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June 18, 2014

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

FROM: Christian Marsh
Deputy Assistant Secretary
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, 2011, through October 31, 2012

Summary

We 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, 2011, through October 31, 2012. As a result of our analysis, we 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.

Background

On December 20, 2013, 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 18, 2014.[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'

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[1] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012*, 78 FR 77098 (December 20, 2013) (*Preliminary Results*), and the accompanying Preliminary Decision Memorandum.
[2] *See* the memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Reviews" dated April 1, 2014.
[3] *See* the case briefs filed by various parties on March 6, 2014. *See also* Weihai's revised case brief dated April 11, 2014.
[4] *See* the rebuttal briefs filed by various parties on March 11, 2014. *See also* the revised rebuttal briefs filed by the

requests, we held a hearing on April 23, 2014.

Company Abbreviations

AT&M – Advanced Technology & Materials Co., Ltd.
ATMI – AT&M International Trading Co., Ltd
ATM Single Entity – AT&M, 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.
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.
The petitioner – Diamond Sawblades Manufacturers Coalition
Weihai – Weihai Xiangguang Mechanical Industrial Co., Ltd.

Other Abbreviations

A-A – average-to-average
A-T – average-to-transaction
AUV – average unit value
CAFC – Court of Appeals for the Federal Circuit
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
CONNUM – control number
CVD – countervailing duty
Doing Business – Doing Business 2013 – Trading Across Borders in Thailand
FOPs – factors of production
Georgetown Memorandum – the Department's memorandum to Assistant Secretary David M. Spooner entitled "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion Are Applicable to China's Present-Day Economy," dated March 29, 2007
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
LTFV – less than fair value
NME – non-market economy

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petitioner and Weihai on April 10, 2014, and April 7, 2014, respectively.

POR – period of review
SRA- separate rate application
SRC – separate rate certification
SOE – State-Owned Enterprise
The Act – The Tariff Act of 1930, as amended
VAT – value-added tax

Diamond Sawblades Administrative Determinations and Results

LTFV Final – Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances, 71 FR 29303 (May 22, 2006).

Second Remand – Final Results of Redetermination dated May 6, 2013, Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China in *Advanced Technology & Materials Co., Ltd. v. United States,* Consol. Court No. 09-00511, Slip op. 12-147 (CIT 2012), available at http://enforcement.trade.gov/remands/12-147.pdf.

Diamond Sawblades 1 – 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).

Diamond Sawblades 2 – Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 36166 (June 17, 2013), as amended in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 42930 (July 18, 2013).

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.[5]

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 country and, therefore, we calculated normal value in accordance with section 773(c) of the Act. We selected Thailand as the primary surrogate country, pursuant to 19 CFR 351.408(c)(2), because it is at the level of economic development of the PRC, because it is a significant producer of merchandise comparable to subject merchandise and because of the availability and quality of Thai data for valuing FOPs.[6] For the final results of review, we continued to treat the PRC as an NME country and have continued to use Thailand as the primary surrogate country.

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.[7] 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.[8]

In the *Preliminary Results*, we found that, in addition to two of 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. Based on

[5] *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011).
[6] *See Preliminary Results* and the accompanying Preliminary Decision Memorandum at pages 10-12.
[7] *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).
[8] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 76 FR 82268 (December 30, 2011).

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. Consistent with that practice and the *Preliminary Results*, we have assigned the weighted average of the two selected respondents' rates based on their ranged U.S. sales values. The two selected respondents for which we calculated individual margins in this review are Bosun and Weihai. For the final results of this review, because we changed the dumping margins for Bosun and Weihai, the rate assigned to the eligible non-selected separate rate companies likewise changes, to 4.83 percent.

Discussion of the Issues

Separate Rate

ATM Single Entity – Separate Rate Status

Comment 1: ATM Single Entity argues that the Department's preliminary denial of the separate rate status for ATM Single Entity based on *Advanced Technology & Material Co., Ltd. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013) (*Advanced Technology & Material Co., Ltd.*) should be reversed. The petitioner disagrees and argues that the Department should maintain its decision to deny ATM Single Entity a separate rate.

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, a practice which is described 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.[9]

In determining *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.[10]

With respect to the issue of *de jure* control, for the final results of this review, our analysis of the

[9] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991).
[10] *See Preliminary Result* and the accompanying Preliminary Decision Memorandum at 6.

relevant PRC laws is unchanged from the *Preliminary Results* and the *Second Remand*.[11] We continue to find that the PRC laws and regulations including the Interim Regulations, the Company Law, and the Code of Corporate Governance provide a framework for various corporate entities to form and operate at some distance from the central government, especially with respect to day-to day export activities.[12] Consistent with the Court's analysis of these laws in the *Second Remand*, we continue to find that these PRC laws and regulations are not dispositive with regard to control and that the "corporate forms and the oversight permitted by these laws and regulations create the potential for (but, in and of themselves, do not demonstrate the clear existence of) government control to be passed to the firm level."[13]

Based on the evidence on the record of this proceeding, there is no meaningful difference between the circumstances at issue in the LTFV investigation and this review with respect to board memberships, directorships, and ownership for SASAC, CISRI, and the members of the ATM Single Entity.[14] Therefore, the record in this case provides no basis for us to depart from the conclusion we reached in the *Second Remand*, consistent with the court's opinion in *Advanced Tech. & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) and *Advanced Technology & Material Co. v. United States*, 938 F. Supp 2d 1342 (CIT 2013). Here, as in the *Second Remand*, the PRC government's control passes from SASAC to CISRI to AT&M because SASAC owns 100 percent of CISRI and CISRI's ownership stake in AT&M is sufficient such that it nominated its own board members to sit on the AT&M board and otherwise was the only entity able to nominate independent board members.[15] For these reasons, CISRI had the capacity to influence AT&M's affairs (and therefore the affairs of ATM Single Entity). Therefore, as we explained in the *Second Remand*, pursuant to the CIT's analysis and given that CISRI was wholly-owned by SASAC, government control had the potential to pass from SASAC through to the AT&M Entity via CISRI and the question turns to whether this potential has been exercised. The record here demonstrates there is no meaningful difference between the investigation and the instant review with respect to the interlocking board memberships and senior management of CISRI and members of ATM Single Entity.[16] Business proprietary details regarding the nature of the relationship between CISRI and ATM Single Entity are explained in a separate memorandum.[17] As explained therein, the record evidence

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[11] *See Second Redetermination upon Remand (Second Remand)*, CIT Ct. No. 09-511, Dkt. No. 148 (May 6, 2013), affirmed by *Advanced Tech. & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (Ct. Int'l Trade 2013).
[12] *See Second Remand* at 5.
[13] *See Second Remand* at 7.
[14] Compare the situation in the investigation as described in the *Second Remand* at 8-9 with the situation in the instant review described in the memorandum to the file entitled, "Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Analysis Memorandum for ATM Single Entity" dated concurrently with this memorandum at 1-2.
[15] *See* petitioner's April 19, 2013, submission of factual information at Exhibit 13. *See* also, ATM Single Entity's August 9, 2013, supplemental questionnaire response at Exhibit SA-7 (AT&M Articles of Association, Articles 85, 101, and 199), Exhibit SC-19 (SASAC owns 100 percent of CISRI) and the Memorandum to the File from Michael Romani, dated December 16, 2013, placing the December 2, 2012 ATM Single Entity Collapsing Memorandum on the record at 3-4.
[16] *See Second Remand* at 8-9. *See also* ATM Single Entity's August 9, 2013, supplemental questionnaire response at Exhibit SA-3 and SA-4.
[17] *See* the memorandum to the File entitled "Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China: ATM Single Entity Final Analysis Memo" (ATM Single Entity Memo) dated concurrently with this memorandum.

demonstrates that AT&M did not choose its management autonomously. Based on these facts, we find the existence of the *de facto* control within ATM Single Entity and deny the separate rate status for ATM Single Entity.

ATM Single Entity – Cash Deposit Rate

Comment 2: ATM Single Entity argues that the revocation of the order in part for ATM Single Entity pursuant to the *Section 129 Final Determination*[18] prevents the Department from collecting cash deposits from ATM Single Entity after the publication of the notice of the final results of this review. ATM Single Entity claims that, given the revocation of the order in part, and that the petitioner's appeal of *Section 129 Final Determination* at the CIT has been stayed pending the completion of the CAFC appeal of the separate rate issue, the Department should instruct CBP not to collect cash deposits from ATM Single Entity. ATM Single Entity suggests that the Department follow the example in *Diamond Sawblades and Parts Thereof From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011: Amended Final Results*, 78 FR 46569 (August 1, 2013).

The petitioner argues that the suspension of the entries of subject merchandise exported by ATM Single Entity must continue to be in place pursuant to *Advanced Technology & Materials Co., Ltd. v. United States*, Consol. Court No. 09-00511, slip op. 2013-42 (Ct. Int'l Trade Mar. 28, 2013) (*Advanced Technology & Materials Co., Ltd. – Injunction Order*), *affirmed* in *Advanced Technology & Materials Co., Ltd. v. United States*, Court No. 13-1305 (Fed. Cir. Nov. 13, 2013). The petitioner also suggests that the Department notify CBP of the situation such that it can ensure the adequacy of the bonding requirement and/or take any other appropriate actions.

Department's Position: In accordance with the *Section 129 Final Determination*, the Department announced it would instruct CBP "to discontinue the collection of cash deposits for estimated antidumping duties for AT&M."[19] However, because of *Advanced Technology & Materials Co., Ltd. – Injunction Order*, the Department also explained that "future entries of such merchandise are subject to suspension of liquidation at the cash deposit rate of zero. Subsequent action will be consistent with the final court decision."[20] Thus, while we continue to be enjoined from ordering the lifting of suspension of liquidation regarding incoming entries, future entries of such merchandise will continue to be subject to suspension of liquidation at the cash deposit rate of zero, consistent with the *Section 129 Determination*, and we will instruct CBP accordingly.

ATM Single Entity – Whether AFA Is Appropriate

Comment 3: ATM Single Entity opposes the Department's decision to assign a so-called "AFA rate" to it by assigning the PRC entity rate. ATM Single Entity argues that, because it cooperated to the best of its ability to the Department's requests for information, there is no basis

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[18] *See Certain Frozen Warmwater Shrimp From the People's Republic of China and Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958 (March 28, 2013) (*Section 129 Final Determination*) (revoking the order with respect to AT&M, for entries made on or after March 22, 2013).

[19] *See Section 129 Final Determination*.

[20] *Id.* 78 FR at 18960, n.20.

for assigning an AFA rate to it for the final results of this review. The petitioner argues that the Department's denial of the separate rate status for ATM Single Entity is not an application of the AFA rate. The petitioner states that the Department should assign the PRC-wide rate to the PRC-wide entity, which includes ATM Single Entity, because it has not established its independence from the PRC government.

Department's Position: For the reasons stated in the comments above, we denied the separate rate status for ATM Single Entity. Accordingly, we have assigned the ATM Single Entity the PRC-wide rate. As explained above, our decision with respect to ATM Single Entity is not based on AFA, but rather is based on the fact that ATM Single Entity was not able to rebut the presumption that it is under the control of the PRC government with respect to its export activities. Therefore, the PRC-wide rate we assigned to the PRC-wide entity, including ATM Single Entity, is not an AFA rate.

ATM Single Entity – Presumption of Government Control

Comment 4: ATM Single Entity argues that the Department's presumption of government control and separate rates practice is unreasonable and that the Department may not presume that a Soviet-style state-controlled communist economic system exists for antidumping duty purposes and does not exist for countervailing duty purposes in the PRC. ATM Single Entity explains that the Department found in the Georgetown Memorandum that the "current nature of China's economy does not" give rise to the same issues litigated in *Georgetown Steel Corp. v. United States*, 801 F.2d 1308, 1310 (Fed. Cir. 1986) (*Georgetown Steel*), many of which involved "Soviet-style economies" essentially under a single central authority or central control that would result in the presumption of state ownership.

The petitioner argues that, since the issuance of the Georgetown Memorandum, the Department found even in CVD cases that the large sectors of the PRC economy function as government authorities. The petitioner also argues that, if the Department changes the presumption of the state control over the economy to the presumption of the absence of the state control over the economy, no party will rebut such presumption to its disadvantage.

Department's Position: As the Department explained in the previous review of DSBs, 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*. The Department's analysis in the Georgetown Memorandum 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."[21] In other words, the government is the entire economy for all intents and purposes. Given the reforms discussed in the Georgetown Memorandum, the Department found that a single central authority no longer comprises the

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

PRC's economy 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.

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

Firms that do not rebut the presumption are assessed a single antidumping duty rate, *i.e.*, the NME-Entity rate.[22] 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).[23]

<u>Danyang Tsunda – Late Separate Rate Application</u>

<u>Comment 5:</u> Ox Group requests that the Department accept the SRA filed with the Department by Danyang Tsunda on January 16, 2014, and rejected by the Department on February 18, 2014, as an untimely filed SRA. Ox Group claims that Danyang Tsunda is a *pro se* party that did not know of the petitioner's request for review of the company and the *Initiation Notice* until Ox Group later informed Danyang Tsunda of this review. Ox Group argues that the petitioner misidentified Kutak Rock as Danyang Tsunda's law firm in its review request when Kutak Rock was not at the time and currently is not counsel to Danyang Tsunda. Ox Group contends that, upon hearing about this review from Ox Group in approximately October 2013, Danyang Tsunda (1) promptly sought legal guidance on what action was possible or required to participate in this review and (2) filed its SRA on January 16, 2014. Citing, *e.g.*, *Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Final Results of Antidumping Duty Administrative Review*,

[22] *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."
[23] *See* Georgetown Memorandum at 9.

73 FR 31961 (June 5, 2008), and *Grobest & I-Mei Industrial (Vietnam) Co., Ltd. v. United States*, 815 F. Supp.2d 1342, 1365 (CIT 2012) (*Grobest*), Ox Group requests that the Department extend leniency to Danyang Tsunda because Danyang Tsunda, which it claims was never a respondent in this proceeding, took prompt action to provide accurate information to the Department. Ox Group argues that assigning the PRC-wide rate to Danyang Tsunda would be inaccurate and punitive to Danyang Tsunda's importers while serving no legitimate purpose. Ox Group states that the Department had time to review Danyang Tsunda's SRA as the Department was waiting for submissions of documents, *e.g.*, supplemental responses, with three months left for the scheduled issuance of the final results of review.

The petitioner argues that, at the time it filed its review request, Kutak Rock represented Danyang Tsunda for the first administrative review of the antidumping duty order on diamond sawblades from the PRC. As a respondent which has participated in a prior review, according to the petitioner, Danyang Tsunda had a continuing obligation to monitor the *Federal Register* for actions that affect its interests, as the CIT held in *Suntec Industries Co., Ltd. v. United States*, 951 F. Supp. 2d 1341, 1351 (CIT 2013), citing *Huaiyang Hongda Dehydrated Vegetable Co. v. United States*, 28 C.I.T. 1944, 1949 (2004). Citing, *e.g.*, *lnt'l Trading Co. v. United States*, 412 F.3d 1303, 1308 (Fed. Cir. 2005), the petitioner claims that Danyang Tsunda was notified of and knew about this review with the publication of the *Initiation Notice*.

