UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Investigation
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October 14, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value Antidumping Duty Investigation

I. SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation on 1,1,1,2-tetrafluoroethane ("tetrafluoroethane") from the People's Republic of China ("PRC"). As a result of our analysis, we made changes to the Preliminary Determination.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

II. BACKGROUND

On May 29, 2014, the Department of Commerce ("Department") published its Preliminary Determination and postponement of the final determination in the less than fair value ("LTFV") investigation of tetrafluoroethane from the PRC and on July 1, 2014, we published an Amended Preliminary Determination. Between June 4 and June 20, 2014, the Department verified the

[1] See 1,1,1,2-Tetrafluroethane from the People's Republic of China: Antidumping Duty Investigation, Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination, 79 FR 30817 (May 29, 2014) ("Preliminary Determination") and accompanying Decision Memorandum ("Prelim Decision Memo"); see also 1,1,1,2-Tetrafluoroethane From the People's Republic of China: Antidumping Duty Investigation; Amended Affirmative Preliminary Determination of Critical Circumstances, 79 FR 37287 (July 1, 2014) ("Amended Preliminary Determination").

information submitted by Jiangsu Bluestar Green Technology Co., Ltd. ("Bluestar")[2] and Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. ("Weitron Kunshan") for use in the final determination. We issued our verification reports on July 21, 2014, and July 23, 2014.[3]

On August 13, 2014, Petitioner,[4] DuPont,[5] MOFCOM,[6] Aerospace,[7] Bluestar, SC Taicang,[8] Quhua/Lianzhou,[9] and Weitron Kunshan each submitted a case brief, and on August 22, 2014, Petitioner, DuPont, Bluestar, SC Taicang, SC Ningbo/SC Ningbo Int'l[10] Quhua/Lianzhou, and Weitron Kunshan submitted rebuttal briefs. On August 22, 2014, pursuant to 19 CFR 351.302(d), we instructed Bluestar, Quhua/Lianzhou, and Weitron Kunshan to strike portions of their case brief that contained untimely and unsolicited new factual information and instructed each company to resubmit a redacted case brief, which each submitted on August 25, 2014. On August 27, 2014, Bluestar filed an objection to the Department's decision to strike portions of its case brief and acknowledged that the information is not on the record of this investigation, but is publicly available on the Department's electronic filing system. We note Bluestar's disagreement with our decision, however, it remains unchanged. Furthermore, 19 CFR 351.302(d) states that the "Secretary will not consider" any "untimely filed factual information, written argument, or other materials" that the Secretary rejects.[11] On September 30, 2014, the Department held a public hearing limited to issues raised in case and rebuttal briefs.

III. SCOPE OF THE INVESTIGATION

The product subject to this investigation is 1,1,1,2-Tetrafluoroethane, R-134a, or its chemical equivalent, regardless of form, type, or purity level. The chemical formula for 1,1,1,2-tetrafluoroethane is CF_3-CH_2F, and the Chemical Abstracts Service ("CAS") registry number is CAS 811-97-2.

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[2] See the Department's four memoranda regarding: (1) "Verification of the Sales and Factors Responses of Jiangsu Bluestar Green Technology Co., Ltd., in the Investigation of 1,1,1,2-Tetrafluorethane from the People's Republic of China," dated July 21, 2014; the Department's memoranda regarding: (1) "Verification of the CEP Sales Response of Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. and Weitron, Inc. in the Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China ("PRC")," dated July 23, 2014; (2) "Verification of the Response of Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. in the Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China ("PRC")," dated July 23, 2014; and (3) "Verification of the Factors Responses of Zhejiang Juhua Co., Ltd. Organic Fluorine Plant ("JuhuaOP") in the Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China ("PRC")," dated July 23, 2014.

[3] See id.

[4] Mexichem Fluor Inc. ("Petitioner").

[5] E.I. DuPont De Nemours & Company ("DuPont").

[6] Ministry of Commerce of the People's Republic of China ("MOFCOM").

[7] Aerospace Communications Holdings, Co., Ltd. ("Aerospace").

[8] Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. ("SC Taicang").

[9] Zhejiang Quhua Fluor-Chemistry Co., Ltd. ("Quhua") and Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd. ("Lianzhou") (collectively, ("Quhua/Lianzhou").

[10] Sinochem Ningbo Ltd. ("SC Ningbo") and SC Ningbo International ("SC Ningbo Int'l") (collectively, "SC Ningbo").

[11] See 19 CFR 351.302(d).

1,1,1,2-Tetrafluoroethane is sold under a number of trade names including Klea 134a and Zephex 134a (Mexichem Fluor); Genetron 134a (Honeywell); Suva 134a, Dymel 134a, and Dymel P134a (DuPont); Solkane 134a (Solvay); and Forane 134a (Arkema). Generically, 1,1,1,2-tetrafluoroethane has been sold as Fluorocarbon 134a, R-134a, HFC-134a, HF A-134a, Refrigerant 134a, and UN3159.

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2903.39.2020. Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

IV. USE OF ADVERSE FACTS AVAILABLE

In the Preliminary Determination, we determined that the PRC-wide entity, which includes Zhejiang Bailian Industry and Trade and Jiangsu Jin Xue Group Co., Ltd., failed to provide necessary information in a timely manner, withheld information requested by the Department, and significantly impeded this proceeding by not submitting the requested information. The PRC-wide entity neither filed documents indicating it was having difficulty providing the information nor did it request to submit the information in an alternate form. As a result, the Department determined, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, to use facts otherwise available to determine the rate for the PRC-wide entity.[12]

For the final determination, we continue to assign to the PRC-wide entity the highest calculated dumping margin of any respondent in the investigation, i.e., the rate of 280.67 percent, which is the dumping margin calculated for Bluestar in the final determination. See Comment 1. No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information.[13]

V. WEITRON KUNSHAN

For the final determination, we have determined that, based on record evidence, Weitron Kunshan did not export subject merchandise during the POI and, therefore, we are not calculating a dumping margin for Weitron Kunshan based on the data it submitted. See below at Comment 2.

[12] See, e.g., Hardwood and Decorative Plywood From the People's Republic of China: Antidumping Duty Investigation, 78 FR 25946 (May 3, 2013) and Preliminary Decision Memorandum, unchanged in Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013).

[13] See 19 CFR 351.308(c) and (d) and section 776(c) of the Act; see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at Comment 1.

VI. CRITICAL CIRCUMSTANCES

On May 29, and July 1, 2014, we published a preliminary affirmative determination of critical circumstances and an amended preliminary affirmative determination, respectively, finding that there was a reasonable basis to believe or suspect that there have been massive imports of tetrafluoroethane over a relatively short period from Weitron Kunshan, Bluestar, the non-individually investigated separate rate entities, and the PRC-wide entity. As such, we determined that critical circumstances exist for Weitron Kunshan, Bluestar, the non-individually investigated separate rate entities, and the PRC-wide entity, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i). Consequently, after the Preliminary Determination and the Amended Preliminary Determination, we instructed U.S. Customs and Border Protection ("CBP") to suspend all entries on or after February 28, 2014, which is 90 days before the publication of the Preliminary Determination on May 29, 2014. After reviewing comments from all parties concerning the preliminary determination of critical circumstances (Comment 6, below), we continue to determine that critical circumstances exist for Bluestar, the non-individually investigated separate rate entities, and the PRC-wide entity.[14]

VII. MARGIN CALCULATIONS

We calculated constructed export price ("CEP"), export price ("EP") and normal value ("NV") using the same methodology stated in the Preliminary Determination, except as follows:

- We made a correction to Bluestar's by-product offset and refrigeration input in the NV calculation and to domestic movement expenses in the net price calculation.[15] We also made corrections to the margin program for Bluestar for certain packing inputs and caustic potash mode of transportation based on verification findings for which we received no comments.[16]

VIII. DISCUSSION OF THE ISSUES

Comment 1: Separate Rate Practice

MOFCOM and Sinochem Ningbo Ltd./SC Ningbo International Ltd.'s Arguments

- The Department's preliminary determination that six PRC exporters failed to demonstrate an absence of de facto government control and were denied separate rates is not supported by the record. The Department should grant those exporters separate rates.
- The Department's separate rate practice does not comply with U.S. law because the statute states the Department shall apply an "all-others rate" to all exporters and producers not individually examined. There are no conditions attached to this, meaning the statue requires the Department to apply the "all-others rate" regardless of government control.

[14] For the final determination, the PRC-wide entity includes Weitron Kunshan.
[15] See Comments 4, 19, and 21, respectively.
[16] See the Department's memorandum to the File regarding, "Final Analysis Memo for Jiangsu Bluestar Green Technology Co., Ltd.," dated concurrently with this memorandum ("Bluestar's Final Analysis Memo").

- Furthermore, in recognition of the market reforms that have taken place in the PRC, it is time for the separate rate practice to be abolished in PRC cases.
- If the Department is unwilling to abandon the separate rate practice, it should remove the "autonomy from the government in making decisions regarding the selection of management" criterion in its de facto analysis.
- The Department's determination rests with its flawed interpretation of Diamond Sawblades from the PRC. Government ownership does not equate to government control over an entity's export activities.
- The Department was incorrect to apply the PRC-wide rate to the six companies denied separate rates, because the Department's decision that the non-market economy ("NME") entity was non-responsive was based on inaccurate information. The fact that two companies named in the petition declined to respond to the Department's quantity and value ("Q&V") request does not demonstrate that they failed to cooperate; it could simply mean they did not export tetrafluoroethane. The Department's decision lacks evidence.
- The Department's country-wide rate practice is inconsistent with the Department's obligations under the World Trade Organization ("WTO") Agreements, and specifically the Vietnam-Shrimp and EC-Bed Linens decisions.
- In the event the Department continues to apply its separate rate practice, it cannot deny separate rate status to companies in the antidumping duty ("AD") proceeding, and calculate countervailing duty ("CVD") subsidies for these companies in the CVD proceeding. That would be akin to declaring a company part of the government in the AD proceeding and while determining in the CVD proceeding that this government entity is receiving subsidies from the government.

Aerospace's Arguments

- The Department denied Aerospace a separate rate and assigned to it the PRC-wide rate, which is based on adverse facts available ("AFA"). The Department erroneously concluded that Aerospace did not demonstrate absence of de facto control because it does not have the ability to select its own management and that China Aerospace Science & Industry Corp ("CASIC") is involved in the company's day-to-day operations. Theoretical control is not enough to deny a separate rate; there must be evidence of control. Petitioner did not provide any evidence demonstrating that Aerospace is not entitled to a separate rate.
- The application of AFA is punitive and, therefore, unwarranted because Aerospace participated to the best of its ability, responding both to the Separate Rate Application and the Department's supplemental.
- The Department's decision that the PRC entity was non-responsive was based on inaccurate information. The Department reached this decision because two companies, Zhejiang Bailian Industry and Trade and Jiangsu Jin Xue Group Co., Ltd., identified by Petitioner as "known or likely known" producers of merchandise subject to the investigation failed to respond to the Q&V. Petitioner provided no evidence that these companies actually produced the merchandise under consideration or exported to the United States during the period of investigation ("POI"). In fact, Petitioner failed to identify Weitron Kunshan in the petition, one of the two largest producer/exporters during the POI.

SC Taicang's Arguments

- There is no evidence that any of SC Taicang's shareholders were involved in export operations, and it should, therefore, have received a separate rate. The Department can only apply AFA in instances when an exporter fails to cooperate by not acting in the best of its ability. The Department did not make this finding with respect to SC Taicang or the other five separate rate applicants that failed the Department's separate rate test and were instead assigned the PRC-wide rate.
- Record evidence does not demonstrate that Zhejiang Bailian Industry and Trade and Jiangsu Jin Xue Group Co., Ltd. are part of the PRC-wide entity, merely that they were identified in the petition. The list identified by Petitioners in the petition was found to be inaccurate by the Department as Q&V responses were submitted by three producers/exporters not identified, and therefore, the list cannot be relied on for purposes of determining the PRC-wide entity rate.
- The Department's separate rate practice, particularly with regards to the PRC, should be discontinued and violates U.S. law because the statute states the Department shall apply an "all-others rate" to all exporters and producers not individually examined. There are no conditions attached to this, meaning the statute requires the Department to apply the "all-others rate" regardless of government control.
- If the Department is unwilling to abandon the separate rate practice, it should remove the "autonomy from the government in making decisions regarding the selection of management" criterion in its de facto analysis.
- In the event the Department continues to apply its separate rate practice, it cannot deny separate rate status to companies in the AD proceeding, and calculate CVD subsidies for these companies in the CVD proceeding. That would be akin to declaring a company part of the government in the AD proceeding while determining in the CVD proceeding that this government entity is receiving subsidies from the government.

Quhua/Lianzhou's Arguments

- The Department incorrectly found Quhua /Lianzhou failed to demonstrate an absence of de facto control because it did not apply the four prong de facto test. Although the Juhua Group is a state-owned enterprise, there is no record evidence that the Chinese government exercised control over the export operations. The ATM case, Advanced Technology & Materials Co. v United States, 938 F. Supp. 1342 (CIT 2013) ("ATM"), was wrongly applied to the facts here since there is no record evidence that the Chinese government exercised control over export operations.

Petitioner's Arguments

- Since 2006, the PRC has strengthened control of state-owned enterprises through SASAC, including enacting additional laws and strengthening existing laws. As such, the Department's separate rate practice continues to be necessary. Furthermore, the Department's separate rate practice has been upheld.
- Aerospace, Quhua/Lianzhou, and SC Taicang should all be denied a separate rate because they have not demonstrated an absence of government control.
- It is unclear if Lianzhou is the exporter because T.T. International ("TTI") has also claimed exporter status based on these sales supplied by Lianzhou.

- The PRC-wide entity includes all PRC companies unless they can demonstrate de jure and de facto independence. Because Aerospace and SC Taicang, along with the other four companies, failed to qualify for separate rates, they ceased to exist as individual entities. Instead, they are included as part of the PRC-wide entity and no longer judged based on individual cooperation.
- Respondents' claim that the record lacks evidence demonstrating that Zhejiang Bailian Industry and Trade or Jiangsu Jin Xue Group Co., Ltd., either produced subject merchandise or exported to the United States, is incorrect. TTI's Separate Rate Application and supplemental Separate Rate Application identify these two companies as suppliers of merchandise that was exported to the United States. Therefore, all companies denied a separate rate should be assigned the PRC-wide rate, which was based on AFA.
- With respect to the argument that the Department cannot deny separate rate status to companies in the AD proceeding and simultaneously calculate CVD subsidies, parties have not cited any court or case precedent in support for its argument, nor has it explained why it the Department's actions are inconsistent. Therefore, the Department should reject this argument.

Department's Position:

We disagree with MOFCOM, Sinochem Ningbo Ltd., SC Ningbo International Ltd., and SC Taicang that our separate rates practice is inconsistent with U.S. law or our obligations under the WTO Agreements. The U.S. Court of Appeals for the Federal Circuit ("CAFC") has affirmed the Department's authority under U.S. law to implement our separate rates practice.[17] In Sigma, 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, and to place the burden on the exporters to demonstrate an absence of central government control. We also disagree that the cited WTO decisions are relevant to our separate rates practice and decision in this case to find certain exporters to be under PRC-government control. The CAFC has held that WTO reports are without effect under U.S. law "unless and until such a report has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).[18] Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[19] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.[20] We note the Department has issued no new determination and the United States has adopted no change to its methodology pursuant to the URAA's statutory procedure.

