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June 10, 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 November 1, 2010, through October 31, 2011

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 November 1, 2010, through October 31, 2011. 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. Targeted Dumping Allegation
4. Post-Preliminary FOP Data
5. Surrogate Country
6. Surrogate Values
   - Bronze Powder
   - Cores
   - Diamond Powder
   - Energy Inputs
   - Financial Ratios
   - Labor Costs
   - Oxygen
   - Steel Types
   - Truck Freight

- The Philippine Data

7. U.S. Repacking Expense

Company Abbreviations

ATM – Advanced Technology & Materials Co., Ltd.
ATMI – AT&M International Trading Co., Ltd
ATM Single Entity – ATM, ATMI, BGY, Cliff, and HXF
BGY – Beijing Gang Yan Diamond Products Co.
Bosun – Bosun Tools Co., Ltd.
CISRI – China Iron and Steel Research Institute Group
Cliff – Cliff International Ltd.
Ehwa – Ehwa Diamond Industrial Co., Ltd.
GYDP – Gang Yan Diamond Products, Inc.
HXF – HXF Saw Co., Ltd.
Hyosung – Hyosung Diamond Industrial Co., Ltd.
Qingdao Hyosung – Qingdao Hyosung Diamond Tools Co., Ltd.
Qingdao Shinhan – Qingdao Shinhan Diamond Industrial Co., Ltd.
SANC - SANC Materials, Inc.
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

AUV – average unit value
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – Court of International Trade
Company Law – the 1994 Company Law of the PRC
CVD – countervailing duty
Federal Circuit – Court of Appeals for the Federal Circuit
FOPs – factors of production
GTA – Global Trade Atlas
HTS – Harmonized Tariff Schedule
I&D Memo – Issues and Decision Memorandum adopted by a *Federal Register* notice of final determination of an investigation or final results of review
ILO – International Labour Organization
KCS – Korean Customs Service
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

NSO Data – the industry-specific labor cost data which cover 2006 and were published in 2007 by the National Statistical Office of the Thai government
POR – period of review
SOE – State-Owned Enterprise
The Act – The Tariff Act of 1930, as amended

Background

On December 10, 2012, 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 10, 2013.[2]

We invited interested parties to comment on the *Preliminary Results*. We received case[3] and rebuttal[4] briefs from various parties to this administrative review. Pursuant to interested parties' requests, we held a hearing on April 15, 2013.

On March 29, 2012, the petitioner filed an allegation that Korean respondents Ehwa, Shinhan, and Hyosung, and their respective Chinese subsidiaries, Weihai, Qingdao Shinhan, and Qingdao Hyosung,[5] 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 March 19, 2013, we issued a post-preliminary analysis memorandum in which we preliminarily found that, notwithstanding the petitioner's allegations, the information submitted by the respondents is reliable and not affected by the circumstances that were the bases of the petitioner's fraud allegations in these administrative reviews.[6] Also, in the post-preliminary analysis memorandum, we stated our intent to revise the methodology for valuing the cores Weihai purchased from NME suppliers. No parties submitted comments concerning our post-preliminary analysis with respect to the petitioner's fraud allegation. However, both the

[1] *Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2010–2011*, 77 FR 73417 (December 10, 2012) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.
[2] *See* the memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, entitled "Diamond Sawblades and Parts Thereof from the Republic of Korea and the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Reviews" dated April 29, 2013.
[3] *See* the case briefs filed by the petitioner and Weihai on February 19, 2013.
[4] *See* the rebuttal briefs filed by the petitioner, ATM Single Entity, Bosun, and Weihai on February 25, 2013.
[5] Qingdao Hyosung is not a respondent in this review.
[6] *See* the memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled "Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China for the 2010-2011 Period: Post-Preliminary Analysis" dated March 19, 2013 (Post-Preliminary Analysis Memorandum).

petitioner and Weihai commented on the modification to the valuation of cores.[7] These comments are addressed below (*see* Comment 8).

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 CBP.[8]

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Surrogate Country

In the *Preliminary Results*, we treated the PRC as an NME and, therefore, we calculated normal value in accordance with section 773(c) of the Act. We selected Thailand as the primary

[7] *See* the petitioner's March 26, 2013, comments on the post-preliminary analysis memorandum and Weihai's April 1, 2013, rebuttal to the petitioner's March 26, 2013 comments.
[8] *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011).

surrogate country, pursuant to 19 CFR 351.408(c)(2), because it is at a level of economic development comparable to the PRC, is a significant producer of merchandise comparable to subject merchandise and because of the availability and quality of Thai data for valuing FOPs.[9] For the final results of review, we have continued to treat the PRC as an NME country and have affirmed our decision to use Thailand as the primary surrogate country.[10]

Affiliation

In the *Preliminary Results*, we treated five companies as a single entity, the ATM Single Entity, for purposes of calculating a single margin. We have received and evaluated comments on whether to expand the ATM Single Entity to include CISRI. For these final results, we have not treated CISRI as part of the ATM Single Entity.[11]

PRC-Wide Entity

As explained in the *Preliminary Results*, Fujian Quanzhou Wanlong Stone Co., Ltd. (Fujian Quanzhou) filed a no-shipment letter, but its claim was contradicted by other information on the record. Fuijian Quanzhou did not file either a separate rate application or a separate rate certification. On December 11, 2012, we issued a supplemental questionnaire requesting Fujian Quanzhou to address the conflicting evidence.[12] Fujian Quanzhou responded but did not address the contradictory evidence.[13] Therefore, we continue to find that Fujian Quanzhou is a part of the PRC-wide entity.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate.[14] It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[15]

In the *Preliminary Results*, we found that, in addition to the companies we selected for individual examination, certain companies demonstrated their eligibility for separate rate status by demonstrating that they operated free of *de jure* and *de facto* government control.[16] We received

[9] *See Preliminary Results*, and accompanying Preliminary Decision Memorandum at pages 9-14.
[10] *See* Comment 6 regarding our primary surrogate selection.
[11] *See* Comment 3.
[12] *See* the supplemental questionnaire to Fujian Quanzhou dated December 11, 2012.
[13] *See* Fujian Quanzhou's supplemental response dated December 15, 2012.
[14] *See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006), and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006).
[15] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 76 FR 82268 (December 30, 2011)
[16] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 4-7.

comments from interested parties regarding the separate rate status of ATM Single Entity. Based on the information on the record of this review, we continue to find that the respondents that received separate rates in the *Preliminary Results* are eligible for separate rates.

Neither the statute nor the Department's regulations address the establishment of a rate to be applied to individual companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Our practice in this regard has been to average the margins for the selected companies, excluding margins that are zero, *de minimis*, or based entirely on facts available.[17] Consistent with that practice and the *Preliminary Results*, we have assigned Weihai's antidumping duty margin to companies eligible for a separate rate but not selected for individual examination.

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 non-majority controlling stake in ATM and that the next nine largest shareholders together held a small percentage of ATM's shares. 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 argues that while ATM did not submit complete financial statements, its articles of association indicated that it distributes cash dividends to its shareholders.

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 explains that, since its creation, SASAC has controlled many of the PRC's largest SOEs, including CISRI's predecessor, and that 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.

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) unnamed legislative enactments and other formal measures, 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

[17] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying I&D Memo at Comment 16.

Single Entity's eligibility for a separate rate.

According to the petitioner, in accordance with State Council Decree 378 (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 *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 purpose of the separate rates test is to prevent an NME government from circumventing an antidumping duty order 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 the ATM Single Entity because, among other reasons, 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 the ATM Single Entity is sufficient for the Department to assign the PRC-wide rate to the ATM Single Entity. Alternatively, according to the petitioner, the 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. For example, the petitioner notes that ATM Single Entity did not provide any board resolutions or minutes of any meetings pertaining to these topics.

Regarding the selection of the management, the petitioner contends that the 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. Instead, according to the petitioner, the record indicates that the selection of directors and

managers was subject to Chinese government control through CISRI's control of the ATM Single Entity. Similarly, as ATM Single Entity's controlling shareholder, CISRI controls ATM Single Entity's export proceeds, profits, assets, and its ability to take out loans.

