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April 8, 2015

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

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

SUBJECT: Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2012-2013

SUMMARY

The Department of Commerce ("Department") analyzed the case and rebuttal briefs of interested parties in the fifth administrative review of the antidumping duty ("AD") order on certain new pneumatic off-the-road tires ("OTR Tires") from the People's Republic of China ("PRC") for the period of review ("POR") September 1, 2012, through August 30, 2013. The review covers the following exporters of subject merchandise: mandatory respondents Double Coin Holdings Ltd. ("Double Coin")[1] and Guizhou Tyre Co., Ltd. / Guizhou Tyre Import and Export Co., Ltd. (collectively, "GTC");[2] separate rates applicants Zhongce Rubber Group Company Limited

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 67104, 67108 (November 8, 2013) ("*Initiation Notice*"). The review was initiated on Double Coin Group Rugao Tyre Co., Ltd. – renamed Double Coin Group Jiangsu Tyre Co., Ltd. – ("DC Rugao/Jiangsu"), Double Coin Group Shanghai Donghai Tyre Co., Ltd. ("DC Donghai"), and Double Coin Holdings, Ltd. ("DCH" or "Double Coin"). The respondent in this review is DCH, which exported all subject merchandise produced by both its wholly-owned and affiliated factories during the POR. We collapsed DCH (including its Shanghai Heavy Tire factory), DC Rugao/Jiangsu, and DC Donghai into a single entity for the purposes of this review. *See* Memorandum to the File, entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Double Coin Affiliation and Collapsing Memorandum," dated September 30, 2014 ("Double Coin Affiliation and Collapsing Memo"). Our collapsing determination remains unchallenged and unchanged for these final results. The China Manufacturers' Alliance ("CMA") is DCH's U.S. sales affiliate for all POR sales, and provided and certified to relevant and requested sales-related information on behalf of the respondent. *See* Double Coin Affiliation and Collapsing Memo. Accordingly, for ease of reference we use "Double Coin" to collectively refer to each of the above-mentioned production, export, and sales entities that comprise the respondent in this review, but note that DCH is the actual exporter-respondent.

[2] *See Initiation Notice.* The review was initiated on Guizhou Advance Rubber Co., Ltd. ("GAR"), Guizhou Tyre Co., Ltd., and Guizhou Tyre Import and Export Co., Ltd. *See* Letter from GTC, entitled, "Section A Response: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated January 29, 2014 ("GTC's SAQR"). These three companies were collapsed

("Zhongce") and Weihai Zhongwei Rubber Co., Ltd.; and Trelleborg Wheel System (Xingtai) China, Co. Ltd. ("Trelleborg" or "TWS Xingtai"). We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On September 30, 2014, the Department published the *Preliminary Results* of this administrative review.[3] At that time, the Department invited interested parties to comment on the *Preliminary Results*.[4]

On December 11, 2014, the Department received timely filed case briefs from Double Coin,[5] GTC,[6] and Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC ("Petitioners").[7] Trelleborg provided a timely filed rebuttal brief on December 19, 2014.[8] On December 23, 2014, the Department received timely filed rebuttal briefs from Petitioners,[9] Double Coin,[10] GTC,[11] and Zhongce.[12]

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into a collective entity, "GTC," in the investigation. *See Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9283 (February 20, 2008), unchanged in *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008). As such, we refer to the respondent, collectively, as "GTC" throughout this memorandum.

[3] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 61291 (October 10, 2014) ("*Preliminary Results*") and accompanying memorandum to Paul Piquado, entitled "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2012-2013," dated September 30, 2014 ("PDM").

[4] *See Preliminary Results*, 79 FR at 61291.

[5] *See* Letter from Double Coin entitled, "Case Brief of Double Coin Holdings and China Manufacturers Alliance Certain New Pneumatic Off-the-Road Tires from China," dated December 11, 2014 ("Double Coin's Case Brief").

[6] *See* Letter from GTC entitled, "GTC Direct Case Brief: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated December 11, 2014 ("GTC's Case Brief").

[7] *See* Letter from Petitioners entitled, "Case Brief Of Titan Tire Corporation And The United Steel, Paper And Forestry, Rubber, Manufacturing, Energy, Allied Industrial And Service Workers International Union, AFL-CIO, CLC," dated December 11, 2014 ("Petitioners' Case Brief").

[8] *See* Letter from Trelleborg entitled, "Trelleborg Wheel Systems (Xingtai) Co. Ltd.'s Rebuttal Brief in the 12/13 Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated December 18, 2014 ("Trelleborg's Rebuttal").

[9] *See* Letter from Petitioners entitled, "Rebuttal Brief Of Titan Tire Corporation And The United Steel, Paper And Forestry, Rubber, Manufacturing, Energy, Allied Industrial And Service Workers International Union, AFL-CIO, CLC," dated December 23, 2014 ("Petitioners' Rebuttal Brief").

[10] *See* Letter from Double Coin entitled, "Rebuttal Brief of Double Coin Holdings and China Manufacturers Alliance Certain New Pneumatic Off-the-Road Tires from China," dated December 23, 2014 ("Double Coin's Rebuttal Brief").

[11] *See* Letter from GTC entitled, "GTC Rebuttal Case Brief: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated December 23, 2014 ("GTC's Rebuttal Brief").

[12] *See* Letter from Zhongce entitled, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Rebuttal Brief of Zhongce Rubber Group Company Limited," dated December 23, 2014 ("Zhongce's Rebuttal").

On December 30, 2014, the Department extended the deadline for the final results until April 8, 2015.[13] In accordance with timely requests from parties, the Department conducted a hearing on February 25, 2015.[14]

SCOPE OF THE ORDER

The products covered by the order are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,[15] combine harvesters,[16] agricultural high clearance sprayers,[17] industrial tractors,[18] log-skidders,[19] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[20] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[21] front end loaders,[22] dozers,[23] lift trucks, straddle carriers,[24] graders,[25] mobile cranes,[26] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of

[13] *See* "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated December 30, 2014.
[14] *See* "Hearing Transcript," filed onto the record by Lisa Dennis Court Reporting on March 25, 2015.
[15] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.
[16] Combine harvesters are used to harvest crops such as corn or wheat.
[17] Agricultural sprayers are used to irrigate agricultural fields
[18] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.
[19] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.
[20] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.
[21] Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.
[22] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.
[23] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform "rough grading" in road construction.
[24] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.
[25] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.
[26] *I.e.*, "on-site" mobile cranes designed for off-highway use.

equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type[27] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol "DOT" must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P - Identifies a tire intended primarily for service on passenger cars;
- LT - Identifies a tire intended primarily for service on light trucks; and,
- ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156" or plus 0.250";
- MH - Identifies tires for Mobile Homes;
- HC - Identifies a heavy duty tire designated for use on "HC" 15" tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC - Identifies tires and rims for motorcycles.

[27] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

DISCUSSION OF THE ISSUES

Comment 1: Whether to Include Double Coin in the PRC-Wide Entity and Adjust the Entity Rate

Double Coin's Brief[28]

[28] *See* Double Coin's Case Brief at 9-58. In support of its arguments, Double Coin cites to: *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1331(Fed. Cir. 2011); *Transcom, Inc. v. United States*, 182 F.3d 876 (Fed. Cir. 1999); *Sigma Corp v. United States*, 117 F.3d 1401 (Fed. Cir. 1997) ("*Sigma*"); *Georgetown Steel v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) ("*Georgetown Steel*"); *Jiangsu Changbao Steel Tube Co., Ltd. v. United States*, 884 F. Supp.2d, 1295 (CIT 2012) ("*Jiangsu Changbao*"); *Advanced Tech. & Materials Co. v. United States*, Court No. 09-00511, Slip Op. 2011 (CIT 2011); *Qingdao Taifa Group Co. v. United States*, 637 F. Supp. 2d 1231 (CIT 2009); *Peer Bearing Company – Changshan v. United States*, 587 F. Supp. 2d 1319 (CIT 2008) ("*Peer Bearing*"); *Hontex Enters. Inc. v. United States*, 248 F. Supp. 2d 1323 (CIT 2003); *UCF America v. United States*, 919 F. Supp. 435 (CIT 1996); Panel Report, *United States – Antidumping Measures on Certain Shrimp from Viet Nam*, WT/DS429/R (November 17, 2014); Panel Report, *United States – Antidumping Measures on Certain Shrimp from Vietnam*, WT/DS404/R (September 2, 2011); Panel Report, *United States – Antidumping Measures on Certain Shrimp from Vietnam*, WT/DS429/R (November 17, 2014) (currently before the WTO Appellate Body); *Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963 (November 4, 2013) ("*Change in Practice*"); *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2011-2012*, 78 FR 33341 (June 4, 2013); *Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012); *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, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012); *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012) ("*Section 772(c)(2)(B) Methodological Change*"); *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 22871 (April 25, 2011) ("*Tires/PRC 2008-2009*"); *Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 8301 (February 24, 2010); *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008); *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); *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) ("*Sawblades/PRC LTFV Final*"); *Honey From the People's Republic of China: Preliminary Results, Partial Rescission, and Extension of Final Results of Second Antidumping Duty Administrative Review*, 69 FR 77184 (December 27, 2004); *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From Germany*, 66 FR 67190 (December 28, 2001); *Notice of Preliminary Determination of Sales at Less Than Fair Value: Foundry*

- The Department does not have the authority to apply a country-wide entity rate that meets neither the statutory requirements for an "individually investigated" or "all others" rate.
- The determination to apply the PRC-wide rate to Double Coin in the *Preliminary Results* presumed that there was another state-owned entity producing and exporting OTR tires to the United States during the POR and that Double Coin was affiliated with said entity without any factual basis and despite verified evidence to the contrary.
- The Department proceeded to apply a rate in excess of the ceiling applicable to companies that are not individually investigated.
- Even if the Department had the authority to issue a country-wide rate, there was no written request for review of the NME entity and, thus, the PRC-wide entity is not under review.
- Given that Double Coin fully participated in this review and obtained a calculated margin, the Department lacks the authority to issue anything other than that company-specific rate and, regardless, cannot apply a country-wide rate based on adverse facts available ("AFA") to a fully cooperative exporter if the statutory requirements for AFA have not been met.
- PRC law, regulations, and Double Coin's Articles of Association plainly disallow government control of Double Coin's day-to-day operations.

Coke From the People's Republic of China, 66 FR 13885 (March 8, 2001); *Notice of Final Rule, Antidumping Duties, Countervailing Duties*, 62 FR 27296 (May 19, 1997) ("*Final Rule*"); *Notice of Proposed Rulemaking and Request for Public Comment*, 61 FR 7308 (February 27, 1996); *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994); *Iron Construction Castings From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 56 FR 2742 (January 24, 1991); *Final Determinations of Sales at Less Than Fair Value: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 56 FR 241 (January 3, 1991); Department Memorandum regarding "Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China - Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy," dated March 29, 2007 ("Georgetown Steel Memorandum"); Department's *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries*, dated April 5, 2005 ("Policy Bulletin 05.1"); and Alagari, Reform, Reality, and Recognition: Reassessing U.S. Antidumping Policy Toward China, 26 L. Pol'y Int'l Bus. 1061 (1995). Double Coin further cites to 19 CFR 351.213(b) and 19 CFR. 351.213 of the Department's regulations and the following sections of the Tariff Act of 1930, as amended ("the Act"): 735(c), 777A(c), 782(a), 701(d), 751, 776(a), and 776(b).

Double Coin references the following submissions: Department Memorandum to the File, entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Verification of the Sales and Factors Response of Double Coin Holdings and China Manufacturers Alliance," dated concurrently with this memorandum ("Double Coin's Verification Report"); PDM; Department Memorandum to the file entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Double Coin," dated September 30, 2014 ("Double Coin's Preliminary Analysis Memo"); Double Coin's Submission entitled, "Response to the Department's 2nd Sections A, C, and D Supplemental Questionnaire for Double Coin Holdings Ltd. and China Manufacturers Alliance, LLC (collectively, "Double Coin") Certain New Pneumatic Off-the-Road Tires from China," dated July 31, 2014 ("Double Coin's 2nd Supplemental ACD Response"); Department Memorandum to Melissa Skinner entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Respondent Selection," dated December 13, 2013 ("Respondent Selection Memo"); Department Letter to Interested Parties entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: U.S. Customs and Border Protection Import Data for Use in Respondent Selection," dated November 12, 2013 ("CBP Data Release"); and Double Coin Affiliation and Collapsing Memo.

- The Department failed to cite a single instance in which Huayi, Double Coin's state-owned parent company, exercised control and, rather, relies on hypotheticals with no basis in fact.
- There is direct and verified evidence that the PRC government did not exercise any control over Double Coin's export activities, as all export prices were negotiated by American employees of CMA, Double Coin's U.S. affiliate.
- The Department's policy with respect to PRC government control is based on outdated 25 year old presumptions which are contrary to the Department's own factual findings about changes in the PRC economy that have already been revisited in a countervailing duty ("CVD") context.
- Questions regarding government control bear no relevance to the primary question of whether Double Coin is exporting to the United States at below fair value. In this case, that question has been demonstrably settled, as the Department's calculations show that – even if the PRC government were controlling operations – Double Coin is not selling tires to the United States at less than fair value.
- The Department's decision to reverse its 20 year policy concerning separate rate eligibility in this review is fundamentally unfair, considering that Double Coin was previously determined eligible for a separate rate, underwent no material changes in ownership or management selection processes since this eligibility determination and, therefore, had every reason to assume that this separate rate finding would be upheld prior to making its export shipments for the POR. The Department effectively changed the rules in the middle of the game.

Petitioners' Rebuttal Brief[29]

- The Department maintains the authority to issue a PRC-entity rate, and this long-standing practice has been upheld by the courts, as has been the practice of assigning the entity rate to individually investigated respondents that fail to demonstrate eligibility for separate rates. The Department should dismiss Double Coin's arguments to the contrary.
- Double Coin failed to rebut the presumption of state control; thus, its individual behavior is no longer relevant to this review and the country-wide rate is the relevant margin.
- The Department explicitly put all interested parties on notice that the PRC-wide entity would be reviewed if one of the named exporters did not qualify for a separate rate. The change in practice with respect to the conditional review cited by Double Coin took effect subsequent to the initiation of the instant review.
- The non-market economy ("NME")-entity rate does not constitute an AFA rate when applied to individual members, as this is not an adverse inference applied to a specific company, but based on the actions of the entity regardless of the specific actions of its constituent members.
- Contrary to Double Coin's claims, the Department is correct to state that the record does not contain information to determine the percentage of PRC-wide activity Double Coin accounted for in the POR.
- The Department's findings with respect government control and relevant PRC laws are consistent with the guidance from the Court of International Trade ("CIT" or "Court") and Court of Appeals for the Federal Circuit ("Federal Circuit") in the recent *Diamond Sawblades* litigation, which addressed and dismissed many of Double Coin's arguments.

[29] *See* Petitioners' Rebuttal Brief at 2-15. Petitioners cite to the following: *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) ("*Advanced Technology I*"), remand affirmed in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), aff'd 541 F. App'x 1009 (Fed. Cir. 2014) ("*Advanced Technology II*") (collectively, "*Diamond Sawblades* litigation"); *Transcom* (Fed. Cir. 1999); *Sigma*, 117 F.3d 1401 (Fed. Cir. 1997); *David v. United States*, 24 F. Supp. 3d 1355 (CIT 2014) ("*Mark David*"); *Michaels Stores, Inc. v. United States*, 931 F. Supp. 2d 1308 (CIT 2013) ("*Michaels Stores*"); *SKF USA Inc. v. United States*, 263 F.3d 1369 (Fed. Cir. 2001) ("*SKF*"); *Jiangsu Changbao* (CIT 2012); *Watanabe Group v. United States*, 2010 Ct. Intl. Trade LEXIS 144 (CIT 2010) ("*Watanabe*"); *Peer Bearing* (CIT 2008); *Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States v. United States*, 44 F.Supp. 2d 229 (CIT 1999) ("*CPABDRAM*"); *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) ("*Diamond Sawblades 11-12*"); *Preliminary Results* (October 10, 2014) and PDM; *Galvanized Steel Wire From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012) ("*Steel Wire/PRC LTFV Final*"); *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 78 FR 54235 (September 3, 2013) ("*Opportunity to Request*"); *Change in Practice*; *Initiation Notice* (November 8, 2013); and *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937 (November 18, 2005) ("*Brake Rotors 11th AR Final*"). Petitioners reference the following record submissions: Double Coin's Case Brief; Petitioners' Case Brief; CBP Data Release; Respondent Selection Memo; Letter from Petitioners' entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Titan and the USW's Request for Administrative Reviews," dated September 30, 2013 ("Petitioners' Review Request"); Letter from Petitioners' entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Rebuttal Factual Information to Double Coin's Supplemental Section A Questionnaire Response," dated June 23, 2014 ("Petitioners' June 23 Submission"); and Letter from Double Coin, entitled, "Supplemental Section A Response of Double Coin Holdings and China Manufacturers Alliance, LLC Certain New Pneumatic Off-the-Road Tires from China," dated June 16, 2014 ("Double Coin's SSAQR").

