largest volume of exports of subject merchandise that could reasonably be reviewed. *See* Respondent Selection Memo.

In administrative reviews, we issue questionnaires requesting parties to provide detailed information on a wide range of matters that are essential to the calculation of an accurate dumping margin such as corporate structure and ownership, sales practices, U.S. sales prices and adjustments thereto, packing, transportation and other movement-related expenses, and production data for subject merchandise. In addition, in an NME review such as this review, we solicit information and conduct our own research to obtain surrogate values for multiple FOPs. We carefully analyze initial information we receive in response to questionnaires and we issue follow-up questionnaires to clarify points or obtain further information. We analyze such

supplemental responses in order to allow time for any further questions or to prepare for verification. We must conduct verifications under certain circumstances. Such verifications often take place in the foreign country, involve a detailed examination of price and FOP data, and require a thorough report of the verification process and results thereafter. Thus, contrary to Bosun's claim, there is substantial work involved in selecting an additional company for individual examination.

With respect to the issue of accepting Bosun as a voluntary respondent, section 782(a)(2) of the Act requires that the Department "establish . . . an individual weighted average dumping margin for any exporter . . . not initially selected for individual examination . . . if . . . the number of exporters . . . who have submitted such information is not so large that individual examination of such exporters . . . would be unduly burdensome and inhibit the timely completion of" this review. Here, during this administrative review, we did not have time and resources to accept Bosun as a voluntary respondent. As detailed below, even without selecting Bosun for individual examination or accepting Bosun as a voluntary respondent, the complexity of the issues and the work involved with reviewing two companies required us to extend the due date for the final results initially to June 4, 2012, and further, as explained herein, we subsequently had to defer the final results beyond the June 4 deadline to adequately address allegations of fraud.

We initiated the review on December 28, 2010.[23] We issued the Respondent Selection Memo on February 18, 2011. Because we stated in the *LTFV Final* and the accompanying I&D Memo at Comment 5 our intent to solicit comments in the subsequent administrative review on whether to change the physical characteristics, we provided interested parties with the opportunity before we issued original questionnaires to selected respondents for this review.[24] We received comments from interested parties and held a meeting in which the petitioner made a presentation on the manufacturing process and inputs used in producing diamond sawblades. We issued our decision on the issues concerning physical characteristics on April 8, 2011.[25]

Because of the issues concerning physical characteristics, we were not able to issue the original questionnaires until April 8, 2011, which is more than three months after we published the *Initiation Notice*.[26] After we received original responses from these two respondents, we analyzed the responses and we requested additional information in supplemental questionnaires. After we received supplemental responses from these two respondents, we analyzed the supplemental responses and data. We received original and supplemental responses from these two respondents after we granted their numerous deadline extension requests. Also, we analyzed the 26 separate-rate applications and certifications we received for this review, issued numerous supplemental questionnaires to these applicants and analyzed their supplemental responses.

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[23] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 81565 (December 28, 2010) (*Initiation Notice*).
[24] *See* the February 17, 2011, letter to all interested parties.
[25] *See* Memorandum entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Physical Characteristics," dated April 8, 2011.
[26] *See* the April 8, 2011, original questionnaires to ATM Single Entity and Weihai.

Moreover, at Weihai's request, we extended the due dates for comments on the selection of surrogate country and surrogate values to August 11, 2011, and August 25, 2011, respectively.[27] After we received comments concerning the selection of surrogate country and surrogate values from interested parties, we analyzed the submissions and selected the surrogate country and the surrogate values for more than 80 FOPs and other line items.

By the time we began analyzing the first supplemental responses of the two selected respondents, the workload level had not decreased or changed in a way that would have allowed us to accept Bosun as a voluntary respondent. This office is and has been conducting numerous concurrent antidumping duty and CVD proceedings, which place a constraint on the number of analysts that could be assigned to this case. Not only do these other cases present a significant workload, but the deadlines for a number of the cases coincide and/or overlap with deadlines in this administrative review. In addition to the significant ongoing workload throughout Import Administration, recent developments including new investigations, new targeted dumping allegations, and new methodologies in zeroing make clear that we could not obtain any additional resources to devote to this administrative review.

With respect to the particular issues in this case, the Department required considerable time to analyze the questionnaire responses, supplemental questionnaires, and the FOPs for the selected respondents. The process required to adequately analyze the complex and voluminous data and information submitted in this administrative review required significant time and resources such that it would not be simple to additionally review Bosun, as Bosun contends. For example, because of the complexity of issues involving the selection of surrogate country and surrogate values, and because of the numerous extensions we granted at the request of various parties during the course of the review to submit information to the record, we fully extended the due date for the *Preliminary Results*.[28] Even with the fully extended due date for the *Preliminary Results*, because of (1) the complexity and details of the original and supplemental responses by ATM Single Entity and Weihai, (2) the unusually large number of FOPs and other line items that required surrogate values, (3) the large number of separate-rate requests we received and analyzed, and (4) the continuing level of workloads for other cases throughout this review as we described in the Respondent Selection Memo, we could not spend time and resources to accept Bosun as a voluntary respondent and take steps necessary to analyze Bosun's information and data as described above and issue the *Preliminary Results* within the fully extended statutory due date. Regardless of any ostensible simplicity in reviewing an additional company, the Department's past experience with this case demonstrates that examining another company such as Bosun would have required that the Department allot additional time and assign additional staff to analyze its responses (in addition to the staff completing its other casework within the statutory deadlines) at a level beyond the capacity of the Department's resources.

In addition, the Department faced the unusual burden of addressing the fraud allegations in this case, which required the deferral of the final results of this review on June 4, 2012, to adequately address the petitioner's fraud allegations and protect the integrity of our administrative review. The work involved in addressing these fraud allegations posed a substantial burden for the

[27] *See* the July 6, 2011, letter to all interested parties.

[28] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 64896 (October 19, 2011).

Department. After we deferred the final results, we requested and received from the respondents additional information concerning the petitioner's fraud allegations, held a meeting with the KCS officials, conducted six separate verifications in Korea and the PRC, and issued seven separate reports for the KCS meeting and six verifications. Thus, this deferral significantly increased our workload in addition to the already existing heavy caseload in our office and the Import Administration as described above.

Accepting Bosun as a voluntary respondent, therefore, would have been unduly burdensome and inhibited not only the timely completion of the preliminary results, as explained above, but also the further, timely completion of the final results in this administrative review.

Comment 5: Bosun argues that the Department's decision not to select it for individual examination or accept it as a voluntary respondent is a violation of Bosun's constitutional rights. According to Bosun, antidumping duties constitute a tax on U.S. importers of record and Bosun has been denied its right to have the United States Government review this tax on its operations.

Bosun claims that the U.S. Constitution protects U.S. citizens' rights to petition the Government. Bosun argues that its U.S. affiliate "Bosun Tools USA is incorporated in the United States, pays the antidumping duty taxes, and is protected by the U.S. Constitution, which provides citizens a right 'to petition the Government for a redress of grievances'" under the First Amendment. Bosun explains that the Petition Clause "serves an independent, structural function designed not simply to vindicate the liberty interest of the individual but also to ensure the free flow of information to the government upon which representative democracy depends." Accordingly, Bosun argues, it is critical that the Department heed Bosun's request "to review its antidumping duty liability accurately." Bosun states that, "given the government's extensive regulation of the economy (including imports), an even greater need exists for a free flow of information to the Department involving commercial matters." Bosun contends that the Department's decision not to select Bosun for individual examination or as a voluntary respondent violates Bosun's rights under the Petition Clause and disregards relevant information that Bosun can provide to the Department to calculate an accurate dumping margin.

In addition, citing the Fifth Amendment of the U.S. Constitution, which states that "nor shall any person be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation," Bosun argues that the Department's decision not to select Bosun for individual examination or accept Bosun as a voluntary respondent violates the Equal Protection guarantees of the U.S. Constitution. Citing *Bolling v. Sharpe*, 347 U.S. 497, 499 (U.S. 1954), Bosun states that, while an equal protection guarantee is not explicitly stated, the U.S. Supreme Court recognized that the Fifth Amendment guarantees equal protection against acts of the federal government. Bosun claims that the Department's decision not to select Bosun for individual examination or accept Bosun as a voluntary respondent is discrimination "between similarly situated U.S. importers of subject merchandise" and denies "a benefit to certain of those importers."

According to Bosun, it is similarly situated to other producers and exporters such as ATM Single Entity, which also sells through a U.S. affiliate. Bosun states that there is "no legitimate governmental purpose or rational basis for differentiating between domestic producers" and that

the Department cannot "deny Bosun the benefit of fully participating in this review as a respondent who is eligible to obtain its own antidumping duty rate." Bosun contends that the Department's "classification of domestic producers into two groups – those who were selected to participate as respondents and those who were not – is unreasonable and conflicts with the purpose of the antidumping" statute, "which is to equalize trade and prevent injury to domestic industries but also to encourage compliance by providing exporters (and their importers) the opportunity to demonstrate that they are not selling at less than fair value." Bosun reiterates that the Department's decision not to select Bosun for individual examination or accept Bosun as a voluntary respondent is a violation of the right to Equal Protection.

We received no comments from other interested parties concerning this issue.

Department's Position: Our decision did not violate Bosun's constitutional rights specified in the Petition Clause of the First Amendment or the Equal Protection guarantee of the Fifth Amendment. Rather, we have conducted this proceeding pursuant to the Act and otherwise in accordance with law, providing parties with the opportunity to comment and participate throughout the proceeding. Similarly, section 516A of the Act provides for judicial review of antidumping proceedings. Moreover, when we select a respondent for individual examination, we do not take into consideration the identity or status of a U.S. importer because the statute permits us to select exporters, not importers, for individual examination. *See* section 777A(c)(2) of the Act. For this reason, Bosun Tools USA was not relevant in our decision to select respondents for individual examination. Because we took into consideration Bosun's comments regarding respondent selection in our decision to select respondents for individual examination, we did not deny Bosun's right to petition the government.[29] Moreover, we did not discriminate against Bosun in favor of similarly situated companies because the information on the record does not support Bosun's claim that it is similarly situated with the two respondents we selected for individual examination.[30] We decided not to select Bosun for individual examination based on the information on the record and within our discretion specified in section 777A(c)(2) of the Act.

Comment 6: Bosun contends that the Department's decision not to select it for individual examination or accept it as a voluntary respondent also denied Bosun the opportunity to seek company-specific revocation of the order after making U.S. sales at not less than fair value for three consecutive PORs in accordance with section 751(d)(1) of the Act and 19 CFR 351.222. Bosun argues that the Department's respondent selection restricts the right to obtain this revocation to the top one or two exporters selected for individual examination. Bosun claims that this is unreasonable, if not unlawful, in light of the statute's focus on compliance rather than punishment.

We received no comments from other interested parties concerning this issue.

Department's Position: A respondent not selected for individual examination does not have a subsequent right to an individual examination only for purposes of revocation.[31] Section

[29] *See* Respondent Selection Memo.
[30] *Id.*
[31] *See Amanda Foods (Vietnam) Ltd. v. United States*, 807 F. Supp. 2d. 1332 (CIT 2011) (*Amanda Foods*).

751(d)(1) of the Act and 19 CFR 351.222 do not limit our discretion afforded by Congress under section 777A(c)(2) of the Act. The statute and our regulations are silent with respect to their applicability when we select respondents for individual examination under section 777A(c)(2) of the Act. Therefore, we are not required to select an exporter for individual examination for purposes of making a decision on whether to revoke the order in part for the exporter within the context of section 777A(c)(2)(B) of the Act. The statute does not require that, for the sole purpose of deciding to revoke the order in part for certain companies, we individually examine more respondents than would be practicable or unduly burdensome and would inhibit timely completion of the review.[32]

Comment 7: Hebei objects to the Department's decision not to select Hebei for individual examination. Hebei contends that the Department denied the company an opportunity to demonstrate the nature and pricing of its exports of subject merchandise and its FOPs which, when properly valued, would demonstrate that the company systematically sold subject merchandise at or above fair value.