ATM Single Entity requests that the Department continue its practice of assigning a separate rate to 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.

The ATM Single Entity argues that there have been no material changes since the investigation or the first administrative review that would alter the Department's decision with respect to granting a separate rate to the ATM Single Entity. The 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, in the *Preliminary Results* the Department reviewed the ATM Single Entity's business licenses, export licenses, and articles of association. The ATM Single Entity cites *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013) (*Final Results AR1*), and accompanying I&D Memo at Comment 1 to argue that the Department has previously found that none of these documents indicates any restrictions on export activities. The ATM Single Entity also argues that the Department has previously determined in *Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative and New Shipper Review*, 75 FR 34100, 34103 (June 16, 2010) (*Crawfish Prelim*), 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) (collectively, *Crawfish from the PRC*), that both the Company Law and the Foreign Trade Law of the People's Republic of China indicate a lack of *de jure* government control over export activities.

In response to the petitioner's assertion that the PRC government has undertaken a program to recentralize control over SOEs and their assets, the ATM Single Entity argues that the Department focuses on specific actions that affect export pricing (consistent with Policy Bulletin 05.1), not other types of control. According to the ATM Single Entity, in *Final Results AR1*, the Department stated that SASAC's reach does not extend to the ATM Single Entity's export pricing and that Article 42 of Decree 378 provides that organization structures, rights, and obligations are governed by the Company Law, a law which the Department has repeatedly found to demonstrate an absence of *de jure* control.

The ATM Single Entity argues that it answered all of the Department's questions with respect to *de facto* control and that there is no evidence on the record that ATM sets export prices for diamond sawblades: rather those prices are set by BGY and ATMI, the companies that export

sawblades. ATM Single Entity contends that, even if CISRI selects ATM's management, CISRI is a company owned by the PRC government, not the PRC government itself, and all it proves is that a shareholder is influencing the company's management decision, not export pricing. The ATM Single Entity argues that, CISRI, a major shareholder in ATM, is not the PRC government. The ATM Single Entity argues further that, even if CISRI were a part of the PRC government, according to *Qingdao Taifa Group Co., Ltd. v. United States*, 637 F. Supp. 2d 1231, 1244 (CIT 2009), "government ownership is not dispositive of government control," that even "firms that are wholly owned by the government are not barred from a separate rate," and "Commerce has consistently found that governance by the Company Law establishes *de jure* independence from government control." The ATM Single Entity claims that, even if CISRI were found to be government controlled, there is no record evidence that CISRI is setting export prices or selecting management for BGY and ATMI, which exist at two levels of ownership below CISRI.

Department's Position: In order to obtain a separate rate, a company must demonstrate an absence of *de jure* and *de facto* control over its 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.[18]

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.[19] The Department has made the same finding with respect to the Foreign Trade Law of the People's Republic of China.[20] 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.[21] 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 of Decree 378. We disagree.

Articles 1 and 2 of Decree 378 state that the regulations are intended to be applicable to SOEs and assets. Article 6 clarifies that SASAC will "perform the responsibilities of Investor according to law, supervise and administer State-owned assets of enterprises according to law." Article 7 of Decree 378 provides for the "separation of government functions from enterprise

[18] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991).
[19] *See Crawfish from the PRC.*
[20] *Id.*
[21] *Id.*

management and separation of ownership from management." 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…." According to its website, SASAC appoints and removes the top executives of SOEs and participates in formulating management system and methods of the state-owned capital operational budget.[22]

Therefore, there are contradictions in Decree 378 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 activities.

In addition, Article 42 of the Decree 378 states that "organizational form, organizational structure, rights and obligations…shall be governed by the Company Law,"[23] which, as explained above, we have previously found to demonstrate an absence of *de jure* control over export activities, including pricing.[24]

The record does not support a finding that SASAC's role, in the ownership of an SOE which may be a shareholder in ATM, would further extend to control over export activities, including pricing, in ATM Single Entity. Consequently, we find that the laws placed on the record of this review establish the absence of *de jure* control of ATM Single Entity.

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.[25]

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 jure* and *de facto* control, and is thus eligible for a separate rate.[26]

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[22] *See* the petitioner's April 18, 2012, factual information submission Exhibit 9, at 3
[23] *Id.*, at Article 42.
[24] *See, e.g., Crawfish Prelim*, 75 FR at 34102-3.
[25] *See Preliminary Result* and accompanying Preliminary Decision Memorandum at 6.
[26] We note that on April 4, 2013, and April 9, 2013, the petitioner and the ATM Single Entity, respectively, filed

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 former 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.

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comments on what the petitioner described as "supplemental authority," *i.e.*, the Department's draft redetermination pursuant to remand in the less-than-fair-value litigation. *See generally* CIT Ct. No. 09-00511. Despite the petitioner's characterization of the draft redetermination, it does not constitute supplemental authority much less binding precedent. Although the Department must acknowledge and explain a deviation from prior practice, "{t}his is not to say that Commerce's prior determinations are legally binding in subsequent administrative proceedings." *Pakfood Pub. Co. v. United States*, 753 F. Supp. 2d 1334, 1341-42, n.20 (Ct. Int'l Trade 2011). Here, our separate rate determination is consistent with our prior practice, and, although we acknowledge that the ATM Single Entity did not receive a separate rate in the remand redetermination covering the time period of the less-than-fair-value investigation, that outcome is explained where we state:

> {W}e respectfully disagree with the Court in its rejection of our *First Remand Redetermination* regarding the full effects of the SASAC Interim Regulations (and the weight it should be given) in the broader de jure and de facto analysis . . . and are conducting the remand under protest. In the *First Remand Redetermination*, we provided a detailed analysis of how our original decision in the *Final Determination* was correct and supported by record evidence, and we maintain that those determinations were appropriate.

See CIT Ct. No. 09-00511, Second Final Remand Redetermination at 20, n.47 (May 6, 2013). Thus, under respectful protest, we "re-analyzed the record evidence pursuant to the text of the Court's opinion and remand order," which resulted in "treating CISRI's shareholding in other companies as if it were ownership by the PRC government due to the fact that CISRI itself is 100-percent SASAC-owned, and then analyzing the downstream effects of this ownership as it relates to separate rate eligibility." *Id.* Accordingly, the remand redetermination is not binding here. *See generally MTZ Polyfilms, Ltd. v. United States*, 717 F. Supp. 2d 1346, 1365 (Ct. Int'l Trade 2010) ("'Even assuming Commerce's determinations at issue are factually identical, as a matter of law a prior administrative determination is not binding on other reviews before this court.' *Alloy Piping Prods., Inc. v. United States*, Slip Op. 09-29, 2009 WL 983078, at *6 (CIT April 14, 2009) (holding that Commerce properly granted a constructed export price offset to a respondent despite not having done so in the previous administrative review)."); *U.S. Steel Corp. v. United States*, 637 F. Supp. 2d 1199, 1218 (Ct. Int'l Trade 2009) ("as a matter of law, each agency determination is *sui generis*, involving a unique combination and interaction of many variables, and therefore a prior administrative determination is not legally binding on other reviews before this court")(citing *Nucor Corp. v. United States*, 414 F.3d 1331, 1340 (Fed. Cir. 2005)). Moreover, the court has not yet ruled on the redetermination.

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 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 antidumping 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."[27]

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

[27] *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).

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.[28] 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).[29]

ATM Single Entity's reliance on a partial quote regarding prices in the PRC is misplaced. The 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."[30] 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 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, the reference 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.

[28] *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."
[29] *See* Georgetown Memo at 9.
[30] *See* Georgetown Memo at 5, *citing* The Economist Intelligence Unit, Country Commerce: China, 2006 at 73.

The petitioner argues that the Department has preliminarily found that ATM and ATMI are subject to CISRI's common legal control, due to the degree of common ownership, and, therefore, CISRI should be collapsed into the ATM Single Entity. 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. 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 that during the POR, CISRI and ATM engaged in significant transactions and CISRI received significant dividends from ATM.

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 reason, 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.