- The fact that the record lacks affirmative evidence showing government intervention in operations is irrelevant, as the standard is that there is a rebuttable presumption of control, which Double Coin has not overcome.
- Finally, Petitioners maintain that, should the Department continue to deny Double Coin's separate rate and agree to not calculate a margin for Double Coin for these final results (*i.e.*, apply a 210.48 percent margin, unadjusted by Double Coin's calculated rate, to the entirety of the entity, including Double Coin), the Department need not address the arguments in Double Coin's case brief, as these concerns are moot.

Petitioners' Brief[30]

- Once the Department has determined that an NME respondent is ineligible for a separate rate, the individual examination of said respondent should end, no margin should be calculated, and there should be no subsequent revision to the PRC-wide rate.
- The calculation of a margin for Double Coin conflicts with past practice (*i.e.*, *Diamond Sawblades* litigation Remand Redetermination, *Brake Rotors 11th AR Prelim* (May 9, 2005), etc.) where the inability of a respondent to overcome the presumption of government control resulted in the application of a PRC-wide rate.
- The idea that a respondent's sales behavior ceases to be meaningful if it is found to be part of the PRC-wide entity has been supported by the Court (*e.g.*, *Watanabe* (CIT 2010), *Jiangsu Changbao* (CIT 2012), and *Mark David* (CIT 2014)) and is reflected in the Department's standard practice.
- The Department maintains reasonable concerns that allowing a focus on the activities of only one member of the PRC-wide entity would create the potential for the larger entity to manipulate AD results by selectively providing data on the record and dictating what data would be verified from review to review.

[30] *See* Petitioners' Case Brief at 2-6. Petitioners cite to: *Mark David*, 24 F. Supp. 3d 1355 (CIT 2014); *Jiangsu Changbao*, 884 F. Supp.2d 1295; *Watanabe*, 2010 Ct. Intl. Trade LEXIS 144 (CIT 2010); *Peer Bearing Company* (CIT 2008); *Preliminary Results* (October 10, 2014); *Change in Practice*, 78 FR 65963; Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China, Court No. 09-00511, Slip Op. 12-147 (CIT 2012), dated May 6, 2013 ("*Diamond Sawblades* litigation Remand Redetermination") in *Advanced Technology I* (CIT 2012), affirmed in *Advanced Technology II*, 938 F. Supp. 2d 1342 ; *Steel Wire/PRC LTFV Final* (March 26, 2012); *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Seventh Administrative Review and Preliminary Results of the Eleventh New Shipper Review*, 70 FR 24382 (May 9, 2005) ("*Brake Rotors 11th AR Prelim*"), unchanged in *Brake Rotors 11th AR Final* (November 18, 2005); *Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 76027 (December 22, 2005) ("*Porcelain Cookware/PRC*"), unchanged in *Porcelain-on-Steel Cooking Ware from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 24641 (April 26, 2006); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From Ukraine*, 62 FR 61754 (November 19, 1997). Petitioners further reference the PDM.

Double Coin's Rebuttal Brief[31]

- For the reasons stated in Double Coin's Case Brief, there is no justification for the Department to assign the PRC-wide rate to Double Coin.
- Even should the Department disagree and believe that Double Coin is ineligible for a separate rate, the Department lacks justification to impose the 210 percent AFA rate, because:
  - The Department has not undertaken in this review any corroboration of the AFA rate.
  - The cases cited by Petitioners purporting to show a "prior practice" of automatically assigning the PRC-wide entity rate to any company that fails to attain separate-rate status, are inapposite, as they either concern original investigations (*Wantanabe* (CIT 2010) and the *Diamond Sawblades* litigation) or uncooperative respondents (*Mark David* (CIT 2014)).

Department's Position: As an initial matter, we disagree with Double Coin's contention that the Department has no authority to issue a rate for the NME entity. Rather, the Department's NME practice, including its assignment of a specific rate to all NME exporters that do not establish their eligibility for a separate rate is well-established[32] and has been upheld by the courts.[33]

The Department considers the PRC to be a non-market economy country under section 771(18) of the Act. 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. Therefore, in PRC cases, the Department uses a rate established for the PRC-wide entity, which it applies to all imports from an exporter that has not established its eligibility for a separate rate. Section 351.107(d) of the Department's regulations, provides that "in an antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers."[34] The Department's practice of assigning a PRC-wide rate has been upheld by the Federal Circuit. In *Sigma*, the Federal Circuit affirmed that it was within the Department's authority to employ a presumption for state control in a NME country and place the burden on the exporters to demonstrate an absence of central government control.[35] The Federal Circuit

[31] *See* Double Coin's Rebuttal Brief at 1-6. Double Coin cites to: *Hubbell Power Sys., Inc. v. United States*, 884 F. Supp. 2d 1283 (CIT 2012); *Qingdao Taifa Grp. Co. v. United States*, 760 F. Supp. 2d 1379 (CIT 2010); section 776(c) of the Act; Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) ("SAA"); and *Gallant Ocean (Thailand) Co., Ltd v. United States*, 602 F.3d 1319 (Fed. Cir. 2010) ("*Gallant Ocean*"). Double Coin further addresses the following cases cited in Petitioners' Case Brief: *Mark David*, 24 F. Supp. 3d 1355 (CIT 2014); *Watanabe*, 2010 Ct. Intl. Trade LEXIS 144 (CIT 2010); and *Advanced Technology II*, 938 F. Supp. 2d 1342. Double Coin references Petitioners' Case Brief and Double Coin's Case Brief.

[32] *See, e.g., Steel Wire/PRC LTFV Final* and accompanying IDM at 8.

[33] *See, e.g., Sigma*, 117 F.3d at 1405.

[34] *See 1,1,1,2-Tetrafluroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value***,** 79 FR 62597 (October 20, 2014) and the accompanying IDM at Comment 1 (explaining the Department's practice with respect to separate rates as upheld by the Federal Circuit in *Sigma*, 117 F.3d at 1405-06, and describing the Department's practice with respect to the rate assigned to the PRC-wide entity).

[35] *See Sigma*, 117 F.3d at 1405-1406 ("We agree with the government that it was within Commerce's authority to employ a presumption of state control for exporters in a nonmarket economy, and to place the burden on the exporters to demonstrate an absence of central government control. The antidumping statute recognizes a close

recognized that sections 771(18)(B)(iv)-(v) of the Act recognized a close correlation between an NME economy and government control of prices, output decisions, and allocation of resources and, therefore, the Department's presumption was reasonable.[36] The application of a PRC-wide rate to all parties which were not eligible for a separate rate was also affirmed by the Federal Circuit in *Transcom* in 2002.[37] In *Transcom*, the Federal Circuit also found that a rate based on "BIA" (the precursor to facts available and AFA under the current statute) is not punitive.[38] Thus, contrary to Double Coin's assertions, the courts have consistently upheld the Department's authority to apply a presumption of state control in NME countries and to apply a single rate to all exporters that fail to rebut that presumption.

Double Coin claims that the Department has no authority to issue a PRC-wide rate in this review since a review was not properly initiated on the PRC-wide entity. Double Coin's insistence that the PRC entity is not under review in the instant case appears to rely, in part, on the November 2013 *Change in Practice* which, indeed, requires an explicit request prior to initiating a review of the NME entity. However, the Department specifically stated that this change in practice announced would apply to "administrative reviews for which the notice of opportunity to request an administrative review is published on or after December 4, 2013."[39] The opportunity to request a review for this review was published September 3, 2013 and, as such, the change in practice noted by Double Coin is inapplicable in this review.[40] Rather, for administrative reviews for which the notice of opportunity was published before December 4, 2013 (as in the instant case), the Department conditionally reviewed the NME entity; therefore, even absent a

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correlation between a nonmarket economy and government control of prices, output decisions, and the allocation of resources. Moreover, because exporters have the best access to information pertinent to the 'state control' issue, Commerce is justified in placing on them the burden of showing a lack of state control.") (internal citations omitted).

[36] *Id*. *See also CPABDRAM*, 44 F.Supp. 2d at 243, quoting *Sigma*, 117 F.3d at 1405 ("Under the broad authority delegated to it from Congress, Commerce has employed 'a presumption of state control for exporters in a non-market economy'… Under this presumption, all exporters receive one non-market economy country ('NME') rate, or country-wide rate, unless an exporter can 'affirmatively demonstrate' its entitlement to a separate, company-specific margin by showing 'an absence of central government control, both in law and in fact, with respect to exports.'"); *Michaels Stores*, 931 F. Supp. 2d at 1315, quoting *SKF*, 263 F.3d at 1030 ("The regulations clarify, however, that for non-market economies, 'rates may consist of a single dumping margin applicable to all exporters and producers.' Moreover, whenever the statute is silent on a particular issue, it is well-settled that Commerce may 'formulate policy' and make rules 'to fill any gap left, implicitly or explicitly, by Congress.'") (internal citations omitted).

[37] *See Transcom v. United States*, 294 F.3d 1371, 1381-83 (Fed. Cir. 2002) ("*Transcom*"). (The PRC-wide rate, and its adverse inference are applicable to all companies which were initiated on yet failed to show their entitlement to a separate rate. "Accordingly, while section 1677e provides that Commerce may not assign a {best information available}-based rate to a particular party unless that party has failed to provide information to Commerce or has otherwise failed to cooperate, the statue says nothing about whether Commerce may presume that parties are entitled to *independent* treatment under 1677e in the first place" {*emphasis added*}). *See* also *Transcom*, 294 F.3d at 1376 citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (Instead, the objective of best information available ("BIA") is to aid Commerce in determining dumping margins as accurately as possible). The litigation in *Transcom* covered three periods of review between June 1990 and May 1993. *See Transcom*, 294 F.3d at 1374-75, and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Reviews*, 61 FR 65527 (Dec. 13, 1996). The term BIA is now referred to under the statute as facts available or AFA. *Id.*

[38] *See Transcom*, 294 F.3d at 1376.

[39] *See Change in Practice*, 78 FR at 65964.

[40] *See Opportunity to Request*, 78 FR at 54235.

request, the NME entity can be subject to the review if an exporter subject to the review does not demonstrate that it is separate from the entity.[41] Though Double Coin notes that the NME entity is not listed as one of the companies for which review was requested in the *Initiation Notice*, the *Initiation Notice* plainly states that "If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain New Pneumatic Off-the-Road Tires {from} the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part."[42] Thus, the Department explicitly put the PRC-wide entity and all other interested parties on notice that the PRC-wide entity would be reviewed if one of the named exporters did not qualify for a separate rate. Thus, pursuant to Double Coin's failure to demonstrate a lack of *de facto* government control, the PRC-wide entity is subject to review. In *Transcom*, the Federal Circuit held that, in addition to the named companies in an initiation notice, conditionally reviewed companies also received sufficient notice in the initiation.[43] Accordingly, we find Double Coin's claims with respect to the NME-entity not being subject to review are unfounded.

We further disagree with Double Coin's argument that, because Double Coin was selected as a mandatory respondent and provided information from which the Department was able to calculate an antidumping margin, the statute requires the Department to assign Double Coin a rate based on this information. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control. As discussed in the *Preliminary Results* and further established below, we found that Double Coin is ineligible for a separate rate due to its inability to demonstrate the absence of government control. As such, Double Coin is a part of the PRC-wide entity. The Department must calculate a single rate for the PRC-wide entity, and in this review, we do not have the necessary information, *i.e.*, sales and production data, from the remaining unspecified portion of the PRC-wide entity. Nor is there information on the record with respect to the composition of the PRC-wide entity. As such, we do not consider it reasonable to determine a rate for the PRC-wide entity based solely on the information provided for Double Coin. Rather, based on the unique circumstances presented in this review, we consider it reasonable to use the information provided by Doubly Coin as well as the only information we have regarding the entire PRC-wide entity, to calculate a new margin for the PRC-wide entity. Specifically, we calculated the final margin for the PRC-wide entity, which includes Double Coin, using a simple average of the previously assigned PRC-wide rate (210.48 percent)[44] and the calculated final margin for Double Coin (0.14 percent). Accordingly, the Department revised the PRC-wide entity rate to 105.31 percent for these final results.

Further, Double Coin's contention ignores the Department's well-established practice of assigning the PRC-wide entity rate to individually investigated respondents who participated in an investigation or review but do not qualify for a separate rate.[45] Indeed, the courts have agreed

[41] *See Change in Practice*, 78 FR at 65970.
[42] *See Initiation Notice*, 78 FR at 67111, footnote 10.
[43] *See Transcom*, 294 F.3d at 1379.
[44] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485, 40489 (July 15, 2008) ("*LTFV Determinations*").
[45] *See, e.g., Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013) and PDM at 10-11, unchanged in *Certain*

that, once a respondent has been held to be part of the NME-wide entity, inquiring into said respondent's separate sales behavior ceases to be meaningful.[46] Therefore, because Double Coin has failed to rebut the presumption of state control, as discussed further below, the Department is no longer required to base the margin assigned to the PRC-wide entity, of which Double Coin is a part, solely on Double Coin's behavior.

Double Coin also objects to the application of the 210.48 percent PRC-wide rate to Double Coin, at least in part, on the basis that this NME entity rate is an AFA rate. Double Coin argues that section 776(b) of the Act requires a party to fail to cooperate to the best of its ability as a prerequisite before the Department is permitted to apply an adverse inference. Therefore, because Double Coin has been fully cooperative, as acknowledged by the Department, the statutory requirements for AFA have not been met and the Department is not permitted to apply the 210.48 percent PRC-entity rate (which is based on AFA) in any manner with respect to Double Coin's margin. However, in *Advanced Technology II*, the Court addressed the issue as to whether the PRC-wide is an adverse rate, stating "Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide rate. These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate fully whereas the PRC-wide rate applies to a respondent who has not received a separate rate."[47] In the investigation at issue in that case, the PRC-wide entity received a rate based on AFA.[48] In this review, to the extent that the application of the pre-existing PRC-wide rate affects the antidumping duties assessed on Double Coin's entries as a result of this review, this rate is not an application of AFA to the entity in this review; rather, it reflects in part the rate applied to the entity based on the actions of the entity in the investigation of which Double Coin is now a part (and unchanged by any subsequent review). In this review, we are seeking to establish a new rate for the entity, which is under review, and a part of which was selected as a mandatory respondent, but for which we do not have complete information. Regardless, as discussed below, as a result of our instant determination, the portion of the PRC-wide entity calculation that is based on its pre-existing rate is reasonably representative only of the unspecified non-Double Coin portion of the single NME-entity, whereas the Double Coin portion of the single entity is reasonably represented by Double Coin's own data.

Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 70533 (November 26, 2013) ("*Activated Carbon/PRC*"); *Brake Rotors 11th AR Final* and accompanying IDM at Comment 7. *See also*, *Advanced Technology II*, 938 F. Supp. 2d 1342.