The petitioner contends that, because Danyang Tsunda filed its SRA too late in the review (*i.e.*, 27 days after the publication of the *Preliminary Results*), the Department does not have sufficient time to review the SRA and issue supplemental questionnaires, which, if the SRA is accepted, is necessary given that it never filed an SRA in the prior segments of the proceeding. The petitioner argues that, unlike in *Grobest* in which the CIT ruled that the Department should accept an SRC that was filed 95 days after the deadline but seven months before the publication of the preliminary results, Danyang Tsunda filed its SRA for the first time in this proceeding after the *Preliminary Results* were published. The petitioner argues further that, unlike the SRC respondent in *Grobest* which received a separate rate in the investigation and participated in several prior reviews of the same proceeding, Danyang Tsunda has not submitted an SRA before. Therefore, according to the petitioner, accepting and analyzing Danyang Tsunda's SRA, issuing supplemental questionnaires to Danyang Tsunda, and allowing interested parties to comment on this SRA at this late stage would create an undue burden on the Department.

<u>Department's Position</u>: For the final results of review, we continue to treat Danyang Tsunda as a part of the PRC-wide entity and reject its untimely filed SRA.

In accordance with section 751(a) of the Act, if a request for an administrative review has been received and after publication of notice of the administrative review in the *Federal Register*, we conduct the administrative review. At the time the petitioner filed its review request for, *inter alia*, Danyang Tsunda for this administrative review, the petitioner served its review request on Kutak Rock, which was representing Danyang Tsunda in the first administrative review in this proceeding.[24] Ox Group claims that Danyang Tsunda did not know of the petitioner's review

[24] *See* the June 17, 2014, memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Placement of Public Service Lists on the Record," which placed on the record of this review the public service lists of the administrative review of the antidumping duty order on diamond sawblades

request. At the time the petitioner served the review request on the counsel for Danyang Tsunda in the first administrative review, however, that review was ongoing.[25] Pursuant to section 751(a) of the Act, we published the *Initiation Notice*. Publication of a notice in the *Federal Register* is an established means of providing notice to interested parties in antidumping proceedings.[26] The publication of the *Initiation Notice*, which named Danyang Tsunda, among other companies, for which we initiated a review provided notice to Danyang Tsunda that this review is being initiated and its entries may be affected by this administrative review.[27] Contrary to Ox Group's contention, Danyang Tsunda was previously subject to a review in this proceeding.[28] As a respondent appearing in a prior review, Danyang Tsunda had a continuing obligation to monitor the *Federal Register* for actions that affected its interest.[29] Danyang Tsunda cannot disclaim such notice published in the *Federal Register.*[30]

Regardless of the party's intention, if we allow a party to submit its SRA without regard to the due date we established in the *Initiation Notice* and without that party requesting an extension of the established deadline, we would establish a precedent that an interested party may establish its own due date to submit its SRA. We decline to allow such a practice here because it would significantly impede our ability to meet our statutory deadlines and conduct administrative proceedings in a predictable manner. This would also compromise timely participation by other interested parties in our proceedings. We require SRAs from respondents earlier in relevant segments of each proceeding so we can allow interested parties to comment on the SRA before we make our preliminary decision on the firms' separate rate eligibility. Allowing parties to submit SRAs outside of established deadlines without having been granted an extension would amount to relinquishing our authority to establish due dates for submissions and it would thus impair our ability to satisfy the statutory timeframe in which to complete an administrative review.[31]

Parties' adherence to our administrative deadlines is necessary for us to provide all interested parties with a reasonable timeframe in which to submit information and to complete the administrative review within the statutory deadline specified in section 751(a)(3)(A) of the Act. For example, because we are obliged to complete an administrative review within the statutory deadline, when we grant a request for an extension of time for an interested party to respond to our request for information, we inform the interested party that our decision to grant an extension may affect the amount of time that we are able to afford it to submit a response to any questions and/or requests for additional information.[32] If we allow an interested party, such as Danyang

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from the PRC covering the period January 23, 2009, through October 31, 2010, approved on March 20, 2012, November 30, 2012, and December 17, 2012. *See also* the petitioner's review request dated November 30, 2012.

[25] *See Diamond Sawblades 1*, which was published on February 15, 2013, more than two months after the time of the review request.

[26] *See, e.g., Int'l Trading Co. v. United States*, 28 F.3d 1268, 1275-76 (Fed. Cir. 2002).

[27] *See Suntec Industries Co., Ltd. v. United States*, 951 F. Supp. 2d 1341, 1350-51 (CIT 2013).

[28] *See Diamond Sawblades 1*, 78 FR at 11145, and *Diamond Sawblades 2*, 78 FR at 36167.

[29] *See Huaiyang Hongda Dehydrated Vegetable Co. v. United States*, 28 C.I.T. 1944, 1949 (2004).

[30] *See, e.g., Royal United Corp. v. United States*, 714 F. Supp. 2d 1307, 1318 (CIT 2010).

[31] *See Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 75 FR 10207 (March 5, 2010), and the accompanying I&D Memo at Comment 1, *aff'd* in *Hyosung Corporation v. United States*, Court No. 10-00114, slip op. 2011-34, at 10 (CIT March 31, 2011) (collectively, *Hyosung*).

[32] *See*, *e.g.*, the February 28, 2013, letter to Husqvarna (Hebei) Co., Ltd., in which we stated, "Our decision to grant

Tsunda, to submit its SRA based upon the party's own timetable in complete disregard of our established due date, we run the risk of losing valuable time within the statutory timeframe, leaving us with inadequate time to analyze information on the record to complete the administrative review.[33]

The SRAs were due no later than 60 days after the publication of the *Initiation Notice*; thus, irrespective of service of the review request, as a matter of law Danyang Tsunda had notice of the ongoing review for 60 days before the SRA deadline, yet it did not enter an appearance or request more time to make up for the time between the alleged failure of service and the publication of the *Initiation Notice.*[34] After this 60-day period, we reviewed timely filed SRAs and issued supplemental questionnaires to separate rate applicants requesting additional information.[35] The deadline for filing new factual information pursuant to 19 CFR 351.301(b)(2) (2012) was April 19, 2013. Danyang Tsunda filed its SRA 321 days after the SRA filing deadline established in the *Initiation Notice*, 277 days after the deadline for new factual information under 19 CFR 351.301(b)(2), and 27 days after the publication of the *Preliminary Results.* Also, unlike in *Grobest*, in which an SRC that was filed late but before the preliminary results was an issue, in the instant review an SRA was filed late after the *Preliminary Results* and by a company that did not previously demonstrate entitlement to a separate rate. An SRA is always requires more intense analysis than an SRC because we request more information in an SRA than in an SRC. For example, on the record of this review, each SRC is no more than 23 pages long whereas each SRA is more than one hundred pages long.[36] Thus, it takes much more time and effort to analyze an SRA than it takes to examine an SRC. Danyang Tsunda's untimely-filed SRA was no exception and, because it was filed late as explained above, we have properly rejected it in accordance with 19 CFR 351.104(a)(2)(ii)(A).

Value-Added Tax

Comment 6: Weihai states that, based on the Exhibit C-6 of Bosun's section C response dated April 17, 2013, the Department preliminarily found that the VAT rate was 17 percent during the POR and the VAT rebate rate of nine percent was applicable to exports of subject merchandise. Weihai states further that the Department deducted the unrefunded VAT from the U.S. price for all respondents in the *Preliminary Results*. According to Weihai, the Department stated that, "{a}ccording to Chinese regulations, the value added tax (VAT) amount is calculated by applying the VAT percentage of FOB price of the export goods."

Bosun and Weihai argue that the Department's preliminary deduction of un-refunded VAT from U.S. price is a violation of section 772(c)(2)(B) of the Act and *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Bosun and Weihai claim that the un-refunded VAT at issue is the tax for the imports of raw materials from other countries into the PRC, not the export tax specifically mentioned in section 772(c)(2)(B) of the Act. Weihai

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this extension in full may affect the amount of time that we are able to afford you to submit a response to requests for additional information."

[33] *See Hyosung.*

[34] *See Initiation Notice*, 78 FR at 77018-19; *see also Pam, S.p.A. v. United States*, 463 F.3d 1345, 1349 (Fed. Cir. 2006) (failure of notice not prejudicial because remedied by extensions that exceeded the delay in notice).

[35] *See* the supplemental questionnaires to various SRA applications dated August 7, 2013, and September 10, 2013.

[36] *See* the SRAs and SRCs filed on the record of this review between February 27, 2013, and March 5, 2013.

explains that the exportation of the subject merchandise is exempt from, not subject to, the payment of VAT. Bosun and Weihai contend that categorizing the VAT that is not fully refunded upon exportation as export tax in section 772(c)(2)(B) of the Act is a violation of *Chevron*'s first prong which requires the agency and the court to comply with the clear intent of Congress when Congress has directly spoken to the precise question at issue. Bosun and Weihai claim that, because section 772(c)(2)(B) of the Act is clear and unambiguous with respect to export tax, the Department has no discretion to construe it otherwise to deduct un-refunded VAT as export tax from U.S. price.

Bosun and Weihai state that they did not pay VAT or any other export tax upon exportation of the subject merchandise. Weihai contends that it should not be penalized for truthfully responding to the Department's request for information concerning VAT. Weihai claims that the Department did not request information related to the computation of the VAT. Moreover, Weihai argues, calculating the VAT for materials imported into the PRC is complex, with different regulatory provisions for tax collection and credits. According to Weihai, the Exhibit C-6 also shows different PRC Customs duty rates for imports from most favored nations. Weihai explains that the imported raw materials reported in its section D response are subject to various single-digit duty rates. Citing the Exhibit C-18 of ATM Single Entity's section C response dated April 24, 2013, Weihai also explains that the Ministry of Finance and State Administration of Taxation of the PRC designates imports of certain materials for processing and exportation as VAT-free and eligible as tax credits.

The petitioner argues that the Department should continue to deduct the unrefunded VAT from the U.S. price. According to the petitioner, in response to the Department's requests for information on Weihai's payment of VAT, Weihai only provided a supplemental response claiming that certain Chinese regulations exempt Weihai from VAT tax for purchasing or exporting diamond sawblades. The petitioner contends that these Chinese regulations do require Weihai to pay the VAT on diamond sawblades upon exportation and that other respondents in this review paid this VAT upon exportation of subject merchandise. The petitioner asserts that Weihai provided nothing to support its claim that it was exempt from this VAT or to confirm that it received a full rebate of the VAT payment.

<u>Department's Position:</u> For the reasons explained below, we applied the VAT adjustment formula we used in the *Preliminary Results* to deduct from the reported U.S. prices an amount for irrecoverable VAT.

In 2012, we announced a change of methodology with respect to the calculation of the EP or CEP to include an adjustment of any un-refunded (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[37] In this announcement, we stated that when a NME government has imposed an export tax, duty, or other charge on subject merchandise *or on inputs* used to produce subject merchandise, from which the respondent was not exempted, we will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or

[37] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012) (*Methodological Change*).

charge paid, but not rebated.[38] In a typical VAT system, companies do not incur any VAT expense; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports (input VAT), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.[39] That stands in contrast to China's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[40] This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of U.S. price, the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[41]

In response to the claims that we do not have the statutory authority to adjust for VAT, section 772(c)(2)(B) of the Act authorizes us to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Bosun and Weihai argue that Chinese VAT is not an export tax, duty or charge but they misstate what is at issue. The issue is the irrecoverable VAT, not VAT *per se*. In this context, irrecoverable VAT, as defined in Chinese law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost. Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States. The statute does not define the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in Chinese law and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[42]

Our methodology, as explained above, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Information placed on the record of this review by ATM Single Entity and Bosun indicates that, according to the Chinese VAT schedule, the standard

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[38] *Id.*, 77 FR at 36483; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and the accompanying I&D Memo at Comment 5 (*Chlorinated Isocyanurates*).
[39] *See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) (*Wood Flooring*), and the accompanying I&D Memo at Comment 3, ATM Single Entity's section C response dated April 24, 2013, at Exhibit C-18, and *Methodological Change*, 77 FR at 36483.
[40] *See* section 3.4 of the "Ministry of Finance and State Administration of Taxation, Circular on Further Promotion of Methodology of 'Exemption, Deduction, and Refund of Tax' for Exported Merchandises," CAISHUI (2002) No. 7 (Circular 7), which is in ATM Single Entity's section C response dated April 24, 2013, at Exhibit C-18.
[41] *See Methodological Change*, 77 FR at 36483.
[42] *Id.*, 77 FR at 36483, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-106, vol. 1, 827, reprinted in 1995 U.S.C.C.A.N. 3773, 4172).

VAT levy on the subject merchandise is 17 percent and the VAT rebate rate for the subject merchandise is nine percent.[43] For the final results, therefore, we removed from U.S. price an amount calculated based on the difference between these rates (*i.e.*, eight percent) applied to the export sales value (*i.e.*, U.S. price net of international movement expenses), consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.[44]

Pursuant to Circular 7,[45] irrecoverable VAT is defined as (1) the free-on-board value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.[46] The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulation.[47]

Our methodology is based on removing irrecoverable VAT on exports, which is product-specific and is explicitly defined in Chinese tax regulations.[48] Our deduction of product-specific irrecoverable VAT from the price of the subject merchandise is a reasonable and accurate methodology because the export tax, duty, or other charge is a product-specific expense that is directly linked with the exportation of the subject merchandise. The Department's method of relying on the standard formula provided for under Chinese tax law and regulation is straightforward, consistent, and a verifiable method to make this adjustment under section 772(c)(2)(B) of the Act. In that respect, the irrecoverable VAT formula for taxation purposes is solely a function of the rates under Chinese regulation and the respondent-specific export value of subject merchandise. There could be any number of differences between the irrecoverable VAT reported for Chinese tax purposes and how the irrecoverable VAT is actually recorded in a given respondent's records. For all of the reasons stated above, we will not consider allocations across all company sales or across sales of products with different VAT schedules. The irrecoverable VAT liability is determined on a product-specific basis, and it is on this basis that we will consider respondent-specific claims for adjustments to the standard formula, taking into account whether such adjustments are permitted under Chinese law and regulation and supported with record evidence.

Our analysis is consistent with our current VAT policy and our treatment of VAT in recently completed NME cases.[49]

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[43] *See* Bosun's section C response dated April 17, 2013, at 40-41 and Exhibit C-6.
[44] *See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Prestressed Wire*), and the accompanying I&D Memo at Comment 1, and *Wood Flooring* and the accompanying I&D Memo at Comment 3.
[45] *See* ATM Single Entity's section C response dated April 24, 2013, at Exhibit C-18.
[46] *See Prestressed Wire* and the accompanying I&D Memo at Comment 1, n. 35, and *Wood Flooring* and the accompanying I&D Memo at Comment 3.
[47] *See Prestressed Wire* and the accompanying I&D Memo at Comment 1, n. 36, and *Wood Flooring* and the accompanying I&D Memo at Comment 3.
[48] *See Prestressed Wire* and the accompanying I&D Memo at Comment 1, and *Wood Flooring* and the accompanying I&D Memo at Comment 3.
[49] *See Prestressed Wire* and the accompanying I&D Memo at Comment 1, *Wood Flooring* and the accompanying I&D Memo at Comment 3, and *Chlorinated Isocyanurates* and the accompanying I&D Memo at Comment 5A.