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.[31]

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.[32]

TARGETED DUMPING ALLEGATION

Comment 4: For the first time in this administrative review, the petitioner raises in its case brief a targeted dumping allegation against Weihai. Weihai argues that the Department should reject the petitioner's targeted dumping allegation. Weihai asserts that, although there was no set deadline for the submission of a targeted dumping allegation in this review, raising it for the first time in a case brief is untimely. Weihai claims that, in any event, the petitioner's targeted dumping allegation does not reflect a significant pattern of targeted sales.

[31] *See* CISRI's February 27, 2012, no shipment letter.
[32] *See Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1346 (CIT 2003).

Department's Position: The petitioner first raised its targeted dumping allegation with respect to Weihai in its February 19, 2013, case brief, 78 days after the Department issued the *Preliminary Results* on December 3, 2012. Although the Department has not established specific deadlines for when the Department will accept targeted dumping allegations in administrative reviews, we find that the petitioner's targeted dumping allegation in this case is untimely. Given the elapsed time between the issuance of the respondent's questionnaire responses and the issuance of the *Preliminary Results*, we find that the petitioner had ample opportunity to have filed its targeted dumping allegation prior to December 3, 2012, and certainly prior to its case brief.

For example, the petitioner in *Ball Bearings and Parts Thereof From France, Germany, and Italy: Preliminary Results of Antidumping Duty Administrative Reviews and Rescission of Antidumping Duty Administrative Reviews in Part*, 77 FR 33159 (June 5, 2012), submitted a targeted dumping allegation for several respondents prior to the issuance of the preliminary results. This allowed us to issue a post-preliminary analysis and receive and analyze comments from interested parties prior to issuing final results.[33] In contrast, we find in the instant case, that the petitioner's filing of its targeted dumping allegation in its case brief did not provide Weihai or other interested parties with sufficient time to adequately review and comment on such an allegation. To entertain a targeted dumping allegation at this point in the proceeding raises due process concerns. Furthermore, the timing of the petitioner's filing of its targeted dumping allegation within its case brief did not provide sufficient time for us to analyze the allegation and any potential comments and issue a post-preliminary analysis for comment within the statutory deadlines for completion of this proceeding.

Accordingly, we are not examining the petitioner's targeted dumping allegation in this review and have continued to apply the average-to-average methodology from the *Preliminary Results* for Weihai. Because we find the petitioner's targeted dumping allegation untimely, we are not addressing Weihai's additional arguments.

POST-PRELIMINARY FOP DATA

Comment 5: Weihai requests that the Department accept the FOP database that it submitted on December 21, 2012, shortly after the *Preliminary Results* were published. Weihai explains that this post-preliminary FOP database corrected inadvertent clerical errors with information that Weihai had already placed on the record of this administrative review before the *Preliminary Results.* According to Weihai, the fields that it corrected in this FOP database are for direct labor, indirect labor, packing labor, electricity, oxygen, and scrap.

The petitioner requests that the Department reject Weihai's post-preliminary FOP database. The petitioner raises a possibility that Weihai placed on the record of this review higher FOP numbers in the FOP database and lower FOP numbers in the worksheet so that (1) if a verification occurred, Weihai could claim that the higher FOP numbers in the FOP database were

[33] *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010-2011*, 77 FR 73415 (December 10, 2012), and accompanying I&D Memo at Comment 1.

correct and the lower FOP numbers in the worksheets were incorrect and (2) if a verification did not occur, Weihai could claim that the lower FOP numbers in the worksheet were correct and the higher FOP numbers in the FOP database were incorrect. The petitioner further contends that the corrected numbers in Weihai's post-preliminary FOP database do not tie to the cost reconciliation and summary allocation sheets in Weihai's section D response. The petitioner explains that, for example, the total electricity consumption numbers in Exhibits D-11.1 and D-11.3 of Weihai's April 20, 2012, section D response do not tie with each other and they do not tie to the cost reconciliation in Exhibit D-16 of Weihai's April 18, 2012 section D response.

The petitioner contends that Weihai has not demonstrated with evidence how the alleged erroneous migration of data occurred. According to the petitioner, unless Weihai can fully demonstrate the alleged error in migration of data and tie the correct numbers to a cost reconciliation, Weihai has not demonstrated which set of numbers represents an error or that an error did take place. The petitioner disagrees with Weihai's assertion that this alleged error was subject to the Department's extensive analysis because there was no supplemental questionnaire addressing this issue. The petitioner also disagrees with Weihai's assertion that correcting this alleged error does not require a substantial revision to its questionnaire response because the changes Weihai made to the post-preliminary FOP database are substantial. The petitioner disagrees with Weihai's assertion that the information does not contradict information previously found to be accurate.

Department's Position: For the final results of review, we have used the FOP database Weihai submitted after the publication of the *Preliminary Results.* The Department has the discretion to correct erroneous data with information submitted on the record of the review between the preliminary and final results of a review.[34] In fact, in connection with another issue, the petitioner suggested in its case brief that the Department request Weihai to submit a revised FOP database or, in the alternative, merge the appropriate numbers from Weihai's earlier-submitted FOP database, as they were already on the record of this review.[35]

Contrary to the petitioner's claims, Exhibits 10, 11, 12, and 13 of Weihai's April 20, 2012, section D response support the corrections Weihai made in its post-preliminary FOP database. Moreover, regarding electricity consumption, Exhibit 11.3 shows the total amount of electricity consumed in plant 1 during the POR, whereas Exhibit 11.1 shows the total consumed solely for production of diamond sawblades in plant 1 on a control-number basis. Therefore, different total consumption amounts between the two exhibits do not indicate any discrepancies. Based on our examination of the revised FOP database, we find that the corrected numbers submitted by Weihai can reliably be used for the final results of this review.

SURROGATE COUNTRY

[34] *See, e.g., Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 72 FR 58053 (October 12, 2007), and accompanying I&D Memo at Comment 21.

[35] *See* the petitioner's February 19, 2013, case brief entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Case Brief with Regard to Weihai Xiangguang Mechanical Industrial Co., Ltd." at 11-12.

Comment 6: In the *Preliminary Results*, the Department selected Thailand as the primary surrogate country. Weihai urges the Department to find the Philippines to be a significant producer of comparable merchandise and to select the Philippines as the primary surrogate country for the final results because financial statements for the calculation of surrogate financial ratio are available from the Philippines but not from Thailand.

Regarding the significant producer criterion, Weihai claims that the Department should rely on the export data for HTS 8202 and 6804 to identify the countries with significant production of diamond sawblades, rather than HTS 8202.39. Weihai explains that such an approach would be consistent with the guidelines in Import Administration Policy Bulletin 04.1 for selecting a broader class of related goods as comparable merchandise where the subject merchandise is predominantly a steel or metal product. Citing, *e.g.*, *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty New Shipper Reviews*, 76 FR 35403 (June 17, 2011) (*Fish Fillets*), Weihai explains that use of broader categories is also consistent with the Department's precedent when the data for identical merchandise are unavailable. Similarly, according to Weihai, *Gleason Industrial Products, Inc. v. United States*, 32 C.I.T. 382 (2008) (*Gleason Industrial Products, Inc.*), supports the use of non-scope HTS headings for ascertaining significant production. Weihai notes that the statute does not compel the Department to define the term "significant producer" in any particular manner.

Weihai disputes the Department's equation of "net exporter" with "significant producer" because a country can import higher-valued products than it exports. Citing *Frontseating Service Valves From the People's Republic of China; 2010-2011 Antidumping Duty Administrative Review; Final Results*, 77 FR 67334 (November 9, 2012), Weihai argues that the Department may and does select a country as the primary surrogate, even if that country is not the largest exporter of comparable merchandise, because the agency's inquiry is focused on identifying all countries that are significant producers of comparable merchandise, and not on finding the most significant producer. Citing *Steel Wire Garment Hangers From the People's Republic of China: Antidumping Duty Administrative Review, 2010-2011*, 77 FR 66952 (November 8, 2012), Weihai states that the Department has relied upon alternative, company-specific production data to select a country as a primary surrogate country over another country with the highest level of exports.