[17] See e.g., Sigma Corp. v. United States, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997) ("Sigma").
[18] See Corus Staal BV v. U.S. Dep't of Commerce, 395 F.3d 1343, 1347-1349 (CAFC 2005), cert. denied 126 S. Ct. 1023 (2006); accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (CAFC 2007).
[19] See, e.g., 19 U.S.C. §3533, 3538.
[20] See, e.g., 19 U.S.C. §3538 (implementation of WTO reports is discretionary).

At the Preliminary Determination, we determined that six companies[21] failed to demonstrate an absence of de facto control, and therefore were denied separate rates.[22] The Department continues to evaluate its practice with regard to the separate rates analysis in light of the Diamond Sawblades from the PRC antidumping duty proceeding, and the Department's determinations therein.[23] In particular, we note that in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade ("CIT" or "Court") found the Department's existing separate rates analysis deficient in the specific circumstances of that case, in which a government controlled entity had significant ownership in the respondent exporter.[24] In the Preliminary Determination, we concluded that six separate rate applicants were under control of SASAC entities and therefore, not entitled to separate rates.[25] We have also recently concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise control, over the company's operations generally.[26] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership and the role of

[21] 1) SC Ningbo International Ltd ("SC Ningbo International"); 2) SC Taicang; 3) SC Ningbo; 4) Quhua; 5) Lianzhou; and 6) Aerospace.

[22] See Preliminary Decision Memo at 13-14.

[23] See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in Advanced Technology & Materials Co., Ltd., et al. v. United States, 885 F. Supp. 2d 1343 (CIT 2012), affirmed in Advanced Technology & Materials Co., Ltd., et al. v. United States, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at http://enforcement.trade.gov/remands/12-147.pdf. ("DSB Remand") See also 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) and accompanying Preliminary Decision Memo at 7, unchanged in Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

[24] See e.g., Advanced Technology & Materials Co., Ltd. v. United States, 885 F. Supp. 2d 1343, 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); id. at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {State-owned Assets Supervision and Administration Commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor de jure 'separation' that Commerce concludes.") (footnotes omitted); id. at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); id. at 1357 ("AT&M *itself* identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control *over* nomination.") (footnotes omitted).

[25] See Prelim Decision Memo at 12-14.

[26] See Carbon and Certain Alloy Steel Wire Rod From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part 79 FR 53169 (September 8, 2014) ("Wire Rod Prelim") and accompanying Preliminary Decision Memorandum at 5-9.

management and continue to find that the six companies named above do not meet the criteria for a separate rate.

We explained that SC Taicang, SC Ningbo Ltd. and SC Ningbo International, failed to demonstrate an absence of de facto control because these companies are under the control of Sinochem Group, a 100 percent SASAC owned entity.[27] That control has been exercised with respect to these companies. Specifically, members of Sinochem Group's board of directors and management actively participate in the day-to-day operations of SC Taicang, SC Ningbo Ltd., and SC Ningbo International.

Regarding SC Taicang, it has three shareholders: 1) Sinochem Modern Environmental Protection Chemicals (Xi'an) Co., Ltd. ("Sinochem Xi'an"); 2) China Newtech Development and Trade Ltd. ("New Technology"); and 3) Sinochem Europe Capital Corporation. SC Taicang explained that the three shareholders are ultimately controlled by the Sinochem Group, a 100 percent SASAC owned entity.[28] According to SC Taicang's Articles of Association, the Board of Directors consists of seven members.[29] Four members of the Board are appointed by Sinochem Xi'an, including the Chairman, one by New Technology, and two by Sinochem Europe Capital Corporation.[30] Therefore, all members of the seven-member Board are appointed by the three shareholders ultimately controlled by Sinochem Group. According to Article 23, the appointment and removal of the general manager and determinations of the general manager's powers, responsibility and compensation is decided on by agreement of two-thirds of the Board, and according to Article 21, the Chairman is the legal representative of the company.[31]

Regarding SC Ningbo Ltd. and SC Ningbo International, the Sinochem Group is the 51 percent owner of SC Ningbo Ltd., which in turn is the 96 percent owner of SC Ningbo International.[32] For a discussion of SC Ningbo and SC Ningbo International's Articles of Association and how government control has been exercised, which contains business proprietary information, see Final Separate Rate Analysis Memo.[33] Because of the control that the board exercises and the government ownership, we conclude that SC Taicang, SC Ningbo Ltd. and SC Ningbo International do not satisfy the criteria demonstrating an absence of de facto government control. Consequently, we determine that these companies are ineligible for separate rates.

Similarly, in our Preliminary Determination, we explained that neither Quhua nor Lianzhou demonstrated an absence of de facto government control because both of these companies are under the control of Juhua Group, a 100 percent SASAC owned entity, and members of Juhua Group's board of directors and management actively participate in the day-to-day operations of

[27] See Prelim Decision Memo at 13-14.
[28] See SC Taicang Supplemental SRA, at 1 and Exhibit 4 at 10, submitted April 22, 2014.
[29] See SC Taicang SRA at Exhibit 8, Article 19, submitted April 2, 2014.
[30] See SC Taicang SRA at Exhibit 8, Article 19 and 20, submitted April 2, 2014.
[31] Id.
[32] See Sinochem Ningbo Ltd., and SC Ningbo International Ltd. SRAs, submitted January 28, 2014.
[33] See Memorandum to the File through Catherine Bertrand, Program Manager, Office V, from Alexis Polovina, International Trade Analyst, Office V, "Antidumping Duty Investigation of 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Final Separate Rate Analysis" dated concurrently with this memorandum ("Final Separate Rate Analysis Memo").

Quhua and Lianzhou as executive directors.[34] Quhua and Lianzhou argue that in finding an absence of de facto control we abandoned our four-pronged de facto test and, citing to the DSB Remand, instead applied the so-called ATM analysis, where government ownership creates potential for control. Quhua and Lianzhou argue that the potential for control standard is insufficient and that evidence of control is required. Here, record evidence demonstrates that Juhua Group has exercised the potential for this control over both companies, particularly in regards to the selection of management. For a full discussion of Quhua and Lianzhou's articles of association and how control from the Juhua Group flows down to the companies, which contains business proprietary information, see Final Separate Rate Analysis Memo. Consequently, we determine that they are ineligible for separate rates. As outlined in the Final Separate Rate Analysis Memo, because we have determined Lianzhou is not eligible for a separate rate due to government control, we will not consider Petitioner's additional allegation that both Lianzhou and TTI cannot be eligible for separate rates based on the exports produced by Lianzhou.

Regarding Aerospace, in the Preliminary Determination we explained that it did not demonstrate an absence of de facto government control because Aerospace's controlling board members are also on the board of its largest single owner China Aerospace Science & Industry Corp. ("CASIC"), a 100 percent SASAC owned entity, and evidence shows that members of CASIC's board of directors actively participate in the day-to-day operations of Aerospace. Aerospace's board elects the company's general manager and the board will appoint or dismiss other senior managers based upon the general manager's recommendation.[35] Documentation on the record indicates that CASIC and/or SASAC are involved in Aerospace's day-to-day operations. For example, while Aerospace purports to be a publicly traded company, SASAC requested of the China Securities Regulatory Commission an approval of non-public offerings of Aerospace's stock.[36] The China Securities Regulatory Commission approved and authorized Aerospace's non-public offering of stock, which includes the stock held by CASIC, the largest single shareholder.[37] Additionally, Aerospace's board of directors: (a) determines its business plan and its investment plan; (b) prepares its annual financial budget plans and its final accounting plans; (c) prepares its profit distribution schemes and its plans to cover Aerospace's losses; (d) formulates the plans in respect of its increase or decrease of registered capital, issuance of stocks or other securities and listings of Aerospace; and (d) appoints or dismisses the manager of the company and secretary of the board, appoints or dismisses, upon the manager's recommendation, deputy managers, the financial chief and other officers, and determines the remunerations as well as rewards and punishments for those personnel.[38]

With respect to Aerospace's board of directors, while, its Articles of Association indicate that its directors have terms limits and are elected or changed at the general board meeting,[39] the record

[34] Id.
[35] See Prelim Decision Memo at 13-14.
[36] See Aerospace's March 26, 2014, submission regarding "1,1,1,2-Tetrafluoroethane from the People's Republic of China: Aerospace Communications Holdings, Co. Ltd.'s Separate Rate Application," ("Aerospace's SRA Response") at Exhibit 6.
[37] Id.
[38] See Aerospace's SRA Response at Exhibit 8 at Article 107.
[39] See Aerospace's SRA Response at Exhibit 8, Articles of Association, Chapter V, Board of Directors - Article 96.

shows that the directors change infrequently because the outgoing board elects the incoming board and most remain on the board.[40] Of the nine directors elected to the "Sixth Board of Directors," five already held positions on the board, including the company's director and president, Du Yao.[41] Additionally, four of Aerospace's board members are also on CASIC's SASAC-appointed board.[42] Aerospace cites to its Articles of Association and claims that it has nine members on its board of directors, only four of which are associated with CASIC, and therefore, Aerospace argues that the Department wrongly concluded that the four constitute a majority. However, Aerospace reported that its three independent board directors do not have voting rights in the selection of management.[43] In its supplemental Separate Rate Application, Aerospace stated "{t}he independent board directors, including Anping Yu, are not involved in the selection of Aerospace's management. The independent directors do not have voting rights in the selection of Aerospace's management."[44] That would mean that of Aerospace's nine board members, only six have voting rights in the selection of management, of which four, or two-thirds, are associated with CASIC. Additionally, Aerospace's Articles of Association states "{i}n accordance with the document of No. 1405 (K.GG (2005) issued by the Commission for Science, Technology and Industry for National Defense of the PRC (COSTIND), in case of major purchase, the purchasing party, individually or with other persons acting in concert by merger, holds more than five percent (5%) (Inclusive) of the Company's shareholders, it shall firstly submit the purchaser and purchaser scheme to the COSTIND for approval."[45] The government appears to have the final say on ownership of Aerospace. We also find the five percent ownership significant, because five percent is the equity threshold required to nominate a board member.[46] Therefore, we conclude that Aerospace does not satisfy the criteria demonstrating an absence of de facto government control over export activities. Consequently, we determine Aerospace is ineligible for a separate rate.

Additionally, at the Preliminary Determination, we concluded, consistent with Section 776(b) of the Act, that the PRC-wide entity's failure to provide the requested information constitutes circumstances under which it is reasonable to conclude that the PRC-wide entity is not fully cooperative. Two companies, which the Department confirmed received a quantity and value ("Q&V") questionnaire, did not respond to the Department's Q&V questionnaire.[47] In the Q&V questionnaire, the Department stated that if a response was not provided, the Department may find that non-responding companies failed to cooperate by not acting to the best of their ability to comply with the request for information. We stated that we may use an inference that is adverse to the interests of such uncooperative companies in selecting from the facts otherwise available,

[40] See Aerospace's April 10, 2014 submission regarding "1,1,1,2-Tetrafluoroethane from the People's Republic of China: Response of Aerospace Communications Holdings, Co. Ld. To the Department's Separate Rate Application Supplemental Questionnaire," ("Aerospace's Supplemental SRA Response") at Exhibit 14.
[41] Id.
[42] See Aerospace's Supplemental SRA Response at 3.
[43] See Aerospace's Supplemental SRA Response at 10.
[44] See Aerospace Supplemental Separate Rate Application at 10, submitted April 10, 2014.
[45] See Aerospace Separate Rate Application, at Exhibit 11, Article 12, submitted March 26, 2014.
[46] Id, at Article 82.
[47] See Memorandum to the File From Frances Veith, Senior International Trade Compliance Analyst, Regarding Zhejiang Bailian Industry and Trade and Jiangsu Jin Xue Group Co., Ltd., Quantity and Value Mailing Confirmation, dated April 22, 2014.

in accordance with section 776(b) of the Act. By not responding to the Department's Q&V questionnaire, these companies withheld requested information and significantly impeded this proceeding and possibly avoided being selected and examined as mandatory respondents in this investigation. As such, we determined that the PRC-wide entity failed to cooperate to the best of its ability to comply with requests for information and employed an adverse inference to the PRC-wide entity in selecting from among the facts otherwise available.[48] We disagree with Aerospace and SC Taicang's argument that the record lacks information demonstrating Zhejiang Bailian Industry and Trade and Jiangsu Jin Xue Group Co., Ltd., are producers of merchandise under consideration. In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) and (2) authorize the Department to rely on information derived from: (1) the petition; (2) the final determination in the investigation; (3) any previous review or determination; or (4) any other information placed on the record. Moreover, 19 CFR 351.202(b)(7)(i)(A) requires the petitioner to provide in the petition the names and address of each person the petitioner believes sells the subject merchandise at less than fair value. The petition identified these companies as producers.[49] Consistent with our practice,[50] when companies named in the petition do not respond to requests for information, including quantity and value questionnaires, our practice is to apply AFA to the PRC-wide entity.

Our decision with respect to the separate rate status of these six companies is not based on AFA, but rather is based on the fact that they were unable to rebut the presumption that they are under the control of the PRC government with respect to their export activities. Therefore, we will continue to assign these six companies the PRC-wide rate.

In antidumping 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, 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 where the CAFC affirmed the Department's separate rates test as reasonable, stating that the statute recognizes a close correlation between a 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.

[48] See Prelim Decision Memo at 16.
[49] See Petition at Volume I, Exhibit 6.
[50] See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 68 FR 4986, 4991 (January 31, 2003), unchanged in Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 68 FR 37116 (June 23, 2003).

Firms that do not rebut the presumption are assessed a single antidumping duty rate, i.e., the NME-Entity rate. See 19 CFR 351.107(d), which provides that "in an antidumping proceeding involving imports from a non-market economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers" However, in recognition that parts of the PRC's economy are transitioning away from the state-controlled economy, the Department 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).

Lastly, we disagree with MOFCOM, Sinochem Ningbo Ltd., and SC Ningbo International Ltd., that companies denied separate rates in AD proceedings cannot also be subject to subsidies in the CVD proceeding. AD and CVD laws are separate regimes that provide separate remedies for distinct unfair trade practices and, as explained above, the six Chinese exporters failed to demonstrate eligibility for separate rates in this AD proceeding. As such, they are included in the PRC-wide rate.

Comment 2: Whether Weitron Kunshan Qualifies as a Respondent

Petitioner's Argument[51]

- Weitron Kunshan is not the proper respondent because it is not an exporter, but only an intermediate stop between Quhua and SC Taicang and its U.S. parent company, Weitron USA.
- Because Weitron Kunshan is not an exporter, it does not qualify for a separate rate.
- The record evidence demonstrates that the exporters are Weitron Kunshan's suppliers, Quhua and SC Taicang.[52]
- Weitron Kunshan has acted in bad faith by claiming that it is an exporter because its responses are carefully crafted to manipulate the U.S. antidumping duty system much like the Export Agent scheme the Department examined in Heavy Forged Hand Tools.[53]

Weitron Kunshan's Arguments

- Weitron Kunshan is the exporter and the Department should dismiss Petitioner's allegations of gaming and manipulation.
- Petitioner had ample opportunity to raise this issue during the course of the investigation but raised it for the first time during case briefs.

[51] Petitioner's case brief on this issue is largely business proprietary information ("BPI"). See Petitioner's Case Brief at 3-15.

[52] Weitron Kunshan's producers are publicly available, see Weitron's Supplemental Section A Response, dated March 4, 2014, ("Weitron Supp A") at 10.