Aggregation of A-A and A-T Comparison Results

Comment 7: Weihai and Bosun claim that the calculations that the Department preliminarily used for the mixed comparison method is inconsistent with *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modifications for Reviews*). Specifically, Weihai explains that the mixed comparison method uses the standard A-A method for the sales that did not pass the Cohen's *d* test and the alternative A-T method for the sales that passed the Cohen's *d* test. According to Weihai, the Department used the mixed comparison method because between 33 percent and 66 percent of Weihai's U.S. sales showed a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods, and passed the Cohen's *d* test. Weihai does not challenge the Department's use of the mixed comparison method but it contends that the Department erred in its calculations by zeroing the overall results found for the sales that did not pass the Cohen's *d* test, rather than offsetting the overall results of those sales with the overall results for the sales that passed the Cohen's *d* test. Weihai argues that zeroing the dumping results of the sales for which the standard A-A method was used disfavors those sales over the sales for which the alternative A-T method was used. According to Weihai, it was the Department's intent to merge these two groups without regard to zeroing but the calculations did not reflect the Department's intention. Weihai requests that the Department modify its calculations so the sales for which the A-A method was used are not zeroed before being combined with the sales for which the A-T method was used.

The petitioner argues that the Department's preliminary calculations were correct. The petitioner explains that the *Final Modification for Reviews* allows offsetting non-dumped sales in the A-A method but it does not require such an offset in the A-T method. The petitioner explains further that the *Final Modification for Reviews* does not specify how to manage offsetting in the combination of the A-A and A-T methods. The petitioner describes Weihai's proposed methodology as double offsetting.

Department's Position: For the final results, we continued to use the same mixed comparison method that we used in the *Preliminary Results*. Consistent with the *Final Modification for Reviews*, in an administrative review, we use the A-A method unless we determine that another method is appropriate in a particular case.[50] With the A-A method, the Department compares the EP or CEP with the NV. When the NV exceeds the EP or CEP, the comparison result is the amount of dumping for that export transaction. The amount of dumping for all sales is the sum of these comparison results where the NV exceeds the EP or CEP. This amount of dumping may then be offset by the comparison results for those sales where the EP or CEP exceed the NV, up to the amount of dumping found for these sales.

When the Department has determined that the A-A method is not appropriate in a particular case, it may use the A-T method as an alternative comparison method to the A-A method. With the A-T method, the Department also compares the EP or CEP with the NV. When the NV exceeds the EP or CEP, the comparison results is the amount of dumping for that export transaction. The amount of dumping for all sales is the sum of these comparison results where the NV exceeds the

[50] *See* 19 CFR 351.414(c)(1) and *Final Modification for Reviews*, 77 FR at 8102 and 8114.

EP or CEP. However, for the A-T method, there is no offset to this amount for the export transactions where the EP or CEP exceed the NV.

When the Department uses for a respondent both the A-A method for some sales, and the A-T method for other sales, it then must aggregate these results to calculate this respondent's weighted-average dumping margin. To do this, the Department adds the amounts of dumping found for the A-A method and the A-T method, and divides this amount by the total U.S. sales value that correspond to the A-A method and the A-T method. Thus, the Department reasonably has aggregated the results of these two different comparison methods to calculate the single weighted-average dumping margin for the respondent. This is the approach that the Department has taken since considering the use of an alternative comparison method under the now-withdrawn regulations governing targeted dumping in LTFV investigations.

The Department disagrees with Weihai's proposal that the Department grant offsets for the amount by which EP or CEP exceeds NV for those sales being evaluated using the A-A method not only to the amount of dumping found for those sales evaluated using the A-A method, but also to the amount of dumping found for those sales evaluated using the A-T method. The A-A method and the A-T method are different comparison methods which are provided for in the statute and regulations and which are distinct and independent from each other. The Department also finds that results from its calculations under each of these methods (or other methods by which the Department may calculate the amount of dumping for a group of sales, such as facts available or the transaction-to-transaction method) are distinguishable. To calculate the weighted-average dumping margin for a respondent whose sales have been evaluated using more than one comparison method, the Department reasonably aggregates the results of each of these distinct comparison methods, specifically summing the amount of dumping and the U.S. sales value for each of these methods. To allow for offsets when combining the results of the mixed comparison approach would defeat the purpose of the A-T method where a pattern of export prices or CEPs for comparable merchandise was found that differed significantly among purchasers, regions, or periods of time. Such an approach would allow the results of A-A method to reduce or completely negate the results of the A-T method prescribed by section 777A(d)(1)(B). Instead, by preserving the results of the A-T method, the Department ensures that the purpose of the A-T method of uncovering masked dumping is fulfilled, just as it is when the Department applies the A-T method as a singular comparison method. Weihai has not pointed to any specific provisions in the *Final Modification for Reviews* that is inconsistent with our practice.

Denial of Offsets for Non-Dumped Sales When Using the A-T Method

Comment 8: Bosun claims that the Department should not use zeroing in NME proceedings. Bosun argues that *Union Steel v. United States,* 713 F.3d 1101, 1106 (Fed. Cir. 2013) (*Union Steel*), which affirmed the Department's use of zeroing in *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) (*Corrosion-Resistant Carbon Steel Korea*), applies to market economy proceedings only, and does not apply to NME proceedings because of the statutory difference between market economy proceedings and NME proceedings in calculating normal values. According to Bosun, the Department calculates the average normal value on a yearly basis in NME proceedings as opposed to a monthly basis in market economy proceedings, which is central to the CAFC decision in *Union Steel*, 731 F.3d at 1108.

Bosun explains that, in this review, the Department valued each raw material input using the one single annual POR average surrogate value. For the financial ratios, Bosun explains further that the Department calculated financial ratios based on Trigger's financial statements covering the fiscal year that overlaps the POR by ten months. For these reasons, according to Bosun, even if the cost of Bosun's FOPs increase and Bosun increases its U.S. prices accordingly, Bosun is stuck with the "mid-point cost" based on the Department's NME methodology. Bosun claims that this methodology results in driving some U.S. sales above and some other U.S. sales below normal value in a way that is indistinguishable from the A-A method in investigations. Bosun contends that, under such circumstances, it is not reasonable to remove non-dumped sales that could potentially offset artificially created dumping margins. Bosun also states that the information the Department uses to calculate surrogate values and ratios are not available to the NME exporters when they price U.S. sales, even if they can correctly guess which sources the Department would ultimately select.

<u>Department's Position</u>: In *Union Steel* the CAFC affirmed the Department's explanation that it may interpret the statute to permit the denial of offsets for non-dumped sales with respect to the A-T comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the A-A comparison method in investigations.[51] The CAFC also affirmed the Department's explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews.[52] Indeed, the court noted that although the Department recently modified its practice "to allow for offsets when making A-A comparisons in administrative reviews . . . {t}his modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns."[53]

Likewise, in *United States Steel Corp. v. United States*, 621 F.3d 1351 (Fed. Cir. 2010) (*US Steel Corp*), the CAFC sustained the Department's decision to no longer apply zeroing when employing the A-A comparison method in investigations while recognizing the Department's intent to continue to apply zeroing in other circumstances. Specifically, the court recognized that the Department may use zeroing when applying the A-T comparison method where patterns of significant price differences are found.[54]

We also disagree with Bosun's contention that the court's decision in *Union Steel* is limited to market economy reviews. The respondent asserts that the A-T method used in market economy reviews differs from the methodology employed in administrative reviews of antidumping duty orders for a NME. While the respondent suggests that the "average" normal value is a monthly average in market-economy reviews, but a yearly value covering the entire period of review in NME reviews, this is only true where normal value is based on comparison market sale prices; it

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[51] *See Union Steel*, 731 F.3d at 1106.
[52] *Id.*
[53] *Id.*
[54] *See US Steel Corp.* 621 F.3d at 1355 n.2, 1362-63

ignores market economy reviews where normal value is based on constructed value. Therefore, the argument that *Union Steel* only applies to market economy reviews where normal value was based on comparison market sales overlooks the fact that even the review underlying the *Union Steel* decision involved the use of constructed value.[55] Although the Department modified its cost-calculation methodology in that review, the Department's normal practice is to calculate an annual weighted-average cost for the POR.[56]

> Cost of production is calculated according to a statutory formula by adding together several costs and expenses, including the cost of materials, fabrication, containers, coverings, and other processing costs, and selling, general, and administrative expenses. . . . The constructed value of merchandise, which is the basis for normal value when there are insufficient sales in the exporting country or a third country, is the sum of the same costs and expenses used to calculate cost of production, plus realized profits. . . . Under its standard methodology, Commerce determines cost of production by calculating a single weighted-average cost for the period of review.[57]

Section 777A(e) of the Act discusses the use of constructed value as the basis for normal value, and contains no limits regarding the time period for production costs used to calculate constructed value as the basis for normal value. In fact, the Department's practice, as explained above, is to calculate a single, weighted-average CONNUM-specific cost for the period of review. We use annual average costs in order to even out swings in production costs experienced by respondents over short periods of time. In this manner, we smooth out the effect of fluctuating raw material costs.[58] Likewise, in NME reviews, such as this one, pursuant to section 773(c)(1) of the Act, the Department calculates a single CONNUM-specific weighted-average normal value for the POR in a manner similar to how it calculates constructed value, except that it values the FOPs utilizing, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Notwithstanding Bosun's claims to the contrary, the court's decision in *Union Steel* was not restricted to market economy reviews in which normal value was based on comparison market sale prices. Therefore, consistent with the Department's normal practice in reviews involving NME countries, we properly applied the A-T method to respondents' sales. Further, in doing so, we properly denied offsets for non-dumped transactions as part of the A-T method.

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[55] *See Corrosion-Resistant Carbon Steel Korea*.
[56] *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006), and the accompanying I&D Memo at Comment 5, which explains our practice of computing a single weighted-average cost for the entire period.
[57] *See Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077, 1084 (Fed. Cir. 2001).
[58] *See Wire Rod Canada* and the accompanying I&D Memo at Comment 5.

Surrogate Values

Adverse Inference Request for Valuation of Certain Inputs

Comment 9: The petitioner states that the Department valued certain inputs using the average of the AUVs from the HTS codes recommended by the petitioner and respondents because of the vague description of those FOPs. The petitioner requests that the Department use only the AUVs from the HTS codes recommended by the petitioner to value those inputs that the respondents inadequately described in their responses. The petitioner claims that the *Preliminary Results* notified the respondents that the record was incomplete and provided the respondents with a post-preliminary opportunity to clarify the inputs and submit updated surrogate values in their post-preliminary surrogate value comments. Despite the notice and opportunity, the petitioner contends, the respondents did use their post-preliminary surrogate value comments to provide specific information on many of the inputs identified in the Department's preliminary surrogate value memorandum because those respondents were apparently hoping that the Department will continue to use the same surrogate values. The petitioner argues that the Department should not reward these respondents for not acting to the best of their ability to provide with information in their control. The petitioner states that the continued use of the averages as in the *Preliminary Results* puts the petitioner in a disadvantage because the petitioner has no access to the description and/or detail of each FOP that the respondents have.

The petitioner states that the Department should exercise caution in following the respondents' description of inputs to select surrogate values. For example, according to the petitioner, the Department preliminarily valued Bosun's steel type 3 using an AUV for a certain HTS code that matched with Bosun's description of steel type 3 in its surrogate value comments. The petitioner argues that Bosun's description of steel type 3 was a quote from its desired tariff classification.

Bosun argues that the *Preliminary Results* did not put the respondents on notice that certain information was missing from the record to value certain inputs more precisely or that the respondents have a corresponding obligation to supplement the record to value inputs more precisely. Bosun explains that the deadline for submitting new factual information pursuant to 19 CFR 351.301(b)(2) had passed and the *Preliminary Results* did not invite such new factual information. Bosun contends that the Department would have rejected any untimely filed new factual information in accordance with 19 CFR 351.302(d). Bosun claims that the Department could have put the company on notice for additional factual information by issuing a supplemental questionnaire but did not do so. Finally, Bosun contends that the petitioner also did not seek to get clarification on the classification of any particular inputs.

Weihai identifies alcohol, paint, and paint thinner as the inputs that the petitioner challenges as inputs with vague description and valued with the average of AUVs from multiple HTS codes or a broad HTS code. Weihai asserts that the Department valued these inputs in the similar manner using the identical or similar HTS codes. Citing, *e.g.*, *Sebacic Acid From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 65 FR 49537 (August 14, 2000), and the accompanying I&D Memo at Comment 5, Weihai states that the Department correctly valued these inputs in the *Preliminary Results* because the Department emphasizes, among others, predictability in valuing FOPs. Weihai contends that, if the petitioner raised this issue immediately after the *Preliminary Results* and the Department followed up with a supplemental questionnaire, Weihai could have provided additional information in response, but the petitioner raised this issue for the first time in its case brief.

Weihai explains that, for valuing these inputs, the petitioner recommended solitary HTS codes at the most disaggregated 11-digit level from the Thai Customs tariff without explaining how such headings covered inputs that were described in general terms. Weihai describes the petitioner's proposed HTS codes as result-oriented and designed simply to achieve the highest surrogate value for each of these three inputs. Weihai requests that the Department reject the petitioner's requests with regards to these three inputs.

<u>Department's Position</u>: For the final results, we did not accept the petitioner's proposed AFA methodology for the inputs at issue. We have not found that the respondents failed to cooperate, and thus there is no basis for applying AFA. The *Preliminary Results* did not put Bosun and Weihai on notice that they needed to provide more details for their FOPs. The deadline for the submission of new factual information (*i.e.*, additional information clarifying descriptions of inputs) pursuant to 19 CFR 351.301(b)(2)(2012) was April 19, 2013. Because the petitioner did not raise this issue earlier, we did not have an opportunity to seek additional information from Bosun and Weihai. Moreover, for the valuation of Bosun's steel types 4, 5, and 6 in the *Preliminary Results*, the petitioner proposed the HTS codes that matched with Bosun's description of those steel types.[59]

Antirust Oil

<u>Comment 10:</u> The petitioner claims that the Department should value antirust oil at 174.36 Baht/kg for the final results and that the preliminary valuation of antirust oil at 160.90 Baht/kg was incorrect. However, the petitioner does not provide any explanation to support its claims.

Bosun and Weihai argue that the Department's preliminary calculation of 160.90 Baht/kg is correct with the use of the simple averaging of the two AUVs: 175.83 Baht/Kg for HTS subheadings 3403.19.19000 (lubricating preparations containing petroleum oils or oils obtained from bituminous minerals, nesoi – other) and 145.97 Baht/Kg for HTS subheadings 3403.99.19000 (lubricating preparations not containing petroleum oils or oils obtained from bituminous minerals, nesoi – other). Citing *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Administrative Review and Final Results of New Shipper Review*, 72 FR 27287 (May 15, 2007) (*Hand Trucks*), *affirmed* in *Gleason Indus. Prods. v. United States*, 32 C.I.T. 382, 386-90 (2008), Weihai requests, however, that the Department weight-average the overall AUVs from the same HTS codes to be consistent with the Department's practice, case precedent, and practical consideration. According to Weihai, the weight-averaged surrogate value of antirust oil should be 149.49 Baht/kg.

[59] *See* the petitioner's surrogate value comments dated June 13, 2013, at Exhibit 1, Bosun's surrogate value comments dated June 13, 2013, at Exhibit 1, and the memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Surrogate Values for the Preliminary Results of Review" dated December 16, 2013, at Exhibit 1, Products Extract tab.