Weihai claims that the export data for HTS 6804 show that the Philippines is a significant producer of comparable merchandise and the Philippines government's statistics support this. Moreover, the financial statement of Trigger Co. (the Philippine company whose financial statements the Department used to calculate surrogate financial ratios for the *Preliminary Results*) shows that its sales of merchandise classified under HTS 8202.39 amounted to 238,316,175 Pesos (USD 5.5 million). Weihai also explains that the Philippine National Statistics Office data show significant level of exports of different types of sawblades under HTS 8202.

If the Department agrees that the Philippines meets the significant producer criterion, Weihai argues that the agency should select the Philippines as the primary surrogate because it is economically comparable to the PRC and the GTA data for the Philippines provide useable surrogate value data for all of the major inputs (except for diamond powders and cores) and all of

the other non-material inputs (*e.g.*, labor and financial ratios). With respect to labor, Weihai claims that the ILO has removed from its website (LABORSTA) the Thai data that the Department used to value labor in the *Preliminary Results.* Weihai also claims that the Thai government has been unresponsive to ILO inquiries concerning the accuracy of the Thai labor statistics. According to Weihai, the Department decided not to select South Africa as the primary surrogate country in part because labor costs were not available for that country.

Weihai points to *Certain Activated Carbon From the People's Republic of China; 2010-2011: Final Results of Antidumping Duty Administrative Review*, 77 FR 67337, 67340 (November 9, 2012) (*Activated Carbon*), in which the Department selected the Philippines as the primary surrogate country instead of Thailand because, according to Weihai, the Philippine financial statements and labor cost statistics were superior to those in Thailand, even though Thailand provided superior statistics for other inputs. Weihai contends, moreover, that the use of the Philippine financial statement with Thailand as the primary surrogate country (1) is inconsistent with the statutory mandate to value all factors in one country and (2) distorts the calculation of normal value.

The petitioner argues that the Department should continue to select Thailand as the primary surrogate country based on the export data for HTS 8202.39. The petitioner contends that HTS 8202 and 6804 include a wide variety of products that may not contain steel, diamonds, or any other materials that characterize subject merchandise and, thus, are not comparable to diamond sawblades. In *Fish Fillets*, according to the petitioner, the Department used a broader category of frozen fish fillets because no data for the relevant countries' production of the single genus of fish were available. In this review, however, the HTS category that applies to the subject merchandise shows that the Philippines is not a significant producer of merchandise identical or comparable to diamond sawblades.

The petitioner points out that Weihai did not submit export data for several subdivisions of HTS 6804, including HTS 6804.21, which is included in the scope description. The petitioner states that the export data under HTS 6804.21 show only 432 kilograms of exports, which the petitioner claims is insignificant. Nor does Weihai explain how the Philippine Department of Trade and Industry data for HTS 6804.10, which cover "Millstones and grindstones for milling, grinding or pulping" are in any way similar to diamond sawblades, according to the petitioner.

The petitioner also disputes Weihai's reliance on Trigger Co.'s financial statement to claim that the Philippines is a significant producer. According to the petitioner, Trigger Co.'s financial statement does not provide the company's production and sales quantity. Citing *Activated Carbon*, the petitioner explains that, although Trigger Co.'s financial statement does provide the value of sales in 2011, the Department uses quantity, not sales value, to measure the significance of production because quantities are expressed in constant units of measurement and are not subject to influence from outside variables and external pressures such as currency fluctuations and inflation.

According to the petitioner, while the Department may select a country that is not the largest exporter as the primary surrogate country, the selected country must be a significant producer, and the Philippines is not a significant producer of identical or comparable merchandise. For this

reason, the petitioner explains that whether the Philippines is a net exporter or not is not an issue.

The petitioner claims that the Philippine statistics do not provide data for important FOPs for diamond sawblades including, but not limited to, diamond powder and steel cores. The petitioner also points out that Weihai did not provide any Philippines data for valuing oxygen and different types of steel sheet, among others. The petitioner argues that the lack of Philippine import data for diamond powders, one of the most important inputs, underscores that the Philippines is not suitable as the primary surrogate country.

The petitioner explains that Thailand is the appropriate primary surrogate country because (1) it is a significant producer of diamond sawblades, (2) it is the only net exporter, and (3) Thailand provides necessary data for the Department to calculate surrogate values. According to the petitioner, the lack of a Thai financial statement and issues with the Thai labor data are not reasons to select another country as a primary surrogate country. With respect to the financial statement, the petitioner points out that Weihai initially urged the Department to select South Africa as the primary surrogate country, while placing on the record of this review a Philippine financial statement. With respect to labor, Weihai provided alternative Thai data. Consequently, the petitioner states the labor data issue is not a reason to select the Philippines.

The petitioner distinguishes this review from *Activated Carbon*. There, according to the petitioner, both Thailand and the Philippines were significant producers of identical or comparable merchandise whereas in this review Thailand is a significant producer and the Philippines is not. Moreover, unlike activated carbon, which is a simple product according to the petitioner, diamond sawblades are complex products with more than two dozen FOPs for direct materials and more than two dozen packing material factors.

Department's Position: For the final results, we continue to select Thailand as the primary surrogate country. Section 773(c)(4) of the Act requires that the Department value FOPs, to the extent possible, "in one or more market economy countries that are (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise." Importantly, the Act does not define the phrase "significant producer."[36] Legislative history suggests that the Department may consider a country to qualify as a "significant producer" if, among other things, it is a "net exporter" of identical or comparable merchandise.[37] Thailand is the most appropriate surrogate country based on information on the record of this review and the Department's practice in selecting surrogate countries in NME reviews.

The merchandise described under HTS 8202.39 ("Circular Saw Blades Of Base Metal With Working Part Of Material Other Than Steel, And Parts") is identical or comparable to the merchandise covered by this review. We analyzed exports under HTS 8202.39 from the seven countries identified as economically comparable to the PRC. Unlike in *Activated Carbon*, the export data we obtained from GTA under HTS 8202.39 (an HTS category which is explicitly

[36] *See* section 773(c)(4)(B) of the Act; *accord* Policy Bulletin 04.1.
[37] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590, 1988 U.S.C.C.A.N. 1547, 1623 (1988).

listed in the scope of the order) clearly show that Thailand is a significant producer of comparable merchandise based on exports and net exports of comparable merchandise.[38] By contrast, the Philippines had no exports under HTS 8202.39.[39] Therefore, while the Philippines is at a level of economic development comparable to that of the PRC, thereby passing the first prong of the surrogate country selection analysis, it fails to pass the second prong because it is not a significant producer of comparable merchandise.

In *Activated Carbon*, we stated that "the fact that a country is not a net exporter of a particular product, in value terms, does not necessarily mean that the country is not a significant producer of that good."[40] In other words, a country does not have to be a net exporter to be a significant producer of comparable merchandise, but there must be an indication that it produces comparable merchandise using information such as official domestic production data, exports or net exports information. There is no such information on the record demonstrating that the Philippines is a significant producer of comparable merchandise.

Unlike in *Fish Fillets*, where we used non-scope HTS categories to identify significant producers of comparable merchandise, the HTS category pertaining to subject merchandise can reasonably be used here to identify producers of comparable merchandise. Moreover, the four-digit categories suggested by Weihai, 8202 and 6804, are broad and including non-comparable merchandise. For example, under HTS 8202, HTS 8202.10 covers "handsaws and parts thereof (except blades) of base metal" and HTS 8202.99 covers "saw blades nesoi and parts of saw blades nesoi, of base metal." Additionally, for HTS 6804.21, which is part of the scope description, the Philippines exported nothing. All other products categorized under HTS 6804 are "millstones, grinding wheels and the like (no frameworks), for grinding, sharpening etc., and parts thereof, of natural stone, abrasives and ceramics." Thus, using broader, less specific, HTS codes such as 8209 and 6804 is unnecessary because we have statistics that conform to the subject merchandise and, further, their use would potentially distort our identification of significant producers.