[46] *See Advanced Technology II*, 938 F. Supp. 2d at 1351, citing *Watanabe*,2010 Ct. Intl. Trade LEXIS 144 at 8 ("Commerce's permissible determination that {a respondent} is part of the PRC-wide entity means that inquiring into {that respondent}'s separate sales behavior ceases to be meaningful.") and *Jiangsu Changbao* at 1312 (referencing *Watanabe* at 8) ("losing all entitlement to an individualized inquiry appears to be a necessary consequence of the way in which Commerce applies the presumption of government control… applying a countrywide AFA rate without individualized findings of failure to cooperate is no different from applying such a countrywide AFA rate without individualized corroboration.").

[47] *Advanced Technology II*, 938 F. Supp. 2d at 1351, citing *Watanabe*, 2010 Ct. Intl. Trade LEXIS 144 at 9, footnote 8. *See also Peer* at 1327 ("… there is no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company. It is not directly analogous to the process used in a market economy, where there is no countrywide rate. Here, the rate must be corroborated according to its reliability and relevance to the countrywide entity as a whole.")

[48] *See Sawblades/PRC LTFV Final*, 71 FR 29303 (May 22, 2006).

Further, Double Coin argues that the Department has no basis to apply the PRC-wide rate to Double Coin based either on other parties' inability to cooperate or the failure of a party to provide information with respect to the PRC-wide entity because such information was never requested by the Department. As mentioned above, in *Sigma*, the Federal Circuit affirmed that it was within the Department's authority to employ a presumption for state control in a NME country and found the presumption reasonable, noting that sections 771(18)(B)(iv)-(v) of the Act recognized a close correlation between a NME economy and government control of prices, output decisions, and allocation of resources.[49] Having not demonstrated the absence of *de facto* control from the government over selection of its management, Double Coin constitutes a part of the PRC-wide entity. Further, the PRC-wide entity is comprised of producers and exporters that can provide answers to questions, as evidenced by Double Coin in this review.

Double Coin then asserts that, setting aside all prior arguments with respect to the permissibility of the Department's application of the PRC-wide rate to Double Coin, the Department was further incorrect on the underlying factual finding that Double Coin failed to rebut the presumption of government control and that neither the Huayi Group (*i.e.*, Double Coin's majority owner), the State Owned Assets Supervision Committee ("SASAC") (which owns 100 percent of the Huayi Group), nor any other government entity maintains control over its day to day activities. However, in making our preliminary finding on this issue, we were – and continue to be – guided by the Court's findings in the *Diamond Sawblades* litigation, which dismissed many of the same arguments that Double Coin currently presents in this proceeding. For example, Double Coin claims that under PRC law, the Huayi Group cannot exercise control over Double Coin. The respondent involved in the *Diamond Sawblades* litigation made the same argument during the administrative proceeding. In rejecting those arguments, the Court found that the PRC Company Law provides evidence rebutting the presumption of *de jure* control "is inadequate … and it lacks … common business sense."[50] For Article 20 of the PRC Company Law in particular, it "does not appear that this {article} may reasonably be construed to 'limit' the power of the state in the companies in which the state invests."[51] Further, the Court found the structure of the PRC Company Law provides controlling shareholders direct and effectual control as "{s}hareholders have the ability to hire and fire each board member and decide their pay pursuant to Article 38, and each board member is thereby beholden. That amounts to delegation, as opposed to separation…. since the general manager, in point of fact, is selected by the same board of directors 'in charge of overall business planning and the selection of upper management' that is 'responsible to the shareholders' and can readily be replaced at their whim."[52] Furthermore, the Court addressed Articles 22-27 of the PRC Code of Governance for Listed Companies, noting that these articles "reveal little to an inquiry into 'governmental control' in the running of a company including its export operations."[53]

The Department finds that the PRC laws and regulations at issue (*i.e.*, the Interim Regulations, and the PRC Company Law) are not dispositive with regard to control of export activities. The PRC laws and regulations at issue provide a framework for various corporate entities to form and

[49] *See Sigma*, 117 F.3d at 1405-1406.
[50] *See Advanced Technology I*, 885 F. Supp. 2d at 1353.
[51] *Id.*, at 1354.
[52] *Id.*, at 1355.
[53] *Id.*, at 1358.

operate at some distance from the central government. While the Interim Regulations also indicate the existence of some degree of government control, the Department continues to find that the overall legal environment is permissive of individual firms maintaining independent operations with respect to export activities.

In the Department's experience applying the separate rate test, the *de jure* factors are not overridingly indicative of the absence of control of export activities in the typical case, but rather they demonstrate an ability on the part of the exporter to control its own commercial decision making. In large part, the laws and regulations that the Department has examined over the years, such as the laws referenced above, indicate that a certain level of control has devolved in that the commercial decision-making can lie with the various corporate entities operating under these laws and regulations, which in turn, merits an analysis of the record evidence to ensure that there is an absence of *de facto* aspects of government control over export activities. This is supported by our findings over the years that numerous PRC respondents operating under such laws also maintain *de facto* control over their export functions. These situations where parties are found to be entitled to a separate rate are, however, based on the individual facts with respect to each such party. Because of the centralized control inherent in the PRC's status as a NME country, we presume that decision making of an enterprise in an NME country is under a form of centralized government control (whether at the central, provincial, or local level). Nevertheless, the PRC Company Law and other laws and regulations demonstrate that, within the PRC's NME, distance can exist between decisions made at the central government level and decisions made at the firm level with respect to exports.

Thus, an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from granting a separate rate.

With respect to Double Coin's assertions that its Articles of Association and other company documents make clear that managers control the day-to-day operations, the Court addressed similar arguments made as part of the *Diamond Sawblades* litigation. Specifically, the Court rejected arguments made by the respondent in that proceeding regarding its management and control of daily operations. The Court stated that managers should be presumed "to be beholden to the board that controls their pay, in particular to the chairman of the board as the *de facto* company head under the PRC model," until proven otherwise.[54] Similarly, we find that as Huayi is the controlling shareholder, it is the entity controlling Double Coin's board and management.

Double Coin then argues the fact that no minority shareholder has ever nominated a director and no Huayi nominee has ever been rejected (facts which supplemented the Department's preliminary finding) simply means that such an event has never occurred and by no means confirms Huayi's control over Double Coin. Moreover, Double Coin asserts that minority shareholders indeed have *bona fide* rights pursuant to the company's Articles of Association. Double Coin's assertions, however, do not demonstrate that it should be given separate rate status. The standard for determining such a status is that an NME exporter is presumed to be

[54] *Id.*, at 1359. *See also, id.*, at 1352 ("…the exclusion of 'day to day operations' from 'oversight' responsibility is a straw man.").

under government control until such a presumption is sufficiently rebutted. As such, the absence of evidence of control or other demonstrable action on behalf of a minority shareholder does nothing to rebut this presumption[55], nor does the existence of certain minority shareholder rights (such as the ability to bring suit against a board member or manager who acts against the interests of the company, and the right of minority shareholders to call a shareholder meeting) prove the absence of government control.[56] Moreover, Double Coin's general argument that the Department cannot cite a single example in which Huayi actually exercised its legal right to control or influence a day-to-day decision about the manner in which Double Coin sold subject merchandise to the United States is similarly unconvincing, as this also ignores the fact that the burden to rebut the presumption of government control is on the party seeking separate rate status.

With respect to Double Coin's assertion that that the Department is setting up an improper standard based on a notion of potential control rather than examples of actual control, and concerns that such examples of potential control are virtually limitless, we find that the facts on the record counter Double Coin's arguments regarding potential or theoretical control. Specifically, as noted in Double Coin's Preliminary Analysis Memo, regardless of the restrictions of PRC law and the protections afforded to minority shareholders, Double Coin's Articles of Association demonstrate that a majority shareholder – and particularly one with 65.66 percent ownership – has near complete control over any shareholder decisions, including decisions which may affect the management and operations of the company.[57] Whether or not the Huayi Group, which is the majority owner of Double Coin, demonstrably exercised control over Double Coin's day-to-day operations does not refute the fact that a government-owned entity has near complete control of shareholder decisions of Double Coin.

Double Coin further argues that Huayi's control of Double Coin's board cannot be equated to control of Double Coin's export activity and that the PRC ownership structure has no effect on sales prices in the United States because the prices are set by Double Coin's U.S. affiliate, CMA. We note that the respondent in the *Diamond Sawblades* litigation made similar arguments in that proceeding. The CIT rejected this line of reasoning in *Advanced Technology I*, stating that "the actual setting of price is only one of the four de facto factors described in the Policy Bulletin, whereas governmental manipulation of the cost of inputs,… or rationalization of industry or

[55] Particularly when considering that the Department specifically afforded Double Coin the opportunity to provide examples of any such instance at verification. *See* Double Coin's Verification Report at 11 ("However, when we then asked for an example, within or outside of the POR, of a shareholder's meeting where a Huayi nominee had been voted down by a coalition of minority shareholders or where a Huayi nominee had generally failed to obtain enough votes to ascend to the board, Double Coin officials confirmed that, to their knowledge, this situation had never occurred.").

[56] Moreover, it remains unclear whether these codified rights are actually exerted and, regardless, it is unclear how evidence demonstrating that minority shareholders routinely called meetings or brought suit against managers would plainly rebut the presumption of control on behalf of the majority state-owned shareholder. The third example of minority rights referenced on Double Coin's Case Brief at 32, *i.e.*, the conflict of interest rule, (whereby any decision which contains a conflict of interest to Huayi would require the recusal of Huayi's voting shares) might serve to better rebut this presumption. However, again, there is no indication on the record of any such recusals, nor is there sufficient understanding of how this recusal process actually works in practice.

[57] *See* Double Coin's Preliminary Analysis Memo at 10-14, *citing* Double Coin's Verification Report at Section III.B.4 and Double Coin's 2nd Supplemental ACD Response at Exhibit S2-5.

output are among numerous other scenarios of concern that can affect seller pricing."[58] Similarly, we find that Double Coin's arguments regarding U.S. sales by CMA does not overcome the rebuttable presumption of government control.

Double Coin argues that the evolving practice on government control in the wake of the *Diamond Sawblades* litigation, as presently implemented, is predicated on outdated presumptions with respect to the PRC economy which the Department already reconsidered in, for example, the Georgetown Steel Memo. However, the Department previously noted that the analysis in the Georgetown Steel Memo focused only on the concept of the single economic entity that characterized the economies in *Georgetown Steel* and that it would be incorrect to conflate that concept with the concept of the NME-wide entity for antidumping duty assessment purposes.[59] Given the reforms discussed in the Georgetown Steel Memo, the Department found that a single central authority no longer comprises the PRC's economy and that the policy that gave rise to the *Georgetown Steel* litigation does not prevent the Department from concluding that the PRC government has bestowed a countervailable subsidy upon a PRC producer.
As such, we agree with Petitioners that the analysis in the Georgetown Steel Memo is inapplicable to the issue of the PRC-wide entity in antidumping proceedings.

As explained above, 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 Federal Circuit 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.[60] The Federal Circuit also stated that it was within the Department's authority to employ a presumption of state control for exporters in an NME-country and to place the burden on the exporters to demonstrate an absence of central government control. Firms that do not rebut the presumption are assessed a single antidumping duty rate, *i.e.*, the NME-Entity rate.[61] 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).[62]

[58] *See Advanced Technology I*, 885 F. Supp. 2d at 1359-1360.
[59] *See Diamond Sawblades 11-12*, 79 FR 35723, and accompanying IDM at Comment 4.
[60] *See Sigma*, 117 F.3d at 1405-06. (Fed. Cir. 1997)
[61] *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."
[62] *See* Georgetown Steel Memo at 9.

With respect to Double Coin's claim that the Department's determination with respect to Double Coin's separate rate is fundamentally unfair in that it effectively changes the rules in the middle of the game, we note that the statute does not afford respondents any expectation that a finding from a prior segment will be upheld in a subsequent segment. Indeed, both the Court and the Department have previously stated that a prior separate rate determination is irrelevant to the decision on the current record.[63] Moreover, the Department has not changed its separate rate criteria, but has analyzed the facts provided by Double Coin in light of the decisions in the *Diamond Sawblades* litigation.[64]

In sum, we continue to find that there is undeniable evidence that the 100 percent SASAC-owned majority-owner of Double Coin exerts considerable influence over the board of directors (and, thus, the management and operations of the company), and that the factual record does not provide sufficient information to rebut the presumption of government control. We note that Double Coin's arguments to the contrary are virtually identical to those made by respondents in other proceedings, which have been similarly rejected by the Department and the CIT. As a result, Double Coin is ineligible for a separate rate and is part of the PRC-wide entity pursuant to the Department's practice, as discussed above.

The only rate ever determined for the PRC-wide entity in this proceeding is 210.48 percent, as first determined in the less-than-fair-value investigation.[65] Petitioners assert that the above-mentioned determination to deny Double Coin's separate rate status should end the individual examination of Double Coin and render its sales behavior meaningless. According to Petitioners, the only rate which may be assigned to Double Coin is the 210.48 percent rate and that the preliminary determination to average the 210.48 percent entity rate with Double Coin's calculated rate is contrary to practice and precedent. We agree with Petitioners that, ordinarily, we would assign the PRC-wide entity rate to any company found to be a part of the entity during the review proceeding and that, in the past, we have applied the existing PRC-wide rate to a respondent once a determination was made to deny said respondent's separate rate.[66] However, this case presents novel circumstances underpinning the Department's decision in this case. In other reviews, the Department may have applied AFA to the entity when a respondent that is

[63] *See, e.g.*, *Mark David* at 1361 ("{the respondent} had previously qualified for separate rate status, and subsequently lost it in this review, therefore {the respondent}'s previous rate is irrelevant in the instant case."); *Brake Rotors From the People's Republic of China*, 70 Fed. Reg. 69937 (Dep't Commerce 18, 2005) (final 03-04 AD and NSR) and accompanying Issues and Decision Memorandum at Comment 7 (a prior holding that a respondent was eligible for a separate rate did not impact the decision in the current review that it did not, as there were "'even more indicia' of government control" in this review than the prior).

[64] *See, e.g., Advanced Technology I*, 885 F. Supp. 2d 1343 (CIT 2012), remand affirmed in *Advanced Technology II*, 938 F. Supp. 2d 1342 (CIT 2013), aff'd 541 F. App'x 1009 (Fed. Cir. 2014).

[65] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485, 40489 (July 15, 2008).

[66] *See, e.g., Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013) and Preliminary Decision Memorandum at 10-11, unchanged in *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) ("*Activated Carbon from the PRC*"). *See also Brake Rotors 11th AR Final* and accompanying IDM at Comment 7.

deemed to be part of the entity failed to cooperate to the best of its ability.[67] Moreover, instances where the Department denied a separate rate to an otherwise cooperative company that is under review, the Department assigned the pre-existing entity rate to that company, as well as to the entire entity for that review period.[68] Moreover, while the Court established in, for example, *Watanabe*, *Jiangsu Changbao*, and *Advanced Technology II* that the denial of a separate rate (1) ends a respondent's entitlement to an individual inquiry, (2) renders further inquiry meaningless, and (3) justifies the application of the PRC-wide rate, the language does not explicitly require the Department to apply the existing PRC-wide rate, as is, in every circumstance nor does it preclude the Department from using such information to alter the rate as appropriate to the facts of a specific case. Indeed, no case cited by Petitioners addresses the instant fact pattern where part of the PRC-wide entity was selected as a mandatory respondent, provided significant information necessary for a review, and no other part of the entity failed to cooperate. As noted in the *Preliminary Results*, Double Coin provided the Department with requested information, which was subsequently verified, necessary to calculate a margin for part of the PRC-wide entity. Given the unique circumstances of this case where (as discussed below) there is insufficient information on the record with respect to the composition of the PRC-wide entity, and we are able to use the information of the mandatory respondent that is a part of the PRC-wide entity, in calculating a rate for the PRC-wide entity, we continue to find it appropriate to utilize both the previously assigned PRC-wide rate and Double Coin's calculated rate as an appropriate methodology from which to determine the PRC-wide entity rate for the final results.[69]

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[67] *See, e.g., Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015). *See also Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China: Final Results of Administrative Review; 2012-2013*, 80 FR 13522 (March 16, 2015).