[53] Petitioner cites Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews and Final Rescission and Partial Rescission of Antidumping Duty Administrative Reviews, 71 FR 54269 (September 14, 2006) ("Heavy Forged Hand Tools") and accompanying Issues and Decisions Memorandum at Comment 1.

- Evidence on the record demonstrates that Weitron Kunshan was the only party whom the Department could designate as the exporter of record, not its suppliers.
- In THFA,[54] the Department has rejected the contention that a company with knowledge that goods will be exported to the United States is the exporter for purposes of calculating dumping margins.
- Weitron Kunshan and Weitron USA jointly negotiate supply agreements with the vendors.
- Weitron Kunshan takes delivery and title of the bulk tetrafluoroethane, packages it into cans and cylinders and prepares the shipping containers and is designated the exporter on PRC Customs documentation and shipping documentation.

Department's Position:

We determine that Weitron Kunshan did not export the subject merchandise to the United States during the POI, and, therefore, is not a proper respondent in this investigation. Accordingly, for the final determination, we will not calculate an individual margin for Weitron Kunshan.

The Act defines EP sales as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States…"[55] On the other hand, the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter…"[56] In the Preliminary Determination, the Department calculated an individual margin for Weitron Kunshan based on the conclusion that its sales were made on a CEP basis.

Described below are the public facts of Weitron Kunshan's sales process. We note that certain facts concerning Weitron Kunshan's sales process are BPI. For facts which are BPI, see Weitron Kunshan Memo.[57]

Weitron Kunshan reported that it and its parent company, Weitron USA, conduct joint purchase contract negotiations with Quhua and SC Taicang for purchase and delivery of bulk tetrafluoroethane.[58] In so doing, Weitron Kunshan stated that Quhua and SC Taicang do not differentiate between the two Weitron entities, although Quhua and SC Taicang identify the

[54] Weitron cites to Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China, 69 FR 34130 (June 18, 2004) ("THFA").
[55] See section 772(a) of the Act.
[56] See section 772(b) of the Act.
[57] See Memorandum to the File, through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Senior International Trade Analyst, Office V, "Antidumping Duty Investigation of 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Business Proprietary Information Memo for Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. for the Final Determination," dated concurrently with this memorandum, ("Weitron Kunshan Memo").
[58] We note certain information contained in the purchase contracts is BPI, see Weitron Kunshan Memo at Note 1, see also Weitron Kunshan's Rebuttal Brief at 6; Weitron Supp A at 4.

Weitron companies differently on the purchase contracts.[59] Quhua and SC Taicang issue commercial invoices upon delivery to Weitron Kunshan.[60] The bulk tetrafluoroethane is delivered from Quhua and SC Taicang to a Foreign Trade Zone in the PRC, before the bulk tetrafluoroethane is delivered to Weitron Kunshan.[61] When the bulk tetrafluoroethane is delivered to the Foreign Trade Zone in the PRC, Weitron Kunshan does not pay the value added tax ("VAT"); [62] rather Quhua and SC Taicang receive the VAT rebate.[63] After the merchandise clears PRC Customs, the merchandise is considered exported under PRC Customs laws.[64] Quhua and SC Taicang transport the bulk tetrafluoroethane to Weitron Kunshan's facility "in bond for sale for exportation."[65] Weitron Kunshan informs Weitron USA of the payment details for bulk tetrafluoroethane it receives from Quhua and SC Taicang.[66] Upon receipt of this information, Weitron USA pays Quhua and SC Taicang.[67] Weitron Kunshan packs the bulk tetrafluoroethane into 12 ounce cans or 30 pound cylinders and loads containers for shipment to Weitron USA.[68] Weitron Kunshan informs Weitron USA of payments due for its services (but not for the tetrafluoroethane itself) and Weitron USA transfers funds for those services to Weitron Kunshan's account.[69] Weitron Kunshan clears the shipment through PRC Customs and arranges for shipment to the United States.[70] Weitron Kunshan also prepares the shipment for entry into the United States.[71]

We disagree with Weitron Kunshan that the circumstances in the instant case are identical to those in THFA.[72] In that case, the Department stated:

> The relevant price, in such a sales situation, is the price at which the first party in the chain of distribution has knowledge of the U.S. destination. However, this practice is restricted with regard to NME cases since the Department does not base export price on internal transactions between two companies located in the NME country.[73]

Here, we can differentiate from THFA because the price is not based on internal transactions between two companies located in the PRC. Rather, the evidence demonstrates that the price is

[59] See Weitron Kunshan's Rebuttal Brief at 6.
[60] See Weitron's Supplemental Section D Questionnaire Response, dated April 15, 2014, ("Weitron Supp D") at 5 and Exhibit DS-12; see also, Weitron Kunshan Memo at Note 2 and Note 3.
[61] See Weitron Kunshan's Rebuttal Brief at 3; see also, Weitron Kunshan Memo at Note 4.
[62] See Weitron Supp D at 13; see also, Weitron's Section C Questionnaire Response, dated April 7, 2014, ("Weitron SCQR") at 35 and Weitron's Supplemental Section C Questionnaire Response, dated April 7, 2014, ("Weitron Supp C") at 15.
[63] See Weitron SCQR at 35; see also Weitron Kunshan Memo at Note 5.
[64] See Weitron's Rebuttal Brief at FN 2 at 3; see also, Weitron Supp C at 15 and Exhibit SC-27, and Weitron Supp D at 7.
[65] Id. at 6; see also, Weitron Supp D at 7 and Weitron Supp A at 4.
[66] Id. at 9; see also, Weitron Supp A at 6.
[67] See Weitron Kunshan Memo at Note 6; see also, Weitron Supp A at 6.
[68] See Weitron Kunshan's Rebuttal Brief at 7; see also, Weitron Supp A at 4.
[69] See Weitron Supp A at 6; see also, Weitron Supp D at 7.
[70] See Weitron Supp A at 6 and Exhibit 3.
[71] See Weitron Kunshan's Rebuttal Brief at 7; see also, Weitron Supp A at 6 and Weitron Kunshan Memo at Note 7.
[72] See THFA and accompanying Issues and Decisions Memorandum at Comment 2.
[73] Id.

agreed upon between Weitron USA and each of the PRC producers.[74] While Weitron Kunshan contends that Quhua and SC Taicang do not differentiate between the two Weitron entities, because Quhua and SC Taicang identify the Weitron companies differently on the purchase contracts,[75] we note that the purchase contracts contain the same feature which demonstrates Quhua and SC Taicang consider Weitron USA to be the customer.[76] Thus the price is established between Quhua and SC Taicang, two PRC companies, and Weitron USA, a U.S.-owned company located in the United States.[77]

Moreover, the price established between these companies is the price which is paid by Weitron USA to Quhua and SC Taicang.[78] As noted above, section 772(a) of the Act defines EP sales as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States…" Here, the merchandise under consideration is first sold before the date of importation by Quhua and SC Taicang to Weitron USA, the unaffiliated purchaser in the United States.[79]

We agree with Petitioner that title to the merchandise passed from Quhua and SC Taicang to Weitron USA and that Weitron Kunshan never held title to the merchandise, despite Weitron Kunshan's argument to the contrary. The CIT in Nucor Corp., upheld the Department's finding of an offshore sale where title transferred to the U.S. buyers overseas.[80] Here, the documentation demonstrates the sales are made between Quhua and SC Taicang and Weitron USA.[81] Further, Weitron USA directly compensates Quhua and SC Taicang for the merchandise under consideration in accordance with the terms of the purchase contracts.[82] Accordingly, because Weitron USA directly pays Quhua and SC Taicang and based on the sales process described above, we find that ownership of the merchandise under consideration does not pass to Weitron Kunshan.

We disagree with Weitron Kunshan's contention that it is the exporter of the merchandise under consideration as opposed to Quhua and SC Taicang. As noted above, Quhua and SC Taicang deliver the merchandise to a Foreign Trade Zone before it is delivered to Weitron Kunshan's facility.[83] At the Foreign Trade Zone, the appropriate documentation is completed[84] and PRC

[74] See Weitron Kunshan Memo at Note 1.
[75] See Weitron Kunshan's Rebuttal Brief at 6.
[76] This feature is BPI, see Weitron Kunshan Memo at Note 1.
[77] See Weitron's Section A Questionnaire Response, dated January 30, 2014, at 13.
[78] See Weitron Kunshan Memo at Note 6; see also, e.g., Weitron Supp D at Exhibit DS-12.
[79] See Weitron Supp A at Exhibit 3; see also Weitron Supp D at Exhibit DS-12.
[80] See Nucor Corp. v. United States, 612 F.Supp.2d 1264, 1275, 1282-83 (CIT 2009) ("Nucor Corp.") "'{T}he sales agreement was signed in Turkey by {exporter} personnel, the invoice was issued by an entity in Turkey (i.e., the producer/exporter) to an entity in the United States (i.e., the U.S. customer), and it was concluded outside the United States.'" quoting Decision Memo at 66–67. The court agreed with Commerce that the sales should be classified as EP because they occurred outside the U.S."
[81] See Weitron Kunshan Memo at Note 1, 2 and 3.
[82] See Weitron Supp A at 6; for a further discussion of transfer of ownership see Weitron Kunshan Memo at Note 8.
[83] See Weitron Kunshan's Rebuttal Brief at 3; see also, Weitron Supp A at 5 and Exhibit 3.

Customs considers the merchandise exported from the PRC.[85] Further evidence that the merchandise under consideration is considered exported from the PRC by Quhua and SC Taicang is the administrative procedure under which it is delivered to Weitron Kunshan. Specifically, when the merchandise under consideration is transported from the Foreign Trade Zone to Weitron Kunshan it is bonded for sale for exportation[86] under PRC Customs law.[87] According to the PRC law placed on the record by Weitron Kunshan, Weitron Kunshan is permitted to repackage the merchandise under consideration and ship the goods without having to pay export tax under PRC Customs law.[88] Because the merchandise under consideration is under bond, Weitron Kunshan must maintain documentation which confirms with PRC Customs that the merchandise under consideration delivered from the Foreign Trade Zone has physically left the PRC.[89] This demonstrates that Weitron Kunshan is performing an administrative function in furtherance of the export sales made by Quhua and SC Taicang. This procedure provides no evidence that Weitron Kunshan has itself made an export sale to Weitron USA.

The evidence on the record demonstrates PRC Customs, Quhua and SC Taicang consider the merchandise exported from the PRC once it enters the Foreign Trade Zone, and Weitron Kunshan only repackages the merchandise under consideration before shipping it to the United States. Accordingly, the appropriate exporters for the sale made to Weitron USA, the first unaffiliated customer, in fact are Quhua and SC Taicang.[90]

Weitron Kunshan contends that the merchandise remains in the PRC until it is exported by Weitron Kunshan to the United States and points to documentation demonstrating that Weitron Kunshan is the exporter.[91] However, the evidence on the record demonstrates that, pursuant to PRC Customs' law under which Weitron Kunshan packages bulk tetrafluoroethane, Weitron Kunshan is required to ship the goods once they are repackaged because the merchandise under consideration is already considered exported by PRC Customs.[92] Further, evidence on the record does not demonstrate that Weitron Kunshan made a purchase of the merchandise under consideration from Quhua or SC Taicang which it, in turn, sold and exported to Weitron USA.[93] Accordingly, because Weitron Kunshan did not purchase the merchandise under consideration from Quhua or SC Taicang, or sell and export the merchandise from the PRC for its account, but only repackaged the merchandise under consideration and shipped it to its owner Weitron USA, Weitron Kunshan did not have CEP sales during the POI within the meaning of section 772(b) of the Act. Therefore, in accordance with section 772(a) of the Act, we find that the reported sales were in fact sales made by Quhua and SC Taicang to Weitron USA. Quhua and SC Taicang are

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[84] See Weitron Kunshan Memo at Note 9; see also, Weitron Supp A at Exhibit 3 and Weitron Supp D at Exhibit DS-12.
[85] See Weitron Kunshan's Rebuttal Brief at 3; see also Weitron Supp A at 6, Weitron Supp D at 13, and Weitron Supp C at 15 and Exhibit SC-27.
[86] See Weitron Supp D at 7 and Weitron Supp C at 15.
[87] See Weitron Kunshan Memo at Note 10; see also Weitron Supp C at Exhibit SC-27.
[88] Id. at Note 11 and Weitron Supp C at Exhibit SC-29; see also Weitron Supp D at 17.
[89] See Weitron Supp D at 11; see also, Weitron Supp A at Exhibit 3.
[90] Id.
[91] See Weitron Kunshan's Rebuttal Brief at 7; see also, Weitron Supp A at 6 and Exhibit 3 and Weitron Kunshan Memo Supp D at DS-12.
[92] See Weitron Kunshan Memo at Note 9; see Weitron Supp A at 6.
[93] Id. at Note 1, 2, and 3; see also Weitron Supp A at Exhibit 3 and Weitron Supp D at Exhibit DS 12.

the exporters of the merchandise under consideration. As the only sales reported by Weitron Kunshan were made pursuant to this sales process, we are unable to determine an individual dumping margin for Weitron Kunshan.

We disagree that the record shows Weitron Kunshan has acted in bad faith as alleged by Petitioner. The facts surrounding these transactions are complex and required significant investigation and analysis, and Weitron Kunshan's initial presentation as an exporter appeared plausible. Further, we disagree with Petitioner that this situation is similar to the Export Agent scheme we examined in Heavy Forged Hand Tools.[94] In Heavy Forged Hand Tools, the Department found that the agent allowed the importer (via an invoice from the "agent") to inform CBP that one party is the exporter while another party was reported as the exporter to the Department.[95] Further, the Department found in that scheme that the "agent" played a minor role in the sales arrangement to the United States.[96] This case is distinguishable from the Export Agent Scheme in Heavy Forged Hand Tools because Weitron Kunshan only repackaged the merchandise under consideration, and under the administrative procedures established by PRC Customs, arranged shipment of the repackaged merchandise under consideration to Weitron USA, its U.S. parent company in the United States. Weitron Kunshan was forthcoming in its questionnaire responses and reported the sales process by which the merchandise under consideration is sold to the United States, and the Department verified this sales process.[97] We found no evidence of an attempt by Weitron Kunshan to mislead the Department.

Further, we agree with Petitioner that Weitron Kunshan is not eligible for a separate rate. The Department's separate rate practice requires companies requesting a separate rate to demonstrate a sale or export to the United States during the POI.[98] Because, as established above, Weitron Kunshan did not make a sale or export of the merchandise under consideration during the POI to the United States, Weitron Kunshan does not qualify for a separate rate. Accordingly, because we have no basis on which to calculate an individual margin for Weitron Kunshan, all issues raised in relation to any such calculation for Weitron Kunshan are moot.

Comment 3: Surrogate Country

Bluestar's Arguments

- The Department incorrectly dismissed Mexico as a potential surrogate country simply because it was not named on the Department's Surrogate Country Memo.[99]

[94] See Heavy Forged Hand Tools and accompanying Issues and Decisions Memorandum at Comment 1.
[95] Id.
[96] Id.
[97] See "Verification of the CEP Sales Response of Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. and Weitron, Inc. in the Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China ("PRC")," dated July 23, 2014; see also, "Verification of the Response of Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. in the Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China ("PRC")," dated July 23, 2014;
[98] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012-2013, 79 FR 57047 (September 24, 2014) and accompanying Issues And Decisions Memorandum at Comment 12.
[99] Bluestar cites to Letter to Interested Parties, "Request for Surrogate Country and Surrogate Value comments and Information," dated January 30, 2014 ("Surrogate Country Memo").