Moreover, we disagree with Weihai's assertion that the financial statements from Trigger Co. demonstrate significant production of comparable merchandise in the Philippines. These financial statements do not show the quantity of the comparable merchandise the company sold and it is our practice to rely on quantity rather than value in determining whether there is significant production.[41] The production of comparable merchandise by one Philippine company

[38] *Id.*
[39] *Id.*
[40] *See Certain Activated Carbon From the People's Republic of China; 2010-2011: Final Results of Antidumping Duty Administrative Review*, 77 FR 67337 (November 9, 2012), and accompanying I&D Memo at Comment 1.
[41] *Id.* ("{w}e prefer to consider quantity, rather than value, in determining whether a country is a significant producer."); s*ee also Certain Preserved Mushrooms From the People's Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Final Results and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004), and accompanying I&D Memo at Comment 8 ("Contrary to Primera Harvest's claim that Flex Foods is not a significant producer of the subject merchandise based on sale value data contained in Flex Foods' 2002-2003 financial report, we do not consider the sales value the most important factor when determining whether a company is a significant producer of the subject merchandise. Rather, we find that the production quantity should be the determining factor in such an analysis.").

does not indicate that the Philippines, as a country, is a significant producer of comparable merchandise.

As described above, we have determined to select Thailand as the primary surrogate country. Thailand is at a level of economic development comparable to the PRC and is a significant producer of merchandise comparable to subject merchandise. Further, given the overall availability and quality of Thai data for valuing FOPs (*e.g.*, Thailand provides more specific GTA data to value certain primary inputs), we find that Thailand is the best choice in this segment of the proceeding for our primary surrogate country. Conversely, we have determined that the Philippines is not a significant producer of comparable merchandise, although the only useable financial statements on the record are from the Philippines. While our preference remains to value factors in a single surrogate country when possible, our decision necessarily is guided by considering the best information available on the record, particularly when valuing primary inputs.[42] Accordingly, as explained above and in accordance with section 773(c)(1) of the Act, we have selected Thailand as the primary surrogate country and selected the only set of useable financial statements on the record, which happen to be from the Philippines.

SURROGATE VALUES

Bronze Powder

Comment 7: In the *Preliminary Results*, the Department relied on HTS 7406.10 (copper powders and flakes: powders of non-lamellar structure) to value bronze powders. The petitioner argues that, because bronze is an alloy of copper and other alloying agents, it is imprecise to only rely on the price of copper to value bronze. Further, according to the petitioner, valuing bronze based only on copper undervalues bronze because the normal alloying agent for bronze is tin, which is much more expensive by weight. The petitioner recommends valuing bronze based on the composition of the bronze alloy reported by ATM Single Entity. According to the petitioner, this value is nearly 25 percent greater than the one which we used to value bronze for the *Preliminary Results*.

ATM Single entity contends that the petitioner provided no support for its assertions. ATM Single Entity argues that, in the absence of any alternative surrogate value, HTS 7406.10 is the best source on the record for valuing bronze powder. Moreover, ATM Single Entity claims, CBP ruling N196539 dated March 26, 2012 (CBP ruling) found bronze powder is classifiable under HTS 7406.

Department's Position: The HTS headnotes to Section XV, "Base metals and articles of base metals" (which includes Chapter 74 "Copper and articles thereof," and Chapter 80 "Tin and articles thereof,")[43] state at item 5(a) that "{a}n alloy of base metals is to be classified as an alloy of the metal which predominates by weight over each of the other metals."[44] In this case, copper

[42] *See High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012), and accompanying I&D Memo at Comments I and II.
[43] *See, e.g.*, http://hts.usitc.gov/
[44] Further, Item 5(c) states that "{i}n this section the term "alloys" includes sintered mixtures of metal powders,

predominates over tin and, therefore, bronzes are classified as articles of copper. Consequently, we have continued to use HTS 7406.10 as our basis to value bronze powders for the final results of this review.

Cores

Comment 8: For the *Preliminary Results*, the Department calculated the surrogate values for cores Weihai purchased from NME suppliers by applying multipliers to the surrogate values for the different types of steel corresponding to the various cores used by Weihai. The Department calculated the multiplier as the percentage difference between the prices of the steel and cores purchased by Weihai from market economy suppliers. Weihai opposed the use of this methodology while the petitioner supported this methodology.

We stated in our post-preliminary analysis memorandum our intention to use the methodology we used for the final results of the previous review, *i.e.*, using Weihai's FOPs for self-produced cores as the basis for also valuing the cores Weihai purchased from other NME suppliers, and invited interested parties to comment.

The petitioner states that the Department should either (1) release the recalculation of the surrogate values for cores Weihai purchased from NME suppliers or (2) continue using the methodology the Department applied for the *Preliminary Results*. The petitioner argues that the Department's post-preliminary analysis does not provide (1) further descriptions of changes to its methodology, (2) any reasons for change, (3) any description of the effects of the change, and (4) disclosure materials with changes to the methodology. The petitioner states that, because the methodology in the *Preliminary Results* relies on the difference between market economy purchase prices and the value of Weihai's own steel input, it represents a superior choice over a surrogate methodology and accurately captures the conversion costs for Weihai's cores.

Citing *Writing Instrument Mfrs. Ass'n, Pencil Section v. United States*, 984 F. Supp. 629, 637 (CIT 1997), Weihai argues that calculating the most accurate dumping margins possible remains "the paramount objective of the statute." Weihai contends that the Department's post-preliminary methodology is more accurate because it is based on the company's FOP data for steel, labor, and energy actually used to produce such cores. Weihai asserts further that, the Department's post-preliminary methodology is more consistent with Court precedent because it does not rely upon the less accurate assumptions inherent in the methodology used in the *Preliminary Results*.

Department's Position: Because there is no GTA data for cores and Weihai did not purchase meaningful quantities of cores from market economy countries,[45] we needed an alternative method to value the cores that Weihai purchased from NME suppliers. Consistent with the prior review of this order, we are using Weihai's reported FOPs for self-produced cores.[46] This

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heterogeneous intimate mixtures obtained by melting (other than cements) and intermetallic compounds.

[45] *See Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717-18 (October 19, 2006) (*Antidumping Methodologies*).

[46] *See Final Results AR1*, and accompanying I&D Memo at Comment 11.

methodology is based on Weihai's NME experience and, therefore, better reflects Weihai's experience of purchasing cores from NME suppliers than the methodology we used in the *Preliminary Results*.

Our purpose of stating in the post-preliminary analysis our intent to change the methodology for the valuation of cores was to provide an opportunity for interested parties to comment on our intended methodology, not our calculations using the intended methodology, for the final results. We described the intended methodology, and cited to the additional details provided in the final results of the previous administrative review.[47] Thus, parties had notice and opportunity to comment on the intended changes.

Diamond Powder

Comment 9: In the *Preliminary Results*, the Department calculated the surrogate value for diamond powder based on the GTA statistics for HTS code 7105.10.00. Weihai argues that the Department should instead use the domestic Thai data it submitted, *i.e.*, prices issued by a Thai diamond dust producer in response to an independent, third party's commercial inquiry. Weihai asserts that these prices are (1) exclusive of duties and taxes, and (2) include 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 Thai price data even though they are not contemporaneous with the POR. In the alternative, Weihai also urges the Department to use Indian domestic data that it placed on the record of this review.

The petitioner lists several reasons to reject Weihai's arguments. The petitioner contends that Weihai did not identify any flaws in the surrogate value for diamond powder that the Department used in the *Preliminary Results*. The petitioner explains that the Department relied on the same HTS code to value diamond powder in the LTFV investigation and in the previous review. According to the petitioner, the Department rejected similar arguments made by Weihai in the previous review because (1) the Department prefers to use "country-wide information such as government import statistics to information from a single source" and "industry-wide values to values of a single producer because industry-wide values better represent prices of all producers in the surrogate country," and (2) Weihai did not demonstrate that the domestic diamond powder prices are "representative of the range of prices Weihai paid to purchase diamond powder with various specifications." The petitioner argues that these two reasons apply to Weihai's assertions in this review. The petitioner reiterates that the Thai domestic price data are not contemporaneous with the POR. Regarding use of the Indian price quote, the petitioner points out that India is not a potential surrogate country listed in the Memorandum from Carole Showers to Susan Kuhbach, dated January 6, 2012, and entitled "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China" (Surrogate Country Memorandum).