[68] *See, e.g., Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 18956 (March 28, 2013). *See also Certain Steel Nails From the People's Republic of China: Final Results and Final Partial Rescission of the Second Antidumping Duty Administrative Review*, 77 FR 12556 (March 1, 2012). Accordingly, we do not find that the ancillary determination to apply the PRC-wide rate to the respondent in the *Brake Rotors 11th AR Final* and IDM at Comment 7 (involving a novel sub-issue with respect to the applicability of local government control in the Department's separate rate analysis) to be informative to the instant circumstance which, itself, must be considered in light of the unique timeframe of this case as related to the Department's evolving practice in light of the *Diamond Sawblades* litigation. Further, we note that, unlike in the instant case, we found at least one component of the PRC-wide entity failed to cooperate in the *Brake Rotors* proceeding. *See Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Seventh Administrative Review and Preliminary Results of the Eleventh New Shipper Review*, 70 FR 24382 (May 9, 2005) at 24385 ("As a result of its failure to respond to the Department's questionnaire, Rotec failed to establish its eligibility for a separate rate. Therefore, Rotec is not eligible to receive a separate rate and will be part of the PRC NME entity, subject to the PRC-wide rate. Pursuant to section 776(b) of the Act, we have applied total adverse facts available with respect to the PRC-wide entity, including Rotec"). Moreover, while Petitioners further cite to the *Diamond Sawblades Litigation* Remand Redetermination as an additional instance where the denial of an otherwise cooperative respondent's separate rate resulted in the assigning that respondent the existing PRC-wide rate, we note that the redetermination in question involved the investigation, in which the entity rate was determined based on the failure of other parts of the entity to cooperate in that segment of the proceeding. *Advance Technology I* and *Advanced Technology II*, 938 F. Supp. 2d 1342.

[69] As we are rejecting Petitioners' argument that the Department should completely end its review of Double Coin and apply the unaltered rate to the PRC-wide entity, we similarly reject Petitioners' argument that the Department does not need to address the additional arguments raised in Double Coin's brief concerning the calculation of Double Coin's preliminary margin. As a result of our determination to take Double Coin's behavior into consideration in determining the entity rate, Double Coin's comments and Petitioners' comments with respect to the proper calculation of Double Coin's margin are indeed relevant to these final results and we address all of the relevant comments, below.

In employing this methodology for the *Preliminary Results*, we noted: "The Department lacks information to determine what share of production and exports of subject merchandise Double Coin constitutes as part of the PRC-wide government-controlled entity during the current POR. As a result, we are able to calculate a margin for an unspecified portion of a single PRC-wide entity, but cannot do so for another unspecified portion of the entity."[70] Because, as established above, the Department must calculate a single margin for the PRC-wide government-controlled entity, we preliminarily calculated a simple average of the previously assigned PRC-wide rate and Double Coin's calculated margin as the rate applicable to the PRC-wide entity. Double Coin asserts that the Department, indeed, has information with respect to what share of the exports of subject merchandise Double Coin constitutes as part of the entity, as the CBP Data Release released by the Department for the purposes of respondent selection demonstrates that no imports came in under the -000 category. The CBP Data Release states that "for this administrative review in the event the Department limits the number of respondents for individual examination, the Department intends to select respondents based on U.S. Customs and Border Protection ('CBP') U.S. import data during the POR."[71] The Department's practice is to request from CBP and release only the import data for the firms specifically requested and initiated upon.[72] As such, Double Coin is incorrect that the lack of entries identified under the -000 (*i.e.*, PRC-wide) case number in the CBP Data Release demonstrates that there were no such entries during the POR; rather, as stated in the *Preliminary Results*, the record simply does not contain this information.[73] Accordingly, we continue to find that the Department lacks information to determine what share of production and exports of subject merchandise Double Coin constitutes as part of the PRC-wide government-controlled entity during the current POR. As facts available, because there is insufficient information on the record with respect to the composition of the PRC-wide entity, we continue to find it appropriate to calculate a simple average of the previously assigned PRC-wide rate (210.48 percent) and Double Coin's calculated margin (0.14 percent) as the rate applicable to the PRC-wide entity for these final results. Accordingly, the Department revised the PRC-wide entity rate to 105.31 percent for these final results.

Finally, similar to its arguments with respect to application of an AFA rate (*i.e.*, the PRC-wide rate) to Double Coin above, Double Coin argues that the Department may not apply an uncorroborated rate (*i.e.*, the PRC-wide rate) to Double Coin. As noted above, the only rate previously determined for the PRC-wide entity in this proceeding is the 210.48 percent rate, as determined in the less-than-fair-value investigation.[74] This margin has been applied as the PRC-

[70] *See* PDM at 12.
[71] *See* CBP Data Release at 1.
[72] *See* Attachment 1 to the CBP Data Release memo.
[73] Double Coin's corollary point that, because no other companies requested or initiated upon were found to be a part of the PRC-wide entity, no other companies that make up the NME entity are subject to this review, and the NME entity was not requested upon and thus not subject to the review (with the implication that Double Coin is then representative of the entire entity) is similarly predicated on an incorrect presumption since, as discuss above, the PRC-wide entity was on notice that it was conditionally subject to review pursuant to the practice in effect at the time. *See Change in Practice* at 65970.
[74] *See Final LTFV Determinations*, 73 FR at 40489 ("In accordance with section 776(c) of the Act, we corroborated our adverse facts available ('AFA') margin by comparing the U.S. prices and normal values from the petition to the U.S. price and normal values for the respondents… Similarly, for the final determination, we have also compared the U.S. prices and normal values from the petition to the U.S. prices and normal values for the respondents. We

wide rate in every subsequent review of the *Order*. Double Coin presented no new evidence to suggest that the Petition-based countrywide rate, as corroborated by comparing the U.S. prices and normal values from the petition to the U.S. price and normal values for the respondents during the period of investigation, has lost its probative value. Nevertheless, Double Coin asserts that the SAA holds that the Department may not use an AD rate from a prior period of time as facts available unless such a rate is corroborated as appropriate to the relevant time period and, therefore, the Department may not apply a PRC-wide rate to Double Coin that has not been corroborated in this review. Double Coin's arguments are predicated on the incorrect presumption that it is distinct from the PRC-wide entity, which it is not.[75] As is emphasized throughout this determination, the Department is not assigning the PRC-wide rate to Double Coin as AFA, but determining Double Coin a part of the NME entity to which an entity rate is assigned. The Department does not need to determine whether the 210.48 percent rate is reliable and relevant with respect to Double Coin; rather the PRC-wide rate must only be generally corroborated as to the PRC-wide entity.[76] As discussed above, the Department has corroborated the 210.48 percent PRC-wide entity rate in the initial investigation and applied this rate for the PRC-wide entity multiple times in different segments of the OTR tires proceeding. The PRC-wide rate for non-cooperative respondents need not be corroborated relative to the commercial reality of companies qualifying for a separate rate.[77]

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found that the U.S. prices and normal values used to calculate the petition margin were within the range of net U.S. prices and normal values, respectively, used in our margin calculations for the mandatory respondents in this investigation. Because no parties commented on the selection of the PRC-wide rate, we continue to find that the margin of 210.48 percent has probative value. Accordingly, we find that the rate of 210.48 percent is corroborated within the meaning of section 776(c) of the Act.")

[75] As such, Double Coin's reliance on the *Gallant Ocean* determination is inapposite, as *Gallant Ocean* involved an exporter of Thai shrimp, where there is no presumption of government control and no NME-wide rate.

[76] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012*, 79 FR 51954 (September 2, 2014) and accompanying IDM at Comment 4.

[77] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57872 (September 26, 2014) and accompanying IDM at Comment 1 ("Accordingly, we find that neither the age of the information used to corroborate the PRC-wide rate used in every segment of this proceeding, nor the fact that lower margins have been calculated for cooperative separate respondents, leads to the conclusion that the PRC-wide rate of 112.81 percent no longer has probative value and is not properly corroborated, a position that has been affirmed by the CIT"), *citing Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, at 1347 (CIT 2005) (where the Court explicitly stated that "both this court and the Federal Circuit have determined that in cases in which the respondent fails to provide Commerce with information necessary to calculate an accurate antidumping margin, 'it is within Commerce's discretion to presume that the highest prior margin reflects the current margins.") and *Ad Hoc Shrimp Trade Action Comm. v. United States*, 992 F. Supp. 2d 1285 (CIT 2014) ("where (as here) the non-cooperating respondent is a NME countrywide entity - definitionally presumed to set prices without regard to market conditions - the actual pricing behavior of the cooperative respondents that have demonstrated eligibility for a separate rate (precisely because they have differentiated themselves from the countrywide entity) does not bear upon the credibility of dumping allegations against the NME countrywide entity in the way that the pricing behavior of cooperative market economy respondents reflects on the credibility of dumping allegations against their similarly-situated market participants").

Comment 2: Whether to Assign a Margin to Trelleborg

Petitioners' Comments[78]

- Though the Department preliminarily determined that TWS Xingtai had no reviewable transactions during the POR based on Trelleborg's certification thereof and CBP data, record information demonstrates that there were POR shipments of what may be in-scope OTR tires from a producer named "Trelleborg (Hebei)" ("TWS Hebei").
- Record evidence demonstrates that TWS Hebei and TWS Xingtai are co-located and Trelleborg did not dispute that the two entities were, in fact, the same company.
- Though Trelleborg provided information purporting to show that the shipments in question were of non-subject merchandise, it provided invoices for just two of 13 shipments. Because the burden of producing information belongs to the party in possession of such information and Trelleborg did not provide information for the remaining 11 shipments, the Department should determine that TWS Xingtai reviewable transactions during the POR.

Trelleborg's Rebuttal[79]

- Petitioners provide no evidence supporting their assertion that the shipments were of subject merchandise. Rather, CBP data, the absence of contrary information from CBP, and Trelleborg's own information affirmatively demonstrate that the shipments in question were non-subject solid tires.
- Though irrelevant to the ultimate finding, Petitioners' assertion that the entities are not distinct is patently false and their separation is, indeed, indicated on the record.
- In addition to providing two affirmative examples that the precise shipments in question were non-subject merchandise, Trelleborg certified to the fact that all 13 shipments were non-subject, and certified to the fact that the Hebei producer produces and sells non-subject tires.
- Petitioners' lone case citation with respect to the burden of providing information is inapposite, as Trelleborg provided relevant information, unprompted, and the Department did not request or require any further information on the subject.

Department's Position: Trelleborg certified that it did not have reviewable transactions during the POR.[80] The absence of entries produced by TWS Xingtai in the Department's CBP data

[78] *See* Petitioners' Case Brief at 7-8. Petitioners cite to: *Zenith Electronics. Corp. vs. United States*, 988 F.2d 1573 (Fed. Cir. 1993) ("*Zenith*"). Petitioners reference: Letter from Trelleborg, entitled, "Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. Statement of No Shipments during the POR: New Pneumatic Off-The-Road Tires from the People's Republic of China," dated November 20, 2013 ("Trelleborg No Shipments Letter"); Letter from Petitioners entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off The-Road Tires from China (A–570–912): Petitioners' Comments on Trelleborg Wheel Systems (Xingtai) China's No Shipments Claims," dated December 4, 2013 ("Petitioners' TWS Comments"); Letter from TWS entitled, "Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: Rebuttal of Factual Information Submitted By Titan Tire Corporation on December 4, 2013," dated December 11, 2013 ("TWS Rebuttal Factual Submission"); Letter from Petitioners entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): and Petitioners' Response to Trelleborg Wheel Systems (Xingtai) China's Rebuttal Comments Concerning Its No Shipments Claim," dated December 16, 2013 ("Petitioners' Reply to TWS Rebuttal").

[79] *See* Trelleborg Rebuttal Brief at 1-8. Trelleborg cites to the *Preliminary Results* (October 10, 2014) and accompanying PDM and addresses the *Zenith* (Fed. Cir. 1993) case referenced by Petitioners. Trelleborg references the following record submissions: CBP Message Number 3352302, dated December 18, 2013 ("No Shipments Message"); Trelleborg No Shipments Letter; Petitioners' TWS Comments; TWS's Rebuttal Factual Submission; Petitioners' Reply to TWS Rebuttal; and Petitioners' Case Brief.

inquiry supports this no shipment claim, and CBP did not report contrary information.[81] In CBP Message 3352302, the Department alerted CBP of Trelleborg's claim of no shipments and requested that CBP officials notify the Department within 10 days should they be in possession of information contrary to this no shipments claim. CBP officials did not contact the Department with contrary information. Meanwhile, Trelleborg submitted information to the record (*i.e.*, invoices for two of the thirteen shipments of concern to Petitioners) demonstrating that the shipments were of non-subject merchandise (*i.e.*, solid tires).[82] Based on this information, we made a preliminary determination of no shipments for Trelleborg.[83]

For these final results, Petitioners assert that the Department should determine that Trelleborg made reviewable shipments during the POR and assign Trelleborg a dumping margin in this review because, though Trelleborg provided information demonstrating that two of the shipments in question were of non-subject tires, the record lacks information with respect to the remaining eleven shipments. Citing to *Zenith* (Fed. Cir. 1993), Petitioners note that the burden of producing relevant information belongs to the party in possession of the necessary information and the Department should not make an assumption with respect to these shipments absent affirmative information demonstrating that the remaining eleven shipments are also of non-subject tires.[84]

As noted above, the preliminary determination of no shipments was based on a certified statement from Trelleborg and supported by (1) a CBP data inquiry, (2) absence of contrary information from CBP, and (3) transaction-specific invoices. Moreover, the facts at issue in this case – in which Trelleborg provided relevant information, unprompted by any request (and, thus, any burden) from the Department – are dissimilar from those at issue in *Zenith* (Fed. Cir. 1993), in which the Department placed a specific burden on respondents to provide evidence in support of an assertion (and which respondents failed to do in that case).[85] Further, Petitioners fail to cite to any record evidence that would bring into question a certification that is supported by the record, nor do they provide sufficient argument that would prompt further examination of the Department's preliminary determination on this issue. Accordingly, we find that the record continues to support Trelleborg's no shipment certification, and we continue to find that there were no reviewable transactions made by Trelleborg during the POR.

Comment 3: Whether to Assign a Margin to Zhongce

- Petitioners argue that, upon a review of proprietary CBP data and proprietary information submitted by Zhongce in its separate rate application ("SRA"), in the context of the Department's standard *bona fides* analysis, the Department should determine that Zhongce did not have reviewable shipments during the POR and should not assign a margin to Zhongce in this review.[86]

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[80] *See* Trelleborg No Shipments Letter.
[81] *See* CBP Data Release at Attachment 1 and the No Shipments Message (to which CBP did not provide a reply).
[82] *See* Trelleborg's Rebuttal Factual Submission at Attachment 3.
[83] *See Preliminary Results*.
[84] *See* Zenith, 988 F.2d 1573.
[85] *Id.*
[86] *See* Petitioners' Case Brief at 8-12. Petitioners cite to: *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in*

- Zhongce rebuts that Petitioners' claims are not supported by the facts and that it is entitled to a separate antidumping duty rate. Zhongce further asserts that Petitioners have waived this issue by failing to raise it in a timely fashion.[87]

Department's Position: Zhongce submitted a complete and timely separate rate application, including documentation demonstrating a suspended entry of subject merchandise during the POR, which the Department was able to corroborate using CBP data.[88] Based upon a review of Zhongce's separate rate application, the Department preliminarily determined that Zhongce was eligible for a separate rate, and thus assigned Zhongce a separate rate for the *Preliminary Results*.[89]

Petitioners assert that Zhongce's sales during the POR were non-*bona fide*. However, in making such an assertion, Petitioners rely on case cites where the Department had deemed a mandatory respondent's or a new shipper respondent's sales to be non-*bona fide*. In this case, Zhongce is participating as a separate rate applicant. In light of the Department's resource constraints and decision to limit individual examination of exporters under review, the Department's practice is not to perform a resource-intensive and complex *bona fides* analysis on sales made by separate rate applicants that are not mandatory respondents. Rather, we rely upon CBP data and/or CBP

Part; 2010-2011, 78 FR 22513 (April 16, 2013) ("*Tires/PRC 10-11*"); *Tires/PRC 2008-2009* (April 25, 2011); *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); *Certain Frozen Warmwater Shrimp From the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007); *Preliminary Results* (October 10, 2014); *Polyethylene Terephthalate Film, Sheet, and Strip From Brazil: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 1827 (January 10, 2014); *Certain Forged Stainless Steel Flanges from India; Rescission of Administrative Review*, 73 FR 44969 (August 1, 2008) ("*Flanges/India Rescission*"), unchanged in *Certain Forged Stainless Steel Flanges from India; Rescission of Administrative Review*, 73 FR 63692 (October 27, 2008); *Tianjin Tiancheng Pharmaceutical Co. Ltd. v. United States*, 366 F. Supp. 2d 1246 (CIT 2005) ("*Tianjin Tiancheng*"); and *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and Partial Rescission*, 73 FR 15479 (March 7, 2008). Petitioners reference the following submissions: Letter from Zhongce, entitled, "New Pneumatic Off-the Road Tires from the People's Republic of China (2012-2013): Separate Rate Application," dated January 8, 2014 ("Zhongce SRA") and letter from Zhongce, entitled, "New Pneumatic Off-the Road Tires from the People's Republic of China (2012-2013): Supplement to Zhongce SRA," dated January 14, 2014 ("Zhongce SRA Supplement").