Department's Position: For the final results, we continued to use the same surrogate value that we used for antirust oil in the *Preliminary Results*. The petitioner has not provided any support for its claim. Further, contrary to Weihai's claim, it is not our practice to weight-average surrogate values, especially when we have no information on the record that we can rely on to weight-average AUVs in proportion to the subject inputs the company consumed for the production of subject merchandise.[60] *Hand Trucks* predates the cases in which we established our current practice.[61] Weihai has not submitted any information showing the relative proportion of the types of antirust oil that Weihai used in order to apply that proportion to weight-average the AUVs for antirust oil under HTS subheadings 3403.19.19000 and 3403.99.19000. For these reasons, we find it appropriate to continue to use the simple average of the GTA statistics for these two HTS codes consistent with *Diamond Sawblades 2*.[62]

Argon, Nitrogen, and Oxygen

Comment 11: Weihai argues that the GTA data for the HTS codes we used to calculate the surrogate values for argon, nitrogen, and oxygen in the *Preliminary Results* do not identify any specific type of these three inputs. Weihai claims that these GTA data do not provide disaggregated data for individually valuing these three inputs. Weihai contends that the GTA data "must necessarily be inclusive of the cost of container," *i.e.*, high pressure cylinders for storing and carrying these inputs. For these reasons, Weihai asserts, the GTA data the Department preliminarily used for these three inputs are unsuitable for the final results. Weihai requests that the Department use the statistics for these three inputs in the financial statements of Bhoruka Gases Limited (Bhoruka), which is an Indian company. According to Weihai, Bhoruka's financial statements, which it submitted in its surrogate value comments dated June 13, 2013, at Exhibit 16, provide the necessary data matching with the specific types of these three inputs and conversion factors that the Department can use to calculate the surrogate values for these three inputs. Weihai explains that the Department has consistently preferred and applied the data in Bhoruka's financial statements over the GTA data to value industrial grade of oxygen because Bhoruka's financial statements reported the price data for pure and industrial grades of oxygen.

The petitioner argues that India is not an economically comparable country for purposes of this review. The petitioner argues further that the Indian price quote at issue comes from a single source, Bhoruka's financial statements, which dates back to 1996 and thus is not contemporaneous with the POR. The petitioner contends that, for these reasons, the Department should not use the data from Bhoruka's financial statements.

Department's Position: For the final results, we continued to calculate the surrogate values for argon, nitrogen, and oxygen based on the GTA statistics for the HTS headings 2804.21, 2804.30,

[60] *See Diamond Sawblades 2* and the accompanying I&D Memo at Comment 15, and *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and the accompanying I&D Memo at Comment 20.
[61] *See Diamond Sawblades 2* and the accompanying I&D Memo at Comment 15, and *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011), and the accompanying I&D Memo at Comment 20.
[62] *See Diamond Sawblades 2* and the accompanying I&D Memo at Comment 15, in which we declined to weight-average the AUVs from the GTA statistics for two different HTS codes for the same reason.

and 2804.40, respectively, as we did in the *Preliminary Results*, because (1) the data are contemporaneous with the POR and (2) the GTA statistics represent a broad-market average that is tax- and duty-exclusive.[63] Moreover, these GTA statistics are import statistics of Thailand, the primary surrogate country in this review and, when possible, our preference is to use surrogate values from a single country.[64] Weihai reported that it consumed argon and nitrogen in both liquid and gaseous forms and oxygen apparently in liquid form.[65] This is consistent with the HTS subheadings we have selected. Although the GTA statistics for the HTS headings 2804.21, 2804.30, and 2804.40 cover argon, nitrogen, and oxygen without identifying their subcategories, Weihai has not demonstrated that any lack of specificity in these HTS headings distorted our preliminary surrogate values for argon, nitrogen, and oxygen that Weihai used. Weihai's only arguments are that (1) these HTS codes do not identify the specific types of argon, nitrogen, and oxygen that it consumed and (2) our preliminary surrogate values for them "must necessarily be inclusive of the cost of container," which is only speculative at best. These arguments do not demonstrate that our preliminary valuations of argon, nitrogen, and oxygen were unfairly high or otherwise distortive.

Bhoruka's financial statements are not contemporaneous with the POR because they date back to 1996.[66] 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.[67] 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."[68] Bhoruka's financial statements are a single source from a country that is not at the level of the economic development of the PRC.[69] Thus, unlike the GTA data, Weihai's suggested values are not representative of industry-wide values or broad market averages from a country at the level of economic development of the PRC.

Bhoruka's financial statements are not as specific as Weihai claims them to be either. Although Bhoruka's financial statements provide the prices for liquid and gas oxygen and liquid nitrogen, they do not provide the prices specifically for gaseous nitrogen, gaseous argon, and liquid argon.[70] As stated above, there is no evidence demonstrating that our reliance on the GTA statistics for the three HTS codes resulted in distortive valuations of argon, nitrogen, and oxygen. Also, there is no evidence that Bhoruka's financial statements are better than the GTA statistics

[63] *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) (*Steel Nails*), and the accompanying I&D Memo at Section M. Sodium Bicarbonate.
[64] *See Clearon Corp. v. United States*, 2013 CIT LEXIS 27, *19-22 (February 20, 2013).
[65] *See* Weihai's section D response dated May 1, 2013, at 21-23. Weihai reported an inspection report for liquid oxygen as a supporting document for its use of oxygen but did not explicitly state the type of oxygen it used. *Id.*, at 21 and Exhibit D-12.3.
[66] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibit 16.
[67] *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) (*Certain Pencils*), and the accompanying I&D Memo at Comment 4.
[68] *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*).
[69] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibit 16.
[70] *Id.*

we preliminarily relied on. Under these circumstances, we do not need to rely on Bhoruka's financial statements that are single-sourced and nearly two decades old.[71]

Cores

Comment 12: For the final results, Weihai requests that the Department value cores that it purchased from NME suppliers based on the price quotes from Thailand or India. Weihai describes the Department's preliminary valuation of cores (by adding the surrogate values for steel types 1, 2, and 3, labor, and electricity) as a two-tier methodology that adds more distortion and uncertainly to the already uncertain one-tier FOP methodology. Weihai argues that the Department's preliminary valuation of cores is distorted because the Department separately valued each underlying input based on the price data of similar inputs prevailing in a third country, instead of directly ascertaining the selling price of the final product itself based on the price data of the same input in the home market. Weihai also argues that the Department used the same surrogate value for steel in constructing the surrogate value for all cores with three significantly different steel types.

Citing *Fresh Garlic from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942, 69947 (November 18, 2005) (*Fresh Garlic*), Weihai claims that, when the burden of valuing each FOP for the intermediate product outweighs the potential increase of accuracy from such calculation, the Department directly values the intermediate product, which is (1) higher in value than the inputs used to make the intermediate product are and (2) further downstream of the chain of production of comparable merchandise. Weihai explains that, as in, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Ukraine*, 67 FR 55785 (August 30, 2002) (*Steel Wire Rod*), this practice ensures a higher level of accuracy in calculating surrogate values when the use of an individual FOP for the intermediate product does not adequately capture a significant element of cost in the overall FOP buildup. Weihai contends that, for these reasons, the Department's preliminary valuation of cores is inconsistent with its practice.

Weihai requests that, for the final results, the Department value cores using the Thai price quote issued by Groupmech Corporation Ltd., which, according to Weihai, manufactures diamond cutting blades. Weihai explains that the Thai price quote contains price quotes for products similar to the cores Weihai used in producing the subject merchandise during the POR. Weihai acknowledges that the Thai price quote may be slightly overstated in favor of Weihai's interest because it is dated three months after the end of the POR. Weihai explains that, in the absence of any other evidence, inflation would be the only reason for any difference between a fair-market value of cores during the POR and the Thai price quote. Weihai asserts that this Thai price quote can be deflated by using the Purchase Price Index (PPI) from Thailand reported by the International Monetary Fund. Weihai states that, given no other viable information on the record of this review, this Thai price quote is the best choice for valuing cores in Thailand.

Weihai argues that the Department can also value cores using the Indian price quotes issued by

[71] *See Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1331 (CIT 2013) ("Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets.").

Orion International at three different times outside the POR. Weihai explains that the Indian price quotes cover several types of cores Weihai used during the POR. Weihai acknowledges that the Indian price quotes are producer- or supplier-specific and not country-wide or industry-wide but it argues that, in the absence of an appropriate HTS code for cores and no other specific data source for valuing cores, using company-specific price quotes such as the ones in the Indian price quotes is consistent with the statutory mandate and the Department's practice. Weihai further stresses that this practice has been upheld by the CIT in *Jinan Yipin Corp. v. United States*, 800 F. Supp. 2d 1226 (CIT 2011). Citing *Shantou Red Garden Foodstuff Co., v. United States*, 880 F. Supp. 2d 1332 (CIT 2012), Weihai argues that, although India is not one of the potential surrogate countries at the level of economic development of the PRC, using the Indian price quotes would be consistent with the Department's practice of preferring more specific price data source from a market economy country to a less specific price data source from the designated surrogate countries. Weihai claims that the petitioner has not challenged the Indian price quotes with any factual data.

Citing *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 29 C.I.T. 288 (2005), Weihai asserts that the Department prefers domestic price quotes to import data to value factors unless record evidence indicates that a surrogate producer is using an imported input for producing the subject merchandise. Weihai explains that, in *Yantai Oriental Juice Co. v. United States*, 26 C.I.T. 605 (2002), the CIT concluded that, even though particular input data might have been more contemporaneous and not aberrational, the Department did not explain how the use of seemingly more expensive input data is the best available information establishing the actual costs Indian producers incurred. Weihai states that there is no evidence on the record of this review indicating that producers of the Thai and Indian price quotes are using imported cores. Weihai asserts that the Thai and Indian price quotes are extremely specific and thus the best available information. Citing *Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011), Weihai argues that product specificity supersedes all other criteria, *e.g.*, contemporaneity, in selecting source for calculating surrogate value. According to Weihai, when an actual price data is available on the record of review, the Department uses the actual price data, not a cost construction methodology, and *Final Determination of Sales at Less Than Fair Value: Foundry Coke Products From The People's Republic of China*, 66 FR 39487 (July 31, 2001) (*Foundry Coke*), is one such example.

Weihai states that, if the record of this review contains no other viable surrogate value for cores, the Department would arguably have no choice other than the use of the hypothetical construct for adjusting steel values up to core values. Bosun states that the Department's valuation methodology for cores purchased from NME suppliers is similar to the methodology used in the last review. Bosun asserts that no fact has materially changed and the Department has no reason to change its core valuation methodology for these final results.

The petitioner requests that the Department continue to use the preliminary calculation methodology to value cores for the final results. The petitioner contends that Weihai provided inapposite precedents for its non-persuasive argument that the preliminary methodology is distortive. The petitioner claims that *Fresh Garlic* involved an issue of balancing the need to be absolutely accurate with conserving the Department's resources, which might otherwise be drained in an attempt to value an insignificant intermediary input with absolute accuracy. The petitioner argues that, unlike in *Fresh Garlic*, because cores in this review are an integral part of diamond sawblades, it is critical to value cores as accurately as possible. The petitioner explains that the issue in *Steel Wire Rod* was whether an attempt to value the individual FOP that lead to an intermediary input would understate the value of the intermediary input with the overhead ratio not capturing capital costs. The petitioner states that the Department addresses peculiarities in NME proceedings on a case-by-case basis rather than following a strict regimen and that the cases Weihai cited are entirely unlike the facts in this review.

The petitioner asserts that the Thai and Indian price quotes are inherently unreliable and notes that they post-date the POR. Citing, *e.g.*, *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review and Sixth New Shipper Review*, 76 FR 15941 (March 22, 2011) (*Fish Fillets*), and the accompanying I&D Memo at 9, the petitioner explains that it is the Department's practice not to use price quote data when it has other publicly available suitable data on the record because (1) price quotes do not represent actual prices or broad ranges of data and (2) the Department does not know the conditions under which the price quotes were solicited and whether or not they are self-selected from a broader range of quotes. The petitioner contends that there is no evidence on the record of this review showing that the Thai price quote corresponds to actual, arms-length transactions in Thailand. The petitioner also contends that the Department cannot know whether the Thai price quote has been cherry-picked from other quotes. The petitioner claims that, unlike in *Foundry Coke* in which the Department had an actual price resulting from actual transactions within the surrogate country, the Thai and Indian price quotes provide only price quotes with no evidence of actual sales or realistic examples of arms-length sales values in Thailand or India during the POR. The petitioner states that the Indian price quotes come from outside the POR and from a country that is not one of the potential surrogate countries at the level of economic development of the PRC. The petitioner requests that the Department reject the Thai and Indian price quotes as it did in *Diamond Sawblades 1*.

<u>Department's Position</u>: For the final results, we continued to use the same methodology we preliminarily used to calculate the surrogate values for cores. This is the same methodology Weihai supported in the second administrative review because, among other reasons, this is based on Weihai's FOP data for steel, labor, and energy actually used to produce such cores.[72] This methodology is the same methodology we used in the first and second administrative reviews.[73] For the final results of this review, Weihai does not oppose the continued use of this methodology in case no other viable alternative is available for valuing cores. Based on the information on the record of this review, we find that this methodology is the best one available because we have no other viable alternative information to use. However, in using the same methodology, we used the surrogate values for steel types for the final results as we explain in Comment 17, *infra*.

We do not find that the Thai and Indian price quotes provide viable alternatives for valuing cores. The Thai and Indian price quotes are not contemporaneous with the POR.[74] Also, we

[72] *See Diamond Sawblades 2* and the accompanying I&D Memo at Comment 8.
[73] *See Diamond Sawblades 1* and the accompanying I&D Memo at Comment 11, and *Diamond Sawblades 2* and the accompanying I&D Memo at Comment 8.
[74] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibits 3 and 15.

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.[75] In addition, we prefer to value FOPs using a single surrogate country where we have useable data.[76] We generally do not use price quotes if other suitable publicly available data is on the record because (1) price quotes do not represent actual prices or broad ranges of data and (2) we do not know the conditions under which they are solicited and whether or not they are self-selected from a broader range of quotes.[77] As Weihai explained, the Thai price quote is from a single source, Groupmech Corporation Ltd., and the Indian price quotes are also from a single source, Orion International.[78] Thus, unlike the GTA data, the Thai and Indian price quotes do not represent actual prices, broad ranges of data, or industry-wide values.

We also find that details of the Thai and Indian price quotes raise questions about whether the price quotes represent actual sales values. First, the Thai price quote is in English with no Thai-language price quote, even though a Thai company issued this price quote for a Thai customer located in Bangkok.[79] Even the signature of the Thai managing director in the Thai price quote is in English. Weihai did not explain the circumstances in which a Thai company issued an English-only price quote to a Thai customer in Bangkok. We do not know whether the Thai price quote is an English translation of a Thai-language price quote, which is not on the record of this review, or a copy of the original price quote issued in English. If the former, we have no original document on the record to ascertain that the Thai price quote is an accurate translation of the original Thai-language price quote. If the latter, we have no information to determine the condition under which an English-language price quote was solicited by a Thai customer and issued by a Thai producer. Either way, we do not have any information to determine whether Weihai selected Thai price quote from a broad range of quotes. Therefore, we do not have information on the record to conclude that the Thai price quote represent actual sales values suitable for the valuation of cores for the final results.