- The Department should select Mexico as the primary surrogate country because it is at a comparable economic level with the PRC.
- The Surrogate Country Memo is not an exhaustive list of potential surrogate countries.
- Mexico, like the PRC, is considered a "high middle income country" by the World Bank. Further, because the merchandise under consideration is principally used in autos, the similarity between the PRC's and Mexico's percentage of auto ownership by their respective middle classes is a better indicator of comparability of economic development than GNI. Accordingly, Mexico is at a comparable level of economic development with the PRC.[100]
- Mexico produces identical and comparable merchandise, while Thailand does not.
- The Department failed to explain the basis on which it concluded that Thailand's production of the comparable merchandise was "significant" because the Harmonized Tariff Schedule ("HTS") code the Department relied on to determine significant production is a basket category of chemical products and provides no evidence that these products are comparable to the merchandise under consideration.
- In HEPD from the PRC, the Department stated that it must select a country that produces the comparable merchandise, even if that country is less economically comparable than those on the surrogate list.[101]
- Mexican surrogate value ("SV") data is far superior to Thailand's SV data because the Thai SV data is based on imports from distant countries resulting in Thai SVs that are higher priced.
- Because there are no Mexican financial statements on the record, the Department should continue to use Thai financial statements. The Department has used financial statements from a country other than the primary surrogate country.[102]

DuPont's and Petitioner's Argument

- The Department should continue to use Thailand as the surrogate country.
- The gross national income ("GNI") band of surrogate countries on the Surrogate Country Memo is the same level of economic development as the PRC. The Department's policy is to go outside the same level to a comparable level of economic development only when same-level countries are not suitable.
- There is no record evidence that Mexico is a producer of identical merchandise. Additionally, Bluestar has provided no evidence that Thailand is not a producer of comparable merchandise. The Department has broad discretion to determine whether merchandise is comparable.[103]
- Bluestar failed to demonstrate that Thailand does not offer suitable data for SVs.

[100] Bluestar cites to Letter from DuPont to the Department, "Surrogate Country Selection," dated February 6, 2014, at 2 ("DuPont Feb. 6 Letter").
[101] Bluestar cites 1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 16280 (March 25, 2014) ("HEPD from the PRC") and accompanying Decision Memorandum at 8.
[102] Bluestar cites Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 67 FR 48612 (July 25, 2002).
[103] Petitioner and DuPont cite Policy Bulletin 4.1 "Non-Market Economy Surrogate Country Selection Process," available at http://enforcement.trade.gov/policy/bull04-1.html.

Department's Position:

The Department disagrees with Bluestar that we should select Mexico as the surrogate country. In accordance with section 773(c)(4) of the Act, in valuing factors of production ("FOP"), the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: "(A) at a level of economic development comparable to that of the NME country; and (B) significant producers of comparable merchandise."[104] In addition, if more than one country satisfies the two criteria noted above, the Department narrows the field of potential surrogate countries to a single country (pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country) based on data availability and quality.[105] The Department issued a memorandum in which it determined that Bulgaria, Colombia, Ecuador, Indonesia, South Africa and Thailand are at the same level of economic development as the PRC and are countries that have a per capita GNI comparable to the PRC in terms of economic development.[106]

As an initial matter, we disagree with Bluestar's contention that we dismissed Mexico as a potential surrogate country simply because it was not listed on the Surrogate Country Memo. The Department does not dismiss countries simply because they are not listed on the Surrogate Country Memo. Specifically, the Surrogate Country Memo explains that the list is "non-exhaustive."[107] For example in Plywood, the Department ultimately selected Bulgaria as the surrogate country even though this country was not listed on the Surrogate Country Memo for that case.[108] This was because in that case, Bulgaria's GNI, which was placed on the record, was within the GNI band of the countries on the list, which means that it was also at the same level of economic development as the PRC, just like the countries that were listed on the Surrogate Country Memo. Here, Mexico's GNI is well outside the GNI band of the countries on the Surrogate Country Memo. Accordingly, we would only consider Mexico as a potential surrogate country if all the countries whose GNIs are within the band of those on the Surrogate Country Memo were not significant producers of comparable merchandise and/or had data that was grossly inadequate, as we found in Fish Fillets AR9. [109] In the Prelim Decision Memo, and as Bluestar notes, the Department identified potential surrogate countries within a GNI band the Department considered comparable to the PRC.[110] Mexico's GNI is well outside the GNI band identified on the Surrogate Country Memo, and as further explained below, there is no need to

[104] See Prelim Decision Memo at 8; see also Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin").
[105] See Prelim Decision Memo at 8.
[106] See Surrogate Country Memo; see also Jianxing Bro. Fastener Co., Ltd. v. United States, 961 F.Supp.2d 1323, 1330 (CIT 2014) ("Department of Commerce's reliance on per capita gross national income (GNI), rather than actual industry under review, to identify surrogate market economy countries at comparable level of economic development to nonmarket economy was reasonable interpretation of antidumping statute…").
[107] Id.
[108] See Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) ("Plywood") and accompanying Issues And Decisions Memorandum at Comment 7.
[109] 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) ("Fish Fillets AR9") and Issues and Decisions Memorandum at Comment 1A.
[110] See Prelim Decision Memo at 8.

consider Mexico as the surrogate country because Thailand provides a full complement of reliable data with which to value factors and financial ratios. Bluestar further contends that the Court has challenged the Department's reliance on selecting a primary surrogate country from the countries identified on the Surrogate Country Memo without support from the record.[111] However, the administrative record here supports the Department's selection of Thailand as the primary surrogate country as described below and, unlike Fish Fillets AR9, we do not find that Thai data is so inadequate that it justifies selecting a surrogate country that is not at the same level of economic development as the PRC.

Level of Economic Comparability

The Department fulfills the statutory requirement to value FOPs, to the extent possible, by using data from "one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country."[112] Section 773(c)(4)(A) of the Act is silent with respect to how or on what basis the Department may determine that a country is at a level of economic development comparable to the NME country. However, the Department's regulations at 19 CFR 351.408(b) state that, in making this determination, the Department will place primary emphasis on per capita gross domestic product as the measure of economic comparability. It is the Department's long-standing practice to identify countries at the same level of economic development as the NME country on the basis of per capita GNI data reported in the World Bank's World Development Report.[113] We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT.[114] In this case, the GNI data published in 2014 was based on data from the year 2012.[115] As explained in our Surrogate Country Memo, on the basis of GNI, the Department considers Bulgaria, Colombia, Ecuador, Indonesia, South Africa and Thailand all to be at the same level of economic development as the PRC.[116] The annual GNI levels for the list of potential surrogate countries ranged from US$3,420 to US$7,610.

Bluestar argues that the Department should select Mexico as the surrogate country for the final determination contending that DuPont initially proffered Mexico as a potential surrogate country.[117] However, Mexico's GNI of $9,740 is outside the band of the GNIs of the countries on the list. The Department finds Mexico is at a higher and, thus, less comparable level of

[111] Bluestar cites Clearon Corp. v United States, Not Reported in F.Supp.2d, 2014 WL 3643332, CIT, July 24, 2014 (NO. SLIP OP. 14-88, 13-00073) ("Clearon") at 48.
[112] See section 773(c)(4) of the Act.
[113] See, e.g., Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) ("Plywood") and accompanying Issues And Decisions Memorandum at Comment 7; see also Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order, 75 FR 80791 (December 23, 2010) and accompanying Issues And Decisions Memorandum at Comment 4.
[114] See Fujian Lianfu Forestry Co., Ltd. v. United States, 638 F. Supp. 2d 1325, 1348 (CIT 2009).
[115] See Surrogate Country Memo.
[116] Id., and Preliminary Determination, and accompanying Prelim Decision Memo at 8-10.
[117] See Bluestar's Case Brief at 11.

economic development than that represented by the GNI band on the Surrogate Country Memo.[118]

As explained in the Department's Policy Bulletin 04.1, "{t}he surrogate countries on the list are not ranked."[119] This lack of ranking reflects the Department's long-standing practice that, for the purpose of surrogate country selection, the countries on the list "should be considered equivalent"[120] from the standpoint of their level of economic development based on GNI as compared to the PRC's level of economic development and recognition of the fact that the concept of "level" in an economic development context necessarily implies a range of GNIs, not a specific GNI. This long-standing practice of providing a non-exhaustive list of countries at the same level of economic development as the NME country fulfills the statutory requirement to value FOPs using data from "one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country..."[121] In this regard, "countries that are at a level of economic development comparable to that of the non-market economy country" necessarily includes countries that are at the same level of economic development as the NME country.

Further, we are unconvinced with Bluestar's argument that the number of automobiles owned by the middle class in Thailand and the PRC is a more appropriate indicator of economic development than GNI. Bluestar has failed to submit any evidence to substantiate the claim that automobile ownership in any way might be an acceptable economic indicator of a country's level of economic development and is superior to per capita GNI when comparing levels of economic development. The record is devoid of any information describing the relationship between automobile ownership and the level of economic development. In contrast, per capita GNI is a recognized consistent economic indicator that is clearly and strongly correlated and is frequently used by the World Bank as the basis for specifying broad development levels, e.g., low-, middle-, or high income. The Department relies on per capita GNI[122] because per capita GNI is reported across almost all countries by an authoritative source, the World Bank.[123] For that reason, the Department concludes that, despite the regulation's reference to per capita GDP, "per capita GNI represents the single best measure of a country's level of total income and thus level of economic development."[124]

We recently stated in PRC Hangers 2014, that:

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[118] Bluestar contends that the Department has recently used surrogate countries whose percentage difference is comparable to the difference between Mexico and the PRC in this case. However, Bluestar did not cite to these examples or direct the Department to evidence on the record supporting its claim.
[119] See Policy Bulletin No. 4.1.
[120] Id.
[121] See section 773(c)(4) of the Act.
[122] GNI consists of gross domestic product ("GDP") (the value of goods and services produced in the country) plus income earned from outside the country, and per capita GNI is calculated as GNI divided by a country's population.
[123] See, e.g., Antidumping Methodologies in Proceedings Involving Non-Market Economy Countries: Surrogate Country Selection and Separate Rates, 72 FR 13246 at n. 2 (March 21, 2007).
[124] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam, 77 FR 27435 (May 10, 2012) and accompanying Issues And Decisions Memorandum at Comment I.A.

> unless we find that all of the countries determined to be at the same level of economic development as the PRC are not significant producers of comparable merchandise, are not reliable sources of publicly-available SV data, are not suitable for use based on other reasons, or we find that another country not on the surrogate country list is at a comparable level of economic development and is an appropriate surrogate, we will rely on data from one of these countries.[125]

However, here, we determined that Thailand fulfills the surrogate country selection criteria; thus, we have selected Thailand as the primary surrogate country.

Further, as we stated in Fish Fillets AR9:

> Because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department also considers other countries at the same level of economic development that interested parties propose, as well as other countries that are not at the same level of economic development as the NME country, but nevertheless still at a level comparable to that of the NME country, such as Indonesia in this review. The latter countries are considered when data or significant producer considerations potentially outweigh the fact that these countries are not at the same level of economic development as the NME country.[126]

However, unlike the circumstances in Fish Fillets AR9, the Thai data on the record meets those criteria. Specifically, the Thai data does not suffer from the data quality issues present in Fish Fillets AR9. Moreover, the record demonstrates that Mexico's GNI places it well outside of the GNI band of countries determined to be at the same level of economic development as the PRC during this POI. As we discuss below, we determine that the Thai data are not grossly inadequate.

Significant Producer of Comparable or Identical Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. As we stated in the Preliminary Determination, based on information from export data for the six-digit HTS code listed in the description of the scope of this investigation (i.e., 2903.39), we determined that all countries on

[125] See Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 79 FR 31298 (June 2, 2014) ("PRC Hangers 2014") and accompanying Issues and Decision Memorandum at Comment 1; see also Fresh Garlic From the People's Republic of China: Preliminary Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011-2012, 78 FR 77653 (December 24, 2013) and accompanying Preliminary Decision Memorandum, unchanged in Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011-2012, 79 FR 36721 (June 30, 2014) ("Garlic 2014"), and accompanying Issues and Decision Memorandum at Comment 1, where we stated that "we will only depart from the SC list and choose a country not on the list, if we find that none of the countries on the list are significant producers or if there are issues regarding the reliability, availability, and quality of data from the countries on the list."

[126] See, Fish Fillets AR9 and Issues and Decisions Memorandum at Comment 1A.

the surrogate country list, except Bulgaria and Indonesia, are significant producers of comparable merchandise.[127] The eight-digit HTS code used in the scope is a sub-category of this six-digit HTS code. While Bluestar argues that the six-digit HTS code is a basket category, we note that the record does not contain eight-digit HTS codes from which to make a determination whether countries on the surrogate country list have significant production of comparable or identical merchandise. Accordingly, we used the six-digit basket category as the best available information from which to determine whether the countries identified in the Surrogate Country Memo were significant producers of comparable merchandise. Further, the record contains financial statements from two Thai companies who produce industrial gases, used in the medical field and industrial applications, comparable to the merchandise under consideration.[128] Therefore, the record demonstrates that Thailand is a significant producer of comparable merchandise.

We disagree with Bluestar's assertion that the inclusion or exclusion of certain countries in the export statistics from the Global Trade Atlas ("GTA") used to determine significant production are so flawed that the data cannot be used to determine whether certain countries are considered significant producers. Simply because the data from GTA does not include a wider range of countries, which Bluestar believes should include all data from countries at the same level of economic development as the PRC, does not make the data unusable. Further, if a country is not included in this data, it simply means GTA reports there are no exports for that country during the POI. The Department did not include or exclude particular countries from the GTA data, but sought export data from the countries identified on the surrogate country list. With regard to Bulgaria, the data was reported on a different basis than the other countries and was not included in our analysis of significant production. We note Bluestar provided no production data from any country from which to make an alternative determination of significant production.

Bluestar contends that the record demonstrates that Mexico is a producer of identical merchandise and points to DuPont's SC Submission, dated February 18, 2014, as evidence of this assertion. Even though we do not consider Mexico to be at the same level of economic development as the PRC, we will address Bluestar's arguments regarding production. We have reviewed the record and agree with Petitioner that the record contains no evidence that Mexico is a producer or exporter of identical or comparable merchandise. A review of DuPont's SC Submission reveals the names of chemical companies operating in Mexico and provides a description of various refrigerants including R-134a,[129] but this submission provides no data with regard to whether Mexico has any production of identical or comparable merchandise.[130] Accordingly, because the record contains no data with respect to Mexican production of identical or comparable merchandise, we do not consider Mexico a significant producer of comparable or identical merchandise for purposes of surrogate country selection.

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[127] See Preliminary Determination and accompanying Prelim Decision Memo at 9, citing to Memorandum to the File from Bob Palmer, Senior International Trade Analyst, Office V, through Catherine Bertrand, Program Manager, Office V "Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Surrogate Values for the Preliminary Determination" (May 21, 2014) ("Preliminary SV Memo") at Exhibit 14.
[128] See below at Comment 16.
[129] An industry designation for 1,1,1,2-tetrafluoroethane, see scope above.
[130] See DuPont's Surrogate Country Comments, dated February 18, 2014 at Exhibit 3.