Department's Position: For the final results, we have continued to calculate the surrogate value for diamond powder based on the GTA statistics for HTS code 7105.10.00 for the POR because

[47] *Id.*

(1) the data are contemporaneous with the POR and (2) the GTA statistics represent a broad-market average that is tax- and duty-exclusive.[48]

As the parties have noted, the domestic Thai price data submitted by Weihai are not contemporaneous with the POR. Moreover, 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.[49] We also prefer to value factors using prices that are broad market averages because "a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country."[50] The surrogate value Weihai recommends is from a single source, Yangkong Enterprise Co., Ltd. Thus, unlike the GTA data, the suggested values are not representative of industry-wide values or broad market averages.

In addition, Weihai did not provide specific descriptions of diamond powders that it purchased and used in the production of diamond sawblades; nor did Weihai explain how the diamond powders specifically named in the domestic Thai 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 domestic Thai diamond powder prices are representative of the types of diamond powder purchased by Weihai.

Finally, because India is not economically comparable to the PRC, we would not normally resort to Indian data as diamond powder valuation data is available from our primary surrogate country, Thailand.

Energy Inputs

Comment 10: In the *Preliminary Results*, the Department did not include ammonia, argon, and nitrogen as FOPs in the buildup of normal value. The petitioner argues that ammonia, argon, and nitrogen are process materials which are factors of production and, therefore, should have been included. According to the petitioner, Weihai's FOP database that the Department used for the *Preliminary Results* is flawed in this regard because it does not report these inputs. The petitioner suggests that the Department request Weihai to submit a revised FOP database or, in the alternative, merge the appropriate values from Weihai's original FOP database, as they are already on the record of this review.

Weihai claims that ammonia, argon, and nitrogen are not inputs for subject merchandise and, thus, not appropriately reported as FOPs. Rather, these three items are accounted for as part of overhead expenses. According to Weihai, it explained in its August 15, 2012, supplemental

[48] *See Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review*; 2010-2011, 78 FR 16651 (March 18, 2013), and accompanying I&D Memo at Section M. Sodium Bicarbonate.
[49] *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), and accompanying I&D Memo at Comment 4.
[50] *See Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Order Administrative Review*, 71 FR 34893 (June 16, 2006) (*Honey*).

response that it removed these three items from its revised FOP database because they are not inputs for subject merchandise. Weihai acknowledges, however, that the Department treated similar inputs as process materials and chemicals in the LTFV investigation and valued them separately from overhead because they were replaced often enough to be treated as direct materials.[51] Weihai further acknowledges that there is nothing on the record showing the replacement rates for these three items. Weihai states that, if the Department disagrees with Weihai's claim that these three items should not be treated as production inputs, it will submit a revised database to include these three items or, in the alternative, the Department may use the input data in the original FOP database Weihai submitted as a part of its April 20, 2012 section D response.

Department's Position: As Weihai has noted, our practice is to value "all materials that are required for a particular segment of the production process as factors except where the record indicates that the input is not replaced so regularly as to represent a direct factor rather than overhead."[52] Based on Weihai's descriptions of its use of ammonia, argon, and nitrogen,[53] we find that they are direct factors. Weihai used ammonia "for the purposes of decomposing a mixture of hydrogen and nitrogen gases in the decomposition furnace and also to stabilize the atmosphere inside the sintering furnace."[54] Sintering is part of the manufacturing process for diamond sawblades.[55] Weihai used argon to prevent a reaction of the laser and oxygen and to improve the welding ability of diamond sawblades.[56] Weihai used nitrogen to operate laser welding equipment.[57] Laser welding is also a part of the process to manufacture diamond sawblades.[58] Moreover, as Weihai has acknowledged there is no evidence showing that these inputs are not regularly replaced. Therefore, we have continued to value ammonia, argon, and nitrogen as factors separate from overhead, and have used the amounts that Weihai reported in section D of its original response.[59]

Financial Ratios

Comment 11: In the *Preliminary Results*, the Department used Trigger Co.'s financial statement to calculate the surrogate financial ratios. For the final results, Weihai urges the Department to continue using Trigger Co.'s financial statement. Weihai opposes the use of Poltava Diamond Tool's financial statement, which the petitioner placed on the record of this review after the publication of the *Preliminary Results*, because, among other reasons, it was not fully translated into English. No other parties made any comments on financial statements.

Department's Position: For the final results, we continue to use Trigger Co.'s financial statement

[51] Weihai cites *LTFV Final*, and accompanying I&D Memo at Comment 2.
[52] *See LTFV Final*, and accompanying I&D Memo at Comment 2.
[53] *Id.*; *See* Weihai's April 20, 2012, section D response, FOP database; *see also LTFV Final*, and accompanying I&D Memo at Comment 2.
[54] *See* section D of Weihai's August 15, 2012, supplemental response at 5.
[55] *See* section A of Weihai's March 25, 2012, original response at 14.
[56] *See* section D of Weihai's August 15, 2012, supplemental response at 5.
[57] *Id.*
[58] *See* section A of Weihai's March 25, 2012, original response at 14.
[59] *See* Weihai's April 20, 2012, section D response, FOP database.

to calculate the surrogate financial ratios.[60] Poltova Diamond Tool's financial statement was not fully translated into English and, therefore, is not a usable source of information.

Labor Costs

Comment 12: In the *Preliminary Results*, the Department used the labor statistics from the ILO. Weihai argues that, since the ILO has now deleted the Thai information from its website, the Department should use the NSO Data, if the Department continues to select Thailand as the surrogate country. Specifically, Weihai explains that the Department should use the labor cost data for Code 28, "Manufacture of fabricated metal products, except machinery and equipment. According to Weihai, the data are reliable because it provides labor costs specific to the subject merchandise. Citing *Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013) (*Steel Sinks*), and accompanying I&D Memo at Comment 3, Bosun concurs with Weihai's proposal.

No parties opposed the use of the NSO Data.

Department's Position: Because the labor valuation data we used for the *Preliminary Results* are no longer available on the ILO's LABORSTA website, consistent with *Steel Sinks*, we used the NSO Data to calculate the surrogate values for direct, indirect, and packing labor. The NSO data are appropriate and now the only available information on the record to value the two respondents' labor inputs. In selecting surrogate values for inputs, section 773(c)(1) of the Act directs us to use the "best available information." In determining the "best available information," we consider five factors: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.[61] The NSO data satisfied these five criteria.

Oxygen

Comment 13: Weihai claims that the GTA statistics for HTS 2804.40, which the Department used to calculate the surrogate value for oxygen, do not identify the types of oxygen covered and, thus, are not sufficiently specific to value the industrial-grade oxygen Weihai uses. Weihai recommends that the Department recalculate the surrogate value for oxygen based on the Indian financial statements of Bhoruka Gases Limited.

The petitioner contends that, since India is not a potential surrogate country in this review, the Department should not use an Indian source to recalculate the surrogate value for oxygen. The petitioner also states that, while Weihai points out the lack of specificity in the GTA statistics for HTS 2804.04, Weihai described this input as "oxygen."

[60] *See* the December 3, 2012, memorandum entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Surrogate Values for the Preliminary Results of Review" at page 7, for the reasons we used this set of financial statements.

[61] *See Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012), and accompanying I&D Memo at Comment 4.

Department's Position: For the final results, we continue to use the GTA statistics for HTS 2804.40. This value is specific to the input as Weihai reported it, namely, "oxygen."[62] Despite its assertion, Weihai did not provide any specific details on the types of oxygen it uses. For the reasons stated above in Comment 9, we have not considered using the Indian value for these final results of review.

Steel Types

Comment 14: The petitioner argues that, because Weihai provided limited descriptions of the steel it uses, the Department should recalculate the surrogate value for steel types based on the GTA statistics for HTS 7225[63] and 7226,[64] and not only HTS 7225.50[65] and 7226.92.[66] The former HTS categories include types of steel that are not cold-rolled, according to the petitioner.