Department's Position: We did not review Hebei for the same reasons discussed in Comment 4, *supra*. Moreover, Hebei did not submit a voluntary response.

Comment 8: Bosun requests that, if the Department calculates *de minimis* margins for both ATM Single Entity and Weihai, and applies the separate rate for non-selected respondents to Bosun, then it should assign the *de minimis* margin to Bosun also. The petitioner disagrees.

Department's Position: Because the antidumping duty margin for Weihai is above *de minimis* for the final results, this issue is moot.

SURROGATE VALUES

Air Freight

Comment 9: Weihai requests that the Department calculate the surrogate value for air freight using the price lists for shipment of cargo from Delhi to Houston, Texas, and from Delhi to New York City, NY. These price lists were issued in September 2009 by Alianca Logistics, which, according to Weihai, is an Indian air freight logistics company. Weihai argues that, because India is the surrogate country in this review, the Department should use the Indian data. Weihai explains that, because Hong Kong is not economically comparable to the PRC, the Hong Kong data should not be used when the record contains better quality data from the primary surrogate country.

Weihai further contends that the Hong Kong data the Department used to value air freight in the *Preliminary Results* is not contemporaneous with the POR whereas the Indian freight data are. Weihai explains that the Department prefers to use data contemporaneous with the POR.

[32] *See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 47191 (September 15, 2009), and the accompanying I&D Memo at Comment 16, *affirmed in Amanda Foods.*

Department's Position: For the final results, we have continued to use the DHL Hong Kong air freight expense from Hong Kong to the United States to value air freight. This value most accurately reflects air freighting costs for the distance between the PRC and the United States. Also, use of these data is consistent with our methodology for calculating the surrogate value for ocean freight expenses based on the distance between the PRC and the United States.

Brokerage and Handling

Comment 10: Weihai opposes the Department's calculation of brokerage and handling based on Doing Business 2011 – India. Weihai argues that the Department should instead use data from the financial statements of Navneet Publications (India) Ltd., Essar Steel Limited, and Himalaya International Ltd. Weihai argues that Doing Business 2011 – India is too broad-based and that the information from the three companies is more probative. Weihai contends that the Department has verified the three Indian companies' data, whereas the data underlying Doing Business 2011 – India has not undergone detailed scrutiny. Citing, *e.g.*, *Chlorinated Isocyanurates From the People's Republic of China. Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 27302 (May 14, 2010), Weihai further contends that the Department has a long-standing practice of calculating brokerage and handling using data from these three Indian companies.

Department's Position: For the final results, we have continued to value brokerage and handling using Doing Business 2011 – India. Doing Business 2011 – India is the best available source for valuing the respondents' brokerage and handling costs because the data are publicly available, contemporaneous, specific to the costs in question and represent a broad market average. Regarding its specificity to the costs in question, the "Trading Across Borders in India Details" page from Doing Business 2011 – India website provides specific itemized costs for document preparation, customs clearance, and ports and terminal handling. In contrast, the information on the record does not indicate whether the three Indian companies included all of these costs in their reported lump sum for brokerage and handling. Regarding the breadth of the information, Doing Business 2011 – India reflects a broad-based survey of costs in the Indian market and, hence, is more credible and representative than the experience of three companies. Therefore, consistent with section 773(c)(1) of the Act and our practice, we determine that Doing Business 2011 – India is "the best available information" for purposes of valuing brokerage and handling.[33]

Cores

Comment 11: Weihai argues that the surrogate value for cores used in the *Preliminary Results* (based on the GTA statistics for HTS code 73261990) is not appropriate because this HTS code (1) references data for forged or stamped articles of iron or non-alloy steel rather than for cores made of alloy steels and (2) is a residual "others" category including a basket of goods.

Weihai contends that, according to the Infodrive India data, none of the 165,831 entries during the POR pertains to imports of cores. Instead, according to Weihai, the Infodrive India data

[33] *See Certain Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 29720 (May 27, 2010), and the accompanying I&D Memo at Comment 6.

show that a large variety of miscellaneous goods, *e.g.*, brackets, cap, carbon steel forging rough turn, clamps, flanges, guide rod, rivets, solenoid valve, strap, *etc*., were imported into India under this HTS code. Weihai argues that, for these reasons, HTS code 73261990 should not be used to value any specific goods, including cores. Weihai explains that the CIT upheld in *Calgon Carbon Corp. v. United States,* Consol. Court No. 09-00518, slip op. 2011-21 (CIT Feb. 17, 2011), that the Department may rely on the Infodrive data to impeach the applicability and credibility of the GTA statistics.

Weihai also disputes the Department's rejection for the *Preliminary Results* of the surrogate value proposed by Weihai, *i.e.*, domestic price data, because the Department found that it was not contemporaneous with the POR. Citing *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 29 C.I.T. 288, 300 (CIT 2005), Weihai explains that the Department prefers using domestic price data over import data even when there are no issues raised with respect to the import data. Weihai states that the Department has on the record of this review domestic price data issued by an Indian core producer in response to an independent, third party's commercial inquiry. Weihai asserts that the domestic price data contain (1) a first sales price (exclusive of duties and taxes) and (2) highly specific descriptions of the cores. Citing *Taian Ziyang Food Co., Ltd. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011), Weihai explains that, in the Department's selection of surrogate values, product specificity is the paramount consideration, even overriding contemporaneity. This is especially true, as the CIT ruled in *Jinan Yipin Corporation, Ltd. v. United States*, 800 F. Supp. 2d 1226, 1282 (CIT 2011), when the Infodrive data clearly indicate that a specific HTS code is not applicable or credible as in this case, according to Weihai. Because the domestic core prices are dated seven to eight months after the end of the POR, Weihai acknowledges that the Department may want to adjust them using the WPI.

The petitioner agrees with Weihai that HTS code 73261990 is not an appropriate basis for valuing cores. However, the petitioner does not agree that the Indian domestic prices should be used because they are not contemporaneous; nor are they public information.

According to the petitioner, the Department stated in *LTFV Final* and the accompanying I&D Memo at Comment 11A that it could not rely on an HTS code covering cores and finished diamond sawblades (which are a downstream product from cores) to value cores because there was significant value added to the core in order to make a finished blade. The petitioner explains that the Department also found in *LTFV Final* and the accompanying I&D Memo at Comment 11A that cores are stamped pieces of the steel inputs. Thus, the petitioner suggests, the Department can construct a value for cores purchased from NME companies by reference to the values of the steel input and the prices Weihai has paid to market economy producers for cores.

Specifically, the petitioner explains that Weihai's core 1 is made of steel 3 (65 MN NH steel), core 2 is made of steel 4 (SCM 435 H steel), and core 3 is made of steel 5 (SCM 435 NH steel). Moreover, the petitioner states that the Department valued steels 3, 4, and 5 independently using the surrogate value for steel 3 and market economy purchase prices Weihai reported for steels 4 and 5. According to the petitioner, the difference between the input steel and the resulting core is yield loss, plus amounts for energy and labor, and this difference can be calculated using information on the record of this review. In particular, the petitioner claims that the market

economy purchase prices of cores 2 and 3 reflect the value added to steels 4 and 5 respectively and, taken together, they can be used to compute a simple average percentage multiplier representing the average conversion costs for all three cores. This multiplier would then be applied to the surrogate value for the corresponding type of steel. The petitioner argues that the surrogate value for cores used in the *Preliminary Results* does not reflect the value added to steel to produce a core.

Finally, the petitioner explains that pursuant to *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-18 (October 19, 2006) (*Market Economy Inputs Methodologies*), the Department's practice is to value FOPs (1) using the market economy prices of purchased inputs when those purchases account for more than 33 percent of the input purchases during the POR and (2) by averaging the market economy prices with the surrogate value when the market economy purchase are less than 33 percent. The petitioner requests that the Department, at least, use Weihai's market economy purchases of cores on a proportional basis regardless of the data it uses to value the remaining portion.

Department's Position: For its self-produced cores, Weihai reported the FOPs it used to produce the cores, *i.e.*, steels, direct and indirect labor, and electricity. In the *Preliminary Results*, we inadvertently applied the surrogate values for cores to both self-produced cores and purchased cores. For the final results, we have valued the FOPs for Weihai's self-produced cores. For Weihai's purchased cores, we agree with Weihai and the petitioner that HTS code 73261990 is not the best available information on the record for valuing cores. For the final results, we have valued Weihai's purchased cores as follows.

Weihai purchased cores from market economy countries and NME companies. The information on the record shows that the quantities of cores Weihai purchased from market economy countries were not meaningful, *i.e.*, less than 33 percent of the total purchases of cores. Therefore, we valued Weihai's purchased cores using a quantity-weighted average of the prices Weihai paid for cores it purchased from market economy countries and Weihai's FOPs for self-produced cores (to reflect the value of the cores Weihai purchased from NME suppliers).[34]

We did not use the domestic Indian core prices submitted by Weihai. First, these prices are not contemporaneous with the POR. Second, we prefer country-wide information such as government import statistics to information from a single source and we prefer industry-wide values to values of a single producer because industry-wide values better represent prices of all producers in the surrogate country.[35] The surrogate values Weihai recommends are from a single source, Orion International, and were given in response to a request for price quotes. Thus, the suggested values are not representative of industry-wide values. Third, Weihai reported the FOPs for cores in grams, while the domestic Indian core prices are for pieces, and there is no specific conversion factor.

[34] *See Market Economy Inputs Methodologies*, 71 FR at 61717-18.

[35] *See, e.g., Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33406 (July 13, 2009) (*Pencils from the PRC*), and the accompanying I&D Memo at Comment 4.

Finally, Weihai has reported that it "traced back production to the original raw material used (steel) and reported the FOP for steel inputs and subsequent processing FOPs (*i.e.*, labor and energy for the production of cores)."[36] However, using Weihai's business proprietary information at Exhibit D-8 of that same submission it becomes apparent that the prices of cores in Weihai's domestic Indian price data do not reflect the value added, *e.g.*, labor and energy, in producing cores from the steel described in the Indian domestic price data. Consequently, either the average price of cores or the average price of steels in the domestic Indian price data submitted by Weihai is an unsuitable source for surrogate values. We have no information on the record showing which of the two is inaccurate. Therefore, we find that the prices of cores and steels in Weihai's domestic Indian price data are unreliable as surrogate values.[37]

Diamond Powder

Comment 12: According to Weihai, the Department decided in the *Preliminary Results* (1) to calculate the surrogate value for diamond powders based on the GTA statistics for HTS code 71051000 and (2) not to use the domestic Indian price data Weihai provided because the domestic price data are not contemporaneous with the POR. Weihai states that the Department has on the record of this review domestic price data issued by an Indian diamond dust producer in response to an independent, third party's commercial inquiry. Weihai asserts that the domestic price data contain (1) a first sales price (exclusive of duties and taxes) and (2) a highly specific description of the diamond powder. Weihai argues that, for these reasons, and because the Department prefers domestic prices to import prices, the Department should use the domestic Indian price data even though they are not contemporaneous with the POR.

The petitioner agrees with the Department's preliminary decision to reject the domestic Indian price data Weihai placed on the record of this review because they are not contemporaneous with the POR and are non-public. Also, consistent with the Department's practice (as stated in *Market Economy Inputs Methodologies*), the petitioner urges the Department to value diamond powder using Weihai's market economy purchases on a proportional basis regardless of the surrogate value it uses in valuing the diamond powders Weihai purchased from NME suppliers.