The circumstances in which Orion International issued the Indian price quotes are even more questionable. The Indian price quotes include all documents in Exhibits 15A and 15B of Weihai's surrogate value comments dated June 13, 2013. Exhibit 15A contains an affidavit and a price quote dated January 21, 2013, and Exhibit 15B contains price quotes dated May 18, 2011, and June 15, 2011, an affidavit dated January 29, 2013, and the January 28, 2013, clarification of the 2011 price quotes. Orion International issued all price quotes in Exhibits 15A and 15B to Ekta International Pvt Ltd. (Ekta), which is a market research firm specializing in finding "price information on various raw materials and other factor of production."[80] Ekta's director issued all affidavits in Exhibits 15A and 15B.[81] In the first administrative review, Weihai submitted the same price quotes that are in Exhibit 15B for this review[82] and we decided not to use them

[75] *See, e.g., Certain Pencils* and the accompanying I&D Memo at Comment 4.
[76] *See Clearon Corp. v. United States*, 2013 CIT LEXIS 27, *19-22 (February 20, 2013).
[77] *See Fish Fillet* and the accompanying I&D Memo at 9.
[78] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibits 3 and 15.
[79] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibit 3.
[80] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibits 15A and 15B.
[81] *Id.*
[82] *See* the Weihai final analysis memorandum dated concurrently with this memorandum at Exhibit.

because they were on a per-piece basis and Weihai reported cores in grams.[83] On January 28, 2013, Orion International issued a clarification regarding weight per piece of core mentioned in the two price quotes.[84] The January 29, 2013, affidavit in Exhibit 15B states that, on January 24, 2011, Ekta's director requested Orion International for clarification on weight for the price quotes dated May 18, 2011, and June 15, 2011, which are in Exhibit 15B, and received Orion International's response.[85]

Based on the record evidence, we do not know the conditions under which and how Ekta requested on January 24, 2011, that Orion International provide clarification on weight for the two price quotes issued on May 18, 2011, and June 15, 2011, which were respectively 118 days and 142 days after January 24, 2011. We also do not know the conditions under which Orion International responded to Ekta's January 24, 2011, request two years later on January 28, 2013, which is also more than one year after the issuance of the two price quotes. These are inexplicable discrepancies Weihai does not address in its request for the Department to use these two price quotes.

Moreover, details in the affidavit in Exhibit 15A provide an appearance that the price quote in Exhibit 15A was obtained not for purposes of actual sales and purchases but for purposes of valuing FOPs in this review. According to this affidavit, Ekta is a market research firm specialized in obtaining "price information on various raw materials and other factors of production."[86] This affidavit states that Ekta's director explained to Orion International in detail "about the *subject merchandise* in order to remove any ambiguity about the description of the goods" to obtain the ex-factory rate of cores.[87] The use of the term "subject merchandise" in an Indian market research firm to obtain a price quote for cores provides an appearance that the price quote in Exhibit 15A was obtained for valuation of FOPs, not for actual sales.[88] Accordingly, we have reasons to believe that the Indian price quotes do not represent actual prices for sales of cores. Finally, the Indian price quotes come from India, which is not one of the potential surrogate countries at the level of economic development of the PRC.

<u>Comment 13:</u> The petitioner argues that, for the calculation of the surrogate values for cores Bosun and Weihai purchased from unaffiliated NME suppliers, the Department should use different calculation methodologies for cores purchased from unaffiliated NME suppliers eligible for a separate rate and unaffiliated NME suppliers that are part of the PRC-wide entity. The petitioner claims that the cores purchased from unaffiliated NME suppliers that are part of the PRC-wide entity should be valued at a price higher than self-made cores to prevent companies that are part of the PRC-wide entity from shipping cores through separate rate companies. The petitioner requests that the Department value such purchases using the highest value in each

[83] *See Diamond Sawblades 1* and the accompanying I&D Memo at Comment 11.
[84] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibit 15B.
[85] *Id.*
[86] *Id.* at Exhibit 15A.
[87] *Id*. (Emphasis added.)
[88] *See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 (April 7, 2014), and the accompanying I&D Memo at Comment V, Section B: Bangladeshi Rice Husk Price Quotes, in which we decided not to use a price quote because, among other reasons, there was no information on the record as to whether the price quote was "for sale in the ordinary course of business."

respondent's database for purchased cores of the same (or most similar) size.

Bosun contends that the petitioner provided no evidence that Bosun's purchases of such cores (1) were not on an arm's length basis or (2) would otherwise be unreliable. Weihai claims that it did not sell cores to unaffiliated U.S. customers during the POR. Bosun argues that, regardless of whether or not such purchases were on an arm's-length basis, the Department's NME methodologies neutralize such distortions and is specifically designed for such purposes. Bosun and Weihai contend that the petitioner did not cite any statutory law, regulations, or administrative or judicial precedents in support of such different calculation methodologies. Weihai claims that the petitioner's suggestion for the use of the highest value in each respondent's database amounts to an application of an AFA rate without pinpointing any statutory provision in support of imposing such an AFA rate. Weihai contends that, because the Department did not ask Weihai to provide separate FOP data for cores that it purchased from unaffiliated NME suppliers that are part of the PRC-wide entity, Weihai is not a party subject to an AFA rate for failing "to cooperate to the best of its ability to comply with a request for information from the administering authority" under section 776(b) of the Act. Bosun argues that, because the petitioner did not establish a factual predicate for an application of AFA to Bosun's purchase of cores, the Department should not accept the petitioner's request.

Department's Position: For the final results, we did not use the petitioner's suggested methodologies for valuing cores. In NME administrative reviews, we do not treat the subject merchandise exported by a separate rate respondent differently based on whether its producer is eligible for a separate rate or a part of the PRC-wide entity. Separate rates are assigned only to exporters and apply to the subject merchandise exported by separate rate exporters regardless of the entity that produces the subject merchandise.[89] In our separate rate analysis for a respondent, we do not take into account whether or not the respondent's unaffiliated NME producer of subject merchandise is eligible for a separate rate.[90] Our current separate rates practice is exporter-specific and does not consider whether the producer is part of the PRC-wide entity. The petitioner has not provided any compelling reason for us to prevent such subject merchandise from being exported by a separate rate exporter. The petitioner does not claim that Bosun sold cores separately to the United States during the POR. During this POR, Weihai did not sell cores separately to the United States. Even if they sold cores separately during the POR, it is not clear how such sales could be a compelling reason to use the petitioner's suggested methodologies for valuing cores.

Finally, as Weihai and Bosun point out, the NME methodology already accounts for any of the distortions in market prices that petitioner alleges by using surrogate values to value the FOPs instead of relying on the prices paid within the NME country. For all these reasons, we reject the petitioner's claims.

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[89] *See* Enforcement & Compliance Policy Bulletin Number: 05.1 – Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, at 3 (Policy Bulletin 05.1).

[90] *See Preliminary Results* and the accompanying Preliminary Decision Memorandum at 4-10; *see also* Policy Bulletin Number: 05.1, at 6, which describes our practice, and *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), and the accompanying Preliminary Decision Memorandum at 4-8, unchanged in *Diamond Sawblades 2*.

Diamond Powder

Comment 14: For the final results, Weihai requests that the Department value diamond powder using the Thai and Indian price quotes dated January 28, 2013, and May 18, 2011, respectively. Weihai explains that these price quotes were issued to an independent third party in the course of a commercial inquiry. According to Weihai, these price quotes represent commercial transaction prices for several grades of commonly traded industrial diamond sawblades. Weihai describes these price quotes as high-quality with specific descriptions of different diamond powders used for producing diamond sawblades. Weihai acknowledges that the price quotes are dated outside the POR but it argues that their level of specificity and the fact that they are domestic price quotes outweigh their non-contemporaneity. Weihai asserts that domestic price data are probative of the price actually payable by a hypothetical NME producer. Weihai claims that these non-contemporaneous price quotes can be inflated or deflated, as applicable, using the suitable PPI. Weihai opposes the Department's preliminary valuation of diamond powder based on the GTA statistics for HTS heading 7105.10.00 (diamond (natural & synthetic) dust & powder).

Bosun concurs with Weihai's arguments concerning the valuation of diamond powder for the final results. Bosun adds that the price quotes Weihai proposes are the best available information because they are (1) far more specific to the diamond powder at issue and (2) favored domestic sources more closely matched to the respondents' domestic procurements.

The petitioner requests that the Department continue to value diamond powder based on the GTA statistics for HTS heading 7105.10.00 for the final results. The petitioner states that the Department valued diamond powder using the same HTS code in this proceeding. The petitioner contends that the Thai and Indian price quotes are non-contemporaneous with the POR and the Indian price quote is sourced from a country that is not a potential surrogate country in this review. Citing *Diamond Sawblades 2*, the petitioner states that the Department does not use a price quote from a single source that does not represent industry-wide values or broad market averages.

Department's Position: For the final results, we continued to value diamond powder based on the GTA statistics for HTS heading 7105.10.00. We find that the Thai and Indian price quotes do not provide viable alternatives for valuing cores. The Thai and Indian price quotes are not contemporaneous with the POR.[91] Also, we prefer country-wide information such as government import statistics to information from a single source and we prefer industry-wide values to values of a single producer because industry-wide values better represent prices of all producers in the surrogate country.[92] In addition, we prefer to value FOPs using a single surrogate country where we have useable data.[93] We generally do not to use price quotes if other suitable publicly available data is on the record because (1) price quotes do not represent actual prices or broad ranges of data and (2) we do not know the conditions under which they are

[91] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibits 5 and 15.
[92] *See, e.g., Certain Pencils* and the accompanying I&D Memo at Comment 4.
[93] *See Clearon Corp. v. United States*, 2013 CIT LEXIS 27, *19-22 (February 20, 2013).

solicited and whether or not they are self-selected from a broader range of quotes.[94] The Thai price quote is from a single source, Yangkong Enterprise Co., Ltd. (Yangkong), and the Indian price quotes is from Orion International.[95]

While these price quotes appear to be very specific with a list of prices for different types of diamond powder, the appearance of "specificity" with details in these price quotes does not enhance their reliability or address our general concerns over price quotes for several reasons. The Thai price quote does not identify the recipient of the price quote.[96] Because we do not know the party to which Yangkong issued the price quote, we do not know the conditions under which it was solicited and whether or not it was self-selected from a broader range of quotes. We also cannot ascertain that the prices in the Thai price quote represent actual prices in sales of diamond powder. The Indian price quote for diamond powder also includes the price quote for cores, which we decided not to use to value cores for the reasons explained in Comment 12, *supra*.[97] For the same reason, we have reasons to believe that the Indian price quotes do not represent actual prices for sales of diamond powder. Finally, the Indian price quotes come from India, which is not one of the potential surrogate countries at the level of economic development of the PRC.

<u>Comment 15:</u> The petitioner requests that the Department reverse a certain variance Weihai reported for its diamond powder because information on the record of this review does not justify such variance. Specifically, the petitioner claims that Weihai had erroneously included certain production output in the calculation of the variance for diamond powder.

Weihai explains that it described in detail the standard methodology it used to allocate diamond powder. Specifically, Weihai explains that it allocated its consumption of diamond powder used in producing the diamond sawblades of all CONNUMs during the POR. Weihai states that, in order to compute the variance of its diamond dust consumption during the POR, Weihai compared the total quantity of diamond powder actually withdrawn (as adjusted) from the inventory for consumption during the POR with the total quantity of consumption based on the total output of diamond sawblades by applying certain standard ratios from Weihai's model-specific bills of material. Weihai describes this methodology as a reasonable method of allocation of diamond powder because Weihai does not separately account for a certain portion of diamond powder withdrawn for consumption during the POR. Weihai contends that such an allocation does not lead to the type of variance that the petitioner seeks to reverse because this methodology would result in an arithmetically neural outcome over a longer period of time.

<u>Department's Position</u>: We find that Weihai's explanation of the methodology it used to calculate this variance is reasonable and we do not have sufficient information to conclude that this variance is biased in any way.[98] For these reasons, we have not reversed the variance for Weihai's diamond powder for the final results. Business proprietary details concerning this issue

[94] *See Fish Fillets* and the accompanying I&D Memo at 9.
[95] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibits 5 and 15.
[96] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibit 5.
[97] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibit 15.
[98] *See* Weihai's supplemental response dated November 6, 2013, at 1, where Weihai explained the nature of this variance. *See also* Weihai's section D response dated May 1, 2013, at Exhibit D-6.

are explained in the Weihai final analysis memorandum.[99]

Financial Statements

Comment 16: For the *Preliminary Results*, the Department used the financial statements of Trigger Co. Philippines, Inc. (Trigger). Trigger is a Philippine producer of comparable merchandise. We preliminarily rejected the financial statements of Alpha Diamond Tools Co., Ltd. (Alpha) because it did not provide sufficient detail. After the *Preliminary Results*, the petitioner placed on the record of this review financial statements from Tyrolit Thai Diamond Company Limited (Tyrolit), a Thai producer of comparable merchandise. In choosing surrogate financial ratios, it is the Department's practice to use data from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[100] Additionally, it is the Department's practice to disregard financial statements where we have reason to believe or suspect that the company has received actionable subsidies, if there is other usable data on the record.[101] For the final results, the petitioner recommends that the Department use Tyrolit's financial statements. Respondents recommend that the Department use Trigger's financial statements.

a. Tyrolit

Bosun and Weihai argue that the Department should not use Tyrolit's financial statements because Tyrolit received countervailable subsidies. Citing, *e.g.*, Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 100 576, at 59, (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24, and *Jiaxing Brothers Fastener Co. v. United States*, 751 F. Supp. 2d 1345, 1352 (CIT 2010), Bosun and Weihai claim that the Department does not need to conclude that a company received countervailable subsidies in order to find the company's financial statements unsuitable for calculation of surrogate financial ratios if there are reasons to suspect that the company may have received actionable subsidies. Bosun and Weihai explain that Tyrolit received subsidies that are identical or very similar to the subsidies the Department found to be countervailable in separate CVD investigations. Further, Bosun and Weihai point out that Trigger's financial statements are available. According to Weihai, finding Tyrolit's financial statements distorted by countervailable subsidies and thus unsuitable for calculation of surrogate financial ratios is consistent with the Department's practice as stated in *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 77 FR 53856, 53862 (September 4, 2012).

Weihai explains that, for the calculation of surrogate financial ratios, the Department's policy on the issue of countervailable subsidies in financial statements addresses the concerns that such countervailable subsidy benefits affect the production and financial performance of a company. According to Weihai, such subsidies inflate the company's profit before tax and alter its

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[99] *See* the Weihai final analysis memorandum dated concurrently with this memorandum.
[100] *See LTFV Final* and the accompanying I&D Memo at Comment 1.
[101] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and the accompanying I&D Memo at Comment 17A.

overhead and SGA expenses in numerous unknown ways. Weihai states that, for these reasons, the Department rejects financial statements that the Department believes or suspects to have been tainted by countervailable subsidies if alternative financial statements are available.

The petitioner argues that Tyrolit's financial statements do not appear to indicate or reflect the use of any of the alleged subsidies. The petitioner claims that the Department has not independently investigated Tyrolit and determined that the company has received subsidies. The petitioner explains that the Department found certain subsidies allegedly received by Tyrolit, *i.e.*, duty exemption for raw materials, as not countervailable. The petitioner explains further that the last time the Department confirmed the existence and operation of other subsidies allegedly received by Tyrolit was more than a dozen years ago. The petitioner contends that, in the absence of any specific record evidence demonstrating that these programs remained operative and countervailable as of the POR and that Tyrolit used them in the fiscal year 2011-12, there is no information on the record demonstrating that Tyrolit's financial statements are distorted by countervailable subsidies.