Weihai claims that all the steel types it reported are cold-rolled, as they were in the LTFV investigation and in the previous review. Weihai explains that Exhibit SSD-13 of its August 15, 2012, supplemental response describes steel types 2, 3, and 4 as cold-rolled in Chinese. Weihai claims that steel type 1 is also cold-rolled and that only a negligible amount of this steel type was consumed. Weihai states that it included the Department's November 30, 2011 surrogate value memorandum for the previous review as Exhibit 3 of its May 23, 2012 surrogate value comments in order to demonstrate that steel type 1 is also cold-rolled.

Department's Position: For the final results, we continue to use the GTA statistics for HTS 7225.50 and 7226.92 to value steel types 1 and 2. (Because the quantities of steel types 3 and 4 that Weihai purchased from market-economy suppliers were meaningful, *i.e.*, 33 percent or more of the total purchases of cores,[67] we did not calculate surrogate values for steel types 3 and 4.)
Information on the record indicates that Weihai's reported steel types are all cold-rolled.[68]

Comment 15: In the *Preliminary Results*, the Department valued steel types 1 and 2 using GTA statistics for HTS codes 7225.50 and 7226.92. Weihai argues that the information on the record of this review does not support the use of the GTA statistics for imports into Thailand under HTS 7226.92 because the value is aberrational. In support, Weihai points to the difference in the values for Thai imports under HTS 7225.50 and 7226.92. According to Weihai, the AUVs per kilogram of imports under these two HTS codes are US$1.05 (31.87 Baht) and US$ 4.25 (128.81

[62] *See* Weihai's April 18, 2012, section D response at D-20.
[63] Commodity: 7225, Flat-Rolled Alloy Steel (Other Than Stainless) Products, 600 Mm (23.6 In.) Or More Wide
[64] Commodity: 7226, Flat-Rolled Alloy Steel (Other Than Stainless) Products, Less Than 600 Mm (23.6 In.) Wide
[65] Commodity: 722550, Flat-Rolled Alloy Steel (Other Than Stainless) Products, 600 Mm Or More Wide, Cold-Rolled, Nesoi
[66] Commodity: 722692, Flat-Rolled Alloy Steel (Other Than Stainless) Products, Under 600 Mm Wide, Cold-Rolled, Nesoi
[67] *See Antidumping Methodologies*, 71 FR at 61717-18.
[68] *See* Weihai's August 15, 2012, supplemental response, Exhibit SSD-13. *See* also the memorandum to the File entitled "Antidumping Duty Administrative Review on Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Analysis Memorandum for Weihai Xiangguang Mechanical Industrial Co., Ltd." (Weihai final analysis memorandum) dated concurrently with this memorandum and Weihai's May 23, 2012, submission at cover pages 1-2 and Exhibits 1 and 3.

Baht) for Thailand, while in Indonesia and the Philippines the differences between them are much smaller: US$ 0.99 and US$1.45 for Indonesia, and US$ 0.82 and US$ 1.16 for the Philippines. Weihai claims that no information on the record explains how an internationally traded commodity such as steel could be priced so differently between these countries, especially given that the only difference between the two HTS categories is the width of the steel. According to Weihai, domestic steel prices in Thailand for October 2011 published by the Iron & Steel Institute of Thailand (ISIT data) ranged between US$ 0.91 and US$ 0.95. Weihai argues that these values are consistent with the values for Thailand under HTS 7225.50 and with data for Indonesia and the Philippines under both HTS codes.

Weihai requests that the Department recalculate the surrogate values for steel using the ISIT data alone or in combination with the GTA data for Thai HTS 7225.50. In the alternative, Weihai suggests, the Department should calculate a weighted-average surrogate value for steel based on the Thai GTA statistics for both HTS codes. According to Weihai, for the *Preliminary Results*, the Department valued nearly all of the material inputs based on the GTA statistics reported at the level of 10-digit HTS codes covered under the respective six-digit HTS codes. Citing, *e.g.*, *Gleason Industrial Products, Inc.*, 32 C.I.T. at 386-90, Weihai claims that the use of a weighted-average surrogate value is consistent with the Department's practice and supported by the CIT. Weihai states that US$ 1.05 for HTS 7225.50 is based on import quantities of 42,813 metric tons whereas US$ 4.25 for HTS 7226.92 is based on import quantities of 1,904 metric tons, which is 22 times less than the quantity for HTS 7225.50. According to Weihai, the distortion caused by the simple average of the two surrogate values can be fixed by calculating a weighted-average of the two surrogate values.

The petitioner argues that a comparison of the GTA statistics for HTS 7226.92 among all potential surrogate countries, not just Indonesia, the Philippines, and Thailand as Weihai suggests, would not support Weihai's assertion that the use of Thai GTA statistics for HTS 7226.92 is unreasonable. Citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010), and accompanying I&D Memo at Comment 2, the petitioner contends that, while the Thai value for HTS 7226.92 may be higher than the AUV for Indonesia and the Philippines, this is not a disqualifying factor.

Citing *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*), and accompanying I&D Memo at Comment 12, the petitioner contends that the Department found a surrogate value aberrational only when (1) the import quantities during the POR were only one percent of the quantities imported during the past review period, (2) the AUV was between 1,000 and 2,000 percent higher than that of imports from any other country under consideration, and (3) the AUV for the same country was substantially different from the AUV from a previous period. In this review, according to the petitioner, (1) the quantity of imports into Thailand under this HTS code is equivalent to that imported in prior years, (2) the AUV of 128.84 Baht/kg is somewhat higher than in prior years but not markedly so, and (3) the three years of data show the price rises from year to year at an even rate.

The petitioner explains that the AUV for steel imported under HTS 7226.92 is higher than the

AUV for steel imported under HTS 7225.50 because steel under HTS 7226.92 is subject to a slitting process, which adds value to make the steel's width less than 600 millimeters. The petitioner questions the reliability of the ISIT data because they cover only October 2011 and do not provide any information regarding the chemistry, grade, or size of the steel that serves as the basis for its pricing. The petitioner contends that the ISIT data do not provide a meaningful comparison to the GTA statistics. Citing, *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) (*Multilayered Wood Flooring*), and accompanying I&D Memo at Comment 20, the petitioner explains that simple averaging is consistent with the Department's established practice and that Weihai did not provide any information on the relative amounts of Weihai's purchases of steel types 1 and 2 that are classifiable in each HTS code in order to justify its request for weight-averaging the surrogate value.

Department's Position: For the final results, we continue to use a simple average of the GTA statistics for HTS 7225.50 and 7226.92 to value steel types 1 and 2. Primarily, because Weihai has not submitted any information demonstrating the relative proportions of steel under HTS 7225.50 and 7226.92 that it used, we find it appropriate to continue to use the simple average of the GTA statistics for these two HTS codes.[69]

Moreover, the circumstances here are not like those in *Citric Acid*. First, the quantity of imports into Thailand under HTS 7226.92 is similar to the amount imported in prior years.[70] Second, the AUV of 128.84 Baht/kg for HTS 7226.92 is only slightly higher than in prior years.[71] Third, the three years of data show yearly price increases at an even rate.[72] Moreover, according to the GTA statistics, the AUVs under HTS 7226.92 for other potential surrogate countries (*i.e.*, Colombia, Peru, South Africa, and Ukraine) are similar to the Thai AUV at issue. A comparison of the GTA statistics for the difference between HTS 7226.50 and 7726.92 for all potential surrogate countries demonstrates that the average difference is consistent with the difference found between these categories in Thailand. In contrast, the difference between these two categories in Indonesia and the Philippines is relatively small.[73] The difference of AUVs between the steel under HTS 7225.50 and the steel under HTS 7226.92 does not indicate that the AUVs for the steel under HTS 7226.92 are aberrational. Therefore, we do not agree with Weihai's claim that the Thai AUV at issue is aberrational. Finally, we are not using the ISIT data because it covers only October 2011, a single month in the POR and the Department has the data that covers the entire POR.