Department's Position: For the final results, we have continued to calculate the surrogate value based on the GTA statistics for HTS code 71051000 for the POR. As explained in the *Preliminary Results*, the domestic Indian price data Weihai placed on the record of this review are not contemporaneous with the POR. Also, we prefer country-wide information such as government import statistics to information from a single source and we prefer industry-wide values to values of a single producer because industry-wide values better represent prices of all producers in the surrogate country.[38] The surrogate value Weihai recommends is from a single source, Orion International. Thus, unlike the GTA data, the suggested values are not representative of industry-wide values.

In addition, Weihai did not provide specific descriptions of diamond powders that it purchased

[36] *See* Weihai's June 17, 2011, original response at D-12.
[37] *See* the Weihai final analysis memorandum, dated concurrently with this memorandum, for more details which contain Weihai's business proprietary information.
[38] *See, e.g., Pencils from the PRC* and the accompanying I&D Memo at Comment 4.

and used in the production of diamond sawblades; nor did Weihai explain how the specific descriptions of diamond powders in the domestic Indian price data are relevant to the diamond powders that it purchased and used during the POR. Therefore, we do not have information on the record to determine whether the diamond powder prices in the domestic Indian price data are representative of the range of prices Weihai paid to purchase diamond powders with various specifications.

Weihai purchased diamond powders from market economy countries and NME companies. Record information shows that the quantities of diamond powders Weihai purchased from market economy countries were less than 33 percent of the total purchases of diamond powder. We valued diamond powders using a quantity-weighted average of the prices paid on purchases from market economy countries and the surrogate value.[39]

Electricity

Comment 13: For the final results, the petitioner requests that the Department value electricity based on the March 2009 data submitted by the petitioner. The petitioner explains that in the *Preliminary Results*, the Department used March 2008 data from the Central Electricity Authority of India, without adjusting for inflation, because March 2008 data remained reflective of POR electricity prices. The petitioner claims that the March 2009 data are more contemporaneous than the March 2008 data and show a significant change for the electricity rates in Mumbai.

We received no comments from the respondents concerning this issue.

Department's Position: We have continued to use the March 2008 data to value electricity. The March 2009 rates the petitioner placed on the record of this review appear to include duties and taxes. For example, looking at "Table 7 (f) Large Industries 20000 KW 60% LF (AT 33KV)" in the March 2008 data, the total prices per kilowatt per hour (including duties and taxes) for Andhra Pradesh and Bihar match the March 2009 data the petitioner submitted. Thus, we find that the March 2008 data contain the most contemporaneous electricity prices net of duties and taxes. The March 2008 data also provide a greater level of detail resulting in a more representative range of prices: there are three different categories of small industry rates, two different categories of medium industry rates, and 20 different categories of large industry rates.

Financial Ratios

Comment 14: The petitioner and Weihai oppose using the financial statements of Carborundum Universal Limited (Carborundum) to calculate surrogate financial ratios, *i.e.*, overhead, SG&A, and profit. The petitioner recommends that the Department use the financial statements of Grindwell Norton Ltd. (Grindwell Norton). Weihai recommends that the Department use the financial statements of Balaji Abrasives Tools Pvt. Ltd. (Balaji).

[39] *See Market Economy Inputs Methodologies*, 71 FR at 61717-18.

a. Carborundum

The petitioner claims that the record does not show that Carborundum produces merchandise identical or comparable to the subject merchandise. The petitioner contends that the "Report of the Directors" in Carborundum's financial statements states that "some low margin products were taken off the line," thus indicating that Carborundum may have changed its product mix since the Department used Carborundum's financial statements in the investigation.

The petitioner explains that the "Report of the Directors," under the heading "Abrasives: Business Profile," provides the closest reference to the subject merchandise with a description of Carborundum's joint venture devoted to "super abrasives," a term which, according to the petitioner, could include diamond sawblades. The petitioner contends that Carborundum's financial statements do not provide any explicit reference to diamond sawblades or comparable products, and that the Department should not decide whether Carborundum is a producer of identical or comparable merchandise based on speculation. Moreover, Carborundum produced through a joint venture, Wendt India Ltd., with which Carborundum is engaged in a legal dispute with respect to issues involving a breach of contract. The petitioner states that Carborundum is a minority partner of Wendt India Ltd. (with 39.87 percent ownership) and that Wendt India Ltd.'s consolidated financial statements also include the results of Wendt Grinding Technologies Ltd. Thailand and Wendt Middle East FZE Sharaz, which, the petitioner presumes, are not located in India.

The petitioner further alleges that Carborundum received countervailable subsidies. While the petitioner acknowledges that receipt of countervailable subsidies in and of itself is not a sufficient reason to reject a financial statement for calculating surrogate financial ratios, it argues that, for the reasons it stated above, the Department should not use Carborundum's financial statements for the calculation of surrogate values for the financial ratios.

Weihai argues that the Department should not use the financial statements of Carborundum because record evidence, including Carborundum's financial statements, shows that Carborundum received multiple countervailable subsidies, *e.g.*, Duty Entitlement Passbook scheme. Citing, *inter alia*, *Tapered Roller Bearings and Parts Thereof Finished or Unfinished From the People's Republic of China: Preliminary Results of the 2009-2010 Administrative Review of the Antidumping Duty Order and Intent To Rescind Administrative Review, in Part*, 76 FR 41207, 41213 (July 13, 2011), Weihai claims that it is the Department's consistent and longstanding practice not to use the financial statements of a company that received countervailable subsidies if other sufficiently reliable and representative financial statements exist on the record for purposes of calculating surrogate financial ratios. Weihai also agrees with the petitioner's claim that the Department has no information on the record showing that Carborundum produces merchandise identical or comparable to the subject merchandise.

b. Balaji

Weihai requests that the Department rely on the financial statements of Balaji to calculate the surrogate financial ratios. Weihai argues that, because Balaji produces diamond sawblades, Balaji's financial statements satisfy the Department's preference for using financial statements

relating to products having similar physical characteristics, end uses, and production processes. Weihai asserts that Balaji's financial statements are complete with reports from directors and auditors, balance sheets, income statements, and schedules. Moreover, Weihai explains, Balaji's financial statements show that this company earned profit before taxes in both fiscal periods. Finally, Weihai claims that Balaji's financial statements are not tainted by any countervailable subsidies and that they cover 19 of the 22 months of the POR.

Weihai contends that, in the *Preliminary Results*, the Department did not point to the absence of any critical information in Balaji's financial statements, but instead preferred Carborundum because of the "more detailed financial information" available in its financial statements. Weihai states that it also placed on the record its calculation of surrogate financial ratios based on Balaji's financial statements, which, according to Weihai, would enable the Department to determine the financial ratios with precision and help calculate the most accurate antidumping duty margin.

The petitioner opposes using Balaji's financial statements to calculate surrogate financial ratios. The petitioner shares the Department's concern that Balaji's financial statements for the fiscal year ending March 31, 2010, contain less detail than other information on the record. Similarly, in the petitioner's view, Balaji's financial statements for the fiscal year ending March 31, 2011, which Weihai included in its post-preliminary surrogate value submission, do not address these concerns.

According to the petitioner, Weihai has not substantiated its claim that Balaji is a producer of diamond sawblades with the one-page Internet printout Weihai submitted from Diccut.com (in this printout, Balaji claims to be "India's leading manufacturer Exporter of Diamond Segmented Saw Blades, Resin/Metal Bond Wheels, Electroplated Wheels/Rollers, Diamond Solid Hollow drills, Expansion ts Cutting Machines, Core Drilling Machines, Brick Cutting Machines, Diamond Indentors, etc."). Specifically, the petitioner contends that Balaji's financial statements contradict these assertions.

First, according to the petitioner, Balaji's financial statements do not provide any information showing the types of merchandise this company produces. Second, the petitioner states, Balaji's profit-and-loss statement shows that the company's direct and manufacturing expenses amounted only to Rs.1,089,373 (or approximately US$22,876) and were identified largely as handling expenses, wages, factory rent, and courier charges. The petitioner states that Balaji's total actual manufacturing expense is Rs.6,743 (or US$141.60), suggesting that Balaji does not produce anything and did not produce anything during fiscal year 2010-2011. Balaji's purchases of Rs. 11,795,189 of goods during the fiscal year (which is 81 percent of Balaji's total sales revenue) causes the petitioner to posit that Balaji is a reseller and not a producer. The petitioner claims that, even if Balaji produced something during the POR, there is no record evidence as to how and what it produced and what inputs or machinery it used in production. The petitioner explains that no record evidence shows any schedule of inventories of raw materials or finished goods, or any information on suppliers of inputs or raw materials Balaji used to produce any merchandise.

The petitioner argues that Balaji is too small in scale for the Department to use in calculating

surrogate financial ratios. The petitioner supports this claim by pointing to Balaji's fixed asset schedule which includes a fire extinguisher valued at $136.00 and an air conditioner valued at $225.00. The petitioner explains that Balaji had total sales of only Rs.14,560,956 (or approximately US$350,000) during fiscal year 2010-11. According to the petitioner, this revenue is comprised entirely of local sales and calls into question Balaji's alleged status as India's leading producer of diamond sawblades.

Weihai reiterates that Balaji is a manufacturer of goods as evidenced by Balaji's financial statements. Weihai explains that the existence of a separate line-item expense for "wages" under "Direct & Manufacturing Expenses" indicates direct manufacturing labor cost and a separate line-item expense for "salary" under the "Administrative Expenses" category indicates salaries paid to administrative staffs. In addition, Weihai claims, Balaji's financial statements contain a separate line-item expense for "factory rent" under "Direct & Manufacturing Expenses," as well as depreciation with respect to "Plant & Machinery."

Weihai explains that Balaji apparently reported mostly residual expenses under the "manufacturing expenses," Thus, without details on the subsidiary accounts for the "manufacturing expenses" category, Weihai contends that it is improper for the petitioner to allege that Balaji is not a manufacturer. Weihai explains further that a high percentage of expenses under the "purchases" category (as compared to sales revenue) does not indicate that Balaji purchased finished goods for resale because the production process for diamond sawblades involves inputs or components such as cores, diamond powders, *etc.*, that the producer purchases, and does not manufacture in-house, and then processes into the finished product. According to Weihai, in this situation, the major costs of final product are those incurred in purchasing the various components or intermediate products.

Citing *GPX Int'l Tire Corp. v. United States*, 715 F. Supp. 2d 1337 (CIT 2010), Weihai argues that the Department should refrain from undertaking a specific, line-item analysis of financial statements. Weihai contends that, because few companies report in their financial statements details of raw materials purchased and because companies are not required to provide such details in their financial statements, the absence of a schedule of raw materials or inventories in Balaji's financial statement does not confirm that the company could not have produced diamond sawblades or comparable merchandise.

According to Weihai, because Balaji is known as a producer of diamond sawblades and not known as a producer of any other products, its sales volume of a single product during the fiscal year is significant. Citing *Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 68030 (December 5, 2003) and the accompanying I&D Memo at Comment 1, Weihai argues that the Department has not considered scale in selecting surrogate financial ratios. Additionally, citing *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 41374 (August 17, 2009), and the accompanying I&D Memo at Comment 14, Weihai states that the Department does not exclude the financial statements of smaller companies based solely on company size unless specific information on the record demonstrates that economies of scale affect the financial ratios and show a direct correlation between company size and financial ratios.

Finally, Weihai contends, because Carborundum's financial statements are not useable and because Balaji's financial statements are the only financial statements that the Department can use to calculate the surrogate financial ratios, the issue of whether Balaji's financial statements are less detailed than Carborundum's is moot.

c. Grindwell Norton

The petitioner requests the Department to use Grindwell Norton's financial statements. The petitioner claims that Grindwell Norton produces a wide range of abrasive products (bonded abrasives, coated abrasives, and super abrasives) at four manufacturing plants located in different cities in India. The petitioner explains that the "super abrasives" category includes diamond sawblades as well as comparable products such as wood cutting sawblades. The petitioner explains further that Grindwell Norton boasts that it invented the laser welding process for diamond sawblades. The petitioner states that Grindwell Norton is part of the Saint-Gobain Group, which, according to the petitioner, is a global leader in manufacturing abrasive products.