The petitioner claims that, even if the Department finds that Tyrolit received countervailable subsidies during the fiscal year 2011-12, Tyrolit's financial statements remain the best information available on the record for valuing surrogate financial ratios for the final results. According to the petitioner, Tyrolit produces diamond sawblades in Thailand and sells diamond sawblades to the United States.

b. Trigger

The petitioner states that Trigger is a company located in the Philippines, which is not the primary surrogate country in this review. The petitioner argues that Trigger produces goods that are not comparable with the subject merchandise because it hardens steel and produces carbide-tipped sawblades, knives, metal parts, and laser-cut parts and sells them solely to its Japanese parent company. The petitioner contends that Trigger's financial statements are distorted because Trigger used Philippine prison labor and received countervailable subsidies from the Philippine government.

According to the petitioner, the Philippine authorities granted Trigger a permit to import brazing machines and raw materials for subcontracting to be carried out by the Bureau of Jail Management and Penology of Soong Lapu-Lapu City. The petitioner explains that this permit was annually renewed, including during the POR, and the payments to inmates were based on a piecework model and subject to an expanded withholding tax of two percent. The petitioner questions whether Trigger's use of prison labor (1) caused any omission of reporting certain costs in Trigger's financial statements, (2) distorted Trigger's valuation of labor in its financial statements, and (3) presents policy implications for reliance on Trigger's financial statements.

The petitioner alleges that Trigger received subsidies from the Philippine authorities in the form of tax and non-tax incentives and benefits for registering with the Philippine Economic Zone Authority to (1) produce and export high quality cemented carbide-tipped saws, (2) produce cutting tools, metal parts, laser cut parts, and other similar items, and (3) harden steel plates.

Bosun and Weihai request that the Department continue to use Trigger's financial statements for the final results. Weihai claims that Trigger's financial statements are better in quality than Tyrolit's financial statements. Citing, *e.g.*, *Shantou Red Garden Foodstuff Co. v. United States*, 880 F. Supp. 2d 1332, 1334-35 (CIT 2012), Weihai argues that, for this reason, the Department may select Trigger's financial statements over Tyrolit's financial statements even though Trigger is located in the Philippines, one of the potential surrogate countries not selected as the primary surrogate country. Weihai explains that the Department did so in *Freshwater Crawfish Tail Meat From the People's Republic of China: Antidumping Duty Administrative Review; 2010-2011*, 77 FR 61383 (October 9, 2012).

Weihai argues that Trigger is a company almost exclusively focused on producing circular saw blades and that even Trigger's other products presumably involve similar metallurgical and mechanical operations. Weihai contends that the minor production of arguably non-comparable merchandise by Trigger does not derogate from the fact that the company's main focus is on producing circular saw blades that are comparable to diamond sawblades. Weihai claims that Trigger's sales of products only to its Japanese parent company does not make Trigger's financial statements unreliable because there is no *per se* rule regarding the unreliability of sale prices to an affiliated person in a commercial transaction. Weihai explains that, if an issue arises with respect to the sales price between Trigger and its Japanese parent company, the appropriate customs and tax authorities would have investigated these companies pursuant to the jurisdictional transfer pricing rules. Weihai contends that, in the absence of such evidence, the petitioner's arguments have no merit.

Weihai contends that the petitioner did not demonstrate that Weihai's use of prison labor distorted its financial performance. Weihai claims that the wage system based on performance appears to be similar to any other independent commercial contractual arrangement. Weihai requests that the Department reject the petitioner's "generalized and vague arguments" concerning the use of prison labor. Citing *Steel Nails*, 78 FR at 16654, Weihai argues that the Department does not consider such tangential and unsupported arguments in selecting surrogate value data.

Citing, *e.g.*, *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479 (March 24, 2008), and the accompanying I&D Memo at Comment I.B., Weihai explains that, in selecting financial statements for calculating surrogate ratios, the Department holds a subsidy program as countervailable only of the program has been determined countervailable in an independent CVD investigation conducted by the Department or by similar agencies in third countries. Weihai argues that, because the petitioner did not cite to any prior determination by the Department or other agencies holding that the incentives Trigger received are countervailable, the Department should reject the petitioner's arguments concerning Trigger's alleged receipt of subsidies.

Bosun also argues that the petitioner did not offer any evidence that any incentives Trigger received are countervailable subsidies. With respect to the use of prison labor, Bosun explains that the prison labor accounted for 0.03 percent of Trigger's total labor and the petitioner did not support its claim that this prison labor is a subsidy program that makes Trigger's financial statements unreliable. Bosun contends that the prison labor appears "to be a charitable act perhaps as a part of a work rehabilitation program for female inmates." Regardless, Bosun argues, all labor costs should be excluded from the calculation of financial ratios "because the Department's applied ILOA 6A labor cost accounts for all labor expenses – direct, indirect, administrative, general, subcontracting, etc." Under this approach, according to Bosun, Trigger's labor cost is not technically excluded but is placed in the denominator for raw materials, direct labor, and energy. As such, Bosun states, should Trigger's labor cost be undervalued due to the small percentage of the prison labor, this fact would actually overestimate the cost of labor because this denominator would be slightly undervalued. Bosun argues that, when Trigger is engaged in the production of comparable merchandise in a country at the level of economic development of the PRC, the Department has no concern about Trigger's financial statements' representation of the respondents' production experience.

c. Alpha Diamond Tools Co., Ltd.

Weihai agrees with the Department's rationale for not using the financial statements of Alpha Diamond Tools Co., Ltd. (Alpha) in the *Preliminary Results.* Weihai states that Alpha's financial statements are not as specific as Trigger's financial statements. Weihai asserts that, in the alternative, if the Department decides to use financial statements from Thailand, the Department should use Alpha's financial statements, not Tyrolit's subsidy-distorted financial statements. Weihai claims that the Department rejected Alpha in the preliminary results based on a technicality (*i.e.*, that its line items were not disaggregated enough in several key categories).

Department's Position: For the final results, we continued to use Trigger's financial statements as we did in the *Preliminary Results*. Section 773(c)(1) of the Act directs us to base the valuation of the factors of production on "the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate. . . ." In order to calculate surrogate financial ratios, we select financial statements from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[102] For this purpose, we normally use publicly available financial statements in accordance with 19 CFR 351.408(c)(4).[103] Where possible, we do not calculate financial ratios based on financial statements that show discrepancies or lack of specificity with respect to certain line items.[104]

The three financial ratios we calculate are 1) manufacturing overhead as a percent of raw materials, direct labor & energy; 2) selling, general, and administrative expenses (SG&A) as a percent of raw materials, direct labor, energy, manufacturing overhead, and traded/finished goods; and 3) profit as a percent of raw materials, direct labor, energy, manufacturing overhead, traded/finished goods, SG&A and interest.[105]

[102] *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) and the accompanying I&D Memo at Comment 1.
[103] *Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and the accompanying I&D Memo at Comment 2.
[104] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) and the accompanying I&D Memo at Comment 2.
[105] *See* the memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of

Tyrolit's financial statements do not include specific line items necessary for our calculation of the surrogate financial ratios in this review. Tyrolit's financial statements show a line item expense for "Raw materials and supplies used." While the petitioner treats this line-item expense as direct materials,[106] it is uncertain whether this line-item expense includes direct material costs only or direct material costs as well as other expenses such as factory overhead. Unlike Trigger's financial statements, Tyrolit's financial statements do not explain whether the "supplies used" in this expense can be aggregated further with specific line item expenses for direct materials and factory overhead supplies.[107] In contrast, Trigger's financial statements show line item expenses for "Direct Materials" and "Factory Overhead," under which "Factory supplies" is one of the ten listed factory overhead line items (*i.e.*, "Depreciation," "Factory supplies," "Light, power and water," "Employees' benefits and welfare," "Rent," "Production supervision," "Miscellaneous expense," "Security services," "Fuel and lubricants," and "Repairs and maintenance").[108] In Trigger's financial statements, the "Factory Overhead" section allows us to categorize two line items as "Labor," one line item as "Energy," and seven line items as "Manufacturing Overhead" for our calculation of financial ratios.[109] Notably, however, with Tyrolit's financial statements, the only line item identifiable as "Manufacturing Overhead" for our calculation of financial ratios is "Depreciation."[110] Here, we do not find it reasonable to conclude that the only manufacturing overhead amount is depreciation, particularly in light of the fact that depreciation is only one of many manufacturing overhead amounts listed in Trigger's financial statement. In prior NME cases, we did use financial statements that provided depreciation as the only overhead for our calculation of financial ratios under unique circumstances, but when available on the record we prefer to use financial statements that contain the full level of details[111] including line-item expenses that comprise manufacturing overhead.[112] In addition, Trigger's financial statements provide detailed line items for "Net Financing Costs" (*i.e.*, "Interest income," "Dividend and other income," "Realized foreign exchange gain (loss)," "Bank charges," "Unrealized foreign exchange gain (loss)," and "Loss on disposal)." From the list of these line items in Trigger's financial statements, we categorized "Dividend and other income" as "Profit (P) and Adjustment to Profit" and all other line items as "SG&A and Interest (SGA)" for our calculation of financial ratios in this review. In contrast, Tyrolit's financial statements provide the line item "Net financing costs" with no further details about it.[113] Trigger's financial statements provide a level of detail more similar to Bosun's

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China: Surrogate Values for the Final Results of Review" (Final Surrogate Value Memorandum) dated concurrently with this I&D Memo, at Exhibit 1, Financial Ratios tab.

[106] *See* the petitioner's post-preliminary surrogate value comments dated January 17, 2014, at Exhibit 1-A.

[107] *Id.* at Exhibit 1-B, note 19.

[108] *See* ATM Single Entity's surrogate value comments dated June 13, 2013, at Exhibit 4, Trigger's 2012 Financial Statements at 23.

[109] *See* the final surrogate value memo at Exhibit 1, Financial Ratios tab.

[110] *See* the petitioner's post-preliminary surrogate value comments dated January 17, 2014, at Exhibits 1-A and 1-B, note 19.

[111] *See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) (*Xanthan Gum*), and the accompanying I&D Memo at Comment 2.

[112] *See* ATM Single Entity's surrogate value comments dated June 13, 2013, at Exhibit 4, Trigger's 2012 Financial Statements at 23.

[113] *See* the petitioner's post-preliminary surrogate value comments dated January 17, 2014, at Exhibits 1-A and 1-B, Statements of Income.

financial statements[114] and Weihai's financial statements[115] than Tyrolit's financial statements do.

Trigger is a company located in one of the potential surrogate countries at the level of economic development of the PRC. Trigger also produces circular saw blades comparable to diamond sawblades.[116] Tyrolit's financial statements explain that Tyrolit "is engaged in manufacturing and selling of diamond cutting wheel and parts of diamond cutting wheel."[117] However, even if Tyrolit manufactures products that are identical or more comparable to the products Trigger produces, as explained above, Tyrolit's financial statements do not provide the level of necessary detail that Trigger's financial statements provide. When we have two sets of financial statements – one with comparable products and useable details and another with identical and/or more comparable products but lacking necessary details – we find it reasonable for us to use the set of financial statements with comparable products and useable details.

We generally do not rely on financial statements where there is evidence that the company received countervailable subsidies and there are other sufficiently reliable and representative financial statements on the record to calculate the surrogate financial ratios.[118] However, it is our practice, in accordance with the legislative history, not to conduct a formal investigation to ensure that such prices are not subsidized; rather, we examine the information on the record to determine whether the financial statements contain evidence that the company received benefits from subsidy programs that we have previously found as countervailable.[119] In this case, we have no reason to believe or suspect Trigger received countervailable subsidies because, since 1988, the Department has not made an affirmative CVD finding on products from the Philippines.[120] Moreover, the petitioner's reference to tax incentives or other such items does not, without more, give rise to a reason to believe or suspect Trigger's financial statements are distorted by countervailable subsidies. Therefore, we have no reason to believe or suspect that Trigger received countervailable subsidies. Although the petitioner has challenged Trigger's financial statements based on Trigger's use of subcontract labor, Trigger's financial statements are the only usable statements on this record. In addition, as explained below, we are relying on industry-specific labor data from the National Statistical Office of the Thai government to value

[114] *See* Bosun's section A response dated March 14, 2013, at Exhibit A-11, and supplemental response dated October 29, 2013, at Exhibit S2-1.
[115] *See* Weihai's section A response dated April 8, 2013, at Exhibits A-19B and A-19C.
[116] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibit 14, page 44.
[117] *See* the petitioner's post-preliminary surrogate value comments dated January 17, 2014, at Exhibit 1-B.
[118] *See, e.g., 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 10545 (March 11, 2009), and the accompanying I&D Memo at Comment 1.
[119] *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report, H.R. Rep. 100-576 at 590 (1988); *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007); *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR at 55039 (September 24, 2008).
[120] *See Canned Tuna From the Philippines; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order*, 53 FR 9788 (March 25, 1988).

labor.[121] For the reasons described above, we find that Trigger's financial statements are the only suitable financial statements for our calculation of surrogate financial ratios in this review.

Because we find that Trigger's financial statements are the only useable financial statements on the record of this review and Tyrolit's financial statements are not suitable as a basis for surrogate financial ratios for the reasons explained above, we find the issues concerning the Tyrolit's location, merchandise that it produces, and alleged receipt of countervailable subsidies moot.

Although Weihai argues only in the alternative that we should use Alpha's financial statements if we decide not to use Trigger's financial statements, we note that we did not use Alpha's financial statements because they do not contain a sufficient level of detail to complete the financial ratio calculation. As we decided in the *Preliminary Results*, Alpha's financial statements are insufficiently detailed because they do not provide the labor costs, energy costs, beginning and ending work-in-process costs, and line-item details of financing costs. Therefore, Alpha's financial statements contain insufficient details for us to calculate financial ratios.

Steel Types 1, 2, and 3

Comment 17: Weihai argues that the Department should use the GTA statistics for HTS subheadings 7225.40.90090 (flat-rolled alloy steel (other than stainless) not in coils, 600 mm or more wide, hot-rolled, nesoi - other) to value steel type 1 and the GTA statistics for HTS subheadings 7211.29.90043 (other flat-rolled iron or non-alloy steel products, nesoi, under 600 mm wide, cold rolled, not clad, plated, or coated – anneal of a thickness exceeding 1 mm but less than 3 mm) to value steel types 2 and 3. Weihai opposes the Department's preliminary use of the GTA statistics for HTS headings 7225.50 (flat-rolled alloy steel (other than stainless) products, 600 mm or more wide, cold-rolled, nesoi) and 7226.92 (flat-rolled alloy steel (other than stainless) products, under 600 mm wide, cold-rolled, nesoi) to value steel types 1 and 2 and the GTA statistics for HTS headings 7226.92 to value steel type 3.

Weihai explains that steel type 1 is a hot-rolled alloy steel plate with a chemical composition of 30CrMo and the width less than 600 mm. Weihai argues that HTS headings 7225.50 and 7226.92 cover cold-rolled alloy steel products with the width greater than or equal to 600 mm (HTS code 7225.50) and less than 600 mm (HTS heading 7226.92). Citing *Xinjiamei Furniture Zhangzhou Co. v. United States*, 2014 CIT LEXIS 20, 14-15 (CIT 2014) (*Xinjiamei*), Weihai contends that the GTA statistics for HTS heading 7225.50 and 7226.92 cover a broad basket category of data and do not provide a specific reliable price for valuing steel type 1. According to Weihai, hot-rolled steel products are different from cold-rolled steel products in terms of their physical characteristics, production process, end uses, and overall cost of production. Weihai explains in particular that hot-rolled steel products undergo heat treatments before rolling. For these reasons, Weihai asserts, HTS headings 7225.50 and 7226.92 are not specific to steel type 1 in terms of a significant defining characteristics, *i.e.*, hot-rolled *versus* cold-rolled.