Data Considerations

Section 773(c)(1) of the Act instructs the Department to value the FOPs based upon the best available information from a market economy ("ME") country or countries that the Department considers appropriate. When considering what constitutes the best available information, the Department considers several criteria, including whether the SV data are contemporaneous, publicly available, tax and duty exclusive, representative of a broad market average, and specific to the input.[131] The Department's preference is to satisfy these selection criteria.[132] Moreover, it is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis to value the FOPs.[133] The Department must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.[134]

In light of Bluestar's argument, we considered whether the Thai data are grossly inadequate for calculating SVs and whether the Mexican data are superior to the Thai data to such an extent that use of Mexican data outweighs economic development considerations. We find that the Thai data are not grossly inadequate because useable data for all SVs is on the record. Bluestar argues that Mexican data are superior because deliveries of bulk raw materials would be made by countries in relative close proximity to Mexico and the materials would therefore have a lower cost and are more reflective of commercial reasonableness.[135] Bluestar has offered no evidence to support its argument beyond alluding to the fact that some of the import statistics demonstrate a lower price than the Thai counterpart. Rather, Bluestar offers no further evidence that the Thai SV data is unusable. Despite a lack of evidence on this administrative record to conclude that Mexico is at the same level of economic development as the PRC or a significant producer of comparable merchandise, we nonetheless examined the Mexican data based on Bluestar's arguments that Mexican data are superior to the Thai data. As an initial matter, we note that there are no Mexican financial statements of comparable or identical producers on the record. While the Department has used financial statements from a country other than the primary

[131] See, e.g., 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) ("CLPP 2006"), and accompanying Issues and Decision Memorandum at Comment 3.
[132] See, e.g., Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 51940, 51943 (August 19, 2011) ("AR5 PRC Shrimp"), and accompanying Issues and Decision Memorandum at Comment 2.
[133] See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review, 71 FR 40477 (July 17, 2006) ("Mushrooms"), and accompanying Issues and Decision Memorandum at Comment 1; see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546 (April 22, 2002), and accompanying Issues and Decision Memorandum at Comment 2.
[134] See, e.g., Mushrooms, and accompanying Issues and Decision Memorandum at Comment 1.
[135] See Bluestar's Case Brief at 17-18.

surrogate country,[136] the Department has a long-standing practice of using broad market averages from a single surrogate country, which is also directed by the Department's regulations at 19 CFR 351.408(c)(2) (the Department "normally will value all factors in a single surrogate country"), and has been upheld by the courts.[137] In addition to missing financial statements, the record does not contain Mexican data for labor, water, and transportation (i.e., truck and brokerage and handling) data. Accordingly, based on the overall consideration of the statutory criteria, the quality of data and our regulatory preference to value factors from a single country, the Department finds that Thailand continues to be the most appropriate surrogate country from which to obtain SVs.

Comment 4: By-Products

Petitioner's Arguments

- The Department granted by-product offsets to Bluestar and to Weitron Kunshan's suppliers in the Preliminary Determination. Based on findings at verification, these offsets should be eliminated or reduced because they do not meet the Department's threshold for by-product offsets.
- During verification, Bluestar informed the Department that its by-products, trifluoroethanol ("TFE") and potassium chloride ("KCL"), undergo further processing before being sold or reintroduced. Furthermore, Petitioner argues that TFE is being misclassified and should instead be valued with HTS 2909.59.
- Similarly, at the verification of Weitron Kunshan's supplier, JuhuaOP,[138] company officials explained that hydrochloric acid ("HCL") undergoes further processing. Moreover, at verification, it was discovered that JuhuaOP was unable to track the quantity of HCL produced during the production of subject merchandise because: 1) there was an issue with the meter and therefore the reported quantity was extrapolated from one day of HCL production; and 2) HCL is also a by-product of other non-subject merchandise, and furthermore, it is reintroduced into the production process of non-subject merchandise.
- In rebuttal, Petitioner argues Bluestar oversimplified the additional processing stages of TFE. Furthermore, Bluestar has not demonstrated how the labor and overhead was allocated among the additional processing. If the Department does grant Bluestar a by-product off-set, it should only be for the TFE refined, not the TFE crude, which as noted in the verification report has not undergone processing and cannot therefore, be sold.

Bluestar's Arguments

[136] See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2011-2012, 78 FR 56211 (September 12, 2013) and accompanying Issues and Decisions Memorandum at Comment 1, (where the Department relied on Bangladeshi financial statements, when the primary surrogate country was Indonesia).

[137] 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 accompanying Issues and Decision Memorandum at Comment 6; see also, Clearon Corp. v. United States, 2013 WL 646390, *8, Slip. Op. 13-22 (CIT Feb. 20, 2013) ("deriving the surrogate data from one surrogate country limits the amount of distortion introduced" into {the Department's} calculation.")

[138] Zhejiang Juhua Co., Ltd. Organic Fluorine Plant ("JuhuaOP").

- In the Preliminary Determination, the Department correctly granted by-product offsets for the production and sale of TFE and KCL.
- In the Department's verification report, the Department noted that Bluestar's by-products undergo additional processing. However, Bluestar identified these steps in its section D responses and supplemental responses.
- None of these minor finishing steps should prevent the Department from granting Bluestar the full by-product offset.
- In rebuttal, Bluestar argues that all further processing was fully explained as were the costs. In response to Petitioner's allegation that TFE was misidentified, Bluestar notes that this issue was not raised at verification. Should the Department decide that the incorrect surrogate value was used; the Department should instead use the actual market economy sales prices.

Weitron Kunshan's Arguments

- The Department should continue to grant JuhuaOP and Juxin[139] by-product offsets for HCL. Juxin sold all of the HCL is produced and JuhuaOP reintroduced the HCL it did not sell into the production of other products. Sales records and meter readings were verified by the Department and the quantities conform to the theoretical quantity of HCL that should be generated from the production of R-134a.
- In rebuttal, Weitron Kunshan argues the fact that the HCL is cleaned to remove impurities prior to sale does not constitute a reason to deny a by-product offset. All costs associated in the production of HCL were accurately reported. The meter reading issue was confined to May 2013 and solely to JuhuaOP.
- JuhuaOP and Juxin maintained records for the production and sales of HCL during the POI. The fact that JuhuaOP did not track the quantity of HCL reintroduced into production should not preclude the Department from granting a by-product offset.

Department's Position

The Department's practice is to grant an offset for by-products generated during the production of the merchandise under consideration if evidence is provided that such by-product has commercial value.[140] As the Department recently explained, "{t}he by-product offset is limited to the total production quantity of the by-product ...produced during the POR, so long as it is shown that the byproduct has commercial value."[141] At the Preliminary Determination, we granted Bluestar by-product offsets for two by-products, TFE and KCL, and Weitron Kunshan by-product offsets for two by-products, HCL and hydrofluoric acid, generated by its producers.

[139] Zhejiang Quzhou Juxin Fluorochemical Industrial Co., Ltd. ("Juxin").
[140] See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35245 (June 12, 2013) and accompanying Issues and Decision Memorandum at Issue 10.
[141] See Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 70706 (November 15, 2011) and accompanying Issues and Decision Memorandum at Comment 18.

Regarding Bluestar, at verification, company officials demonstrated that KCL meets the Department's threshold for a by-product offset because KCL is generated during the production process of tetrafluoroethane, and the Department verified the production and sales of KCL.[142] Therefore, the Department will continue to grant Bluestar an offset for the quantity of KCL produced during the POI. However, at verification, company officials explained that the reported quantity produced of TFE includes what they refer to as TFE crude and TFE refined. At verification, company officials clarified that TFE crude cannot be sold. It must be processed by dehydrating and removing impurities into TFE refined.[143] The TFE refined is then sold. Therefore, the Department will only grant Bluestar a by-product offset for the quantity of TFE refined that was produced and sold during the POI and not TFE crude because the TFE crude that was generated during the POI in Bluestar's production of tetrafluoroethane will remain in its work-in-process until it is further processed as TFE refined, becomes commercially viable and sold subsequent to the POI.[144] In other words, only when the TFE becomes commercial grade and sold will we consider granting the by-product offset. Thus, for the final determination, we will only offset Bluestar's NV for its by-product TFE refined.

With respect to Petitioner's argument that Bluestar's costs of further processing TFE were not included, we disagree. Bluestar reported the energy and labor associated with the processing of TFE crude into TFE refined. In its questionnaire responses and at verification, Bluestar demonstrated that it produced its by-products in Unit 2, the same unit as subject merchandise and included all energy and labor consumption associated with Unit 2 in its factors of production reconciliation.[145]

Petitioner also argues that TFE is misclassified and cites to Bluestar's product brochure. We agree. It appears Bluestar mistranslated TFE as tetrafluoroethylene, when instead it should be trifluoroethanol. In its original Section D Response, Bluestar identified TFE as tetrafluoroethylene.[146] In response to our request for more information on tetrafluoroethylene, Bluestar provided a description of the product along with the Chinese characters.[147] These are the same Chinese characters used in Bluestar's product brochure to identify TFE as trifluoroethanol.[148] Furthermore, Bluestar's commercial invoices of TFE sales identify TFE as trifluoroethanol.[149] Therefore, we determine based on Bluestar's product brochure and commercial invoices that TFE is in fact trifluoroethanol and should be valued using HTS 2905.59, Halogenated, Sulfonated, Nitrated Or Nitrosated Derivatives Of Acyclic Alcohols, Nesoi. Bluestar suggested this HTS code for TFE; however, we inadvertently used HTS 2903.72, dichlorotrifluoroethanes, in the Preliminary Determination.

[142] See Bluestar Verification Report at 22.
[143] Id.
[144] See e.g., Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Issues and Decision Memorandum for the Final Results of Antidumping Duty New Shipper Reviews; 2011-2012, 78 FR 39708 (July 2, 2013) and accompanying Issues and Decision Memorandum at Comment IX.
[145] See Bluestar Section D Response, at D6, D25-D28; see also Bluestar Verification Report at 8-9.
[146] See Bluestar's Section C&D Response at D-13, submitted February 27, 2014.
[147] See Bluestar's Supplemental D Response, submitted March 31, 2014, at Exhibit D-19.
[148] See Bluestar Verification Report at Exhibit 5, Bluestar Product Brochure at page 12.
[149] See Bluestar Verification Report at Exhibit 20, pages 4218-4243.

Because we are not calculating an individual dumping margin for Weitron Kunshan, Weitron Kunshan's by-product arguments are moot.

Comment 5: Price Adjustments – ISO Tanks

Petitioner's Comments

- The Department should allocate some portion of the cost of the ISO tank to each sale, and deduct that amount from U.S. price because ISO tanks, whether rented or owned, represent a cost incident to bringing the merchandise from the original place of shipment to the United States.[150] In support of its argument, Petitioner cites to section 772(c)(2)(A) of the Act and argues that the Department could, in effect, apply the entire cost of these ISO tanks to shipments of the subject merchandise.
- The Department should reduce Bluestar's U.S. price for Chinese customs declaration and transportation costs associated with bringing the empty ISO tank back through Chinese customs and transport from the port to Bluestar's factory.

Bluestar's Comments

- The Department should not treat the cost of Bluestar's ISO tank as a movement expense because the surrogate financial ratios already capture expenses (i.e., rental fees and depreciation) associated with Bluestar's ISO tanks.
- While the surrogate financial statements do not go into this level of detail, it is reasonable to assume that any producer of industrial gases would treat the cost of purchased or rented ISO tanks in a similar manner. To reduce Bluestar's U.S. price further by some estimated per-kilogram cost of these tanks would effectively double-count this cost.
- No additional transportation costs related to Bluestar's ISO tanks should be deducted from U.S. price because the deduction of these expenses is not supported by section 772(c)(2) of the Act and because their deduction would constitute an unwarranted double-counting of expenses. The Department should reject Petitioner's argument that U.S. sales of the subject merchandise should bear all of these overhead expenses.
- Brokerage & handling, Chinese Customs clearance, warehousing and transportation costs associated with the return of the ISO tanks back to Bluestar are, by definition, not expenses associated with the delivery of the merchandise to the U.S. customer.

Weitron Kunshan's Comments

- The company disagrees with Petitioner's assertion that the ISO tanks in which bulk tetrafluoroethane is shipped from the vendors to Weitron Kunshan is "the container used to ready the {merchandise} for exportation to the United States" because the merchandise is not shipped to the United States in the ISO tanks; it is first unloaded from the ISO tanks into storage containers and then packaged for export to the United States in 12 ounce cans and 30 pound cylinders.

[150] In support of its argument, Petitioner cites to section 772(c)(2)(A) of the Act and provides a detailed analysis of how the Department could, in effect, apply the entire cost of these ISO tanks to shipments of the subject merchandise.

- Petitioner's position is contrary to the Department's policy that temporary and intermediate packing materials are factory overhead and not packing materials.[151]

Department's Position:

For the final determination, the Department will continue to consider the costs in question as overhead rather than as an adjustment to sale price or as an FOP. The Department agrees with Bluestar with respect to the treatment of certain costs (i.e., depreciation expense and rental fees) associated with ISO tanks as an overhead expense that is captured in the surrogate financial ratios. Section 772(c)(2) of the Act provides that the Department may reduce the price used to establish EP or CEP in the following instances:

> (A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and (B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C).

We further note that 19 CFR 351.401(c) directs the Department to use, in calculating U.S. price, a price which is net of any price adjustment that is reasonably attributable to the subject merchandise. The term "price adjustments" is defined under 19 CFR 351.102(b) as a "change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." Overhead expenses associated with depreciation and rental fees are not included in this definition, nor are expenses related to Chinese customs declaration and transportation costs associated with returning the empty ISO tanks through Chinese customs and transport from the port to Bluestar's factory.[152]

We find that it would be inappropriate to decrease Bluestar's gross unit price as a result of costs attributable to depreciable assets, rental fees, Chinese customs declaration and transportation cost associated with bringing the empty ISO tank back through Chinese customs and transport from the port to Bluestar's factory. Such expenses should be attributable to factory overhead, and not as a selling adjustment. Therefore, we will not allocate some portion of the cost of Bluestar's ISO tank to each sale, nor will we adjust the sale for the expenses related to bringing the ISO tank back to Bluestar's factory. Thus, we did not adjust Bluestar's gross unit price for additional costs associated with its ISO tanks.

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[151] Weitron Kunshan cites Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013) ("Xanthan Gum"), and accompanying Issues and Decision Memorandum at Comment 10 (which cites to Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Second Administrative Review, 72 FR 13242 (March 21, 2007) and accompanying Issues and Decision Memorandum at Comment 16, where the Department clarified that "Thuan An properly did not report an intermediate packaging material because it is factory overhead").

[152] See Xanthan Gum and accompanying Issues and Decision Memorandum at Comment 10.

Because the Department is not calculating an individual dumping margin for Weitron Kunshan, Weitron Kunshan's arguments with regard to this issue are moot.

Comment 6: Critical Circumstances

Weitron Kunshan's Arguments

- The Department's affirmative finding of critical circumstances was skewed because R-134a is a seasonal product used in automotive air conditioners. Demand for R-134a increases in warmer months and the base period used for comparison was a three month period that Weitron Kunshan typically does its buying. An examination of Weitron Kunshan's purchases of R-134a from domestic sources shows a similar increase, demonstrating that the increase was due to seasonal factors, and not avoidance of antidumping duties.
- Due to the seasonality of the product, the Department should compare Weitron Kunshan's purchases over a year-long base period.
- The Department improperly found knowledge of dumping existed merely because the preliminary dumping margins exceeded the 15/25 percent threshold. The margin is based on the Department's valuation of certain SVs that were commercially unrealistic, causing the margin to exceed the threshold.