Citing *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005), and the accompanying I&D Memo at Comment 2, the petitioner argues that, while the statute does not define "comparable merchandise" for purposes of calculating surrogate values, the Department "has considered whether products have similar production processes, end uses, and physical characteristics" in selecting surrogate values for overhead, SG&A and profit. And, when it evaluates "production processes," the Department has taken into account the complexity and duration of the processes and the types of equipment used.

The petitioner argues that Grindwell Norton's financial statements provide a good source of surrogate financial data for this review because Grindwell Norton manufactures diamond sawblades and comparable merchandise with a high degree of comparability in terms of production processes, inputs, and level of integration. Although the Department did not determine that Grindwell Norton manufactured diamond sawblades in the investigation, the petitioner contends that information on the record of this review clearly shows that the company manufactures diamond sawblades and comparable merchandise. Moreover, according to the petitioner, Grindwell Norton's financial statements are publicly available and, thus, meet the Department's strong preference for publicly-available information specified in 19 CFR 351.408(c)(4).

ATM Single Entity and Weihai argue that the Department should not use the financial statements of Grindwell Norton because record evidence shows that the company received countervailable subsidies, *e.g.*, under the Export Promotion Capital Goods scheme. Citing, *inter alia, Tapered Roller Bearings and Parts Thereof Finished or Unfinished From the People's Republic of China: Preliminary Results of the 2009-2010 Administrative Review of the Antidumping Duty Order and Intent To Rescind Administrative Review, in Part*, 76 FR 41207, 41213 (July 13, 2011) (*TRBs from China*), Weihai claims that it is the Department's consistent and longstanding practice not to use the financial statements of a company that received countervailable subsidies if other sufficiently reliable and representative financial statements exist on the record for purposes of calculating surrogate financial ratios.

Department's Position: When we select financial statements to calculate surrogate financial ratios, we look for "specificity, contemporaneity, and quality of the data."[40] We use non-proprietary information gathered from producers of identical or comparable merchandise in the primary surrogate country, to the extent possible.[41]

Based on these considerations, we have calculated the surrogate financial ratios for these final results using Grindwell Norton's financial statements because, out of the three companies discussed above, Grindwell Norton is the only producer of diamond sawblades and other types of bonded, coated, and super abrasives. We have determined that abrasives are merchandise comparable to diamond sawblades[42] and Grindwell Norton's production of diamond sawblades and other abrasives constitutes one of the company's two production operations.[43] Also, Grindwell Norton was profitable during the POR and its audited financial statements are complete, sufficiently detailed to disaggregate materials, labor, energy, overhead, and SG&A expenses, and publicly available. Thus, we conclude that Grindwell Norton's financial statements are the best available information for calculating the surrogate financial ratios in this review.

While information on the record indicates that Carborundum produces abrasives, that information does not show that Carborundum produces diamond sawblades. Grindwell Norton, as noted above, does produce diamond sawblades. Although Grindwell Norton also produces abrasives, the financial statements do not provide sufficient detail to analyze the product mix. Nonetheless, because Grindwell Norton is a producer of diamond sawblades, it is a more suitable surrogate to use in calculating surrogate financial ratios. In selecting surrogate values, we are often "faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other."[44] Here, we have reasonably exercised our discretion in selecting Grindwell Norton.

We are unable to conclude that Balaji is a manufacturer of diamond sawblades or comparable merchandise because Balaji's financial statements do not identify the merchandise it produces. Weihai's claim that Balaji is an Indian producer and exporter of diamond sawblades is unsubstantiated because it appears to come from an unreliable and unsubstantiated source (the internet printout). Because we have no information on the record indicating that Balaji produces diamond sawblades or comparable merchandise, we did not use its financial statements to calculate the surrogate financial ratios.

Regarding the respondents' claim that the Department has a policy of not relying on financial statements that show a company has received countervailable subsidies, we acknowledge that we prefer not to do so. However, this policy presupposes that there are other sufficiently reliable

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[40] *See, e.g., Pure Magnesium From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 76945 (December 9, 2011) (*Pure Magnesium from the PRC*), and the accompanying I&D Memo at Comment 5.

[41] *See* 19 CFR 351.408(c)(4). *See also, e.g., Pure Magnesium from the PRC* and the accompanying I&D Memo at Comment 5.

[42] *See LTFV Final* and the accompanying I&D Memo at Comment 1

[43] *See* the petitioner's January 17, 2012, post-preliminary results surrogate value submission, Exhibit 3, page 8.

[44] *See, e.g., FMC Corporation v. United States*, 27 C.I.T. 240, 251 (2003).

and representative data on the record for this purpose.[45] Because Weihai alleges both Carborundum and Grindwell Norton received subsidies, we would not have any financial statements of producers of diamond sawblades or comparable merchandise to calculate surrogate financial ratios even if we were to accept Weihai's allegations as true. Moreover, information on the record demonstrating that Grindwell Norton is the only company among the three put forward that produces diamond sawblades provides an independent basis for selecting Grindwell Norton's financial statements and rejecting Carborundum's financial statements.

Comment 15: Citing *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) (*Shrimp from Vietnam*), and the accompanying I&D Memo at Comment 2, the petitioner argues that the Department's use of financial statements for two fiscal years to calculate surrogate values in the *Preliminary Results* is inconsistent with the Department's established practice of using only one set (*i.e.*, fiscal year) of financial statements. Thus, according to the petitioner, if the Department continues to rely on Carborundum's financial statements, it should use Carborundum's financial statements for the fiscal year 2009-10 because it covers 45 percent of the POR, whereas the fiscal year 2010-11 statements cover only 35 percent of the POR.

Alternatively, the petitioner recommends Grindwell Norton's financial statements as a better choice because the company's fiscal year 2009-10 statements cover the 15-month fiscal period from January 1, 2009 to March 31, 2010. As such, according to the petitioner, Grindwell Norton's 2009-10 financial statements are completely contained within and cover 75 percent of the POR. Citing *Honey From the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 69 FR 25060 (May 5, 2004) (*Honey from the PRC*) and the accompanying I&D Memo at Comment 5, the petitioner contends that the Department should not use two sets of financial statements to calculate surrogate financial ratios even if the POR is longer than in typical reviews. In that case, the Department used one set of the financial statements which covered 12 months of the 22 month POR.

In response to the petitioner's request that the Department select Grindwell Norton's 2009-10 financial statements because they are the most contemporaneous with the POR, Weihai claims that contemporaneity is not determinative in selecting surrogate financial ratios. Citing, *e.g.*, *Folding Metal Tables and Chairs From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part*, 76 FR 66036 (October 25, 2011), and the accompanying I&D Memo at Comment 2, Weihai argues that financial ratios are less susceptible to change over time than material costs because financial ratios measure the relationship between costs, expenses, and prices, which do not change due to inflation.

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[45] *See Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review*, 76 FR 16379, 16384 (March 23, 2011), and the accompanying I&D Memo at Comment 3; *see also, e.g.*, *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and the accompanying I&D Memo at Comment 1, and *Pure Magnesium from the PRC*, and the accompanying I&D Memo at Comment 5 (our preference not to use the financial statements of a company that received countervailable subsidies if other sufficiently reliable and representative financial statements are on the record).

ATM Single Entity argues that, if the Department decides to use Grindwell Norton's financial statements, the Department should calculate surrogate financial ratios consistent with *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order*, 76 FR 77772 (December 14, 2011) (*Citric Acid from the PRC*), and the accompanying I&D Memo at Comment 8, which addresses the use of multiple financial statements from a single company.

Department's Position: Consistent with *Shrimp from Vietnam* and *Honey from the PRC*, we are using a single set of financial statements, Grindwell Norton's financial statements for the fiscal year 2009-10. These financial statements cover 14 months and nine days of the 21-month POR. Therefore, we find no basis to deviate from our practice of using one set of financial statements. Although Grindwell Norton's financial statements are the most contemporaneous with the POR, we are relying upon them for the reasons stated in Comment 14, *supra.*

Comment 16: Weihai argues that the Department should deduct certain line-item incomes from the total SG&A amount in Carborundum's financial statements if it continues to use those financial statements.

ATM Single Entity argues that, if the Department decides to use Grindwell Norton's financial statements, the Department should calculate the surrogate financial ratios consistent with *Citric Acid from the PRC* and the accompanying I&D Memo at Comments 9, 10, and 11, which address adjustments for interest and other income, foreign exchange gains and losses, and finished goods, respectively. ATM Single Entity claims that the worksheet submitted by the petitioner did not make any of these adjustments.

Department's Position: With respect to Weihai's argument about the line-item incomes in Carborundum's financial statements, the issue is moot because we are using Grindwell Norton's 2009-10 financial statements for the final results.

Regarding ATM Single Entity's claims, it is our practice to include certain miscellaneous income as an offset to SG&A when we cannot determine that the revenues are related to specific manufacturing or selling activities.[46] Because we cannot go behind Grindwell Norton's 2009-10 financial statements, we analyzed them on their face to determine whether any relationships exist between the activities that generated the miscellaneous income and the general operations of Grindwell Norton. Grindwell Norton's miscellaneous income consists of commissions, interest from long-term investments and others, dividends from current and long-term investments, service income, profit on sales of current and long-term investments, and others. We have not found any information in Grindwell Norton's financial statements or otherwise on the record to indicate that commissions, interest income from others, service income, and others are related to specific manufacturing or selling activities and not to the general operations of the company. Therefore, we have offset these four line-item miscellaneous income categories against SG&A and interest expenses in the calculation of the surrogate financial ratios.

Also consistent with our practice, we did not deduct Grindwell Norton's income from investment

[46] *See, e.g., Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 57329 (October 2, 2008), and the accompanying I&D Memo at Comment 3.

from the SG&A and interest because investments are not related to the general operations of the company.[47] Because Grindwell Norton included investment income in the profit before tax, we deducted that amount before calculating the surrogate profit rate.[48]

Comment 17: Citing *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36094 (June 21, 2011) (*Antidumping Methodologies on Labor*), Weihai argues that the Department misclassified certain of Carborundum's expenses in calculating the surrogate financial ratios, including "Contribution to Provident Fund" and "Welfare Expense."

Department's Position: With respect to these expenses in Carborundum's financial statements, the issue is moot because we are using Grindwell Norton's 2009-10 financial statements for the final results. However, Grindwell Norton's 2009-10 financial statements also list some similar expenses. Consistent with *Antidumping Methodologies on Labor*, 76 FR at 36094, we have reclassified expenses for "Contributions to Provident and Other Funds" and "Staff Welfare" from manufacturing overhead to direct and indirect labor.

Gasoline

Comment 18: Weihai argues that the surrogate value for gasoline the Department used in the *Preliminary Results* is based on retail prices that include VAT and excise duty. Weihai requests that the Department instead use the value Weihai provided in its January 17, 2012 surrogate value comments. According to Weihai, this information includes retail prices from the four major metropolitan areas in India during the POR and shows the VAT and excise duty included in the retail prices.

Department's Position: For the final results, we have relied on the information submitted by Weihai in its January 17, 2012 submission to value gasoline. This information covers the POR and permits us to calculate a value net of VAT and excise duty.[49]

Paraffin Wax

Comment 19: For the final results, Weihai requests that the Department calculate the surrogate value for paraffin wax based on the POR-specific data from four metropolitan areas in India as reported in *Chemical Weekly*, instead of the price used in the *Preliminary Results*. According to Weihai, the Department did not use the *Chemical Weekly* information because it did not cover the full POR. Weihai acknowledges this but states that the information does cover the middle of the POR. Weihai explains that, because the price of paraffin wax as reported in *Chemical Weekly* did not change during the entire 12-month period, it is reasonable to infer that it remained the same for the remaining months of the POR. Weihai claims that the Department has

[47] *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008) and the accompanying I&D Memo at Comment 7A, which states, "Investment income is not considered to be related to the general operations of the company."