[87] *See* Zhongce's Rebuttal Brief at 1-6. Zhongce addresses the *Flanges/India Rescission* (August 1, 2008) and *Tianjin Tiancheng* (CIT 2005) cases raised by Petitioners, and further cites to the following: *Preliminary Results* and PDM; *Certain Oil Country Tubular Goods From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014); *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review, Determination Not To Revoke Antidumping Duty Order in Part, and Final No Shipment Determination*, 76 FR 50176 (August 12, 2011); *Multilayered Wood Flooring From the People's Republic of China; Preliminary Results of Antidumping Duty New Shipper Reviews; 2012-2013*, 79 FR 33723 (June 13, 2014); *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Revie*w; 2011–2012, 78 FR 14267 (March 5, 2013) ("*Tires/PRC 11-12 NSR Prelim*"); and 19 CFR 351.309(d) of the Department's regulations. Zhongce references the following record submissions: Zhongce SRA; Zhongce SRA Supplement; Petitioners' Case Brief; Petitioners' submission, entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off The-Road Tires from China (A-570-912): Petitioners' Pre-Preliminary Determination Comments," dated September 8, 2014 ("Petitioners' Pre-Prelim Comments").

[88] *See* Zhongce SRA at Exhibit 1 and Zhongce SRA Supplemental at Exhibit 1. *See also* CBP Data Release at Attachment 1.

[89] *See Preliminary Results* at 61293-94 and accompanying PDM at 7-10.

entry documentation to determine if the separate rate applicant had suspended entries during the POR (as we did in this case).[90]

Accordingly, we continue to find Zhongce eligible for a separate rate because its separate rate application shows absence of both *de jure* and *de facto* government control and because Zhongce was able to demonstrate suspended entries during the POR.[91] Petitioners did not provide any arguments challenging the Department's decision on these established criteria. Moreover, because we continue to find Zhongce eligible for a separate rate, we have not addressed the counter-arguments that Zhongce made to Petitioners' arguments.

Comment 4: Whether to Adjust U.S Prices for Un-refunded Value-Added Tax ("VAT")

Double Coin's Comments[92]

- Double Coin argues that the VAT in the PRC is a tax imposed only on domestic transactions and not an export tax, duty, or other charge contemplated in section 772(c)(2)(B) of the Act. This statutory limitation is not subject to the Department's discretion and the Department lacks the authority to adjust for non-export taxes such as VAT. Moreover, PRC law states that the tax rate on exports is zero and the company's VAT refund exceeded VAT paid during the POR and there was no VAT liability for export sales.
- Double Coin asserts that the Department's existing calculation of VAT (*i.e.*, subtracting the reimbursement rate from the base rate) misunderstands the VAT system, in that:
  - The methodology ignores the fact that Double Coin did not pay VAT on export sales, which are exempt.
  - The methodology ignores the fact that the only VAT incurred was for raw material purchases.
  - The VAT that Double Coin did incur on certain raw material purchases was based on free on board ("FOB") costs, however, the methodology overstates the actual VAT deduction by applying it to the re-sale invoice U.S. price, which includes freight and profit.
  - The methodology ignores the fact that Double Coin did not incur input VAT on materials consumed at its Rugao factory to produce merchandise for export, as these were imported through a bonded warehouse and thus exempt from input VAT.
- Double Coin notes that, regardless of the above arguments, if the Department continues to apply its current VAT methodology, it should not do so on the CMA re-sale price in the

[90] *See, e.g., 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) and accompanying IDM at Comment 8.

[91] *See* PDM at 7-10. *See also* Zhongce SRA and Zhongce SRA Supplemental.

[92] *See* Double Coin's Case Brief at 64-69. Double Coin cites to section 772(c)(2)(B) of the Act and the June 19, 2012 *Section 772(c)(2)(B) Methodological Change* in support of its argument. Double Coin references the following submissions: Letter from Double Coin, entitled, "Section C Response of Double Coin Holdings and China Manufacturers Alliance, LLC: Certain New Pneumatic Off-the-Road Tires from China," dated February 18, 2014 ("Double Coin's SCQR"); Double Coin's Letter, entitled, "VAT Tax Supplemental Questionnaire Response of Double Coin Holdings and China Manufacturers Alliance, LLC, Certain New Pneumatic Off-the-Road Tires from China," dated May 14, 2014 ("Double Coin's VAT Response"); Double Coin's letter, entitled, "Supplemental Questionnaire Response of Double Coin Holdings and China Manufacturers Alliance, LLC Certain New Pneumatic Off-the-Road Tires from China," dated July 3, 2014 ("Double Coin's Supplemental C&D QR").

United States, as this is a U.S. price set by a U.S. company in the United States (which does not have a VAT tax) and should instead apply it to the PRC price.

GTC's Comments[93]

- GTC also argues that the VAT in the PRC is a tax imposed only on domestic transactions and not an export tax, duty, or other charge contemplated in section 772(c)(2)(B) of the Act. This statutory limitation is not subject to the Department's discretion, and the Department lacks the authority to adjust for non-export taxes such as VAT. Moreover, there was no VAT liability for export sales (in accordance with PRC law), and, in fact, the company's VAT refund exceeded VAT paid during the POR and GTC received a refund for the full amount of VAT paid to purchase inputs attributed to exported tires during the POR.
- GTC notes that a simple comparison of percentages applied to U.S. price does not accurately reflect VAT liability and, under the plain language of both the statute and the Department's own policy, the issue is not the rate but the amount of VAT paid and then refunded.
- GTC notes that the Department's reasoning for rejecting respondents' calculation of refunded VAT claims is to disallow allocations across all company sales or across sales of products with different VAT schedules by using the difference between the VAT rate and the refund rate. However:
  - GTC did, in fact, provide an irrecoverable VAT calculation methodology that is associated with the production of subject OTR tires exported to the United States (*i.e.*, GTC's allocation was for tires, which are all subject to the same VAT schedule).
  - GTC provided the exact type of reconciliation to its VAT tax returns that the Department requested, including the most detailed VAT calculation possible based on its books and records, and it has reconciled its computations to its VAT tax returns as requested.

[93] *See* GTC's Case Brief at 17-29. GTC cites to the following: section 772(c)(2)(B) of the Act; *Magnesium Corp. of America v. United States*, 166 F.3d 1364 (Fed. Cir. 1999); *Section 772(c)(2)(B) Methodological Change* (June 19, 2012); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984); *Wind Tower Trade Coalition v. United States*, 741 F.3d 89 (Fed. Cir. 2014); *Dorbest v. United States*, 604 F.3d 1363 (Fed. Cir. 2010); and Exhibit 3 to its Case Brief. GTC references the following submissions: The Department's separate letters to GTC and Double Coin entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Supplemental Tax Questionnaire," dated April 30, 2014 ("VAT Questionnaires"); GTC's submission entitled, "Supplemental VAT Questionnaire Response: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated May 28, 2014 ("GTC's VAT Response"); the Department's memorandum entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Verification of the Sales and Factors Response of Guizhou Tyre Co., Ltd. and Affiliates," dated September 30, 2014 ("GTC's Verification Report"); *Preliminary Results* (October 10, 2014) and PDM; and GTC's submission entitled, "Section C & D Responses. Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated February 19, 2014 ("GTC's SCDQR").

Petitioners' Rebuttal[94]

- The Department has rejected on multiple occasions the claim that it lacks the authority to adjust for irrecoverable VAT imposed by an NME government and addressed arguments that the PRC VAT is not an export tax.
- The Department followed its established practice by applying the difference between the general VAT rate and the export rate specific to the subject merchandise.
- The Department's practice is to reject firm-wide allocations across all company sales or across sales of products with different VAT schedules, as the PRC's VAT regime is product-specific, with VAT schedules that vary by industry and specific products.
- The Department has declined to base irrecoverable VAT adjustments on the total VAT liability of a respondent for well-founded reasons.
- GTC's argument that the Department should make an adjustment to account for the particular input VAT for purchases of certain natural rubber and Double Coin's argument regarding the VAT status of some of its inputs at its Rugao factory are both in error, as each would result in an adjustment based on non-product specific data.
- Neither GTC nor Double Coin make a claim or offered any evidence that they were rebated input VAT at more than the standard nine percent on their export sales. As such, the Department should continue to reject GTC's and Double Coin's arguments that the applicable VAT should be calculated by reference to charges and refunds on all their merchandise rather than the irrecoverable VAT on the subject merchandise in question.

Department's Position: For the reasons explained below, we continue to apply the un-refunded (irrecoverable) VAT adjustment that we used in the *Preliminary Results* to deduct an amount for irrecoverable VAT from the reported U.S prices for both respondents. However, we agree with Double Coin that our application of the irrecoverable VAT percentage to the U.S. resale price overstated the adjustment and, therefore, as explained below, we based our determination of Double Coin's irrecoverable VAT adjustment on entered value less international freight for these final results of review.

In 2012, we announced a change of methodology with respect to the calculation of the EP or CEP to include an adjustment of any irrecoverable VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[95] In this announcement, the Department stated that when a NME government has imposed an export tax, duty, or other charge on subject merchandise or on

[94] *See* Petitioners' Rebuttal Brief at 20-24. Petitioners cite the following: *Section 772(c)(2)(B) Methodological Change* (June 19, 2012); *Preliminary Results* (October 10, 2014) and PDM; *Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) ("*SDGE/PRC 12-13*"); *Frontseating Service Valves From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014) ("*FSVs/PRC 12-13*"); *Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 66356 (November 7, 2014); *Diamond Sawblades 11-12*, 79 FR 35723 (June 24, 2014); *Hangers/PRC 12-13 Prelim* (November 5, 2014); *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) ("*Prestressed Wire/PRC*"); *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) ("*Chlorinated Isos/PRC 11-12*"). Petitioners reference Double Coin's Case Brief and GTC's Case Brief.

[95] *See Section 772(c)(2)(B) Methodological Change* (June 19, 2012), 77 FR at 36482.

inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.[96]

In a typical VAT system, companies do not incur any VAT expense; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.[97] That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[98] This amounts to a tax, duty, or other charge imposed on exports that is not imposed on domestic sales and we, thus, disagree with the respondents' assertions that irrecoverable VAT should not be deducted from their U.S. prices. Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[99]

Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. We disagree with respondents' claims that we do not have the statutory authority to adjust for irrecoverable VAT, or that our methodology unlawfully re-interprets section 772(c)(2)(B) of the Act. Section 772(c)(2)(B) of the Act authorizes us to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Moreover, respondents argue that they pay no VAT tax upon export and that the PRC VAT is not an export tax, duty or charge but, rather, a charge on domestic purchases of inputs; however, this misstates what is at issue: the issue is the irrecoverable VAT, not VAT *per se*. Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[100] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[101] The statute does not define the terms "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in PRC law and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax neutral

[96] *Id.*, 77 FR at 36483; *see also Chlorinated Isos/PRC 11-12* (January 30, 2014) and accompanying IDM at Comment 5.
[97] *See, e.g., Diamond Sawblades 11-12*, 79 FR 35723 (June 24, 2014) and accompanying IDM at Comment 6; *Section 772(c)(2)(B) Methodological Change*, 77 FR at 36483.
[98] *See* Double Coin's VAT Response at Exhibit SC-1; GTC's VAT Response at Exhibits 1-3; and *Methodological Change*, 77 FR at 36483.
[99] *See Section 772(c)(2)(B) Methodological Change* (June 19, 2012), 77 FR at 36483.
[100] *See SDGE/PRC 12-13* (September 25, 2014) and accompanying IDM at Comment 7.
[101] *See, e.g., Diamond Sawblades 11-12*, 79 FR 35723 (June 24, 2014) and accompanying IDM at Comment 6 and *FSVs/PRC 12-13* (December 2, 2014) and accompanying IDM at Comment 5.

net price received by the seller. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[102]

In both an initial and supplemental questionnaire, the Department instructed GTC and Double Coin to report value-added taxes on inputs used to produce the merchandise sold to the U.S. and identify the portion of input VAT that was not fully refunded on exportation. In response, both respondents stated their disagreement with our product-specific methodology and reported that their total VAT refund exceeded VAT paid for export sales during the POR and, thus, reported no value in the VAT field of their respective sales databases.[103] However, our practice is that we will not consider allocations across all company sales or across sales of products with different VAT schedules but, rather, to use the difference between the VAT rate and the refund rate, consistent with PRC regulations, unless the company can show otherwise for the subject merchandise.[104] Rather, our irrecoverable VAT calculation methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Information placed on the record of this review by both GTC and Double Coin indicates that according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is nine percent.[105] For the purposes of these final results, therefore, we removed from U.S. price the difference between the rates (*i.e.*, eight percent), which is the irrecoverable VAT as defined under PRC tax law and regulation.[106]

For these final results, both Double Coin and GTC argue that the Department should take into account for the calculation of irrecoverable VAT the various alternate (or absent) input VAT rates that they claim are applicable to certain inputs used in the production of subject merchandise: for GTC's purchases of certain natural rubber (which, according to GTC is assessed at a VAT rate of 13 percent for all other inputs); and for Double Coin's raw materials consumed to produce merchandise for export at its Rugao factory that were imported through a bonded warehouse (which Double Coin claims did not incur any input VAT, pursuant to PRC law). In our questionnaires to Double Coin and GTC we asked that if the irrecoverable VAT amount reported is not directly derived as the difference between the VAT tax rate applicable to domestic purchases and inputs and the refund rate for export sales of subject merchandise, then they need to: 1) explain in detail why and provide worksheets demonstrating how to calculate the irrecoverable VAT; 2) reconcile the worksheets to the translated VAT tax returns provided and provide a detailed narrative explanation that describes the calculations shown in the worksheets; and 3) for each reconciling item reported in the worksheets, provide documentation and a citation to the Chinese laws and regulations to fully support the reason for the reconciling item. However, the respondents did not provide this information, and the limited information they did provide would result in an adjustment to irrecoverable VAT based on non-product

[102] *See* Article 5(3) of Circular 39 that states, "(3) Where the Tax Refund Rate is lower than the applicable tax rate, the amount of tax calculated according to the difference in rates shall be included in the costs of the Exported Goods and Services."; *See Section 772(c)(2)(B) Methodological Change* (June 19, 2012), 77 FR at 36483, and *Final Rule* (May 19, 1997) 62 FR at 27369 (citing the SAA).
[103] *See* Double Coin's VAT Response and GTC's VAT Response.
[104] *See, e.g., Diamond Sawblades 11-12* (June 24, 2014) and accompanying IDM at Comment 6.
[105] *See, e.g.,* Double Coin's VAT Response at 2-3 and GTC's VAT Response at 1-2.
[106] *See, e.g., Prestressed Wire/PRC* (May 5, 2014) and accompanying IDM at Comment 1. *See* the Program Log and Output attached to Double Coin's and GTC's Final Analysis Memoranda for details regarding this calculation.

specific data. For the calculation of irrecoverable VAT we will not consider allocations across all company sales or across sales of products with different VAT schedules.[107] Furthermore, we note that GTC fails to cite to any evidence on record of this specifically lower rate that it claims applies to one of the inputs it consumed, nor did the Department verify the claimed 13 percent VAT rate for natural rubber at verification. Further, Double Coin's argument that it did not pay VAT on certain inputs ignores the fact that it did not receive the full refund from its exports that it would have otherwise received and, thus, the difference in these amounts is a cost arising from exportation. Indeed, neither GTC nor Double Coin make a claim or offered any evidence that they were rebated input VAT at more than the standard nine percent on their export sales. With respect to GTC's assertion that it provided the exact type of reconciliation to its VAT tax returns that the Department requested in its VAT questionnaire, we note that our request was for parties to reconcile the amount of irrecoverable VAT reported to its VAT tax returns, but GTC only reconciled the input and output VAT to their tax returns and, as such, did not provide the reconciliation requested.[108]

Irrecoverable VAT is (1) the free-on-board value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.[109] The first variable, export value, is unique to each respondent and sale while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.[110]

19 CFR 351.401(c) requires that the Department rely on price adjustments that are "reasonably attributable to the subject merchandise." The PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. Irrecoverable VAT is a product-specific export tax, duty, or other charge that is incurred on the exportation of subject merchandise. Thus, our analysis is consistent with our current irrecoverable VAT policy and our treatment of irrecoverable VAT in recently completed NME cases.[111] Therefore, we have not altered our irrecoverable VAT adjustment methodology for these final results.