Bluestar's Arguments

- Bluestar's purchases of merchandise under consideration are made on a seasonal basis and the Department's regulations require seasonal trends to be taken into consideration when examining critical circumstances.
- While the preliminary dumping margin exceeded the 15/25 percent threshold, the margin is based on skewed SVs from unreliable sources.

Quhua/Lianzhou's Arguments

- The Department found that critical circumstances exist for Quhua/Lianzhou because these companies were found to be part of the PRC-wide entity.
- The Department should grant Quhua/Lianzhou separate rates and reach a negative determination of critical circumstances based on Weitron Kunshan's rationale that imports are seasonal, the margins exceed the 15/25 percent threshold due to improper valuation of SVs, and there is a lack of evidence that importers should have known they were buying merchandise at dumped prices.

Petitioner's Rebuttal

- While there appears to be some seasonality in imports of R-134a, the chart of import data included in Petitioner's pre-preliminary comments demonstrate that the surge of imports following the petition were well above normal seasonal patterns.
- If Weitron Kunshan remains a respondent, the Department should continue to find affirmative critical circumstances exist. Weitron Kunshan's argument that its purchases in the 2012 and 2013 calendar years ignores the increase in imports in January 2014, which would have been loaded in December 2013.

Department's Position:

At the preliminary determination, we found affirmative critical circumstances exist with respect to the individual respondents, the non-individually examined companies, and the PRC-wide entity.[153] Respondents argue that the merchandise under consideration is seasonal, and therefore, the Department needs to account for this seasonality. When examining the import data on the record for merchandise under consideration, there appears to be a seasonal relationship.[154] For example, imports tend to increase during October through May, and then decline during June through September. Consistent with a similar case,[155] to account for possible seasonal trends, using data on the record, we compared the base and comparable periods with those corresponding base and comparable periods for the prior year.[156]

Because the Department is not calculating an individual margin of dumping for Weitron Kunshan, Weitron Kunshan's arguments with regard to this issue are moot.

Bluestar only submitted monthly import data from July 2013 – January 2014.[157] As the burden is on the respondent to provide evidence of seasonality, we are unable to compare the level of Bluestar's imports to the prior period. Therefore, because this data does not exist on the record, we are unable to conclude whether seasonality exists with respect to Bluestar. Further, we are unable to make a finding with respect to seasonality for the non-individually examined respondents, as the import data examined for the non-individually examined respondents relied on removing the reported shipment data from the mandatory respondents from total import data.

Furthermore, we disagree with respondent's argument that the margin is based on SVs that are skewed or not based on commercial reality. All interested parties are invited to submit SVs. In accordance with section 773(c)(1) of the Act, we selected the best available information in this case for valuing the FOPs, which are, to the extent practicable: 1) non-export average values, 2) representative of a range of prices within the POI or most contemporaneous with the POI, 3) product-specific, and 4) tax-exclusive. Additionally, as explained at the Preliminary Determination,[158] because the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports from the PRC of tetrafluoroethane, the Department determines that importers knew or should have known that there was likely to be material injury by reason of sales of tetrafluoroethane at LTFV. Therefore, our finding affirmative of critical circumstances in the Preliminary Determination remains unchanged.

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[153] See Prelim Decision Memo at 4-7; see also, Amended Preliminary Determination at 37288.
[154] See Petitioner's Pre-Preliminary Comments, submitted April 21, 2014, and Final Critical Circumstances Memo at Attachment 1.
[155] See 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 accompanying Issues and Decision Memorandum at Comment 26.
[156] For example, we compared the August 2013 - October 2013 base period and November 2013 – January 2014 comparable period ("current period") to the August 2012 - October 2012 base period and November 2012 – January 2013 comparable period ("prior period").
[157] See Bluestar's Response to Critical Circumstances Inquiry, submitted March 7, 2014.
[158] See Prelim Decision Memo at 6.

Comment 7: Whether to Continue to Rely on the Average-to-Average Margin Calculation Methodology

Quhua/Lianzhou's Arguments

- The Department should not resort to the application of an average-to-transaction ("A-T") comparison methodology since application of the A-T methodology, with zeroing, did not yield a meaningful difference in the weighted average dumping margins, when compared to the results from the average-to-average ("A-A") comparison methodology.
- In the final determination the Department will again perform a targeting analysis; such analysis may result in a meaningful difference between application of A-A and A-T methodologies. If so, the Department should modify its differential pricing analysis to conform to law.
- For an affirmative finding of targeting, the Department first must confirm whether there is an authentic pattern, devoid of distortion or misrepresentation.
- The Department's withdrawal of its regulation limiting A-T to targeted sales was contrary to law.
- The Department should refine its targeted dumping analysis by abandoning the Cohen's d test.

Petitioner's Arguments

- The Department used the A-A methodology in the Preliminary Determination, therefore this issue is moot.

Department's Position:

In the Preliminary Determination and for the final determination, the Department applied the standard average-to-average method to calculate a weighted-average dumping margin for Bluestar, the only company for whom we are calculating an individual margin of dumping. Therefore, Quhua/Lianzhou's arguments are moot.[159]

Comment 8: Whether to Add an Additional HTS Code to the Scope

Petitioner's Argument

- The Department should add an additional HTS code to the description of the scope.

No Other Party Commented On This Issue.

Department's Position:

We disagree with Petitioner that an additional HTS code should be added to the description of the scope. We determine that the Petitioner has not provided the Department with adequate information to determine whether it is appropriate to add this HTS code to the scope of the

[159] See Certain Oil Country Tubular Goods from the Republic of the Philippines: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances, 79 FR 41976 (July 18, 2014) and accompanying Issues and Decisions Memorandum at Comment 2.

investigation. We note that the description of the merchandise in the scope is dispositive and that the HTS codes are provided for convenience only.

Comment 9: Whether The Department's Rejection of Minor Corrections Was Contrary to Law

Quhua/Lianzhou's Arguments

- The Department should not have rejected the actual chemical composition of Dawson Gas at verification.
- Additionally, the Department should not have rejected documentation regarding the April 15, 2014 statement that the Marketing Center belonged to the Juhua Group was a clerical error.
- The Department's rejection constitutes an abuse of administrative discretion and was contrary to law. This information would have been easily verified by the Department and would not have prejudiced the Petitioner by being placed on the record at verification.

Petitioner's Arguments

- The Department has considerable discretion as to what it considers to be new information.

Department's Position:

As the Department is not utilizing the information from Weitron Kunshan for which we conducted this verification, this issue is moot.

Comment 10: Hydrogen Fluoride Surrogate Value

Bluestar's Arguments

- The Department should use Ukrainian data as SV for hydrogen fluoride ("HF"), because record evidence demonstrates that the Thai SV for HF is aberrational. If the Department finds the Ukrainian HF value is unsuitable it should use Mexican HF data as the SV.
- The Thai HF SV is based on a very small quantity compared the quantity of HF used by Bluestar to produce the merchandise under consideration. The CIT has rejected the Department's use of SV data based on the surrogate country's small import volumes compared to the amount consumed by the respondent.[160]

Quhua/Lianzhou's Arguments

- The Department should use Ukrainian data to value HF, because the quantity reported for the Thai HTS data is aberrantly low and the value was aberrantly high.
- The Department should not rely on Thai HF import data because:
    - The Thai HF value is not corroborated by the export data from Germany or Taiwan.
    - The Thai HF value is not corroborated by HF import prices found in other countries.

[160] Bluestar cites to Blue Field (Sichuan) Food Industrial Co., Ltd. v. United States, 949 F. Supp. 2d 1311, 1327-28 (CIT 2013) ("Blue Field") and Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F.Supp.2d 1339, 1352 (CIT 2004).

- The Department has a statutory obligation to value factors using the "best available information" and the Court has determined that the Department cannot ignore wide variances between competing SVs and is required to consider whether data is corroborated by other evidence on record.[161]

MOFCOM's and Sinochem Taicang's Arguments

- The SV for HF is aberrantly high. MOFCOM and Sinochem Taicang adopt the arguments of the respondents on this issue.

Petitioner's and DuPont's Arguments

- The Department should continue to value HF using Thai SV data.
- The burden is on the party claiming an aberrational SV.[162] Bluestar, Quhua and Lianzhou have not demonstrated that the Thai HF SV is aberrational and the import quantity is non-commercial. The quantity of HF imported into Thailand is higher than the import quantities reported for other countries and the Thai average unit value is not aberrational when compared to the weighted average SV from all other countries on the record.

Department's Position:

We agree with Petitioner that the SV for HF is not aberrational. Section 773(c)(1)(B) of the Act directs the Department to use "the best information available" from the appropriate ME country to value FOPs. In selecting the most appropriate SVs, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad market average, chosen from a single approved surrogate country, is tax and duty-exclusive, and is specific to the input.[163] The Department's preference is to satisfy the breadth of the aforementioned selection criteria. However, where all of the criteria cannot be satisfied, the Department will choose a SV based on the best information available on the record.[164] In the Preliminary Determination, the Department used Thai GTA import data reported to under HTS 2811.11: "hydrofluoric acid" to value HF. The data is from the approved surrogate country, represent a broad market average, is tax and duty-exclusive, and is specific to the input.[165]

We disagree with the parties' arguments that the Thai HTS code 2811.11 used to value HF is aberrational when compared to all other values on the record. When determining whether data is

[161] Quhua and Lianzhou cite Peer Bearing Company-Changshan v. United States, 804 F. Supp. 2d 1337, 1353 (CIT 2011) ("Peer 804") and Peer Bearing Company-Changshan v. United States, 752 F.Supp.2d 1353, 1372 (CIT 2011).
[162] Petitioner cites 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 accompanying Issues and Decision Memorandum at Comment 15 and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009), and accompanying Issues and Decision Memorandum at Comment 6.
[163] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 11349 (March 17, 2009) ("Fish Fillets 2009") and accompanying Issues and Decisions Memorandum at Comment 9.
[164] See id.
[165] See Memorandum to the File, through Catherine Bertrand, Program manager, Office V, from Bob Palmer, Senior International Trade Compliance Analyst, re: "Investigation of 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Surrogate Values for the Preliminary Determination," dated May 21, 2014 ("Prelim SV Memo") at 2-4.

aberrational, the Department has found that the existence of higher prices alone does not necessarily indicate that the price data is distorted or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular SV.[166] Interested parties must provide specific evidence showing the value is aberrational. If a party presents sufficient evidence to demonstrate a particular SV is aberrational, and therefore unreliable, the Department will examine all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question. With respect to benchmarking, the Department examines historical import data for the potential surrogate countries for a given case, to the extent such import data is available, and/or examines data from the same HTS category for the surrogate country over multiple years to determine if the current data appears aberrational compared to historical values.[167]

Here, the record does not contain historical GTA HF import data from any of the countries on the Surrogate Country Memo which allows us to determine whether the Thai HF SV used in this investigation is aberrational. Further, no parties have placed any information on the record which demonstrates that the Thai GTA import data for HF is not specific to the HF used by the parties in production of the merchandise under consideration.

Bluestar and Quhua/Lianzhou argue that the Thai HF value is aberrational when compared to GTA HF import data from Armenia, Belarus, Bulgaria, Colombia, Ecuador, the Czech Republic, Germany, India, Indonesia, Japan, Mexico, South Africa, Spain, Ukraine, and the United States. While parties submitted GTA HF import and export data from a range of countries to compare with the Thai HF SV,[168] as noted above, Department's current practice is to examine GTA import data for potential surrogate countries for a given case, to the extent such import data is available.[169] The Department does not find the values from Armenia, the Czech Republic, Germany, India, Japan, Mexico, Spain, and the United States to be proper comparisons in deciding whether the Thai HF value is aberrational as these countries are not economically comparable or considered NME countries.[170] As noted above, the Department identified Bulgaria, Colombia, Ecuador, Indonesia, South Africa and Thailand as countries comparable to the PRC in terms of economic development for the purposes of this investigation. The average unit values of these countries range from $0.99/kilogram ("kg") to $25.10/kg.[171] Thailand's 150.69 Baht/kg (or roughly $4.92/kg) value falls well within the range of average unit values of GTA HF import data for countries comparable to the PRC in terms of economic development. Thus, the Thai value is representative of market averages. Further, we find that the record

[166] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 76 FR 56158 (September 12, 2011) and accompanying Issues and Decisions Memorandum at Comment 12.
[167] See Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 36630 (June 28, 2010) ("Carbazole") and accompanying Issues and Decisions Memorandum at Comment 6.
[168] See e.g., Weitron's SV Submission, dated March 18, 2014 at Exhibit 2.
[169] See Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 74644 (December 17, 2012) and Issues and Decision Memorandum at Comment 1.
[170] The Department considers Armenia an NME country.
[171] See DuPont's Surrogate Value Submission, dated March 25, 2014 at Attachment 1.

evidence does not support a finding that the average unit value from any of the other countries, when compared with that of Thailand, either are more specific to the input or are a more reasonable value. With respect to parties' arguments regarding the Bulgarian and Ukrainian GTA HF import values, while the average unit values for Bulgaria and Ukraine are lower than the Thai HF value, it merely demonstrates that the Bulgarian and Ukrainian average values are lower than Thailand' average unit values. The Court of International Trade has stated that the existence of a range of different values on a record does not render any one of those values aberrational.[172] Moreover, the variance between the lower Bulgarian and Ukrainian values and the higher Thai values may suggest that such variance in price may be a characteristic of the markets rather than a statistical outlier.[173]

With regard to Quhua/Lianzhou's contention that we use export data to value HF, we note that, consistent with our established practice, we only use export data when it represents the best available information on the record and no other appropriate SV data is available from the potential surrogate countries provided by the Department.[174] Here, we have HF import data from the primary surrogate country which meets the Department's surrogate value selection criteria. Further, by simply arguing that the export quantities versus import quantities predictably differ, Quhua/Lianzhou has not established that the export data is more reliable than the Thai import data. The Department does not expect one country's export quantities to be a one-to-one ratio to another country's import data.[175]

Parties cite to certain court cases, arguing the Department must find that the Thai SV is aberrational when compared with other HF data on the record.[176] We note that in Blue Field and the Peer Bearing cases cited by parties, the Court rejected the Department's well established practices regarding SV selection and remanded to the Department to consider data from countries the Department did not consider to be at the same level of economic development as the PRC or that the Department did not consider to be appropriate benchmark sources.[177] Under protest, the Department complied with the Court's orders.[178] In this case, as described above, we do not agree that the information placed on the record demonstrates that the Thai SV is aberrational.

We disagree with Bluestar's argument that the Thai import quantity of HF should be representative of the quantity consumed during the POR. When making SV selections, the Department considers whether the SV is publicly available, contemporaneous with the POR,

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[172] See Camau Frozen Seafood Processing Import Export Corporation v. United States, 929 F. Supp. 2d 1352, 1356 n.9 (CIT 2013) ("Camau II").
[173] See AR5 PRC Shrimp and accompanying Issues and Decision Memorandum at Comment 4.
[174] See Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 3.
[175] See First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 57995 (November 10, 2009) and Issues and Decisions Memorandum at Comment 3f.
[176] See Bluestar's Case Brief at 21; see also Quhua and Lianzhou's Case Brief at 13.
[177] See Blue Field 949 F.Supp.2d 1331-1334 and Peer Bearings.
[178] See Final Results of Redetermination Pursuant to Court Remand Certain Preserved Mushrooms from the People's Republic of China, Blue Field (Sichuan) Food Indus. Co., Ltd. v. United States, Court No. 12-00320, USCIT Slip Op. 13-142 (November 14, 2013), dated March 18, 2014 at 9.

represents a broad market average, chosen from a single approved surrogate country, is tax and duty-exclusive, and is specific to the input.[179] Further, the Department consistently finds that small quantities alone are not inherently distortive.[180] As previously stated the Department considers whether the SV source is publicly available, contemporaneous with the POR, represents a broad market average, chosen from a single approved surrogate country, is tax and duty-exclusive, and is specific to the input. Here, the Thai SV for HF meets these criteria. Therefore, because the Thai SV for HF meets the Department's SV selection criteria, is not otherwise aberrational, and represents the best available information on the record, the Department will continue to use the Thai value as the SV for HF.