[48] *See Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China Final Results and Partial Rescission of the 2001-2002 Administrative Review, and Final Results of the New Shipper Review*, 68 FR 71062 (December 22, 2003), and the accompanying I&D Memo at Comment 2.

[49] For more details, *see* the final results surrogate value memorandum dated concurrently with this memorandum.

treated surrogate values covering a portion of the POR to be sufficiently contemporaneous with the POR.

Weihai further contends that using the *Chemical Weekly* information would be consistent with the Department's longstanding preference for domestic data over import data. Citing, *e.g.*, *Hand Trucks and Certain Parts Thereof From the People's Republic of China; Preliminary Results and Partial Rescission of Administrative Review and Preliminary Results of New Shipper Review*, 72 FR 937 (January 9, 2007), Weihai claims that the Department relied on *Chemical Weekly* in the past to calculate surrogate values.

No other parties commented on this issue.

Department's Position: For the final results, we continued to use the paraffin wax value that we used in the *Preliminary Results*. The surrogate value Weihai recommended is a price for industrial wax, not paraffin wax, and there is no information on the record showing that they are the same product or that they would have the same prices.

Steel Types 1, 2, 3, and 6

Comment 20: According to Weihai, the Department decided in the *Preliminary Results* (1) to calculate the surrogate value for steel types 1, 2, 3, and 6 based on the GTA statistics for HTS code 722550 (flat-rolled products of other alloy steel, of a width of 600 mm or more – other, not further worked than cold-rolled (cold reduced)) and (2) not to use the domestic Indian price data for steel coils which Weihai provided in its August 25, 2011 surrogate value comments at Exhibit 5 because the domestic price data are not contemporaneous with the POR. Weihai contends that HTS code 722550 is overly expansive, lacks specificity, and contains a variety of dissimilar goods. Weihai further contends that the Department prefers using domestic price data over import data. Weihai claims that the surrogate value data it has placed on the record is a domestic Indian price that was offered by an Indian steel producer in response to an independent, third party's commercial inquiry. Weihai asserts that this price is a first sales price (*i.e.*, exclusive of duties and taxes) and that the offer contains highly specific descriptions of the steel types. For these reasons, Weihai urges the Department to use the domestic price data on the record even though they are not contemporaneous with the POR.

The petitioner disagrees with Weihai's claim that HTS code 722550 is too broad and instead argues that it is too narrow. According to the petitioner, Weihai reported abbreviated codes for the chemical composition of its steel FOPs and explained that the steels are either flat-rolled or plated-alloy steels, not further worked than cold-rolled. The petitioner explains that hot-rolled alloy steels, cold-rolled alloy steels, plate, and sheet refer to distinct steel products that are described by various HTS codes. The petitioner contends that, because Weihai described its steel inputs in such broad fashion, the Department should recalculate the surrogate values using additional HTS codes covering hot-rolled alloy steels, cold-rolled alloy steels, plates, and sheets for each particular alloy. Specifically, the petitioner requests that the Department recalculate the surrogate values for the steels using the same HTS numbers and calculation methodologies it used in the investigation, as described in *LTFV Final* and the accompanying I&D Memo at Comment 22. According to the petitioner, those HTS codes are 72254020, 72254030, 72269110,

and 72269120 for 30CRMO steels and 72092520, 72092530, 72092620, 72092720, 72092730, and 72112950 for the 65MN steels. The petitioner claims that there are no differences between the 30CRMO and 65MN steels in the investigation and in this review.

Department's Position: We did not use Weihai's domestic price data. These prices are not contemporaneous with the POR. Also, we prefer country-wide information such as government import statistics to information from a single source and we prefer industry-wide values to values of a single producer because industry-wide values better represent prices of all producers in the surrogate country than values from a single source.[50] The steel values recommended by Weihai are from a single source, Orion International. Thus, unlike the GTA data, the suggested values are not representative of industry-wide values.

Regarding Weihai's claim that the domestic Indian price data include specific descriptions of the steel, the specificity of those data exceeds the specificity of Weihai's reported inputs. Weihai reported six categories of steel, and all six categories were described as follows:

> Flat Rolled or Plated products of other alloy steel, Not further worked than Cold Rolled.[51]

In contrast, in Weihai's proposed source for the surrogate value, the steels are described as follows:

> Coil
> Flat Rolled or Plated products of other alloy steel, Not further worked than Cold Rolled, Non Heat Treatment, Composition of allow steel – C(0.62~0.70%), Mn(0.90~1.20%), P(<0.035%), S(<0.036%), NI(<0.30%), Cr(<0.25%), Si(0.17~0.37%), Cu(<0.25%)
> Price: Rs. 26/kg
>
> Flat Rolled or Plated products of other alloy steel, Not further worked than Cold Rolled, Heat Treatment, Composition of allow steel – C(0.8~0.9%), Si(<1.0%), Mn(<0.5%), P(<0.03%), S(<0.03%)
> Price: Rs. 28/kg[52]

Because the descriptions of Indian steel coils Weihai provided are much more specific than single description that it reported for all six categories of the steels purchased and used during the POR, and because Weihai did not explain how its proposed surrogate values could be used to value the steel it purchased, we are not able to determine that the proposed values are appropriate surrogate values.

Moreover, as explained above in to the Department's Position in Comment 11, the domestic Indian prices that Weihai proposed as surrogate values for steel and cores cannot be reconciled. Specifically, the prices of cores in Weihai's domestic Indian price data do not reflect the value

[50] *See, e.g., Pencils from the PRC* and the accompanying I&D Memo at Comment 4.
[51] *See* Weihai's October 3, 2011, second supplemental section D response at Exhibit SSD-2.
[52] *See* Weihai's August 25, 2011, surrogate value comments at Exhibit 5.

added, *e.g.*, labor and energy, in producing cores from the steel described in the Indian domestic price data. This indicates that either the average price of cores or the average price of steel is an unsuitable surrogate value. We have no information on the record showing which of the two is inaccurate and, therefore, have not relied on either. *See* the Weihai final analysis memorandum, dated concurrently with this memorandum, for more details which contain Weihai's business proprietary information.

We have also not relied on the HTS numbers the petitioner suggests. As explained above, Weihai described the steel it used as "Flat Rolled or Plated products of other alloy steel, Not further worked than Cold Rolled." The HTS codes the petitioner recommends for steel type 1 cover hot-rolled steel. HTS code 722540 covers "Flat-Rolled Alloy Steel (Other Than Stainless) Not In Coils, 600 Mm Or More Wide, Hot-Rolled, Nesoi" and HTS code 722691 covers "Flat-Rolled Alloy Steel (Other Than Stainless) Products, Under 600 Mm Wide, Hot-Rolled, Nesoi." Also, the HTS codes the petitioner recommends for steel 3 cover non-alloy steels. HTS code 7209 covers "Flat-Rolled Iron Or Nonalloy Steel Products, 600 Mm (23.6 In.) Or More Wide, Cold-Rolled, Not Clad, Plated Or Coated." Finally, HTS code 72112950 covers "Strips Of Flt-Rld Prdcts Of Iron/Non Aloy Stl Nt Frthr Wrkd Thn Cold-Rld (Excl 7211.23)." Therefore, the HTS codes the petitioner recommends for steel types 1 and 3 do not match the types of steel purchased and used by Weihai to produce cores during the POR.

Based on our closer examination of Weihai's description of the steel it purchased and used, we have included one additional HTS code to more accurately calculate the surrogate values for steel for these final results. Because HTS code 722550 does not cover steels that are less than 600 mm in width and because Weihai did not specify the width of the steel input it purchased and used during the POR, we have added HTS code 722692, which covers "Flat-Rolled Alloy Steel (Other Than Stainless) Products, Under 600 Mm Wide, Cold-Rolled, Nesoi."

We find that the descriptions of HTS codes 722550 and 722692 most closely match the steel description Weihai provided in its response. Because Weihai provided one description of the steels it purchased and used, we calculated one surrogate value for steel types 1, 2, 3, and 6 based on these two HTS codes. There are no subcategories for steel plates and sheets, or for different steel types and grades within HTS codes 722550 and 722692. Consequently, we find it reasonable to rely on both HTS codes to calculate one surrogate value for the four different steel categories Weihai reported.

Tin Powder

Comment 21: The petitioner opposes the Department's calculation of the surrogate value for tin powders, which relies on the GTA statistics for HTS code 80020090 ("other tin scraps"). According to the petitioner, the Department relied on this information because the GTA statistics for Indian imports under HTS code 800500 are no longer available. The petitioner explains that Bosun placed on the record the 2008 statistics for HTS 800500. The petitioner explains further that it and ATM Single Entity placed on the record Indian import statistics for HTS code 800700 ("Articles Of Tin, Nesoi"). The petitioner requests that the Department calculate the surrogate value for tin powder based on either Bosun's submitted information or the Indian import statistics for HTS code 800700.

The petitioner contends that the surrogate value for tin powders relied upon by the Department for the *Preliminary Results* does not accurately reflect the inputs used by the respondents in producing subject merchandise. The petitioner argues that tin powders, which the respondents used to manufacture segments, are a very refined and high value-added tin product. The petitioner explains that, if the respondents used scrap tin, HTS code 80020090 would be appropriate, but this HTS code is not appropriate to value the tin powder actually used.

Department's Position: For the final results, we agree with the petitioner and have valued tin powder based on the GTA statistics for HTS code 800700 ("Articles of Tin, Nesoi"). As the petitioner points out, ATM Single Entity and Weihai reported that they used tin powder, not tin scrap, in the production of the subject merchandise. Moreover, ATM Single Entity suggested that we use HTS 800700. Because we were able to find the GTA statistics for HTS code 800700 contemporaneous to the POR, we did not use the surrogate value suggested by Bosun in its August 25, 2011 surrogate value comments, which is based on the 2008 data.

STATUS OF THE ORDER

Comment 22: Hebei states that, as a result of the recalculation of the antidumping duty margins for all Korean respondents in the investigation of diamond sawblades from Korea under section 129 of the URAA, the Department revoked the antidumping duty order on diamond sawblades from Korea effective October 24, 2011. According to Hebei, this revocation invalidates the ITC's affirmative finding of threat of material injury on which the the PRC order rests because the ITC's three-to-three affirmative finding of threat of injury was explicitly predicated on the cumulative impact that dumped imports from the PRC and Korea have on domestic producers of the like product. Thus, according to Hebei, the Department should revoke the PRC order as well because the ITC has never found material injury or threat of material injury by reason of imports from the PRC on a stand-alone basis.

Hebei concedes that section 129 of the URAA does not explicitly address these circumstances. Nevertheless, Hebei claims that, because the statute clearly specifies that the ITC's affirmative finding of material injury must support the antidumping duty order, the PRC order cannot remain in effect without a finding that such imports cause or threaten material injury on their own. Because the section 129 determination took effect only with respect to unliquidated entries of subject merchandise entered or withdrawn from warehouse for consumption on or after the date on which the USTR directed the Department to implement this determination, Hebei contends that the ITC's affirmative finding of threat of material injury became invalid effective October 24, 2011.