Finally, Double Coin argues that – notwithstanding its aforementioned arguments regarding the applicability of the Department's irrecoverable VAT methodology – in applying this methodology the Department should not assess irrecoverable VAT on the gross unit price (*i.e.*, CMA's re-sale price in the United States). Instead, Double Coin argues, the Department should instead apply the irrecoverable VAT assessment to the PRC export price less freight expenses, which can be calculated by subtracting reported ocean freight from reported entered value. We agree with Double Coin that the calculation in the *Preliminary Results* overstated the export sales value and that Double Coin's suggested correction to the calculation is appropriate and

[107] *See, e.g., Prestressed Wire/PRC* (May 5, 2014) and accompanying IDM at Comment 1.
[108] *See* GTC's VAT Response at Exhibit 2.
[109] *See Prestressed Wire/PRC* (May 5, 2014) and accompanying IDM at Comment 1, n. 35.
[110] *Id.* at Comment 1, n. 36.
[111] *See, e.g., Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4542 (January 28, 2015) and IDM at Comment 6; *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013* (January 28, 2015) and IDM at Comment 4.

consistent with our recent practice.[112] Accordingly, for Double Coin's CEP sales, we based our determination of the irrecoverable VAT tax offset on entered value less international freight.[113]

Comment 5: Use of Adverse Facts Available in Calculating Double Coin's Margin

Double Coin's Comments[114]

- As a result of the discovery of an unreported CONNUM at verification, Department officials applied the highest CONNUM-specific margin to the percentage of all sales comprised by the missing CONNUM, and applied this to the calculated margin as an adverse inference to account for the amount of unreported sales. Double Coin argues that there is no basis for applying an adverse inference in accounting for the sales of the unreported CONNUM, as the Department acknowledged and verified that the error was inadvertent.
- CMA offered all relevant information once the error was discovered, and in no way failed to cooperate by not acting to the best of its ability or impeded the proceeding.
- The Department should instead apply the average of all CONNUM-specific margins as facts available ("FA").
- Regardless of whether the Department applies facts available ("FA") or AFA to the unreported sales, the Department must apply this margin only to the percentage of sales shown to have been sold to U.S. customers. The summary sheet provided at verification clearly shows the breakdown of domestic and export sales, and Department officials verified this information.

Petitioners' Comments[115]

- In past determinations where a respondent did not report all U.S. sales, the Department has held that applying the highest calculated margin as partial AFA is appropriate, even when the respondent claims inadvertence or the missing data is offered during verification.

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[112] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012-2013*, 80 FR 4244 (January 27, 2015) and accompanying IDM at Comment 9 ("We agree with CPZ/SKF that it is appropriate to use the entered value of its merchandise as the tax base here, given that: 1) it is essentially the same as the company's export value; and 2) the Government of the PRC determines the amount of VAT rebated upon exportation using export values."). *See also Frontseating Service Valves From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014) and accompanying IDM at Comment 5 ("{A}s Sanhua noted, in the *Preliminary Results*, the Department overstated the export sales value by deducting only international freight and certain adjustments from CEP. For these final results, we based our determination of the VAT tax offset, as Sanhua suggested, on entered value, which excludes international freight and U.S. selling expenses.").

[113] *See* Double Coin's Final Analysis Memo for further details on the calculation pursuant to this correction. As GTC previously provided FOB prices for its sales, and these prices were used for the VAT calculation in the *Preliminary Results*, no such change is needed to GTC's VAT liability calculation.

[114] *See* Double Coin's Case Brief at 59-64. Double Coin cites to *Jiangsu Changbao* (CIT 2012) and section 776(a) and (b) of the Act. Double Coin references the following record documents: Double Coin's Preliminary Analysis Memo and Double Coin's Verification Report.

[115] *See* Petitioners' Rebuttal Brief at 15-18. Petitioners cite to *Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic of China*, 78 FR 70918 (November 27, 2013) ("*Bricks/PRC*") and *Nippon Steel Corp. v. United States*, 337 F.3d 1373 (Fed. Cir. 2003). Petitioners reference the following record documents: Double Coin's Preliminary Analysis Memo, Double Coin's Verification Report, and Double Coin's Case Brief.

- The Department only accepted information at verification to collect information necessary to allow the inclusion of these sales in the average margin calculated for Double Coin and did not verify whether any of the sales were re-exported (regardless of what fields are included on the summary sheet provided). Instead the Department explicitly noted there is nothing on the record to demonstrate that these sales were not entered for U.S. consumption, and should continue to include the total volume of unreported sales in the final calculation.

Department's Position: At verification of Double Coin's U.S. sales affiliate, CMA, we discovered an unreported CONNUM that company officials admitted should have been reported as subject merchandise, but claimed was unreported because of an oversight with respect to product lines.[116] As information with respect to these sales was not previously on the record, we declined to take invoices or other sales-specific information regarding sales of this product during the POR, but took a summary sheet which contained the quantity and value information of the sales.[117] Company officials stated that the majority of these sales were to non-U.S. markets and the number of tires sold to downstream U.S. customers represented only about 35 percent of the total number of tires sold of this product. In the *Preliminary Results*, we noted that the record lacked evidence to demonstrate that the entirety of the sales of this CONNUM (*i.e.*, representing all of CMA's sales of this OTR product during the POR, whether to downstream U.S. customers or export sales) was not entered for U.S. consumption. Accordingly, in calculating Double Coin's weighted-average margin for the *Preliminary Results*, we weight-averaged the *ad valorem* margin for Double Coin's reported sales (calculated from our standard antidumping duty program) with a margin determined for all unreported sales.[118] As the record did not contain information for which to calculate a margin for these sales, we assigned the highest CONNUM-specific margin calculated for the reported sales as an adverse inference applicable to the unreported sales.[119]

For these final results, Double Coin asserts that the highest calculated CONNUM-specific margin should not be applied in accounting for these sales, as section 776(b) of the Act only permits the application of an adverse inference when a party fails to cooperate by not acting to the best of its ability to comply with a request for information and is found to have willfully impeded the proceeding, which is not the case in the instant proceeding.

We agree that Double Coin's error was inadvertent and the respondent was cooperative once the omission was discovered at verification. However, we agree with Petitioners that the application of the adverse inference in this situation is proper and well supported by precedent.[120] Section 776(a)(2)(B) and (D) of the Act provides that if an interested party fails to provide information within the established deadlines or provides information but the information cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability

[116] *See* Double Coin's Verification Report at section VII.A.4.
[117] *Id.,* at Exhibit US-VE 12.
[118] *See* Double Coin's Preliminary Results Analysis Memo at Attachment III.
[119] *Id.*, at 10 and Attachments II and III.
[120] *See Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic Of China*, 78 FR 70918 (November 27, 2013), and accompanying IDM at Comment 7.

to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA accompanying the Uruguay Round Agreements Act explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[121]

In *Nippon Steel*, the Federal Circuit noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[122] Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability.[123] While the Federal Circuit noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[124] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.[125]

The antidumping duty questionnaire issued in this review requires respondents to report all of their relevant U.S. sales during the POR. Double Coin had multiple opportunities to provide the full universe of sales, given that the Department issued multiple supplemental questionnaires to Double Coin, and Double Coin made adjustments to reported sales notwithstanding the unreported CONNUM in its responses to the supplemental questionnaires.[126] Thus, section 782(d) was satisfied with respect to the universe of Double Coin's sales. By not reporting the entire universe of its U.S. sales in its questionnaire and supplemental questionnaire responses, Double Coin failed to provide information within the deadlines established.

The Department previously declined to accept unreported sales information identified at verification and instead relied upon FA or AFA as appropriate.[127] In this case, we find it is

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[121] *See* SAA, H.R. Rep. No. 103-316, at 870; *see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).
[122] *See Nippon Steel v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).
[123] *Id*.
[124] *Id*.
[125] *Id*.
[126] *See, e.g.*, Double Coin's Supplemental C&D Response.
[127] *See Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710 (June 8, 1999) at Comment 10 ("*SSSS/Germany*"). In this case, the Department noted that the respondent identified the missing sales at the outset of verification (and provided a complete packet containing copies of each of the relevant invoices which the Department included on the record as a verification exhibit), but for the final results the Department noted "that {the respondent} had three opportunities spread over four months to provide the Department with a complete listing of its U.S. sales. In response to its failure to do so, as adverse facts available, we are applying the highest non-aberrational margin calculated based on {the respondent's} correctly reported CEP transactions to the unreported sales and have included these transactions in our calculation of the overall weighted-average margin." *See also*, *Bricks/PRC* (November 27, 2013) at Comment 7, where the respondent similarly claimed its failure to report all U.S. sales was inadvertent after the Department discovered the unreported

appropriate to base dumping margins for these unreported sales on FA pursuant to section 776(a) of the Act. Further, as evidenced by its ability at verification to identify the invoices related to these specific unreported U.S. sales, it is clear that Double Coin possessed the necessary records to provide a complete U.S. sales database but did not conduct a comprehensive investigation of all relevant records to identify the unreported sales in a timely manner. As discussed in prior cases, we note that the purpose of verification is to verify the accuracy of information previously submitted to the record by the respondent, not to collect new sales information that had been previously requested but not reported. Therefore, we find that Double Coin's failure to report all of its U.S. sales of in-scope products during the POR, using the information over which it maintained control at all times, indicates that the respondent did not act to the best of its ability to comply with our request for information.[128] Hence, we find it is appropriate to base the dumping margins for these unreported sales on AFA and continue to assign the highest CONNUM-specific margin to the unreported sales for the final results.[129]

However, we agree with Double Coin that we should only apply this adverse inference to the 35 percent of unreported sales shown to have been sold to U.S. customers. Upon discovery of the omission of sales of this product at verification, Department officials requested information for all sales of this product during the POR. For the sake of completion and in compliance with the Department's request, Double Coin provided all information available for all sales of this tire type, whether sold to a U.S. customer or foreign customer, including original invoices for each sale, along with a cover sheet summarizing all transactions (*i.e.*, the summary sheet provided at US VE-12 of Double Coin's Verification Report). As noted in the verification report, Department officials declined to take new factual information on the specific sales for the record (*i.e.*, copies of invoices). However, in order to have a record of the quantity of the missing sales for any necessary margin calculation, we accepted the summary sheet (*i.e.*, US VE-12). Though Department officials did not take the invoices for the record, we did review the information on these original invoices to ensure the veracity of the information provided in the summary sheet. Thus, after considering Double Coin's comments, we find that the use of the total sales value corresponding to sales of all unreported tires sold by CMA during the POR, regardless of destination, used for the total margin calculation in *Preliminary Results* was in error, and we

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sales at verification, but the Department nonetheless determined that the respondent failed to act to the best of its ability by not reporting all U.S. sales prior to verification (rejecting the respondent's arguments that an inadvertent omission cannot be viewed as a withholding of information). Citing to *Nippon Steel*, the Department noted that the respondent had all the information in its possession prior to the Department's discovery, and it had been instructed to submit all its U.S. sales and rejected the respondent's arguments that the Department could have accepted information on the unreported sales at verification, stating, "the purpose of verification is to verify the accuracy of information previously submitted to the record by the respondent, not to collect new sales information that had been previously requested but not reported."

[128] *Id.* As in this *Bricks/PRC* (November 27, 2013) case, where the Department held that by reporting U.S. sales based on knowledge of customers' typical purchases rather than thoroughly examining sales records, the respondent had not done the maximum it could have done, we note that, in the instant case, by failing to cross check for subject merchandise across product lines (an error that, while inadvertent, was readily apparent to Department officials quite early in the relevant review process at verification), Double Coin did not do the maximum it could have done to provide the full universe of sales information to Department officials in a timely manner. *See also, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013*, 80 FR 1021 (January 8, 2015), citing to *SSSS/Germany* (June 8, 1999) at Comment 10.

[129] *See* Double Coin's Final Analysis Memo.

instead used the reported sales value of the domestic sales of the tire type in question (*i.e.*, representing 35 percent of all unreported sales) in the calculation of Double Coin's margin for these final results.[130]

Comment 6: Use of PT Gajah Tunggal's Financial Statement for the Surrogate Financial Ratio Calculation

GTC's Comments[131]

- The Department should adjust the financial ratios to account for Gajah Tunggal's total cost of labor. Specifically, the Department correctly adjusted Gajah Tunggal's manufacturing expenses to account for the cost of energy using Gajah Tunggal's annual report in the *Preliminary Results*, and should now adopt the same methodology to adjust Gajah Tunggal's total production labor.
- Alternatively, the Department should place Gajah Tunggal's corrected 2013 statements on the record and use these revised statements (the Department should be aware of such corrected statements for Gajah Tunggal, since they are on the record of the *PVLT Tires/PRC LTFV Prelim* (January 27, 2015)).

[130] For a further proprietary discussion of our findings at verification and of this calculation, *see* Double Coin's Final Analysis Memo.

[131] *See* GTC's Case Brief at 4-11. GTC cites to the following: *Grobest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342 (CIT 2012); *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 4386 (January 22, 2013); *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015) ("*PVLT Tires/PRC LTFV Prelim*"); *Fresh Garlic From the People's Republic of China: Final Rescission of Antidumping Duty New Shipper Reviews; 2010-2011*, 78 FR 18316 (March 26, 2013); *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); *Certain Preserved Mushrooms from the People's Republic of China: Final Results of the Antidumping Duty New Shipper Review*, 71 FR 66910 (November 17, 2006); *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004); *Heavy Forged Hand Tools From the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 66 FR 48026 (September 17, 2001); *Shakeproof Assembly Components. v. United States*, 268 F.3d 1376 (Fed. Cir. 2001); *Union Camp Corp. v. United States*, 53 F. Supp. 2d 1310 (CIT 1999); and its own analysis of adjusted overhead ratio provided at Exhibit 1to the Case Brief. GTC references the following record documents: The Department's Memorandum to the File, entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results Surrogate Value Memorandum," dated September 30, 2014 ("Preliminary SV Memo"); and Petitioners' letter, entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off The-Road Tires from China (A–570–912): Petitioners' Initial Surrogate Value Comments," dated April 14, 2014 ("Petitioners' Initial SV Comments") (specifically, the PT Gajah Tunggal Tbk ("Gajah Tunggal") and PT Goodyear Indonesia Tbk ("Goodyear") financial statements provided at Attachment 19 thereto).