Weihai requests that the Department use the GTA statistics for HTS subheading 7225.40.90090, which covers flat, hot-rolled alloy steel products, not in coils, with width greater than equal to

[121] Our use of the NSO statistics to value labor is not contested for the final results of this review.

600 mm. Weihai states that HTS subheading 7225.40.90090 matches with steel type 1 in the most important characteristics, *i.e.*, hot-rolled steel product. Weihai explains that HTS subheading 7225.40.90090 does not cover steel type 1 in terms of width but there is no information on the record of this review showing how this difference alone has any relevance to the per-unit surrogate value of steel plate based on weight of the steel. Weihai explains further that, even if such evidence exists on the record of this review, this difference is less significant than a difference between hot-rolled and cold-rolled steel products.

Weihai explains that steel types 2 and 3 are non-alloy cold-rolled, annealed steel plate with a chemical composition of 65 MnNH with width less than 600 mm and thickness greater than 1 mm (steel type 2) and less than or equal to 1 mm (steel type 3). Weihai states that the Department preliminarily used the GTA statistics for the HTS headings 7225.50 and 7226.92 to value steel type 2 and the GTA statistics for HTS heading 7226.92 to value steel type 3. Citing *Xinjiamei*, Weihai contends that the HTS codes the Department preliminarily used for these two steel types cover a broad basket category of data and do not provide a specific reliable price for valuing these two steel types. In addition, Weihai explains that HTS heading 7225.50 and 7226.92 cover alloy steel. Weihai argues that the differences between alloy steel and non-alloy steel are significant in terms of their physical characteristics, production process, end uses, and overall cost of production that the Department considers these differences in constructing control numbers. For these reasons, Weihai contends, the GTA statistics for the HTS codes the Department preliminarily used to value steel types 2 and 3 are not suitable.

Weihai requests that the Department value steel types 2 and 3 based on the GTA statistics for HTS subheading 7211.29.90043, which covers flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated or coated, not further-worked than cold-rolled, and annealed. Weihai states that HTS subheading 7211.29.90043 specifically covers steel type 2 because steel type 2 (1) is a non-alloy steel, (2) is cold-rolled, (3) undergoes the manufacturing process which includes annealing, and (4) has the width of less than 600 mm and the thickness ranging between 1 mm and 3mm. Weihai also explains that the reliability of the GTA statistics for the HTS subheading 7211.29.90043 is corroborated by the U.S. import data for HTS subheading 7211.12.96030, which covers flat-rolled iron or non-alloy steel, 300 to under 600 mm wide, cold-rolled, within which steel type 2 would be classified if imported into the United States. With respect to steel type 3, Weihai asserts that its physical characteristics are the same as steel type 2 with the exception of thickness, which is less than or equal to 1 mm. According to Weihai, there is no record evidence showing that steel thickness by itself has any bearing on its unit price.

The petitioner requests that the Department continue to use the same GTA statistics for the HTS codes the Department preliminarily used to value steel types 1, 2, and 3. The petitioner argues that, despite the post-preliminary opportunity to submit additional information on its inputs, Weihai did not provide any specific description of the steel used in its production. The petitioner contends that the information Weihai submitted on the record of this review concerning these steel types do not support Weihai's request for the use of different GTA statistics to value these steel types. The petitioner claims that there is nothing on the record of this review that links the steel types Weihai reported in its surrogate value comments dated June 13, 2013, to the inputs Weihai used in its production.

Department's Position: For the final results, we valued steel type 1 based on the GTA statistics for HTS subheading 7225.40.90090 and steel types 2 and 3 based on the GTA statistics for HTS subheading 7211.29.90043 because these subheadings provide the best available information.[122] We used the GTA statistics for HTS subheading 7225.40.90090 to value steel type 1 because this steel type and the product covered by this HTS code are both hot-rolled alloy steel products.[123] We used the GTA statistics for HTS subheading 7211.29.90043 to value steel types 2 and 3 because these two steel types and the product covered by this HTS code are both non-alloy, cold-rolled, and annealed steel products.[124] These are the HTS codes that Weihai placed on the record of this review.[125] The petitioner has not submitted any surrogate data rebutting the specificity of these HTS codes. We find that valuing these steel types based on HTS subheadings 7225.40.90090 and 7211.29.90043, as explained above, is more consistent with record evidence than valuing these steel types based on the two HTS headings we used in the *Preliminary Results* was, and thus better satisfies the surrogate value criteria and provides the best available information. In the *Preliminary Results*, we valued these steel types based on the GTA data for the HTS codes that cover steel products with essentially different physical characteristics, *i.e.*, valuing hot-rolled steel based on HTS codes for cold-rolled steel and valuing non-alloy steel based on HTS codes for alloy steel.

Despite the petitioner's claim that there is nothing on the record of this review that explicitly links the steel types Weihai reported in its surrogate value comments dated June 13, 2013, to the inputs Weihai used in its production, the petitioner did not point to any evidence on the record clearly contradicting Weihai's claim that steel type 1 is hot-rolled steel and steel types 2 and 3 are cold-rolled, non-alloy, annealed steel products.[126]

Comment 18: Weihai claims that the GTA statistics for HTS heading 7226.92 are aberrational. Weihai argues that, if the Department decides to continue to value steel types 1 and 2 using the same HTS codes that it used in the *Preliminary Results*, the Department should weight-average the values. The petitioner disagrees with Weihai's assertion that the GTA data for HTS heading 7226.92 is aberrational. The petitioner states that the Department's normal practice is to simple average HTS codes when more than one HTS code is used to value an input.

Department's Position: As explained in Comment 17, for the final results, we used single HTS subheadings not including the HTS subcategory at issue to value each steel type and we did not use the HTS headings that we preliminarily used. Therefore, these issues are moot.

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[122] We considered valuing steel type 3 based on the GTA data for HTS code 7211.29.90044 (other flat-rolled iron or non-alloy steel products, nesoi, under 600 mm wide, cold rolled, not clad, plated, or coated – anneal of a thickness of 0.5 mm or more but not exceeding 1 mm) because this HTS code covers the same products as the products covered by HTS code 7211.29.90043 with the exception of thickness, which is 0.5 mm or more but not exceeding 1 mm but there is no useable GTA data for the POR. *See* the final surrogate value memorandum, Exhibit 1, Original tab and Excluded tab.
[123] *See* Weihai's section D response dated May 1, 2013, at 14, and surrogate value comments dated June 13, 2013, at Exhibits 1 and 2.
[124] *See* Weihai's section D response dated May 1, 2013, at 14, and surrogate value comments dated June 13, 2013, at Exhibits 1 and 2.
[125] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibits 1 and 2.
[126] *See* the petitioner's revised rebuttal brief dated April 10, 2014, at 27-29, for more details of its arguments using Weihai's business proprietary information.

Tin Powder

Comment 19: Weihai opposes the Department's preliminary valuation of tin powder based on the GTA statistics for HTS subheading 8007.00.30002 (tin powders and flakes). Citing, *e.g.*, *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 66087 (December 14, 2009), Weihai explains that it is the Department's practice to compare to the extent applicable a surrogate value for each FOP to the AUV calculated for the same period using data from other potential surrogate countries in a review. Quoting *Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 17, 2010) (*Activated Carbon*), and the accompanying I&D Memo at Comment 4A, Weihai explains further that, in such cases, "the Department will assess all relevant price information on the record, including any appropriate benchmark data, in order to actually value the input in question" and, with regards to benchmarking, the Department also examines "data from the same HTS category for the surrogate country over multiple years to determine if the current data appear aberrational compared to historical values."

Weihai states that, between November 2009 and October 2012, the global AUV of tin (the unit value of tin averaged on a worldwide basis), which is the underlying material for tin powder, increased by 41 percent whereas the Thai AUV of tin powder based on this GTA statistics inexplicably increased by 161 percent. Also, Weihai argues that, compared to the AUVs based on U.S. imports under HTS subheading 8007.00.3200 (tin powders and flakes for HTSUS) and GTA data for HTS subheading 8007.00 (articles of tin, nesoi) from India, Indonesia, and the Philippines, the AUV based on the Thai GTA statistics for HTS subheading 8007.00.3200 is higher by the percentages ranging from 140.88 percent to 444.44 percent.

Citing *Peer Bearing Company – Changshan v. United States*, 752 F. Supp. 2d 1353, 1372-74 (CIT 2011), Weihai requests that the Department reject the preliminary surrogate value for tin powder. Weihai requests that the Department value tin powder using the price quote for tin oxide from a Thai producer named Cover Asia Co., Ltd. (Cover Asia), for the final results. According to Weihai, tin oxide is used in the production of diamond blades and core bits and thus specific to the input Weihai used. Weihai explains that Cover Asia issued this price quote pursuant to a commercial inquiry by Weihai's consultant in Thailand. Weihai describes this price quote as high-quality and detailed with two different average unit sale prices and substantive terms and conditions. Weihai claims that the prices in this price quote fall within the price range of the AUVs based on the GTA statistics for HTS heading 8007.00 for India, Indonesia, and the Philippines.

Bosun concurs with Weihai's arguments concerning the valuation of tin powder for the final results.

For the final results, the petitioner requests that the Department continue to use the same surrogate value for tin powder that it used in the *Preliminary Results*. The petitioner claims that the existence of higher prices alone does not demonstrate a distortion or misrepresentation of the price data and the fact that a given country's import prices may be higher than some other countries is insufficient to exclude a particular surrogate value. The petitioner argues that the price movements are common and Thailand's import prices follow the global trend. The petitioner also argues that the data Weihai provided for the AUV for U.S. imports shows a 100 percent increase in prices between January 2012 and October 2012.

The petitioner explains that large and even erratic price movements are common and they are not aberrational. 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), and the accompanying I&D Memo at Comment 14, the petitioner explains that surrogate values based on import prices are aberrational only when (1) the quantities of imports during the POR were significantly diminished from those imported during past periods, (2) the AUVs are between 1,000 percent and 2,000 percent higher than that of imports from any other country under consideration, and (3) the AUV for the same country varied substantially from the AUV from a prior period. The petitioner observes none of these factors is in play in this review.

The petitioner opposes the use of the price quote from Cover Asia. The petitioner argues that this price quote lacks specific information pertaining to grade, quality, or impurities and that it comes from a single supplier. The petitioner contends that (1) price quotes do not represent actual prices or broad ranges of data; and (2) the Department does not know the conditions under which the price quote was solicited and whether or not Weihai selected this particular price quote from a broader range of quotes. Moreover, the petitioner explains, the Department prefers country-wide values to values from a single producer because country-wide values represent prices in the surrogate country as a whole better than a single-source value does.

Department's Position: For the final results, we continued to value tin powder as we did in the *Preliminary Results*. For the following reasons, we do not find that Weihai's proffered reference points demonstrate that our preliminary valuation of tin powder was aberrational.

First, Weihai compared our preliminary surrogate value for tin powder with the AUVs based on the GTA statistics for HTS heading 8007.00 (articles of tin, nesoi), for India, Indonesia, and the Philippines. The comparison product (articles of tin, nesoi) is an underlying raw material for tin powder, not the tin powder covered by HTS subheading 8007.00.30002. It is possible that non-powder tin products included in the comparison product (*i.e.*, articles of tin, nesoi) had price experiences that are different from the price experience tin powder had in the same period. Therefore, a comparison of AUVs for tin powder and AUVs for articles of tin does not demonstrate that our preliminary valuation of tin powder was aberrational.

Second, for the reason described above, Weihai's comparison of the 161 percent increase of the Thai AUV of tin powder to the 41 percent increase of the global AUV of tin, which is the underlying material for tin powder and, thus, different from tin powder, at the same time period does not demonstrate that the increase of the Thai AUV and our preliminary valuation of tin powder are aberrational.

Third, the AUV based on U.S. imports under HTS subheading 8007.00.3200 is the only AUV based on the HTS subheading with matching descriptions (tin powders and flakes). With only one HTS subheading with matching product description and lower AUV than our preliminary surrogate value for tin, we are not able to determine which one, if either, is aberrational because we have no other comparison data to determine in one way or another.

As we explained above in numerous comments, it is not our normal practice to value FOPs based on price quotes. For the final results, we did not use the price quote from Cover Asia.

Truck Freight

Comment 20: Bosun and Weihai request that the Department recalculate the surrogate value for truck freight based on the Dxplace data,[127] not *Doing Business* as in the *Preliminary Results*. According to Weihai, the Dxplace data provide a comprehensive database concerning logistics in Thailand. Weihai explains that Dxplace provides a central database of truck freight data compiled from sources from vendors located throughout Thailand that cover different types of trucks used for different products and services in different conditions. Weihai claims that, for these reasons, the Dxplace data represent a broad geographical market average and thus is more representative than *Doing Business* is.

Bosun and Weihai argue that *Doing Business* does not cover the broad market average of the truck freight because it covers only one route from the center of Bangkok to the Port of Bangkok. Bosun states that the Department decided not to use *Doing Business* covering the Philippines and selected another source to value truck freight in *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) (*Wood Flooring 2009-10*), and the accompanying I&D Memo at Comment 18, because *Doing Business* covering the Philippines covers only one route from Naga to Manila and is not representative of a broad market average. Bosun and Weihai point out the other source includes 92 destinations. Weihai claims that *Doing Business* also lacks information regarding the type of truck used for transporting goods. Weihai contends that *Doing Business* does not provide the actual distance the freight traveled from the center of Bangkok to the Port of Bangkok; the Department used a secondary source to estimate the distance traveled and there may be reasonable doubts as to whether the unit freight charges based on such estimated distances are accurate. For these reasons, Weihai claims, *Doing Business* is inferior to the Dxplace data.

Bosun and Weihai assert that Dxplace provides a comprehensive database concerning logistics in Thailand. Weihai states that the Dxplace website lists several different transport service providers and contains detailed price statistics for road transportation of cargo by truck from Bangkok to different cities throughout Thailand in June 2010. Weihai claims that the Dxplace data have been collected from several freight forwarders and then categorized by province, service area, vehicle type, and product type. Weihai explains that the Dxplace data provide 228 different price points for three types of trucks from several transport service providers with the

[127] Weihai submitted two different Dxplace data sets, one in its surrogate value comments dated June 13, 2013, at Exhibit 8, before the *Preliminary Results* (pre-preliminary Dxplace data), and another in its post-preliminary surrogate value comments dated January 17, 2014, at Exhibit 6 (post-preliminary Dxplace data). According to a respondent in another case, Dxplace is a comprehensive database of logistics in Thailand that provides (1) details of truck freight charges from Bangkok to 76 cities across Thailand and (2) information for three types of trucks yielding 228 price points. *See Xanthan Gum* and the accompanying I&D Memo at Comment 6-A.

cost to ship from Bangkok to 76 different cities throughout Thailand. The more contemporaneous Dxplace data Weihai submitted in its post-preliminary surrogate value comments provide 250 price data points, according to Weihai. Moreover, Weihai explains, the Dxplace data provides truck freight cost for transporting cargo under full truck load conditions, *i.e.*, 15,075 kg for 6-wheel car, 23,000 kg for 10-wheel car, and 42,150 kg for trailer-teller. Weihai argues that, for these reasons, the Dxplace data is better than *Doing Business* in satisfying the specificity criteria, which the CIT ruled in *Taian Ziyang Food Co., Ltd. v United States*, 2013 Ct. Intl. Trade LEXIS 82 (June 24, 2013), as the most important of the five criteria set forth in Enforcement and Compliance's Policy Bulletin 04.1.