Truck Freight

Comment 16: Weihai argues that, if the Department continues to select Thailand as the primary surrogate country, then it should recalculate the surrogate value for inland truck freight based on

[69] *See Multilayered Wood Flooring*, and accompanying I&D Memo at Comment 20.
[70] *See* the June 10, 2013 memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Surrogate Values for the Final Results of Review" (Final Surrogate Value Memo) at Exhibit 4.
[71] *Id.*
[72] *Id.*
[73] *Id.*

the June 2010 Dxplace data at http://www.dxplace.com/price/list (the 2010 data). Weihai explains that the 2010 data show the cost of road transportation by truck from Bangkok to different cities throughout Thailand in June 2010. Weihai asserts that the 2010 data represent a broader market average than the August 2005 inland truck freight data from the Thailand Board of Investment's 2006 publication, Costs of Doing Business in Thailand" (the 2005 data). According to Weihai, the 2010 data report truck freight transportations costs between cities all over Thailand whereas the 2005 data covers only five Thai cities. Moreover, Weihai explains, the 2010 data are more contemporaneous with the POR than the 2005 data. Finally, Weihai claims that the 2010 data provide the actual distance traveled between any two cities and the overall freight charged whereas the 2005 data provide only the amount charged for transportation of cargo from Bangkok to five different cities in one type of truck only in August 2005 without providing estimated distance s traveled. Citing *High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012), Weihai argues that the 2010 data, which take into consideration the distance traveled, is superior to the 2005 data and that the use of the 2010 data is consistent with the Department's practice.

The petitioner contends that the Department should continue to use the 2005 data because the 2010 data have several flaws. The petitioner explains that the 2010 data are denominated in United Kingdom pounds and its pricing is denoted as transportation costs by types of car without indicating whether the prices are for passenger loads, truck loads, empty truck loads, or some other type of load and the types of vehicles used. According to the petitioner, the 2010 data do not state whether the prices include taxes and refer to a base weight exclusive of items like fuel surcharges or any charge that would be incurred in moving goods or passengers.

In determining what constitutes the best available information for valuing a factor, the Department considers whether each potential surrogate value (1) is publicly available, (2) is contemporaneous with the POR, (3) represents a broad market average covering a range of prices, (4) is from an approved surrogate country, is specific to the input in question, and is tax exclusive.

The petitioner claims that Weihai does not reveal the source of the 2010 data (*e.g.*, whether they were obtained from a single entity or whether they are from a broad-based market survey). The petitioner also claims that Weihai does not indicate whether the values in the 2010 data refer to the full weight of vehicle or the maximum theoretical carrying capacity of the vehicle. The petitioner points out that the large portions of Exhibit 2B of Weihai's January 29, 2013, post-preliminary surrogate value submission, which deals with truck types, are not translated.

The petitioner requests that the Department continue to use the 2005 data because they were obtained and authenticated by the Thailand Board of Investment, which is under the auspices of the Thai Ministry of Industry. According to the petitioner, the data provide specific information concerning prices for shipments of truck-loaded goods, list the maximum cargo load for the truck, and are based on shipments from Bangkok to different cities. Citing, *e.g.*, *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 accompanying I&D Memo at Comment 3, the petitioner explains that the Department prefers official government source data

even when alternative non-official data is available.

Department's Position: For the final results, we compared the three options on the record to determine which dataset provided the best available information. We did not use the 2010 data submitted by Weihai because they were not fully translated. We also did not use the 2005 data because they were not contemporaneous with the POR. Instead, we find that Doing Business Thailand 2012 (Doing Business) is the best source for valuing truck freight charges for the final results.[74] The value for truck freight in Doing Business is publicly available and contemporaneous with the POR because the data in Doing Business is current as of June 1, 2011, which is within the POR.[75]

We prefer to value factors using prices that are broad market averages because "a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country."[76] Doing Business contains data "collected from local freight forwarders, shipping lines, customs brokers, port officials and banks."[77] Thus, although Doing Business provides freight costs solely for the distance between the main city and the port, it reflects the freight costs of multiple vendors and users (*i.e.*, shipping lines, customs brokers, port officials and banks) and is a broad market average.[78]

The Philippine Data

Comment 17: Weihai argues that the Department should recalculate the surrogate values for brokerage and handling, electricity, labor, truck freight, and other material and non-material inputs using the data from the Philippines.

Department's Position: Pursuant to 19 CFR 351.408(c)(2), we normally will value all factors in a single surrogate country if the data are available to do so. The CIT has found this approach reasonable because "deriving the surrogate data from one surrogate country limits the amount of distortion introduced into {the Department's} calculations because a producer would be more likely to purchase a product available in" its domestic market.[79] Because we have selected Thailand as the primary surrogate country for the final results and because we are able to find Thai data to value all the FOPs named by Weihai, we continue to use Thai data for these final results.

U.S. REPACKING EXPENSE

Comment 18: Citing, *e.g.*, Import Administration Policy Bulletin: Calculation of Profit for

[74] *See Sodium Hexametaphosphate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012), and accompanying I&D Memo at Comment IV.B.
[75] *See* Final Surrogate Value Memo at Exhibit 2.
[76] *See Honey*.
[77] *See* Final Surrogate Value Memo at Exhibit 2.
[78] *See Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 2366 (January 11, 2013), and accompanying I&D Memo at Comment 3.
[79] *See Clearon Corporation and Occidental Chemical Corp. v. United States*, Slip Op. 13-22, at 12-14 (CIT Feb. 20, 2013).

Constructed Export Price Transactions dated September 4, 1997 (Policy Bulletin 97.1) and *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006) (*LTFV Final – DSBs Korea*), and accompanying I&D Memo at Comment 4, Weihai requests that the Department treat U.S. repacking expenses as movement expenses instead of CEP selling expenses for purposes of computing CEP profit.

Department's Position: Consistent with Policy Bulletin 97.1, our practice is to exclude movement expenses from CEP selling expenses and in the calculating CEP profit. However, we treat U.S. repacking expenses as a direct selling expense, not a movement expense, when the information on the record indicates that the expenses have no relationship to the shipment of subject merchandise.[80] In particular, in accordance with section 772(d)(1)(B) of the Act, we classify U.S. repacking expenses as a direct selling expense when these expenses "result from, and bear a direct relationship to, the sale."[81]

In *LTFV Final – DSBs Korea*, we did treat Ehwa's repacking as movement expenses but, based on the facts of the record in this review, we find that Weihai's repacking expenses are not movement expenses because they bear a direct relationship to particular sales and customers. It is our well established and upheld practice to base our decisions on the record of the administrative proceeding before us in each review.[82] In its response to our original questionnaire in this review, Weihai reported that its U.S. sales affiliate General Tool, Inc., "repacks some of the sawblades into individual consumer packages *before* shipping (emphasis added)."[83] Unlike bulk packing or shipping, this manner of repacking represents a direct relationship to particular sales or customers. Thus, we do not have any information on the record of this review to deviate from our normal practice of classifying U.S. repacking expenses as direct selling expenses. Therefore, we find that Weihai does not incur any movement expense specified in section 772(c)(2)(A) of the Act with its repacking activities in the United States.[84]

[80] *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2009-2010*, 78 FR 11818 (February 20, 2013) (*DSBs Korea Final*), and accompanying I&D Memo at Comment 5.

[81] *See, e.g., Certain Orange Juice From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination*, 77 FR 21724 (April 11, 2012), unchanged in *Certain Orange Juice From Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012).

[82] *See, e.g., Stainless Steel Sheet and Strip in Coils from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006), and accompanying I&D Memo at Comment ("each administrative review of the order represents a separate administrative proceeding and stands on its own."); *Handong Huarong Mach. Co. v. United States*, 29 C.I.T. 484, 491 (2005) ("As Commerce points out 'each administrative review is a separate segment of proceedings with its own unique facts. Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews.").

[83] *See* Weihai's April 18, 2012 section C response at 44.

[84] *See DSBs Korea Final*, and accompanying I&D Memo at Comment 5.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are 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

10 JUNE 2017
(Date)