Petitioners' Comments[132]

- The Department should not adjust the reported labor costs in Gajah Tunggal's financial ratios using the unaudited annual report, but should continue to rely on the labor value reported in the audited financial statements as the best available information.
- Citing to *HRS/Romania* (June 14, 2005), Petitioners allege that the Department should decline to "take notice" of a corrected financial statement for Gajah Tunggal that was submitted in the ongoing investigation of passenger vehicle and light truck ("PVLT") tires from the PRC because Gajah Tunggal is affiliated with interested parties in that investigation.

Department's Position: For the *Preliminary Results*, in order to calculate surrogate financial ratios, we used the financial statements of two Indonesian producers of identical merchandise: Gajah Tunggal and Goodyear. Though Goodyear's financial statements break out energy, Gajah Tunggal's financial statements do not. However, Gajah Tunggal's annual report provides the cost of energy as a percentage of the total cost of production. Thus, for the *Preliminary Results*, we used the percentage provided in Gajah Tunggal's annual report to compute the cost of energy for Gajah Tunggal in the computation of the financial ratios. For these final results, as explained below, we relied solely on Goodyear's financial statements for computation of financial ratios.

As a preliminary matter, no party disputed either the use of Goodyear's financial statements or the manner in which the Department used Goodyear's statements to calculate surrogate financial ratios. Second, we note that Goodyear is a producer of identical merchandise and that its audited financial statements are complete, contemporaneous with the POR, and include detailed expense lines for raw materials, manufacturing labor, manufacturing energy, and manufacturing overhead.

With regards to Gajah Tunggal's financial statements, GTC argues that either (1) the Department should make an adjustment to direct labor, the same way the Department did for Gajah Tunggal's manufacturing energy using Gajah Tunggal's annual report, or (2) that the Department should "take notice" of a corrected version of Gajah Tunggal's financial statements, which were placed on the record of the ongoing investigation of PVLT tires from the PRC.

In this case, because we still have another financial statement (*i.e.*, Goodyear), which no party disputed, we did not use the financial statements of Gajah Tunggal for these final results because Gajah Tunggal's audited financial statements do not contain a line for manufacturing energy. As GTC pointed out, there may be some inconsistency between Gajah Tunggal's annual report and its audited financial statements; thus, rather than rely upon Gajah Tunggal's unaudited annual report to generate a cost for manufacturing energy for Gajah Tunggal as we did in the *Preliminary Results* or to generate a cost for production labor, we discarded Gajah Tunggal's statement in favor of only using Goodyear's complete, audited financial statements which break out all relevant manufacturing costs.

[132] *See* Petitioners' Rebuttal Brief at 24-26 and Exhibit 1. Petitioners cite to *HRS/Romania* (June 14, 2005) and section 773(c)(1) of the Act. Petitioners reference the following record documents: Preliminary SV Memo and GTC's Case Brief.

The Department's practice is to rely upon the best, publicly available information when making determinations. As we determined not to use Gajah Tunggal's financial statements, and to rely only on Goodyear's financial statements for calculation of the financial ratios, the Department does not need to examine information not on the instant case record (*i.e.*, the filing in the PVLT tires investigation), since Goodyear's statements represent the best information available for this case.

Additionally, with regards to Petitioners' arguments that the labor percentage suggested by GTC to calculate Gajah Tunggal's financial ratio is not an accurate representation of the actual amount of direct labor used by GTC itself, we note that this argument is moot because the Department decided not to use Gajah Tunggal's financial statements for other reasons.

For the final results, we determined to reject Gajah Tunggal's statement entirely because its financial statements did not include energy and, upon further consideration, the un-audited annual report is not a sufficiently reliable source to derive the energy ratio and, at any rate, Gajah Tunggal's statement is not necessary because we already have a complete and useable statement from Goodyear that does break out energy. Therefore, we relied solely on the Goodyear statement for the calculation of surrogate financial ratios.[133]

Comment 7: Surrogate Value ("SV") for Coal

- GTC argues that the Department should value coal using the more product-specific price data from Argus Coalindo rather than Global Trade Atlas ("GTA") import data used in the *Preliminary Results*.[134]

[133] *See* Final SV Memo at 2 and Attachments I, II, and III.

[134] *See* GTC's Case Brief at 12-17. GTC cites to the following: *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); *Chlorinated Isocyanurates From the People's Republic of China: Final Results of 2008-2009 Antidumping Duty Administrative Review*, 75 FR 70212 (November 17, 2010); *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 70 FR 34448 (June 14, 2005) ("*HRS/Romania*"); *Taian Ziyang Food Company, Ltd. v. United States*, 783 F. Supp. 2d 1292 (CIT 2011) (as related to the Department's *Policy Bulletin* 04.1); *Chlorinated Isocyanurates From the People's Republic of China: Final Results of June 2008 Through November 2008 Semi-Annual New Shipper Review*, 74 FR 68575 (December 28, 2009); *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 73 FR 58113 (October 6, 2008); *Clearon Corp. v. United States*, Court No. 13-00073, Slip Op. 2014-88 (CIT 2014); *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264 (CIT 2005); *Yantai Oriental Juice Co. v. United States*, Court No. 00-07-00309, Slip Op. 2002-56 (CIT 2002); section 773(c)(1) of the Act; and its own summary of the Argus Coalindo information on record, provided at Exhibit 2 to the Case Brief. GTC references the following record documents: GTC's letter entitled, "Surrogate Value Comments for GTC: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated April 14, 2014 ("GTC's SV Submission") (specifically, the Argus Coalindo data provided at Exhibit 6A thereto); GTC's letter entitled, "GTC's Second Surrogate Value Submission: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated September 2, 2014 ("GTC's Second SV Submission"); GTC's submission entitled, "GTC's Surrogate Value Rebuttal Submission: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated May 2, 2014 ("GTC's Rebuttal SV Submission"); and GTC's SCDQR.

- Petitioners rebut that the Department should continue to use GTA import data because it provides a more accurate measure of coal values in Indonesia than the international coal values reported by Argus Coalindo.[135]

Department's Position: We do not find Argus Coalindo to be an appropriate source to use to value coal because the Argus Coalindo data represent "prices for Indonesian coal traded on the international spot market" (*i.e.*, prices for Indonesian coal exports) and thus do not accurately represent the price of coal bought or sold in Indonesia.[136] Conversely, the GTA data represent actual prices of coal purchases in Indonesia. When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non-hierarchically to the case-specific facts and with preference to data from a single surrogate country.[137] As established in the *Preliminary Results*, the Department continues to find that the Indonesia import data obtained from GTA are publicly available, broad market averages, tax-exclusive, and specific to the input in question, satisfying the Department's criteria for selection of a surrogate value. Because the Argus Coalindo data is for export prices paid for Indonesian coal, GTA data is a better, more specific, source to value coal inputs and fulfills the Department's standard SV criteria (non-export, broad-market, *etc*.). Accordingly, we made no changes to the valuation of coal from the *Preliminary Results*.

Additionally, we agree with Petitioners that there is insufficient record data to establish consistent heat values for GTC's coal during the POR (*i.e.*, GTC provided only a handful of coal testing slips with heat values that vary quite widely).[138] Moreover, contrary to GTC's claim that heat value is the most important attribute of its coal purchases and necessarily makes the Argus Coalindo values more specific, we note that the information GTC placed on the record gives equal weight to sulfur content and ash content of the coal. Specifically, the Argus Coalindo report itself has maximum sulfur and ash values for each heat value range and the Platts Coal Pricing Methodologies states that "heat and sulfur content are considered the primary determinants of steam coal price; ash as a secondary determinant."[139] Though GTC did provide a limited selection of coal testing slips with heat values, GTC made no effort to corroborate its

[135] *See* Petitioners' Rebuttal Brief at 27-28. Petitioners cite to *Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 2366 (January 11, 2013) and *Drill Pipe From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 75 FR 51004 (August 18, 2010). Petitioners reference the following submissions: GTC's Second SV Submission; GTC's Rebuttal SV Submission; GTC's SCDQR; GTC's Case Brief; and GTC's submission entitled, "GTC Supplemental Section C&D Responses: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated June 17, 2014 ("GTC's Supplemental SCDQR").
[136] *See* GTC's Second SV Submission at Exhibit 5. Confirming that these are international spot market prices for Indonesian exports of coal (and not prices representative of domestic coal consumption in Indonesia), Argus Coalindo describes its data collection team as consisting of "specialist market reporters/analysts in Singapore, Beijing, Tokyo, Sydney, London, Moscow, Washington, Johannesburg and Bogota, drawing on Argus' global network of energy correspondents."
[137] *See, e.g., Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews; 2012-2013*, 79 FR 66355 (November 7, 2014), and accompanying IDM.
[138] *See* GTC's SCDQR at Exhibit SD-7.
[139] *See* GTC's Second SV Submission at Exhibit 5 and GTC's Rebuttal SV Submission at Exhibit 4A.

ash and sulfur levels with those specified in the Argus Coalindo or Platts Coal Pricing Methodologies sources.

Thus, we continue to find that the GTA value for "Bituminous Coal, Not Agglomerated" from Indonesia (HS code 270112) represents the most product-specific, publicly available, tax-exclusive, non-export price on the record with which to value steam coal in Indonesia.

Comment 8: Valuation of Labor

- Petitioners argue that the Department should not use a calculated labor rate that falls below the minimum wage as an SV and should inflate the International Labor Organization ("ILO") wage rate by 250 percent or should use the $232 per month value reported in the World Bank's *Doing Business 2014: Indonesia* report.[140]
- GTC rebuts that the Department should not adjust the calculated labor SV based on the stated Indonesian minimum wage from a source unrelated to the ILO Yearbook (*i.e.*, the source of the labor SV used for the *Preliminary Results*).[141]
- Double Coin argues that the Department should reject Petitioners' suggested SV for labor rates because they are not based on the best available information and contends that the allegation that the minimum wage in Indonesia has increased by 250 percent is incorrect.[142]

Department's Position: The *Doing Business* wage rates cited by Petitioners bear no relation to the ILO wage rate and are less specific to the production of tires. Specifically, the data in *Doing Business* do not appear to be derived from any country-wide Indonesian law, but rather from a survey of businesses operating in Jakarta and reporting minimum wages for a 19-year old

[140] *See* Petitioners' Case Brief at 12-15. Petitioners cite to: *Saccharin from the People's Republic of China: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 51800 (September 11, 2007); *Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65616 (November 5, 2014) ("*Hangers/PRC 12-13 Prelim*"); *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010) ("*Shrimp/Vietnam 08-09*"); and section 773(c)(1) of the Act. Petitioners reference the following submissions: Preliminary SV Memo (specifically, the International Labor Organization's ("ILO") *Yearbook of Labor Statistics* (2008) Chapter 5B data contained therein); GTC's SV Submission (specifically, the World Bank's *Doing Business 2014: Indonesia* information contained at Exhibit 11); and Petitioners' Initial SV Comments (specifically, the ILO *Yearbook of Labor Statistics* (2009) Chapter 5B data contained at Exhibit 14).

[141] *See* GTC's Rebuttal Brief at 1-8. GTC discusses the *Shrimp/Vietnam 08-09* (August 9, 2010) and *Hangers/PRC 12-13 Prelim* (November 5, 2014) cases cited by Petitioner and further cites to *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*"). GTC references the following record submissions: Preliminary SV Memo and *Doing Business 2014: Indonesia* (submitted in GTC's SV Submission at Exhibit 11), and Petitioners' Case Brief.

[142] *See* Double Coin's Rebuttal Brief at 7-13. Double Coin cites the following: *Preliminary Results* (October 10, 2014); *Hangers/PRC 12-13 Prelim* (November 5, 2014); *Labor Methodologies* (June 21, 2011); and further discusses Petitioners' use of *Shrimp/Vietnam 08-09* (August 9, 2010) and *Hangers/PRC 12-13 Prelim* (November 5, 2014). Double Coin references the following record submissions: Letter from Petitioners' entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Fourth Surrogate Value Comments," dated September 2, 2014 ("Petitioners' 4th SV Submission"); Petitioners' Initial SV Comments; *Doing Business 2014: Indonesia* (submitted in GTC's SV Submission at Exhibit 11); Preliminary SV Memo; and Petitioners' Case Brief.

worker/apprentice.[143] Thus, the "minimum wage" in *Doing Business* in not representative of the experience of Indonesian tire producers and does not provide a more reliable indicator of inflation in wages than the "Division: 25 – Manufacture of rubber and plastics products" ILO wage data and Consumer Price Index ("CPI") used in the *Preliminary Results*. Additionally, in response to cases cited by Petitioners, we note that: (1) the ILO data in *Shrimp/Vietnam 08-09* were significantly different from one year to the next and the Department had other ILO data from which to choose;[144] and (2) with regards to *Hangers/PRC 12-13 Prelim*, the Department used more specific, more contemporaneous Thai National Statistical Office data.[145] Thus, we made no change from the *Preliminary Results* and continue to value labor via the Department's standard ILO wage rate methodology, using chapter 25 data for Indonesia, inflated with CPI data.[146]

Comment 9: Valuation of Domestic Truck Freight

- Petitioners argue that the Department should recalculate the truck freight rate for Indonesia using a single distance of 16.7 kilometers, representing the distance from the center of Jakarta to the port of Jakarta.[147]
- GTC rebuts that the Department rejected Petitioners' proposed calculation in the recent *MSG/PRC LTFV* (September 29, 2014) case and that the existing calculation is supported by record evidence and current practice.[148]
- Double Coin rebuts that *Doing Business 2014: Indonesia* is clear in defining the distance from the port to a business "located in the periurban area" and, thus, the Department should reject Petitioners' proposed distance. Moreover, Double Coin argues that use of Petitioners' suggested distance would result in an SV for truck freight that does not reflect commercial reality.[149]

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[143] *See* GTC's SV Submission at Exhibit 11, *Doing Business 2014: Indonesia* at pages 98-99.
[144] *See Shrimp/Vietnam 08-09* and accompanying IDM at Comment 9.
[145] *See Hangers/PRC 12-13 Prelim* and accompanying decision memorandum at 25, unchanged in *Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012–2013*, 80 FR 13332 (March 13, 2015).
[146] *See Labor Methodologies*.
[147] *See* Petitioners' Case Brief at 15-17. Petitioners cite to: *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/Vietnam 11-12*"); *Monosodium Glutamate From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 26408 (May 8, 2014); and *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012). Petitioners reference the following submissions to the record: Preliminary SV Memo; Petitioners' Initial SV Comments (including *Doing Business 2014: Indonesia*); GTC's SV Submission; Petitioners' Pre-Prelim Comments; GTC's submission entitled, "GTC's Pre-Preliminary Comments: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated September 9, 2014 ("GTC's Pre-Prelim Comments").
[148] *See* GTC's Rebuttal Brief at 8-10. GTC cites to *Monosodium Glutamate From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and the Final Affirmative Determination of Critical Circumstances*, 79 FR 58326 (September 29, 2014) ("*MSG/PRC LTFV*"). GTC references the following record submissions: *Doing Business 2014: Indonesia* (submitted in GTC's SV Submission at Exhibit 11) and Petitioners' Case Brief.
[149] *See* Double Coin's Rebuttal Brief at 14-19. Double Coin cites to *Certain Frozen Fish Fillets from Vietnam:*

Department's Position: *Doing Business* specifies that the business exporting is "located in the periurban area of the economy's largest business city."[150] GTC placed complete evidence on the record of this case establishing the five periurban areas of Jakarta and showing the distance from each area to the port of Jakarta.[151] Following past case precedent, we continued to use an average of five distances from periurban areas of Jakarta to the port of Jakarta.[152] Thus, we made no change to truck freight and continued to calculate freight using a 65.08 kilometer average of distances from the periurban areas of Jakarta to the port of Jakarta.

Comment 10: Valuation of Electricity

Petitioners' Comments[153]

- Petitioners contend that the Department should not use electricity rates from the Indonesian utility PT PLN (Persero) ("PLN") as a SV, as information on record and various CVD determinations demonstrate that the PLN rates are heavily subsidized, and the Department must avoid using any prices which it has reason to believe or suspect may be dumped or subsidized.
- The Department should instead use either electricity prices on the record from Thailand or, in the alternative, PLN's cost of production for electricity in Indonesia.