The petitioner requests that the Department continue to rely on *Doing Business* to calculate the surrogate values for truck freight because *Doing Business* represents a broad market average. The petitioner claims that the Dxplace data does not indicate how and where the data was obtained and whether the values refer to the full weight of the vehicle or the maximum theoretical carry capacity of the vehicle. The petitioner contends that the Dxplace data do not state whether the prices exclude duties or include taxes. The petitioner explains that the Dxplace data do not reference a base weight exclusive of items like fuel surcharges or any charges for moving goods and passengers. The petitioner also points to the post-preliminary Dxplace data's lack of freight rates for trailers or containers shipped from the factory to the port, which would be the primary method used to ship merchandise to the port.

Department's Position: For the final results, we continue to use *Doing Business* for the surrogate value for truck freight and did not change the preliminary calculation of this surrogate value. The value for truck freight in *Doing Business* is publicly available and contemporaneous with the POR because the data in *Doing Business* are current as of June 1, 2012, which is within the POR.[128] 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," it is our practice to consider the following five factors: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.[129] In this review, we find that *Doing Business* is the only reliable data source and is contemporaneous with the POR. Moreover, *Doing Business* provides a publicly available, broad market average freight rate and we have consistently found it to provide the best available information in other prior cases to value truck freight.[130] 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."[131] *Doing Business* contains data "collected from local freight forwarders, shipping lines, customs brokers, port officials and banks."[132] 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 it is a broad market average.[133] Based on

[128] *See* ATM Single Entity's surrogate value comments dated June 13, 2013, at Exhibit 3.
[129] *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 the accompanying I&D Memo at Comment 4.
[130] *See, e.g., Prestressed Wire* and the accompanying I&D Memo at Comment 4.
[131] *See Honey*.
[132] *See* ATM Single Entity's June 13, 2013, surrogate value comments at Exhibit 3.
[133] *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) (*PSF*), and the accompanying I&D Memo at

these facts and given that *Doing Business* is a World Bank publication, we find the quality of the data in this publication to be reliable, consistent with our decisions in other NME cases.[134]

We do not consider the pre-preliminary Dxplace data to be the best available information because, although the pre-preliminary Dxplace data appear to provide multiple freight rates from multiple locations in Thailand, these data (1) come from June 2010, well before the POR and thus is not contemporaneous with the POR and (2) it is unclear if the prices are six-month averages or a snapshot in time.[135] Absent evidence indicating whether this resource provides historical price data, we cannot consider this resource more reliable than *Doing Business*.[136] Also, for the pre-preliminary Dxplace data, Weihai did not provide a worksheet and source documentation demonstrating how Weihai calculated the full cargo weights (15,075 kg for 6-wheel car, 23,000 kg for 10-wheel car, and 42,150 kg for trailer-teller) that Weihai used to calculate Weihai's proposed surrogate value for truck freight.[137]

We also did not use the post-preliminary Dxplace data because they do not contain freight rates for trailers or containers shipped from the factory to the port, which would be the primary method used to ship merchandise to the port (as the petitioner points out).[138] The post-preliminary Dxplace data do not even indicate which time period these data cover and, thus, do not support Weihai's assertion that the post-preliminary Dxplace data are more contemporaneous with the POR.[139] Again, for this reason, it is unclear if the prices are average prices covering a period of time or a snapshot in time.[140]

With respect to contemporaneity, we prefer not to use non-contemporaneous freight rate data that may have been affected by various factors over time (*e.g.*, changes in demand for truck services and increasing energy costs) for which the wholesale price data used for inflating a value to the POR will not necessarily account.[141] The pre-preliminary Dxplace data are not contemporaneous. Although we do not know the time period that they cover, we know that the pre-preliminary Dxplace data cover a certain time period in or before June 2010. As explained above, we do not know whether the post-preliminary Dxplace data are contemporaneous with the POR. Without knowing whether a freight data source is contemporaneous with the POR, we are not able to find that such various factors did not affect the freight rate data. Also, contrary to the respondents' claims, for the reasons stated above, both Dxplace data are not sufficiently specific for use to rely on to value truck freight.

Comment 3.

[134] *See e.g., PSF* and the accompanying I&D Memo at Comment 3.

[135] *See Prestressed Wire* and the accompanying I&D Memo at Comment 4.

[136] *Id.*

[137] *See* Weihai's surrogate value comments dated June 13, 2013, at Exhibits 8B and 8C. Although Weihai did provide certain truck weights and freight weights for different types of trucks in Exhibit 8B of its surrogate value comments dated June 13, 2013, it did not provide narratives or worksheets demonstrating how it used Exhibit 8B to calculate these three full cargo weights.

[138] *See* Weihai's post-preliminary surrogate value comments dated January 17, 2014, at Exhibit 6. The e-mail on the first page of Exhibit 6 states, "Nevertheless, they have not had much data in connection with the trailer."

[139] *Id.* Nothing in Exhibit 6 clearly indicates that the post-preliminary Dxplace data covers any of the dates in Exhibit 6.

[140] *See Prestressed Wire* and the accompanying I&D Memo at Comment 4.

[141] *See Prestressed Wire* and the accompanying I&D Memo at Comment 4.

While it is true that we relied on a source other than Doing Business covering the Philippines in *Wood Flooring 2009-10* to value truck freight, that source we relied on in that review was data from Confederation of Truckers Association of the Philippines, Inc., not Dxplace.[142] The reason we used another source to value truck freight in *Wood Flooring 2009-10* was because that source provided a more specific and sufficiently reliable data than the truck freight data from Doing Business in the Philippines' province of Camarines Sur did.[143] In this review, that is not the case. For the above reasons, for the valuation of truck freight, *Doing Business* provides specific and useable data whereas both Dxplace data do not. Even with the flaws that Weihai claim exist in it, *Doing Business* is the only viable information on the record for calculating the surrogate value for truck freight.

Weihai Collapsing Analysis

Comment 21: The petitioner requests that the Department collapse Weihai and Shinhan's affiliate and treat them as one entity pursuant to 19 CFR 351.401(f) in order to prevent them from manipulating price or production of the subject merchandise and funneling exports through the party with the lowest rate. The petitioner argues that a certain family relationship between Ehwa, which is Weihai's Korean parent company, and Shinhan supports collapsing Weihai and Shinhan's affiliate. The petitioner explains that, although the Department did not collapse Ehwa and Shinhan in *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 Korea*), and the accompanying I&D Memo at Comment 13, Weihai and Shinhan's affiliate have facilities in the PRC to produce subject merchandise exported to the United States. The petitioner contends that, although the Department preliminarily found that Weihai and Shinhan's affiliate do not (1) share managers, (2) have intertwined operations, or (3) have direct cross-ownership, Ehwa and Shinhan can potentially work together with respect to their Chinese production facilities because of this family relationship. The petitioner claims that the ownership structure of Ehwa and Shinhan is sufficient to direct the restructuring of their Chinese affiliates' manufacturing priorities with respect to subject merchandise.

Weihai states that Ehwa and Weihai have no involvement in the businesses operated by Shinhan and its affiliate at issue, or vice versa. Weihai argues that the certain degree of family relationship the petitioner relies on to request collapsing the two companies does not meet the collapsing criteria. Weihai states that the Department correctly decided not to collapse the two companies in the *Preliminary Results* and the petitioner provided no justifications for the Department to reverse its preliminary decision. Weihai argues in particular that the petitioner provided no products manufactured by Weihai and Shinhan's affililate with identical CONNUMs.

Department's Position: Ehwa and Shinhan are Korean producers of diamond sawblades that we found affiliated in the *LTFV Final Korea*. As it relates to this case, Weihai is owned by the Korean company, Ehwa; and the Shinhan affiliate at issue here is related to the Korean company, Shinhan (although the details of that relationship are proprietary). Neither Ehwa nor Weihai own

[142] *See Wood Flooring 2009-10* and the accompanying I&D Memo at Comment 18.
[143] *Id.*

Shinhan or the Shinhan affiliate at issue. However, because of our finding in the *LTFV Final Korea* that the Korean companies Ehwa and Shinhan were affiliated, the petitioner has suggested that we examine the relationships between these companies in this case as well, arguing that we should collapse Weihai and the Shinhan affiliate.

In essence, collapsing entities means that we will treat the collapsed entities as a single entity for the purpose of calculating anti-dumping margins. Based on the discussion below, we do not find that the collapsing criteria are satisfied here, and thus we are continuing to treat Weihai and the Shinhan affiliate as separate entities.

The principal authority governing collapsing is 19 CFR 351.401(f). Under that regulation, there are criteria in order to collapse two (or more) entities: (1) the entities must be "affiliated," as defined in section 771(33) of the Act, (2) they must "have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities," and (3) there must be "a significant potential for the manipulation of price or production."[144] With respect to the first criterion, the petitioner has not alleged, let alone demonstrated, any affiliation between Weihai and the Shinhan affiliate. Thus, we do not even arrive at the second and third criteria.

In the *LTFV Final Korea*, we found Ehwa and Shinhan affiliated but we did not find a significant potential for manipulation of price or production between them because they did not (1) jointly employ or share managers, executives, or members of the board and (2) have intertwined operations between them.[145] For these reasons and because record evidence did not suggest otherwise, we treated Ehwa and Shinhan as separate entities in subsequent segments of that proceeding.[146] A finding of affiliation between Ehwa and Shinhan in the proceeding involving diamond sawblades from Korea does not automatically result in a finding of affiliation between Weihai and the Shinhan affiliate in this case. To support a finding that Weihai and the Shinhan affiliate are affiliated with each other in this case, the petitioner must demonstrate an affiliation between these two companies, pursuant to section 771(33) of the Act. The petitioner has not demonstrated such an affiliation. Instead, the petitioner's argument for collapsing Weihai and the Shinhan affiliate rests solely on the affiliation status between Ehwa and Shinhan. Ehwa and Shinhan are affiliated through a certain degree of common ownership with a familial relationship.[147] However, we do not have information on the record of this review about the ownership percentages flowing from the family relationship at issue through Shinhan to the Shinhan affiliate. Therefore, we are not able to analyze and determine the affiliation status, if any, between Weihai and the Shinhan affililate in accordance with section 771(33) of the Act. As a threshold matter, these two companies cannot be collapsed because the record does not support the Department finding them to be "affiliated producers" as required by 19 CFR 351.401(f)(1).[148]

[144] *See* 19 CFR 351.401(f)(1); *see also Carpenter Tech. Corp. v. United States*, 510 F.3d 1370, 1373 (Fed. Cir. 2007).
[145] *See LTFV Final Korea* and the accompanying I&D Memo at Comment 13.
[146] *See, e.g., Diamond Sawblades and Parts Thereof From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 2010-2011*, 78 FR 36524 (June 18, 2013).
[147] *See* Weihai's section A response dated April 8, 2013, at 20-21 and Exhibit A-5.
[148] In the *Preliminary Results*, we inadvertently overlooked this affiliation issue and analyzed this issue in accordance with 19 CFR 351.401(f)(2). *See Preliminary Results* and the accompanying Preliminary Decision

Request To Apply Adverse Facts Available to Bosun

Comment 22: The petitioner argues that the Department should base Bosun's final dumping margin on AFA because it has not participated to the best of its ability in this review. Specifically, the petitioner argues that, after it pointed out discrepancies in Bosun's fifth filing of its U.S. sales database, including mismatched business proprietary information and the corresponding public version, and mismatched electronic and hard copy versions, Bosun was forced to file further submissions clarifying the record. The petitioner argues that at this point of the review, the Department can have no confidence in the completeness and accuracy of Bosun's U.S. sales information and therefore, reliance on AFA is warranted.

The petitioner argues that, to the extent the Department chooses not to employ adverse inferences in this review, given that Bosun's U.S. database is unreliable, the Department should apply the margin calculated in the LTFV investigation for Bosun for the final results.

Bosun rebuts the petitioner's argument by stating that it explained that the issue concerning its U.S. sales database arose from a technical mistake in programming/formatting the databases at issue. Bosun points out that the petitioner acknowledges that this technicality was corrected in the resubmitted U.S. sales database. Bosun argues that this inadvertent technical mistake does not constitute a failure to cooperate. Rather, according to Bosun, it responded to each supplemental questionnaire, further refining its U.S. sales database to correct discrepancies that were more and more minor with each resubmission. Bosun asserts that the record contains a fully reliable and complete U.S. sales database. Bosun argues that there is no missing information that would trigger the facts available statute, which states that the Department can rely upon "facts available" when necessary information is not available on the record. According to Bosun, the petitioner has not indicated a single piece of missing information in its allegation.

Bosun contends that the petitioner's argument that the Department should apply the LTFV margin to Bosun for the final results suffers from a fatal flaw. Specifically, Bosun argues that if there is no missing information and no substantial evidence that the response is unreliable, then facts available is not warranted, including facts available with an adverse inference. Bosun argues further that the margin calculated in the LTFV investigation was based on a surrogate country, *i.e.*, India, that the Department has determined in this review as not at the level of economic development of the PRC. Bosun asserts that the petitioner's suggestion is particularly inappropriate as it has not alleged any defect or discrepancy with Bosun's FOP database in this review. Thus, according to Bosun, it would be entirely inappropriate to rely upon the margin calculated in the LTFV investigation for the final results.

Bosun argues that for all these reasons, the Department should dismiss the petitioner's request to apply the AFA rate to Bosun for the final results.

Department's Position: We agree with Bosun. Sections 776(a)(1) and (2) of the Act provide

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Memorandum at 13 and 14. Even if we assume that these two Chinese companies are affiliated, for the reasons stated in the *Preliminary Results*, we would not have collapsed these two Chinese companies.

that, if necessary information is not available on the record or if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to sections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, the facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that, "{i}f an interested party, promptly after receiving a request from {the Department} for information, notifies {the Department} . . . that such party is unable to submit the information requested in the requested form and manner," the Department may modify the requirements "to avoid imposing an unreasonable burden on that party." Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) of the Act if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

Although Bosun provided several versions of its U.S. sales databases and clarified the record on more than one occasion, we find that the necessary requirements for us to apply AFA have not been met pursuant to sections 776(a)(1) and (2) and (b) of the Act and thus AFA is not warranted in this review. Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall inform the person submitting the response of the nature of the deficiency promptly and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the administrative review. Consistent with section 782(d) of the Act, we issued several supplemental questionnaires requesting Bosun to remedy or explain the applicable deficiencies and we received timely responses from Bosun clarifying the record.[149] On January 23, 2014, Bosun filed its last U.S. sales database. In addition, in response to the petitioner's submission filed on February 6, 2014, Bosun filed a submission clarifying the record further on February 18, 2014.[150] Based upon our review, we have found no discrepancies with regard to Bosun's latest U.S. sales database.[151] As no party has provided further evidence on the record that Bosun's latest U.S. sales database is distorted or inaccurate in any way, we are satisfied with Bosun's latest U.S. sales database. As such, we disagree with the petitioner that AFA is warranted in this review because we find that the information on the record can serve as the basis for the Department to calculate a margin for Bosun for the final results.

[149] *See* Bosun's responses dated July 19, 2013, October 29, 2013, November 6, 2013, November 14, 2013, and the January 15, 2014, memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Telephone Conversation."
[150] *See* the petitioner's February 6, 2014, submission and Bosun's February 18, 2014, submission.
[151] *See* Bosun's January 23, 2014, submission.

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 _________

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

June 18, 2014
(Date)