Comment 11: Color Salts Surrogate Value

Quhua/Lianzhou's Arguments

- The Department should value color salts using Thai HTS number 2501 rather than Thai HTS number 8112.29 "articles of chromium" because color salts are not "articles of chromium."
- The Department could place additional information on the record to fulfil its obligation to value FOPs using the best information available.
- The Department would be abusing its discretion by failing to agree with the request to value color salt with Thai HTS number 2501 because the Department has an obligation to calculate margins based on the principles of fairness and accuracy.[181]

MOFCOM's and Sinochem Taicang's Arguments

- The SV for color salts is aberrantly high and disassociated from commercial reality. MOFCOM and Sinochem Taicang adopt the arguments of the respondents on this issue.

Department's Position:

Because we are not calculating an individual margin for Weitron Kunshan, this issue is moot.

Comment 12: Caustic Potash Surrogate Value

Bluestar's Arguments

- The Department should use the Mexican SV for caustic potash because the Thai potash SV is skewed by the aberrational Austrian and Swiss import values.
- If the Department continues to use the Thai source for the potash SV, then it should exclude the Austrian and Swiss values.[182]

[179] See Fish Fillets 2009, and accompanying Issues and Decision Memorandum at Comment 9.
[180] See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review, 2011-2012, 78 FR 56209 (September 12, 2013), and accompanying Issues and Decisions Memorandum at Comment 4.
[181] Quhua/Lianzhou cite SNR Roulements v. United States, 402 F.3d 1358, 1363 (Fed. Cir. 2005).
[182] Bluestar cites Shakeproof Assembly Components Division of Illinois Tool Works v. United States, 59 F.Supp.2d 1354, 1360 (CIT 1999), aff'd, 268 F.3d 1376 (Fed. Cir. 2001) and Hebei Metals & Minerals Import & Export Corporation v. United States, 366 F.Supp.2d 1264 (CIT 2005).

Petitioner's Arguments

- The Department should continue to use the Thai source to value caustic potash because there is no other information on the record demonstrating this value is aberrational.

Department's Position:

We disagree with Bluestar that the Thai SV for caustic potash is aberrational. In the Preliminary Determination, we valued caustic potash using Thai GTA import data under HTS 2815.20 "Potassium Hydroxide" or caustic potash. The data is from the approved surrogate country, represent a broad market average, is tax and duty-exclusive, and is specific to the input.[183]

Bluestar argues that the Thai caustic potash SV is aberrational and that the imports from Austria and Switzerland should be removed from the calculation of the caustic potash SV or, as an alternative, the Department should use the Mexican caustic potash data on the record to calculate an SV. As stated above, the Department considers several criteria when evaluating whether an SV is aberrational and examines all relevant price information on the record, including any appropriate benchmark data, in order to accurately value the input in question.[184] We disagree with Bluestar's argument that the caustic potash value is unreliable because of widely divergent average unit values ("AUV") in the Thai GTA import data. As we stated before, without any additional reference points, a party can just as easily make the claim that either value is aberrational in comparison to the other, without sufficient evidence to draw a reasonable conclusion either way.[185] When import data is obtained from a wide range of countries--as is the case here with Thai imports from fourteen countries--with a wide range of quantity and value, it is not unusual to find a wide range of AUV's.[186] Bluestar has not placed any historical data or benchmarking data on the record to support its allegation that the divergent AUV's necessarily mean that the data is unreliable.[187] Accordingly, there is no basis to conclude that any one of the AUVs in the Thai GTA import data are aberrational. Therefore, we will continue to use the Thai value for caustic potash because it represents the best available information on the record from the primary surrogate country.

[183] See Prelim SV Memo at 2-4.
[184] See Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 67337 (November 9, 2012) ("Activated Carbon 2012") and accompanying Issues and Decision Memorandum at Comment 1.C.(A).
[185] See Citric Acid 2009, and accompanying Issues and Decision Memorandum at Comment 5B.
[186] See Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 49460 (August 13, 2010) and accompanying Issues and Decisions Memorandum at Comment 4.
[187] See Camau II, 929 F. Supp. 2d 1352, 1356.

Comment 13: Dawson Gas Surrogate Value

Weitron Kunshan's Arguments

- The Department should value Dawson Gas based on the Thai SV for natural gas because the SV for Dawson Gas is unrealistically high and commercially unrealistic, causing an unrealistic normal value.
- The Department is required to select SVs which are "reasonably accurate estimates of the true value of the factors of production, as the statute dictates."[188] Commerce is required to select a SV "that most accurately reflects the . . . consumption patterns of producers in the relevant industry."[189]
- The Thai HTS number 2705 used to value Dawson Gas is not contemporaneous with the POI, the low import quantity is commercially unrealistic and unrepresentative of the quantity used by JuhuaOP, and is a basket category comprising many types of gases.
- The Department faced a similar situation in Plate from Romania; there the Department determined that furnace gas could not be valued using HTS 2705 because the data was reported in aberrantly small volumes at aberrantly high prices.[190]
- To value Dawson Gas, the Department should derive a ratio by dividing the heat value of Dawson Gas by the heat value of natural gas, then apply this ratio to the SV of natural gas. The Department has applied this methodology in other cases.[191]
- If the Department does not rely on the Thai natural gas SV to value Dawson Gas, it should use Indonesian HTS number 2705 data to value Dawson Gas because it is contemporaneous with the POI and is for a larger quantity.

MOFCOM's and Sinochem Taicang's Arguments

- MOFCOM AND SC Taicang supports the arguments made by mandatory respondents regarding this issue.

Petitioner's Arguments

- The Department should continue to value Dawson Gas based on the Thai HTS number 2705 because there is no benchmark comparison information on the record on the unit value of HTS 2705 imports into other countries.

Department's Position:

Because we are not calculating an individual margin for Weitron Kunshan, this issue is moot.

[188] Weitron cites Sigma at 117 F.3d 1401, 1408, citing 19 U.S.C. § 1677b(c)(1), (e)(1988).
[189] Weitron cites Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, 28 C.I.T. 1185, 1195 (2004).
[190] Weitron cites Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 70 FR 12651, 12654 (March 15, 2005) ("Plate from Romania") and accompanying Issues and Decision Memorandum at Comment 6.
[191] Weitron cites, e.g., Plate from Romania at Comment 6, Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 Fed. Reg. 76336, 76338 (December 16, 2008) ("Pure Magnesium") and accompanying Issues and Decision Memorandum at Comment 4.

Comment 14: Whether to Categorize Catalyst, Refrigerants and Compressed Air as Factory Overhead

Quhua/Lianzhou's Arguments

- The Department should re-categorize the material inputs catalysts, refrigerants and compressed air as factory overhead because these materials are not incorporated into the finished products and the relative costs of these materials to the total production costs were very low during the POI.[192]

Petitioner's Arguments

- Catalysts, refrigerants and compressed air should continue to be valued as material inputs because Thai-Japan Gas Co., Ltd.'s ("Thai-Japan") financial statement does not break out overhead costs.
- If the Department uses Linde's financial statement, these items might plausibly be a part of overhead rather than material inputs.

Department's Position:

Because we are not calculating an individual margin for Weitron Kunshan and because this issue pertains only to inputs used by Weitron Kunshan's producers, this issue is moot.

Comment 15: Compressed Air Surrogate Value

Quhua/Lianzhou's Arguments

- If the Department does not categorize compressed air as overhead, it should value compressed air at 98.665 Baht/kg, rather than the 223.30 Baht/kg used in the Preliminary Determination, because there are aberrational average unit values in the Thai import data. These aberrational values from the various countries should be removed from the calculation of compressed air.

Petitioner's Argument

- The Department should continue to use the compressed air SV it used at the Preliminary Determination because the presence of high prices alone is not an indication that the value is aberrational.

Department's Position:

Because we are not calculating an individual margin for Weitron Kunshan and because this issue pertains only to inputs used by Weitron Kunshan's producers, this issue is moot.

[192] Quhua/Lianzhou cite Notice of Final Determination of Sales at Less Than Fair Value: Urea Ammonium Nitrate Solutions from Belarus, 68 FR 9055 (February 27, 2003) ("Belarus Urea") and accompanying Issues and Decisions Memorandum at Comment 2: Whether Catalysts Should Be Valued Separately ("Department's Position: We disagree with the petitioner and continue to believe that catalysts should be treated as part of overhead.").

Comment 16: Selection of Surrogate Financial Statements

Petitioner's and DuPont's Arguments

- The Department should not use Thai-Japan's financial statement because it is a trading company and not a capital-intensive manufacturer of industrial gases. Further, it provides no break out for raw materials, labor, energy or overhead.[193]
- The Department should use Linde (Thailand) PLC's ("Linde") financial statement because it is a manufacturer of industrial gases and provides sufficient detail to calculate accurate financial ratios.
- The Department has a consistent practice of not rejecting financial statements that mention the Investment Promotion Act unless there is evidence within those financial statements that the company was provided its Investment Promotion Act privileges.[194] Further, the Department has used financial statements which contained countervailable subsidies.[195]
- The Department should choose the company with the best specificity and data quality, as long as any potential subsidies reported in the financial statement could not possibly be above de minimis.[196]
- The Department correctly rejected using Bangchak Petroleum Public Co., Ltd. ("Bangchak"), PTT Public Co., Ltd., and IRPC Public Co., Ltd. because these companies are producers of hydrocarbon products which are not chemically the same, have a different production process, and are used primarily as combustion sources.
- If the Department continues to rely on Thai-Japan's financial statement, it should do so only in combination with Linde's statement.[197]

Quhua/Lianzhou Arguments

- The Department should rely only on Bangchak's financial statement because it is contemporaneous to the POI, did not reflect subsidies from the Thai Board of Investment ("BOI"), and the company produces hydrocarbon products which are similar to the merchandise under consideration.
- Bangchak's financial statement is untainted by countervailable subsidy benefits because it did not receive any revenue under the category of "Promoted Business - Export Sales," i.e. benefits contingent upon exports.

[193] DuPont cites Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12, 79 FR 96 (January 2, 2014), ("Aluminum Extrusions") and accompanying Issues and Decision Memorandum at Comment 1 (rejecting various financial statements for lack of detail).

[194] DuPont cites Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 3396 (January 16, 2013), and accompanying Issues and Decision Memorandum at Comment 2.

[195] Petitioner cites Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less than Fair Value, 77 FR 63791 (October 17, 2012), and accompanying Issues and Decisions Memorandum at Comment 2.

[196] Petitioner cites Jianxing at 1358-59 (CIT 2010).

[197] DuPont notes that the Department should use the Indian financial statement on the record if it finds Linde's statement unsuitable.

- Hydrocarbons products such as LPG, gasoline, diesel and naphtha are comparable to the merchandise under consideration because these chemical compounds share similar physical and chemical properties and production processes.
- Alternatively, the Department should select the financial statements of Bangchak and Thai-Japan. Thai-Japan's statement is the second-best alternative on this record because Thai-Japan produces comparable merchandise and its statement is not tainted by subsidies.
- In accordance with its practice, the Department should not use Linde's financial statement because it is distorted by countervailable subsidies.
- Petitioner's reliance on Jianxing is misplaced. In Jianxing, the Court agreed with the Department to reject a financial statement due to the possibility of countervailable subsidies.[198]
- The Court has rejected the application of a de minimis standard in the analysis of countervailable subsidies.[199]
- Linde's financial statement is inferior to Thai-Japan's because Thai-Japan's statement is free of subsidies and has sufficient detail to calculate financial ratios. Additionally, even if a portion of Thai-Japan's business is trading activities, the Department would not prefer Linde's financial statement, which is distorted by subsidies.
- The Department should reject Petitioner's contention that Thai-Japan's statement is unsuitable because it does not demonstrate the traits of a capital-intensive manufacturer.
- The Department should not use the Indian financial statements on the record because they are from a country which is not considered economically comparable and the companies receive countervailable subsidies.

Bluestar's Arguments

- The Department should continue to reject Linde's financial statement for use as a source for financial ratios because the Department's practice is to reject financial statements from companies that receive countervailable subsidies.

Department's Position:

In the Preliminary Determination, the Department used Thai-Japan's financial statement to calculate surrogate financial ratios because we found it to be the best available information on the record.[200] Section 773(c)(1) of the Act states that when the Department cannot calculate the NV of subject merchandise from a NME using the method described in section 773(a) of the Act, then the Department shall determine the NV "on the basis of the value of the factors of production utilized in producing the merchandise . . ."[201] In so doing, section 773(c)(1) explains further that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors. . ." In choosing surrogate financial ratios, it is

[198] Quhua and Lianzhou cite Jianxing, 751 F.Supp.2d 1345, 1350-1353.
[199] Quhua and Lianzhou cite Peer Bearing Company-Changshan v. United States, 27 C.I.T. 1763 (CIT 2003).
[200] See Prelim Decision Memo at 22.
[201] Section 773(c)(1) of the Act also explains that the Department will add to this amount general expenses, profit, and the cost of containers, coverings, and other expenses. See also 19 CFR 351.408(c)(4).

the Department's practice to use data from ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."[202]

Consistent with the Preliminary Determination, we are disregarding the financial statement of Linde because we continue to find that Linde receives benefits under Investment Promotion Rights from the Thai Board of Investment. The Department found this program to be countervailable.[203] While Petitioner argues that the amount of benefit to Linde is minimal, we agree with Quhua/Lianzhou that the Department is not required to undertake an investigation into the actual amount of benefit received in analyzing surrogate financial statements that contain evidence of subsidies previously found to be countervailable.[204] Where we have reason to believe or suspect that the company producing comparable merchandise benefited from countervailable subsidies, the Department normally considers the financial ratios derived from that company's financial statements to be less representative of the financial experience of the relevant industry than the ratios derived from financial statements of a company that does not contain evidence of subsidization.[205] Consequently, the Department does not rely on financial statements that indicate the company received subsidies that the Department previously found countervailable when there are other more reliable and representative data on the record for purposes of calculating the surrogate financial ratios.[206] The record of this proceeding contains another financial statement that meets the Department's criteria of being audited, publicly available, from the primary surrogate country, and from a producer of comparable merchandise, which shows a profit, and which does not contain any evidence of subsidies previously found by the Department to be countervailable, (i.e., the Thai-Japan financial statement, discussed below). Therefore, we find there is no need to rely on financial statements that do contain evidence of such subsidies, regardless of the extent of the benefit.