The petitioner argues that, because this review covers the POR January 23, 2009, through October 31, 2010, the Department does not need to consider this issue here. In any case, the petitioner contends that the Department's section 129 determination for the Korea investigation does not alter, amend, or invalidate the ITC's finding of material threat of injury. The petitioner explains that prior section 129 determinations in which the Department revoked orders because of margin recalculations did not state any intent to affect or invalidate the ITC's findings. Moreover, according to the petitioner, the ITC has not made a finding that revocation of an order following a section 129 determination invalidates the ITC's injury determination, even if the ITC

made such injury determination using the cumulated data.

Department's Position: The antidumping duty order on diamond sawblades from the PRC has been in effect for the entirety of the POR and currently remains in effect.[53] The ITC's finding of the threat of material injury for the subject merchandise has been in effect for the entirety of the POR and currently remains in effect.[54] The revocation of the Korea order was based on the recalculation of the antidumping duty margin in our section 129 determination, not based on any decision made by the ITC.[55] Thus, the basis for the revocation of the Korea order does not affect the PRC order or the ITC's finding of threat of material injury and we have no reason to question the validity of the ITC determination or the order.

COMBINATION RATES

Comment 23: The petitioner requests the Department issue cash deposit instructions making clear that the cash deposit rate for each separate-rate exporter is applicable only to subject merchandise produced by that exporter or by parties known to have supplied that exporter during the POR. According to the petitioner, this is necessary to prevent exporters with separate rates from exporting merchandise produced by previously unreviewed, new producers. The petitioner acknowledges that the Department does not normally apply combination rates in NME administrative reviews, but argues that there is no reason not to do so. The petitioner explains that the Department assigns combination rates in NME investigations in order to prevent firms from avoiding the payment of antidumping duties by making U.S. sales through exporters with the lowest assigned cash deposit rates.

Department's Position: We have not applied combination rates in this review. While we have the discretion to apply combination rates, the preamble to our regulations states that "if sales to the United States are made through an NME trading company, we assign a noncombination rate to the trading company regardless of whether the NME producer supplying the trading company has knowledge of the destination of the merchandise."[56] We have continued to follow this approach in this review because we have not changed our general practice of not assigning combination rates in antidumping duty administrative reviews.[57] In limited circumstances, the Department has applied combination rates in administrative reviews in which we had a compelling reason to do so.[58] We have no compelling reason to apply combination rates in this review.

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[53] *See Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders*, 74 FR 57145 (November 4, 2009).

[54] *See Diamond Sawblades and Parts Thereof from China and Korea:* Investigation Nos. 731–TA–1092 and 1093 (Final) (Remand), USITC Pub. 4007 (May 2008), *aff'd Diamond Sawblades Manufacturers Coalition* v. *United States*, No. 06-00247, slip op. 09-05 (CIT Jan. 13, 2009).

[55] *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof From the Republic of Korea*, 76 FR 66892 (October 28, 2011).

[56] *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27303 (May 19, 1997) (*Preamble*).

[57] *See Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part*, 76 FR 49729 **(**August 11, 2011) (*Wooden Bedroom Furniture*), and accompanying I&D Memo at Comment 16.

[58] *Id.*

When we decide whether combination rates are appropriate, we consider the practicality of their assignment.[59] In this review, we find that "the application of combination rates would be too large of an administrative burden to be practicable."[60] The Department stated the following in *Activated Carbon*:

> The Department would be required to list producer/exporter combinations for the individually reviewed respondents as well as the numerous separate rate companies that are reviewed in each segment. Furthermore, the number of combinations could grow significantly with each successive review. If we were to assign combination rates, the Department would be required to manually create a page in U.S. Customs and Border Protection's ("CBP") Automated Commercial Environment Module for every combination of exporter/producer, including situations where the exporter was also the producer of the subject merchandise (*i.e.*, not just for non-producing exporters). Additionally, with such a large number of mandatory and separate rate respondents under review, the Department's duty with providing CBP with accurate instructions, after each segment, would be impractical to complete within statutory deadlines, as it would require us to enumerate every combination of exporter/producer. Thus, in addition to finding that no compelling reasons exist on this record, we also find that assigning combination rates in this review is not administratively feasible.[61]

Additionally, there is no record evidence concerning specific producers and/or exporters shifting their exports from high-margin exporters to low-margin exporters. We do not apply combination rates based only on speculation.[62]

ASSESSMENT PERIOD

Comment 24: Bosun requests that the Department not assess antidumping duties on any entries prior to the ITC's affirmative finding of threat of injury in *Diamond Sawblades and Parts Thereof from China and Korea*, 75 FR 68618 (November 8, 2010), published as a result of the CIT remand. According to Bosun, because the affirmative finding of threat of injury is an indication that injury is currently not occurring, section 736(b)(2) of the Act prevents application of antidumping duties to entries prior to the publication of the ITC's affirmative finding of threat of injury in the *Federal Register*.

The petitioner claims that Bosun's reading of section 736(b)(2) of the Act is erroneous. According to the petitioner, the CIT held in *Diamond Sawblades Manufacturers Coalition v. United States*, 650 F. Supp. 2d 1331, 1352-1355 (CIT 2009), that, in accordance with sections 735(d) and 736(b)(2) of the Act, the notice of the ITC's final remand was published in *Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea:*

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[59] *See Preamble*, 62 FR at 27303.

[60] *See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 17, 2010) (*Activated Carbon*), and accompanying I&D Memo at Comment 1.

[61] *See Activated Carbon*, and accompanying I&D Memo at Comment 1.

[62] *See Wooden Bedroom Furniture*, and accompanying I&D Memo at Comment 16.

Notice of Court Decision Not In Harmony With Final Determination of the Antidumping Duty Investigations, 74 FR 6570 (February 10, 2009) (*Timken Notice*). The petitioner explains that section 736(b)(2) of the Act requires the publication of a notice of the ITC's affirmative determination of the threat of injury but this statutory provision does not require that the ITC publish such notice. The petitioner claims that, because the CIT had found that the ITC's final remand replaced its original final determination, the *Timken Notice*, which states that the final court decision is not in harmony with the ITC's original final determination, is therefore the published notice of the ITC's final affirmative determination in accordance with section 736(b)(2) of the Act. The petitioner contends that the legislative history of section 736(b)(2) of the Act indicates that Congress did not intend to delay or prohibit assessment of duties subject to an antidumping duty order.

Department's Position: The CIT has held that the *Timken Notice* serves as the *de facto* publication of the ITC's final remand, which is the ITC's affirmative final determination of the threat of material injury.[63] Because the effective date of the *Timken Notice* was January 23, 2009, the subject merchandise entered during the POR is subject to assessment of antidumping duties as a result of these final results of review.

INSTRUCTIONS TO CBP

Comment 25: Bosun requests that the Department apply Bosun's antidumping duty margin to any entries by any individual members of the group. Bosun also requests that, for deposit rate purposes going forward, the Department apply the new deposit rate, if any, to the production, export, or entry of each member of the group or the group collectively. Bosun contends that it should be permitted to review all such instructions in draft before they are issued to CBP in order to assist the Department in ensuring that they are issued accurately and in accordance with the Department's instructions.

Department's Position: Upon the publication of the notice of the final results, we will instruct CBP to collect cash deposits from Bosun.[64] We do not release draft cash deposit instructions to parties for review upon the completion of the review. Because cash deposit instructions do not contain any details of our calculations of antidumping duty margins, we are not required to release draft cash deposit instructions to interested parties under 19 CFR 351.224.

ZEROING

Comment 26: ATM Single Entity argues that the Department should not apply zeroing for the final results of this review. Citing, *e.g.*, *European Communities -Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India* (WT *IDS* 141 /R and WT *IDS* 1411 AB/R), and *United States -Final Dumping Determination on Softwood Lumber from Canada* (WTIDS264/R and WTIDS264/AB/R), ATM Single Entity states that the United States has lost all cases on the zeroing issue before the WTO, which, according to ATM Single Entity, found that zeroing is inconsistent with WTO obligations in investigations and administrative reviews. ATM Single Entity states further that the Federal Circuit has rejected the Department's current statutory

[63] *See Diamond Sawblades Manufacturers Coalition*, 650 F. Supp. 2d at 1352-57.
[64] *See Preliminary Results*, 76 FR at 76137, for more information concerning the identity of Bosun.

justification for the use of zeroing and proposed regulation to eliminate zeroing in administrative reviews. According to ATM Single Entity, the Federal Circuit has ruled in *Dongbu Steel Co., Ltd. v. United States*, 635 F.3d 1363, 1371-3 (Fed. Cir. 2011) (*Dongbu*), that the Department's decision to cease the use of zeroing in investigations but to continue the use of zeroing in administrative reviews is unreasonable and arbitrary. ATM Single Entity states that the Federal Circuit has upheld in *SKF USA Inc.* v. *United States*, 630 F.3d 1365, 1373-74 (Fed. Cir. 2011) (*SKF*), that the Department has the statutory authority to follow its international obligations and end the use of zeroing in this review. ATM Single Entity states further that the Department's publication of *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin During an Antidumping Investigation: Final Modification*, 74 FR 77722 (December 27, 2006) (*First Final Modification for Investigations*), shows that the Department has statutory authority to do so.

Citing, *e.g.*, *Dongbu* and *JTEKT Corp. v. United States*, 642 F.3d 1378, 1385 (Fed. Cir. 2011) (*JTEKT*), Weihai argues that the Department unreasonably interprets, without any explanation, section 771(35) of the Act as both allowing the use of zeroing in administrative reviews and not allowing the use of zeroing in investigations. Weihai contends that, based on the Federal Circuit's decisions in *Dongbu* and *JTEKT*, the Department's use of zeroing in the *Preliminary Results* was arbitrary and unreasonable, and does not comply with the statute. Weihai claims that the Department used zeroing in the *Preliminary Results* without any explanation for the Department's different statutory interpretations with respect to zeroing in investigations and administrative reviews. Weihai explains that, even though the Federal Circuit in *Dongbu* and *JTEKT* has given the Department opportunities to explain the two different interpretations of section 771(35) of the Act, the Department cannot justify its different statutory interpretations because the Federal Circuit's opinions in *Dongbu*, 635 F.3d at 1373, and *JTEKT*, 642 F.3d at 1384-85, indicate that the express terms of section 771(35) of the Act, the statutory objectives, and the U.S. antidumping scheme do not support the Department's current interpretations of section 771(35) of the Act between investigations and administrative reviews.

Weihai acknowledges that the Department issued *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification* on February 9, 2012,[65] in which the Department announced that it will end the use of zeroing for all administrative reviews for which the date of publication of preliminary results is on or after April 16, 2012. Weihai requests that the Department end the use of zeroing for all administrative reviews for which the preliminary results or the final results were not yet published in order to (1) be judicially sound and (2) reduce administrative burdens for a settled issue. Weihai explains that, following *Dongbu* and *JTEKT*, the CIT has recently issued remand orders in, *e.g.*, *Union Steel v. United States*, 804 F. Supp. 2d 1356 (CIT 2011), requiring the Department to explain the different statutory interpretations of section 771(35) of the Act on zeroing.

The petitioner argues that the courts have not found that the Department's use of zeroing is

[65] Weihai cited the signed but not yet published version of this notice in its February 10, 2012, case brief. This notice was published on February 14, 2012. *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

unjustifiable. The petitioner explains that the courts have required the Department to provide further explanation on its use of zeroing. The petitioner contends that, because the *Final Modification for Reviews* is effective to reviews for which the date of publication of preliminary results is on or after April 16, 2012, and because the date of publication of the *Preliminary Results* was December 6, 2011, the Department should continue zeroing for the final results of this review.

Department's Position: We have not changed our calculation of the weighted-average dumping margin, as suggested by the respondents, in these final results.

Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value *exceeds* the export price or constructed export price of the subject merchandise" (emphasis added). The definition of "dumping margin" calls for a comparison of NV and EP or CEP. Before making the comparison called for, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act and 19 CFR 351.414 provide the methods by which NV may be compared to EP (or CEP). Specifically, the statute and regulations provide for three comparison methods: average-to-average, transaction-to-transaction, and average-to-transaction. These comparison methods are distinct from each other, and each produces different results. When using transaction-to-transaction or average-to-transaction comparisons, a comparison is made for each export transaction to the United States. When using average-to-average comparisons, a comparison is made for each group of comparable export transactions for which the EPs (or CEPs) have been averaged together (averaging group).

Section 771(35)(B) of the Act defines weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The definition of "weighted average dumping margin" calls for two aggregations which are divided to obtain a percentage. The numerator aggregates the results of the comparisons. The denominator aggregates the value of all export transactions for which a comparison was made.

The issue of "zeroing" versus "offsetting" involves how certain results of comparisons are treated in the aggregation of the numerator for the "weighted average dumping margin" and relates back to the ambiguity in the word "exceeds" as used in the definition of "dumping margin" in section 771(35)(A) of the Act. Application of "zeroing" treats comparison results where NV is less than EP or CEP as indicating an absence of dumping, and no amount (zero) is included in the aggregation of the numerator for the "weighted average dumping margin". Application of "offsetting" treats such comparison results as an offset that may reduce the amount of dumping found in connection with other comparisons, where a negative amount may be included in the aggregation of the numerator of the "weighted average dumping margin" to the extent that other comparisons result in the inclusion of dumping margins as positive amounts.

In light of the comparison methods provided for under the statute and regulations, and for the reasons set forth in detail below, we find that the offsetting method is appropriate when

aggregating the results of average-to-average comparisons, and is not similarly appropriate when aggregating the results of average-to-transaction comparisons as we did in this administrative review. We interpret the application of average-to-average comparisons to contemplate a dumping analysis that examines the pricing behavior on average of an exporter or producer with respect to the subject merchandise, whereas under the average-to-transaction comparison methodology we undertake a dumping analysis that examines the pricing behavior of an exporter or producer with respect to individual export transactions. The offsetting approach described in the average-to-average comparison methodology allows for an overall examination of pricing behavior on average. Our interpretation of section 771(35) of the Act to permit zeroing in average-to-transaction comparisons, as in this administrative review, and to permit offsetting in average-to-average comparisons reasonably accounts for differences inherent in the distinct comparison methodologies.

Whether "zeroing" or "offsetting" is applied, it is important to note that the weighted-average dumping margin will reflect the value of all export transactions, dumped and non-dumped, examined during the POR; the value of such sales is included in the aggregation of the denominator of the weighted-average dumping margin. Thus, a greater amount of non-dumped transactions results in a lower weighted-average dumping margin under either methodology.

The difference between "zeroing" and "offsetting" reflects the ambiguity the Federal Circuit has found in the word "exceeds" as used in section 771(35)(A) of the Act.[66] The courts repeatedly have held that the statute does not speak directly to the issue of zeroing versus offsetting.[67] For decades, the Department interpreted the statute to apply zeroing in the calculation of the weighted-average dumping margin, regardless of the comparison method used. In view of the statutory ambiguity, on multiple occasions, both the Federal Circuit and other courts squarely addressed the reasonableness of the Department's zeroing methodology and unequivocally held that the Department reasonably interpreted the relevant statutory provision as permitting zeroing.[68] In so doing, the courts relied upon the rationale offered by the Department for the continued use of zeroing, *i.e.*, to address the potential for foreign companies to undermine the antidumping laws by masking dumped sales with higher priced sales: "Commerce has interpreted the statute in such a way as to prevent a foreign producer from masking its dumping with more profitable sales. Commerce's interpretation is reasonable and is in accordance with

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[66] *See Timken Co. v. United States*, 354 F.3d 1334, 1341-45 (Fed. Cir. 2004) (*Timken*).

[67] *See PAM, S.p.A. v. United States*, 265 F. Supp. 2d 1362, 1371 (CIT 2003) (*PAM*) ("{The} gap or ambiguity in the statute requires the application of the *Chevron* step-two analysis and compels this court to inquire whether Commerce's methodology of zeroing in calculating dumping margins is a reasonable interpretation of the statute."); *Bowe Passat Reinigungs-Und Waschereitechnik GmbH v. United States*, 926 F. Supp. 1138, 1150 (CIT 1996) (*Bowe Passat*) ("The statute is silent on the question of zeroing negative margins."); *Serampore Indus. Pvt. Ltd. v. U.S. Dep't of Commerce*, 675 F. Supp. 1354, 1360 (CIT 1987) (*Serampore*) ("A plain reading of the statute discloses no provision for Commerce to offset sales made at {less than fair value} with sales made at fair value. . . . Commerce may treat sales to the United States market made at or above prices charged in the exporter's home market as having a zero percent dumping margin.").

[68] *See, e.g., Koyo Seiko Co. v. United States*, 551 F.3d 1286, 1290-91 (Fed. Cir. 2008); *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007) (*NSK*); *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007) (*Corus II*); *Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347 (Fed. Cir. 2005) (*Corus I*); *Timken*, 354 F.3d at 1341-45; *PAM*, 265 F. Supp. 2d at 1370 ("Commerce's zeroing methodology in its calculation of dumping margins is grounded in long-standing practice."); *Bowe Passat*, 926 F. Supp. at 1149-50; *Serampore*, 675 F. Supp. at 1360-61.

law."[69] The Federal Circuit explained in *Timken* that denial of offsets is a "reasonable statutory interpretation given that it legitimately combats the problem of masked dumping, wherein certain profitable sales serve to mask sales at less than fair value."[70] As reflected in that opinion, the issue of so-called masked dumping was part of the policy reason for interpreting the statute in the manner applied by the Department. No U.S. court has required the Department to demonstrate "masked dumping" before it is entitled to invoke this interpretation of the statute and deny offsets to dumped sales.[71]

In 2005, a panel of the WTO Dispute Settlement Body found that the United States did not act consistently with its obligations under Article 2.4.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 when it employed the zeroing methodology in average-to-average comparisons in certain challenged antidumping duty investigations.[72] The initial WTO Dispute Settlement Body Panel Report was limited to the Department's use of zeroing in average-to-average comparisons in antidumping duty investigations.[73] The Executive Branch determined to implement this report pursuant to the authority provided in section 123 of the URAA (19 U.S.C. § 3533(f), (g)) (Section 123).[74] Notably, with respect to the use of zeroing, the Panel found that the United States acted inconsistently with its WTO obligations only in the context of average-to-average comparisons in antidumping duty investigations. The Panel did not find fault with the use of zeroing by the United States in any other context. In fact, the Panel rejected the European Communities' arguments that the use of zeroing in administrative reviews did not comport with the WTO Agreements.[75]

Without an affirmative inconsistency finding by the Panel, the Department did not propose to alter its zeroing practice in other contexts, such as administrative reviews. As the Federal Circuit recently held, the Department reasonably may decline, when implementing an adverse WTO report, to take any action beyond that necessary for compliance.[76] Moreover, in *Corus I*, the Federal Circuit acknowledged the difference between antidumping duty investigations and administrative reviews, and held that section 771(35) of the Act was just as ambiguous with respect to both proceedings, such that the Department was permitted, but not required, to use zeroing in antidumping duty investigations.[77] In light of the adverse WTO Dispute Settlement Body finding and the ambiguity that the Federal Circuit found inherent in the statutory text, the Department abandoned its prior litigation position – that no difference between antidumping duty

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[69] *Serampore*, 675 F. Supp. at 1361 (citing *Certain Welded Carbon Steel Standard Pipe and Tube From India; Final Determination of Sales at Less Than Fair Value*, 51 FR 9089, 9092 (March 17, 1986)); *see also Timken*, 354 F.3d at 1343; *PAM*, 265 F. Supp. 2d at 1371.

[70] *See Timken*, 354 F.3d at 1343.

[71] *See, e.g., Timken*, 354 F.3d at 1343; *Corus I*, 395 F.3d at 1343; *Corus II*, 502 F.3d at 1370, 1375; and *NSK*, 510 F.3d at 1375.

[72] *See* Panel Report, *United States – Laws, Regulations and Methodology for Calculating Dumping Margins (Zeroing)*, WT/DS294/R (Oct. 31, 2005) (*EC-Zeroing Panel*).

[73] *See EC-Zeroing Panel*, WT/DS294/R.

[74] *See First Final Modification for Investigations*, 71 FR at 77722; and *Antidumping Proceedings: Calculation of the Weighted – Average Dumping Margin During an Antidumping Investigation; Change in Effective Date of Final Modification*, 72 FR 3783 (Jan. 26, 2007) (together, *Final Modification for Investigations*).

[75] *See EC-Zeroing Panel* at 7.284, 7.291.

[76] *See Thyssenkrupp Acciai Speciali Terni S.p.A. v. United States*, 603 F.3d 928, 934 (Fed. Cir. 2010).

[77] *See Corus I*, 395 F.3d at 1347.

investigations and administrative reviews exists for purposes of using zeroing in antidumping proceedings – and departed from its longstanding and consistent practice by ceasing the use of zeroing. The Department began to apply offsetting in the limited context of average-to-average comparisons in antidumping duty investigations.[78] With this modification, the Department's interpretation of the statute with respect to non-dumped comparisons was changed within the limited context of investigations using average-to-average comparisons. Adoption of the modification pursuant to the procedure set forth in Section 123(g) of the URAA was specifically limited to address adverse WTO findings made in the context of antidumping investigations using average-to-average comparisons. The Department did not, at that time, change its practice of zeroing in other types of comparisons, including average-to-transaction comparisons in administrative reviews.[79] *Id.*, 71 FR at 77724.

The Federal Circuit subsequently upheld the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations while recognizing that the Department limited its change in practice to certain investigations and continued to use zeroing when making average-to-transaction comparisons in administrative reviews.[80] In upholding the Department's decision to cease zeroing in average-to-average comparisons in antidumping duty investigations, the Federal Circuit accepted that the Department likely would have different zeroing practices between average-to-average and other types of comparisons in antidumping duty investigations.[81] The Federal Circuit's reasoning in upholding the Department's decision relied, in part, on differences between various types of comparisons in antidumping duty investigations and the Department's limited decision to cease zeroing only with respect to one comparison type.[82] The Federal Circuit acknowledged that section 777A(d) of the Act permits different types of comparisons in antidumping duty investigations, allowing the Department to make average-to-transaction comparisons where certain patterns of significant price differences exist.[83] The Federal Circuit also expressly recognized that the Department intended to continue to address targeted or masked dumping through continuing its use of average-to-transaction comparisons and zeroing.[84] In summing up its understanding of the relationship between zeroing and the various comparison methodologies that the Department may use in antidumping duty investigations, the Federal Circuit acceded to the possibility of disparate, yet equally reasonable interpretations of section 771(35) of the Act, stating that "{b}y enacting legislation that specifically addresses such situations, Congress may just as likely have been signaling to Commerce that it need not continue its zeroing methodology in situations where such significant

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[78] *See First Final Modification for Investigations*, 71 FR at 77722.

[79] On February 14, 2012, in response to several WTO dispute settlement reports, the Department adopted a revised methodology which allows for offsets when making average-to-average comparisons in reviews. *See Final Modification for Reviews*. The *Final Modification for Reviews* makes clear that the revised methodology will apply to antidumping duty administrative reviews where the preliminary results are issued after April 16, 2012. Because the preliminary results in this administrative review were completed prior to April 16, 2012, any change in practice with respect to the treatment of non-dumped sales pursuant to the *Final Modification for Reviews* does not apply here.

[80] *See U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1362-63 (Fed. Cir. 2010) (*U.S. Steel Corp.*).

[81] *Id.*, at 1363 (stating that the Department indicated an intention to use zeroing in average-to-transaction comparisons in investigations to address concerns about masked dumping).

[82] *Id.*, at 1361-63.