We disagree with Petitioner that the information on the record demonstrates that Thai-Japan is only a trading company and not a manufacturer of industrial gases. While information on the record indicates that Thai-Japan may also be a trading company of comparable merchandise, the record demonstrates that it is a manufacturer of comparable merchandise. Thai-Japan's financial statements state one of its objectives is to "produce and distribute industrial gases."[207] Further, its financial statement provides details regarding raw material, finished goods, and manufacturing inventory. While, Thai-Japan's financial statement is not as detailed as the Department prefers, its financial statement provides sufficient information to calculate surrogate ratios for factory overhead, selling, general, and administrative costs and profit. Further, it is the only financial

[202] See 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) and accompanying Issues and Decision Memorandum at Comment 1. More specifically, the Department's criteria for selecting among surrogate companies' financial statements are: public availability, complete and audited, representative, and contemporaneous with the POR. See Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China, 70 FR 24502 (May 10, 2005) and accompanying Issues and Decision Memorandum at Comment 3 ("Chlorinated Isos IDM").
[203] See Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination, 78 FR 50379 (August 19, 2013) and accompanying Issues and Decision Memorandum at IV.A.2.
[204] See Jianxing at 1357-1358.
[205] See Carbazole and accompanying Issues and Decision Memorandum at Comment 1.
[206] See id.
[207] See Weitron's SV Submission, dated April 21, 2014, at Exhibit 14D.

statement on the record from a company which is a producer of comparable merchandise that does not receive countervailable subsidy benefits.

Quhua/Lianzhou contends that Bangchak, a manufacturer of hydrocarbons, is a producer of comparable merchandise and, therefore, is most appropriate source to calculate surrogate financial ratios. We disagree that hydrocarbon products are comparable merchandise. While the statute does not define "comparable merchandise," it is the Department's practice, where appropriate, to apply a three-prong test that considers: 1) physical characteristics; 2) end uses; and 3) production processes.[208] Hydrocarbons are comprised only of carbon and hydrogen atoms in various molecular structures to produce a flammable product that is derived from crude oil or natural gas.[209] Tetrafluoroethane is comprised mostly of fluorine, with small quantities of carbon and hydrogen.[210] With respect to end-uses, information on the record indicates that certain hydrocarbons can be used as refrigerants. However, as Petitioner points out, hydrocarbon refrigerants and tetrafluoroethane do not appear interchangeable.[211] Further, there is no information on the record which indicates that hydrocarbon refrigerants are used in the automobile industry, unlike the merchandise under consideration, whose primary end-use is in automobiles.[212] Regarding production processes, while both hydrocarbon and tetrafluoroethane production use high temperatures and a refining process to derive the end product, hydrocarbon production involves distilling crude oil at many different temperatures to create various hydrocarbon products,[213] whereas tetrafluoroethane production requires a catalyst to create a reaction between two inputs to create the product.[214] Accordingly, we find that hydrocarbons are not comparable to tetrafluoroethane. Accordingly, we will not use Bangchak's financial statements to calculate the surrogate financial ratios.

DuPont suggests that the Department use the Indian financial statements on the record if we continue to find Linde's financial statement unsuitable for calculating surrogate financial ratios. We did not consider the Indian financial statement on the record because there is a suitable financial statement on the record from the primary surrogate country, Thailand, from which to calculate surrogate financial ratios. As stated above, the Department's policy is to use financial statements of companies producing comparable merchandise from the primary surrogate

[208] See Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (Apr. 19, 2010) ("OCTG") and accompanying Issues and Decision Memorandum at Comment 13.
[209] See Weitron's SV Submission, dated April 21, 2014, at Exhibit 5A.
[210] See Prelim Decision Memo at 2 (Scope of the Investigation).
[211] See Weitron's SV Submission, dated April 21, 2014, at Exhibit 4A.
[212] See 1,1,1,2-Tetrafluoroethane From China, Investigation Nos. 701-TA-509 and 731-TA-1244 (Preliminary), International Trade Commission Report (December 2013) at I-11.
[213] See Petitioner's SV Submission, dated May 1, 2014 at 6; see also, Weitron's SV Submission, dated April 21, 2014, at Exhibit 6C and 6 F.
[214] See e.g., Bluestar's Section D Response, dated February 27, 2014 at D-5.

country.[215] Therefore, because we have a usable financial statement from Thailand, the surrogate country, we will not rely on the Indian financial statements.

Comment 17: Calculation of Thai-Japan Financial Ratios

DuPont's Arguments

- Should the Department continue to rely upon the Thai-Japan financial statement, it should not reduce selling, general, and administration expenses ("SG&A) by "other income." Offsetting SG&A by the full amount of "other income" assumes that the entire amount of "other income" was also captured in the SG&A line item, which is not supported by any evidence. Instead, the Department should exclude "other income" from the financial ratio calculation.[216]

No other party commented on this issue.

Department's Position:

We disagree with DuPont that the revenue line item "other income" in Thai-Japan's financial statement should be excluded from the surrogate financial ratio calculations. The Department's current practice with respect to line items detailed in surrogate financial statements that we determine should not be included in the ratio calculations, such as non-period income or expenses and investment income or expense, is to adjust profit.[217] While the Thai-Japan's financial statement does not indicate to what this other income refers, other than current period revenue, there is no information to suggest it is not related to the general operations of the company for the current period. Therefore, there is no reason to change our treatment of this line item from an offset to SG&A to an adjustment of profit.

Given the nature of the information that serves as the source for financial ratio calculations in non-market economy cases (i.e., that it is based on surrogate financial data from a company that

[215] See, e.g. Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 74 FR 41374 (August 17, 2009), and accompanying Issues and Decision Memorandum at Comment 14 ("in complying with the statute and the regulations, the Department calculates the financial ratios based on contemporaneous financial statements of companies producing comparable merchandise from the surrogate country").

[216] DuPont cites the following in support of its argument: Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,74 FR 8907 (February 27, 2009) ("Steel Threaded Rod"), and accompanying Issues and Decision Memorandum at Comment 1 ("{w}ith respect to the 'other incomes' line item, the Department agrees with Petitioner that without further evidence regarding the nature of the revenue and its relationship to production/sales incomes, it is inappropriate to include the line item in the calculation of the financial ratios for the final determination"); and Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review, 77 FR 12553 (March 1, 2012) ("2nd AR Hangers"), and accompanying Issues and Decision Memorandum at Comment 4 ("we note that in using Nasco's statement, we have excluded the 'other income' line item from the ratios calculation, as the source of this income is unclear").

[217] See, e.g., Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 44008 (July 29, 2014) and accompanying Issues and Decision Memorandum at Comment 5.

is not a party to the proceeding), we cannot "go behind" a surrogate financial statement to determine precisely what each item includes or to what activity it relates.[218] Therefore, when assigning the various line items to particular categories for our financial ratio calculations, we prefer to rely on the classification of these items from the surrogate financial statement, unless there is good reason to believe the classification is not accurate.[219]

In this case, we have not found any information in Thai-Japan's financial statements or otherwise on the record to indicate that the "other income" line item is not related to the general operations of the company. Because there is no information to dispute this assumption, it is not unreasonable to assume that the item at issue relates to the general operations of the company. Moreover, there is no other information in the Thai-Japan financial statement, or elsewhere on the record of this case, suggesting that the financial statement classifications are not accurate. Therefore, we are making no changes with respect to the category classification of "other income" in our surrogate financial ratio calculations.

Comment 18: Inland Freight and Brokerage & Handling

Petitioner's Arguments

- The valuation of inland freight and domestic brokerage and handling should be revised because the merchandise under consideration is hazardous, and therefore, requires special handling.
- The Department should open the record allowing parties to submit movement and expense SV data related to hazardous materials.

Quhua/Lianzhou's Arguments

- The Department should not open the record to allow for additional SVs related to movement of hazardous materials. The deadline for submitting SVs has passed and Petitioner has not established a sufficient reason for a waiver of the deadline.

Department's Position:

In the Preliminary Determination, we valued inland freight and brokerage and handling using the World Bank's Doing Business in Thailand. Prior to the Preliminary Determination, interested parties placed the World Bank's Doing Business in Thailand on the record as a SV for movement expenses.[220] Petitioner did not argue that respondent's movement expenses should include a premium to account for special handling required for this merchandise under consideration in its SV submission, nor in its rebuttal SV submission. Furthermore, Petitioner did not provide any alternative movement surrogate value prior to the SV deadline. The record does not contain SVs

[218] See, e.g., Diamond Saw Blades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 16.
[219] See, e.g., Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 6D.
[220] See, e.g., Petitioner's SV Submission, submitted March 18, 2014; Weitron Kunshan's SV Submission, submitted March 19, 2014.

for hazardous material movement expenses. While Petitioner argues that the record should be opened to allow for parties to submit SVs related to the movement expenses of hazardous materials, we disagree. Petitioner had an opportunity to submit SVs, along with the other interested parties. We will continue to value movement expenses using the World Bank's Doing Business in Thailand, which we determine is the best information on the record.

Comment 19: Bluestar R22 Supplier Distance

Petitioner's Arguments

- The Department should correct the input calculation for R22 in the final determination because it used an incorrect supplier distance when calculating this input. Specifically, it used the supplier's distance for calcium hydroxide, instead of R22's supplier distance.

No other party commented on this issue.

Department's Position:

We agree with Petitioner that we used an incorrect supplier distance for Bluestar's R22 input. We updated the margin calculation for Bluestar's R22 input to use the R22 supplier distance, and not the supplier distance for calcium hydroxide.[221]

Comment 20: Packing Materials

Petitioner's Arguments

- As noted in Bluestar's minor corrections at verification, Bluestar did not report packing materials (wood pallet and shrink wrap) for one sale. The wood pallet and shrink wrap should be included in Bluestar's normal value calculation, along with the plywood panels and wood beams that Bluestar reported as overhead.

Bluestar's Arguments

- At verification, Bluestar provided the packing weights for the packing materials identified in its minor corrections. Based on these weights, the Department can add wood pallet and shrink wrap to the normal value calculation for the sale since Bluestar inadvertently forgot to include the packing materials.
- The Department should not value the plywood panels and wood beams used to secure cylinders in the shipping container. These materials should be treated as factory overhead, as identified by Bluestar in its original section D questionnaire response.
- Should the Department decide to include the plywood panels and wood beams in the calculation of normal value, the consumption should be allocated over the entire quantity of product within a standard 20 foot shipping container.

[221] See Memorandum to the File through Catherine Bertrand, Program Manager, Office V, from Frances Veith, Senior International Trade Compliance Analyst, Office V, "Final Analysis Memo for Jiangsu Bluestar Green Technology Co., Ltd." dated concurrently with this memorandum ("Bluestar Final Analysis Memo").

Department's Position:

As part of its minor corrections we accepted at verification, Bluestar notified the Department that it did not report packing materials for one sale.[222] Therefore, because wood pallet and shrink wrap were part of packing materials, the Department will add the wood pallet and shrink wrap to the normal value calculation for the sale as identified by Bluestar as part of its minor corrections.

In the Preliminary Determination, we treated Bluestar's plywood panels and wood beams that were not directly included in the packing, but added to the shipping containers to ensure cartons do not hit against one another during shipment, as overhead.[223] Because the plywood panels and wood beams are not incorporated into the packaging of the product, we continue to determine that they should be treated as overhead. Therefore, we will treat the plywood panels and wood beams as overhead.

Comment 21: Domestic Movement Expense Calculation

Petitioner's Argument

- For truck freight to and from the Chinese port, the Department should apply its truck SV to the gross weight of the merchandise (i.e., tetrafluoroethane plus ISO tank or other container) in its margin program, and not just to the net weight (tetrafluoroethane only).

No Other Party Commented On This Issue

Department's Position:

We agree with Petitioner that for merchandise shipped by Bluestar to the United States during the POI, the truck freight SV should be applied to the packed weight (i.e., tetrafluoroethane and container, including the ISO tank) of the product and not just the product's net weight. In our review of the record, we found that the basis for Bluestar's freight vendor's trucking fees is gross weight of the product and not net weight.[224] Therefore for the final determination, we included the weight of the product in our domestic movement calculation in Bluestar's margin program. However, because the record does not contain gross weight on a per-unit basis for each sales transaction, we calculated a gross-to-net weight factor using the quantity sold in kilograms and the total gross weight of the product sold, and applied that factor to the domestic movement SVs to obtain a per-unit cost on a gross weight basis.[225] Thus, for the final determination, for domestic movement expense from Bluestar's factory to the port, we applied a gross-to-net weight adjustment factor to the SVs for domestic freight and brokerage and handling to arrive at a per-unit domestic movement expense adjustment.[226]

[222] See Bluestar Verification Report at 2.
[223] See Prelim Decision Memo at 11.
[224] See the Department's memorandum to the file regarding "1,1,1,2-Tetrafluoroethan from the People's Republic of China: Verification Exhibits," dated July 10, 2014, at Verification Exhibit 9.
[225] See Bluestar Final Analysis Memo.
[226] Id.

With respect to movement expenses related to the return of the ISO tank to Bluestar's factory from its U.S. customer, as noted above, we found it inappropriate to decrease Bluestar's gross unit price as a result of costs attributable to transportation cost associated with bringing the empty ISO tank back through Chinese customs and transport from the port to Bluestar's factory. Specifically, we found it not to be a cost incident to the sale because such expenses are attributable to factory overhead, and not a selling adjustment. Therefore, we will not adjust Bluestar's selling price for movement expenses back through the Chinese port to Bluestar's factory**.**

Comment 22: Whether to Correct the Unit Weight of Certain Packing Inputs

Petitioner's Argument

- In Weitron Kunshan's margin program, the Department inadvertently used Weitron Kunshan's reported weights for the market economy caps and cans rather than Weitron Kunshan's usage. The Department should correct this clerical error.

Weitron Kunshan's Arguments

- Weitron Kunshan correctly reported its market economy caps and cans on a per-kilogram basis.
- The Department inadvertently used the incorrect value for caps and cans. The Department should correct this clerical error.

Department's Position:

Because we are not calculating an individual margin for Weitron Kunshan and because this issue pertains only to inputs used by Weitron Kunshan, this issue is moot.

Comment 23: Whether to Delete Unknown Country of Origin Sales from Weitron Kunshan's Reported Sales

Petitioner's Argument

- The Department must delete from Weitron Kunshan's U.S. sales database those sales which Weitron Kunshan cannot determine the country of origin.[227]
- By including sales with an unknown country of origin the Department produced an inaccurate result because it cannot be determined with these sales are the merchandise under consideration.[228]

No Other Party Commented On This Issue.

[227] Petitioner cites Asociasion Columbiana de Exportadores de Flores v. United States, 704 F.Supp. 1114, 1117 (CIT 1989), aff'd 901 F.2d 1089 (Fed. Cir. 1990) ("The Court has specifically held that speculation is not an appropriate basis for a determination by the Department").

[228] Petitioner cites Krupp Thyssen Nirosta Gmbh v. United States, 24 C.I.T. 666, 675 (2000).

Department's Position:

Because we are not calculating an individual margin for Weitron Kunshan, this issue is moot.

Comment 24: Whether to Apply Subsidy Offset to Weitron Kunshan's Margin

Weitron Kunshan's Arguments

- The Department should apply an adjustment to Weitron Kunshan's antidumping duty margin pursuant to section 777A(f) of the Act because the assessment of antidumping duties and countervailing duties on Weitron Kunshan imports constitutes double counting of remedies.
- Juhua reported that the subsidy program "Provision of Acidspar for Less than Adequate Remuneration" has an impact on the cost to manufacture R-134a. Because Juhua's sales prices of bulk R-134a are affected by the receipt of a domestic subsidy; Weitron Kunshan's resale prices are affected by its purchase price of bulk R-134a from Juhua.
- The Department should conduct the same analysis with respect to domestic subsidies received by SC Taicang.

No Other Party Commented On This Issue.

Department's Position:

Because we are not calculating an individual margin for Weitron Kunshan, this issue is moot.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If accepted, we will publish the final determination of this investigation and the final dumping margins in the Federal Register.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 OCTOBER 2014
(Date)