[83] *See id.*, at 1362 (quoting sections 777A(d)(1)(A) and (B) of the Act, which enumerate various comparison methodologies that the Department may use in investigations); *see also* section 777A(d)(1)(B) of the Act.

[84] *See U.S. Steel Corp.*, 621 F.3d at 1363.

price differences among the export prices do *not* exist."[85]

We disagree with the respondents that the Federal Circuit's decisions in *Dongbu* and *JTEKT* require us to change its methodology in this administrative review. These holdings were limited to finding that the Department had not adequately explained the different interpretations of section 771(35) of the Act in the context of investigations versus administrative reviews, but the Federal Circuit did not hold that these differing interpretations were contrary to law. Importantly, the panels in *Dongbu* and *JTEKT* did not overturn prior Federal Circuit decisions affirming zeroing in administrative reviews, including *SKF*, in which the Court affirmed zeroing in administrative reviews notwithstanding the Department's determination to no longer use zeroing in certain investigations.[86] Unlike the determinations examined in *Dongbu* and *JTEKT*, we provide in these final results additional explanation for its changed interpretation of the statute subsequent to the *Final Modification for Investigations* – whereby we interpret section 771(35) of the Act differently for certain investigations (when using average-to-average comparisons) and administrative reviews. For all these reasons, we find that our determination is consistent with the holdings in *Dongbu, JTEKT, U.S. Steel Corp.*, and *SKF*.

Our interpretation of section 771(35) of the Act reasonably resolves the ambiguity inherent in the statutory text for multiple reasons. First, outside of the context of average-to-average comparisons,[87] we have maintained a long-standing, judicially-affirmed interpretation of section 771(35) of the Act in which we do not consider a sale to the United States as dumped if NV does not exceed EP. Pursuant to this interpretation, we treat such a sale as having a dumping margin of zero, which reflects that no dumping has occurred, when calculating the aggregate weighted-average dumping margin. Second, adoption of an offsetting methodology in connection with average-to-average comparisons was not an arbitrary departure from established practice because the Executive Branch adopted and implemented the approach in response to a specific international obligation pursuant to the procedures established by the URAA for such changes in practice with full notice, comment, consultations with the Legislative Branch, and explanation. Third, our interpretation reasonably resolves the ambiguity in section 771(35) of the Act in a way that accounts for the inherent differences between the result of an average-to-average comparison and the result of an average-to-transaction comparison.

The *Final Modification for Investigations*, which implements the WTO Panel's limited finding, does not disturb the reasoning offered by the Department and affirmed by the Federal Circuit in several prior, precedential opinions upholding the use of zeroing in average-to-transaction comparisons in administrative reviews as a reasonable interpretation of section 771(35) of the Act.[88] In the *Final Modification for Investigations*, the Department adopted a possible construction of an ambiguous statutory provision, consistent with the *Charming Betsy* doctrine, to comply with certain adverse WTO dispute settlement findings.[89] Even where we maintain a

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[85] *Id.* (emphasis added).

[86] *See SKF*, 630 F.3d at 1375.

[87] The *Final Modification for Reviews* adopts this comparison method with offsetting as the default method for administrative reviews, however, as explained in footnote 81 this modification is not applicable to these final results.

[88] *See, e.g., SKF USA, Inc. v. United States*, 537 F.3d 1373, 1382 (Fed. Cir. 2008); *NSK*, 510 F.3d at 1379-1380; *Corus II*, 502 F.3d at 1372-1375; *Timken*, 354 F.3d at 1343.

[89] According to *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804), "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be

separate interpretation of the statute to permit the use of zeroing in certain dumping margin calculations, the *Charming Betsy* doctrine bolsters our ability to apply an alternative interpretation of the statute in the context of average-to-average comparisons so that the Executive Branch may determine whether and how to comply with international obligations of the United States. Neither Section 123 of the URAA nor the *Charming Betsy* doctrine requires us to modify its interpretation of section 771(35) of the Act for all scenarios when a more limited modification will address the adverse WTO finding that the Executive Branch has determined to implement. Furthermore, the wisdom of the Department's legitimate policy choices in this case – *i.e.*, to abandon zeroing only with respect to average-to-average comparisons – is not subject to judicial review.[90] These reasons alone sufficiently justify and explain why we reasonably interpret section 771(35) of the Act differently in average-to-average comparisons relative to all other contexts.

Moreover, our interpretation reasonably accounts for inherent differences between the results of distinct comparison methodologies. We interpret section 771(35) of the Act depending upon the type of comparison methodology applied in the particular proceeding. This interpretation reasonably accounts for the inherent differences between the result of an average-to-average comparison and the result of an average-to-transaction comparison.

We may reasonably interpret section 771(35) of the Act differently in the context of the average-to-average comparisons to permit negative comparison results to offset or reduce positive comparison results when calculating "aggregate dumping margins" within the meaning of section 771(35)(B) of the Act. When using an average-to-average comparison methodology, *see, e.g.*, section 777A(d)(1)(A)(i) of the Act, we usually divide the export transactions into groups, by model and level of trade (averaging groups), and compare an average EP or CEP of transactions within one averaging group to an average NV for the comparable merchandise of the foreign like product. In calculating the average EP or CEP, we average all prices, both high and low, for each averaging group. We then compare the average EP or CEP for the averaging group with the average NV for the comparable merchandise. This comparison yields an average result for the particular averaging group because the high and low prices within the group have been averaged prior to the comparison. Importantly, under this comparison methodology, we do not calculate the extent to which an exporter or producer dumped a particular sale into the United States because we do not examine dumping on the basis of individual U.S. prices, but rather performs its analysis "on average" for the averaging group within which higher prices and lower prices offset each other. We then aggregate the comparison results from each of the averaging groups to determine the aggregate weighted-average dumping margin for a specific producer or exporter. At this aggregation stage, negative, averaging-group comparison results offset positive, averaging-group comparison results. This approach maintains consistency with our average-to-average comparison methodology, which permits EPs above NV to offset EPs below NV within each individual averaging group. Thus, by permitting offsets in the aggregation

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construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country." The principle emanating from the quoted passage, known as the *Charming Betsy* doctrine, supports the reasonableness of the Department's interpretation of the statute in the limited context of average-to-average comparisons in antidumping duty investigations because the Department's interpretation of the domestic law accords with international obligations as understood in this country.

[90] *See Suramerica de Aleaciones Laminadas, C.A. v. United States*, 966 F.2d 660, 665 (Fed. Cir. 1992).

stage, we determine an "on average" aggregate amount of dumping for the numerator of the weighted-average dumping margin ratio consistent with the manner in which we determined the comparison results being aggregated.

In contrast, when applying an average-to-transaction comparison methodology, *see, e.g.*, section 777A(d)(2) of the Act, as we do in this administrative review, we determine dumping on the basis of individual U.S. sales prices. Under the average-to-transaction comparison methodology, we compare the EP or CEP for a particular U.S. transaction with the average NV for the comparable merchandise of the foreign like product. This comparison methodology yields results specific to the selected individual export transactions. The result of such a comparison evinces the amount, if any, by which the exporter or producer sold the merchandise at an EP or CEP less than its NV. We then aggregate the results of these comparisons – *i.e.*, the amount of dumping found for each individual sale – to calculate the weighted-average dumping margin for the POR. To the extent the average NV does not exceed the individual EP or CEP of a particular U.S. sale, we do not calculate a dumping margin for that sale or include an amount of dumping for that sale in its aggregation of transaction-specific dumping margins.[91] Thus, when we focus on transaction-specific comparisons, as we did in this administrative review, we reasonably interpret the word "exceeds" in section 771(35)(A) of the Act as including only those comparisons that yield positive comparison results. Consequently, in transaction-specific comparisons, we reasonably do not permit negative comparison results to offset or reduce other positive comparison results when determining the "aggregate dumping margin" within the meaning of section 771(35)(B) of the Act.

Put simply, we interpret the application of average-to-average comparisons to contemplate a dumping analysis that examines the pricing behavior, on average, of an exporter or producer with respect to the subject merchandise, whereas under the average-to-transaction comparison methodology we continue to undertake a dumping analysis that examines the pricing behavior of an exporter or producer with respect to individual export transactions. The offsetting approach described in the average-to-average comparison methodology allows for a reasonable examination of pricing behavior, on average. The average-to-average comparison method inherently permits non-dumped prices to offset dumped prices before the comparison is made. This offsetting can reasonably be extended to the next stage of the calculation where average-to-average comparison results are aggregated, such that offsets are (1) implicitly granted when calculating average EPs and (2) explicitly granted when aggregating averaging-group comparison results. This rationale for granting offsets when using average-to-average comparisons does not extend to situations where we are using average-to-transaction comparisons because no offsetting is inherent in the average-to-transaction comparison methodology.

In sum, on the issue of how to treat negative comparison results in the calculation of the weighted-average dumping margin pursuant to section 771(35)(B) of the Act, for the reasons explained, we reasonably may accord dissimilar treatment to negative comparison results

[91] As discussed previously, we do account, however, for the sale in its weighted-average dumping margin calculation. The value of any non-dumped sale is included in the denominator of the weighted-average dumping margin while no dumping amount for non-dumped transactions is included in the numerator. Therefore, any non-dumped transactions results in a lower weighted-average dumping margin.

depending on whether the result in question flows from an average-to-average comparison or an average-to-transaction comparison. Neither the CIT nor the Federal Circuit has rejected the above reasons. In fact, the CIT recently sustained the Department's explanation for using zeroing in administrative reviews while not using zeroing in certain types of investigations.[92] Accordingly, our interpretations of section 771(35) of the Act to permit zeroing in average-to-transaction comparisons, as in the underlying administrative review, and to permit offsetting in average-to-average comparisons reasonably account for the differences inherent in distinct comparison methodologies.

Regarding other WTO reports cited by the respondents finding the denial of offsets by the United States to be inconsistent with the Antidumping Agreement, the Federal Circuit has held that WTO reports are without effect under U.S. law, "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[93] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of our discretion in applying the statute.[94] Moreover, as part of the URAA process, Congress has provided a procedure through which we may change a regulation or practice in response to WTO reports.[95]

Accordingly, and consistent with our interpretation of the Act described above, in the event that any of the U.S. sales transactions examined in this review are found to exceed NV, the amount by which the price exceeds NV will not offset the dumping found in respect of other transactions.

FRAUD ALLEGATIONS AND THE RELIABILITY OF RESPONDENTS' SUBMISSIONS

Comment 27: Qingdao Shinhan argues that the conclusions of the Department's Post-Preliminary Analysis Memorandum and evidence presented in the verification reports confirm the accuracy and reliability of the information Qingdao Shinhan submitted in response to the Department's supplemental questionnaires addressing the petitioner's allegation of fraud. Qingdao Shinhan states that the Department's meeting with officials of the KCS validates the accuracy of the information provided by Qingdao Shinhan.

Department's Position: We agree with Qingdao Shinhan that our extensive post-preliminary investigation of the petitioner's fraud allegations uncovered no evidence that impugns the accuracy and reliability of the information Qingdao Shinhan submitted in this review. Accordingly, we find no basis relating to the petitioner's fraud allegations to change the preliminary margin.[96]

[92] *See Union Steel v. United States*, 823 F. Supp. 2d 1346 (CIT 2012).
[93] *See Corus I*, 395 F.3d at 1347-49; accord *Corus II*, 502 F.3d at 1375; and *NSK*, 510 F.3d 1375.
[94] *See* 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).
[95] *See* 19 U.S.C. § 3533(g).
[96] *See* Post-Preliminary Analysis Memorandum.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of the review and the final dumping margins for all of the reviewed companies in the *Federal Register*.

Agree ✓ Disagree _____

Paul Piquado
Assistant Secretary
for Import Administration

8 FEBRUARY 2017
(Date)