Preliminary Results of AD Administrative Review for 2012-2013, 79 FR 40059 (July 11, 2014); *Fish Fillets/Vietnam 11-12* (April 7, 2014); *Shandong TTCA Biochemistry Co. v. United States*, 774 F. Supp. 2d 1317 (CIT 2011); *Gallant Ocean* (Fed. Cir. 2010); *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Final Rescission, in Part*, 77 FR 14495 (March 12, 2012); *Tires/PRC 10-11* (April 16, 2013); and *Tires/PRC 11-12 NSR Prelim* (March 5, 2013). Double Coin references the following record submissions: *Doing Business 2014: Indonesia* (submitted in GTC's SV Submission at Exhibit 11) and Petitioners' Case Brief.

[150] *See* GTC's SV Submission at Exhibit 11, *Doing Business 2014: Indonesia* at page 75.

[151] *See* GTC's SV Submission at Exhibit 11.

[152] *See, e.g.*, *MSG/PRC LTFV* and accompanying IDM at Comment 1 and *Fish Fillets/Vietnam 11-12* and accompanying IDM at Comment XIII.

[153] *See* Petitioners' Case Brief at 18-20. Petitioners cite to: Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988); *China Nat'l Mach. Imp. & Exp. Corp. v. United States*, 264 F. Supp. 2d 1229 (CIT 2003); *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 806 F. Supp. 1008 (CIT 1992); *Luoyang Bearing Corp. v. United States*, 347 F. Supp. 2d 1326 (CIT 2004); *Xanthan Gum From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 78 FR 2252 (January 10, 2013); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania*, 65 FR 39125 (June 23, 2000) ("*Pressure Pipe/Romania LTFV Final*"); *Polyvinyl Alcohol From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 27991 (May 15, 2006). Petitioners reference the following submissions to the record: Petitioners' submission entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off The-Road Tires from China (A–570–912): Petitioners' Additional Surrogate Value Comments," dated May 2, 2014 ("Petitioners' Additional SV Submission"); Preliminary SV Memo; PDM; and Petitioners' Pre-Prelim Comments.

Respondents' Comments[154,155]

- GTC and Double Coin rebut that the Department should continue to value electricity using the PLN rate, because in previous CVD cases the Department examined allegations of sales of electricity for less than adequate remuneration ("LTAR") in Indonesia, and found no benefit from the program.
- GTC avers that there is no evidence establishing that the rate charged by PLN is below its actual production cost. GTC suggests that, if the Department declines to use PLN's data, it could instead use the average electricity price charged to industrial customers in Indonesia published in the 2012 Energy Handbook.
- Double Coin further argues that the Thai electricity value does not constitute "best available information," as it is not specific to the surrogate country, Indonesia.

Department's Position: For these final results, we continued to use the PLN electricity prices that we used for the *Preliminary Results* to value respondents' consumption of electricity. First, we prefer to use the same country, where possible, to value all factors of production;[156] in this case, Indonesia is our primary surrogate country. Thus, if we can find an acceptable data source in Indonesia, we would prefer to use the Indonesian value. Second, we prefer to use prices actually paid by producers in the primary surrogate country.[157] Additionally, in countervailing duty cases where the Department examined allegations of sales of electricity for LTAR in Indonesia, the Department determined (as discussed below) that electricity in Indonesia does not provide a countervailable benefit; accordingly, we have no reason to disregard the prices on the record which are charged to industrial customers in Indonesia by PLN.

In the *Shrimp/Indonesia CVD Investigation*, the Department found that PLN charged uniform tariff rates to industrial users. We did not find the provision of electricity to be a countervailable

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[154] *See* GTC's Rebuttal Brief at 10-14. GTC cites to *Certain Frozen Warmwater Shrimp From Indonesia: Negative Preliminary Countervailing Duty Determination*, 78 FR 33349 (June 4, 2013) ("*Shrimp/Indonesia CVD Prelim*"), sustained in *Certain Frozen Warmwater Shrimp From the Republic of Indonesia: Final Negative Countervailing Duty Determination*, 78 FR 50383 (August 19, 2013) (collectively, "*Shrimp/Indonesia CVD Investigation"*); *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia*, 64 FR 73155 (December 29, 1999) ("*CTL Plate/Indonesia*"); *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 78 FR 55676 (September 11, 2013); *Preliminary Results* (October 10, 2014); and *Pressure Pipe/Romania LTFV Final* (June 23, 2000). GTC references the following record submissions: Double Coin's submission entitled, "Double Coin Holdings and China Manufacturers Alliance, LLC 's Surrogate Value Comments: Certain New Pneumatic Off-the-Road Tires from China," dated April 14, 2014 ("Double Coin's SV Comments"), containing the Indonesian Government's 2012 Handbook of Energy & Economic Statistics of Indonesia ("2012 Energy Handbook") at attachment SV-4; Petitioners' Additional SV Submission; and Petitioners' Case Brief.

[155] *See* Double Coin's Rebuttal Brief at 20-22. Double Coin cites to *Pressure Pipe/Romania LTFV Final* (June 23, 2000); *Shrimp/Indonesia CVD Prelim* (June 4, 2013); and *CTL Plate/Indonesia* (December 29, 1999). Double Coin references the following record submissions: Petitioners' Initial SV Comments; GTC's SV Submission; Petitioners' Additional SV Submission; Petitioners' Case Brief.

[156] *See, e.g., Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 4386 (January 22, 2013) at Comment 4, "the Department prefers to rely on a single surrogate country to value all factors when possible." *See also* 19 CFR 351.408(c)(2), "except for labor, … the Secretary normally will value all factors in a single surrogate country."

[157] *See, e.g., Iron Construction Castings From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 56 FR 2742 (January 24, 1991) at Comment 11.

subsidy in Indonesia.[158] Thus, consistent with the Department's findings in *Shrimp/Indonesia CVD Investigation* and the AD investigation of *Pressure Pipe/Romania LTFV Final*, we continue to find the PLN electricity data acceptable.[159] Therefore, we continued to use the PLN electricity prices to value electricity for these final results.

Comment 11: Container Weight Used in Ocean Freight and Brokerage and Handling Surrogate Value Calculations

- GTC argues that the Department should remedy the inconsistency between the SV calculations for ocean freight, domestic brokerage and handling ("B&H"), and domestic inland trucking. Specifically, GTC urges the Department to either use:
    - GTC's actual container weight for both B&H and ocean freight; or
    - The assumed weight of 10 tons for the B&H calculation and the quote-specific assumed weights from the Descartes quotes (*i.e.*, the ocean freight SV source) for the ocean freight SV calculation.[160]
- Petitioners rebut that the Department correctly measured movement expenses since the Department's calculations of ocean freight, domestic B&H, and truck freight expenses were based on different facts and, thus, calculated in different ways.[161]

Department's Position: The Department's clearly defined practice in calculating the B&H and domestic truck freight SVs from *Doing Business* is to use the 10-ton weight specified in the World Bank's survey methodology.[162] Thus, we have not changed the 10-ton denominator for the calculation of domestic truck freight and B&H.

For ocean freight, the Department preliminarily used an average of actual container weights from GTC and Double Coin to calculate company-specific shipment weights for valuation of ocean freight.[163] While the Descartes ocean freight quotes are issued on a per-container basis, the quotes also provide an assumed weight for each quoted shipment.[164] Therefore, because the quotes include a weight, we find the weights on the Descartes freight quotes to be more specific to the quotes than the average weights of respondents' own shipments. Thus, for these final results, we are using the ocean freight weights provided in the Descartes international ocean freight quotes, on a weighted-average basis, to derive the overall ocean freight surrogate value, rather than relying upon the average of respondent-specific container weights used for the *Preliminary Results*.[165]

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[158] *See Shrimp/Indonesia CVD Prelim* and accompanying decision memorandum at 20.
[159] *See Pressure Pipe/Romania LTFV Final* and accompanying IDM at Comment 7, citing to *CTL Plate/Indonesia* at 64 FR 73162.
[160] *See* GTC's Case Brief at 29-30. GTC cites to the following: *Pakfood Pub. Co. v. United States*, 724 F. Supp. 2d 1327 (CIT 2011) and *SKF* (Fed. Cir. 2001). GTC references the following submissions: GTC's SV Submission and the Preliminary SV Memo.
[161] *See* Petitioners Rebuttal at 29-30. Petitioners reference the following submissions: GTC's Case Brief; Petitioners' Case Brief; GTC's SV Submission; and the Preliminary SV Memo.
[162] *See, e.g., Certain Steel Threaded Rod From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71743 (December 3, 2014) and accompanying IDM at Comment 5. *See also* Petitioners' Initial SV Comments at Attachment 17.
[163] *See* Preliminary SV Memo at 15-16 and Attachment X.
[164] *See* GTC's SV Submission at Exhibit 8.
[165] *See* Final SV Memo at 2 and Attachments I, II, IV, and V.

Comment 12: Whether to Exclude Certain Ocean Freight Charges When Calculating a Surrogate Value for Ocean Freight

- GTC argues that the Department has double counted certain costs between domestic B&H and ocean freight (*e.g.*, documentation charges, traffic mitigation fees, AMS charges, clean truck fees, chassis usage charges, Shanghai port surcharges, international ship and port security charges, and ISD handling charges) and thus should exclude certain charges from the ocean freight SV calculation.[166]
- Petitioners rebut that the Department correctly determined that B&H charges did not overlap with ocean freight charges.[167]

Department's Position: Consistent with past Department precedent and record evidence, we did not exclude any charges from the Descartes ocean freight quotes, as they appear to be necessary for the shipment of freight and because they do not appear to be double counted (*i.e.*, they do not appear to have already been covered by the B&H surrogate value).

Doing Business states that its trading-across-borders methodology measures the "cost necessary to complete every official procedure for exporting and importing" a "standardized cargo of goods by sea transport," but not the "cost for sea transport" itself.[168] In addition to the surcharges enumerated by GTC, the Descartes freight quotes include numerous other surcharges (*e.g.*, peak season surcharge, bunker surcharge, Panama Canal transit surcharge).[169] The surcharges on the Descartes quotes do not appear to overlap with the B&H charges related to exporting, but simply appear to be additional fees imposed by the ocean freight company in order to transport the merchandise from the Chinese port of origination to the U.S. destination port. Moreover, GTC does not cite to any record evidence in support of its argument that the Descartes ocean freight surcharges it alleges should be covered by the B&H value from *Doing Business* are, in fact, included in those export costs. Furthermore, GTC does not cite to a single Department precedent supporting its contention. To the contrary, in *Stilbenic OBAs*, the Department "included certain additional charges (*i.e.*, fuel surcharges, destination delivery charges, and bill of lading charges) in the ocean freight calculation because these charges, in addition to the base ocean freight charge, are incurred by the surrogate freight forwarders and are not separately covered by the brokerage and handling surrogate value."[170] Thus, including these charges is both consistent with the Department's practice and with the record evidence in this case.

[166] *See* GTC's Case Brief at 31-32. GTC references the following submissions: Petitioners' Initial SV Comments, GTC's SV Submission, and the Preliminary SV Memo.
[167] *See* Petitioners Rebuttal at 30-31. Petitioners reference the following submissions: GTC's Case Brief; Petitioners' Case Brief; GTC's SV Submission; and the Preliminary SV Memo.
[168] *See* Petitioners' Initial SV Comments at Attachment 17.
[169] *See* GTC's SV Submission at Exhibit 8.
[170] *See Certain Stilbenic Optical Brightening Agents From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17436 (March 26, 2012) and accompanying IDM at Comment 4.

Comment 13: Whether to Deflate the Surrogate Value for GTC's Warehouse Costs

- For the *Preliminary Results*, the Department valued GTC's domestic warehousing expenses using a SV derived from an April 9, 2014 price quote. In accordance with its standard practice, the Department should deflate this value using the average producer price index ("PPI") for the POR of 116.02 compared with the PPI for April 2014.[171]
- No other interested party provided comment on this issue.

Department's Position: Though the record information from which this SV was derived shows that the relevant price quote was accessed on April 9, 2014, there is no indication that the quoted price was not in effect during the POR and no party provided a better source of data for the warehouse cost.[172] As such, we did not deflate this value for the final results.

Comment 14: Whether to Calculate Region-Specific U.S. Delivery Charges for GTC's U.S. Inland Freight Surrogate Value

- GTC notes that the Department's preliminary calculation of a U.S. inland freight SV accounted for different prices associated with delivery to East Coast or West Coast ports in the United States, but made no distinction based on the distance from the port to the customer for each shipment. GTC asserts that the Department should make this calculation more precise by computing the delivery charge from both the East Coast and West Coast for each of the four geographical regions used for the regional "targeted dumping" test.[173]
- No other interested party provided comment on this issue.

Department's Position: Since no party opposed this change in calculation, and because we have adequate information on the record to support and perform such a calculation, and because this calculation is more accurate and specific to the manner in which GTC conducts business, we calculated U.S. inland freight delivery charges for GTC that are specific to the port of import and delivery region for these final results.[174]

Comment 15: Surrogate Values for GTC's Tackifier Inputs

- GTC argues that certain of its tackifier inputs are phenolic resins and, as such, should be valued using GTA Indonesia import data for Harmonized Tariff Schedule ("HTS") 3909.40 (*i.e.*, TACKIFIER10, which is a standard phenolic resin, HTS 3909.40 covers "Phenolic Resins, Pr Fms") and HTS 3909.40.9000 (*i.e.*, TACKIFIER 08, 09, and 14, which are "other" phenolic resins, HTS 3909.40.90 covers "Other Phenolic Resins"). Further, GTC argues that TACKIFIER 18, 19, and 20, should be valued under HTS 3909.40.90 (*i.e.*, the "Other Phenolic resins"), which covers products more specific to these "other" resin inputs than the

[171] *See* GTC's Case Brief at 30-31. GTC references the following submissions: Petitioners' Initial SV Comments and the Preliminary SV Memo.
[172] *See* Petitioners' Initial SV Comments at Attachment 18.
[173] *See* GTC's Case Brief at 32-33 and Exhibit 4. GTC further references the Preliminary SV Memo.
[174] *See* Final SV Memo at 2 and Attachments I and IV.

phenolic resins covered in the 3909.40 category used to preliminarily value these tackifier inputs.[175]

- Petitioners rebut that the Department has reasonably valued GTC's TACKIFIER08, 09, 10 and 14 inputs using HTS 3506.99 ("Products Suitable For Use As Adhesives"). Furthermore, GTC has not demonstrated that TACKIFIER18, 19, and 20 belong to an "other" category rather than the broader six digit category that the Department used for the *Preliminary Results*.[176]

Department's Position: For proprietary reasons discussed in GTC's analysis memo, we continued to classify GTC's inputs of TACKIFIERs 08, 09, 10, and 14 under HTS 3506.99 ("Products Suitable For Use As Adhesives").[177]

For the *Preliminary Results*, TACKIFIERs 18, 19, and 20, were valued using the broad six-digit category of 3909.40 ("Phenolic Resins, Pr Fms"). However, record evidence shows that there are only two categories under Indonesian HTS code 3909.40: "Phenolic Resins in Moulding Compound" {*sic*} and "Other Phenolic Resins."[178] The descriptions provided by GTC for tackifiers 18, 19, and 20 demonstrate that they are phenolic resins, but do not show them as being in molding compound, so the "other" category is more specific to GTC's tackifiers (because there are only two detailed phenolic resin categories).[179] Thus, for the final results, we valued tackifiers 18, 19, and 20, using the more specific category 3909.40.9000 ("Other Phenolic Resins").

Comment 16: Freight Distance Applied to GTC's Inputs

- Petitioners argue that, for GTC's *Sigma* cap distance, the Department should use the same distance from port to factory that GTC provided for its market economy ("ME") inputs rather than the distance reported to the nearest port.[180]
- GTC rebuts that Petitioners' argument to revise GTC's *Sigma* freight cap is contrary to both record evidence and agency practice regarding the *Sigma* cap calculation. Moreover, GTC

[175] *See* GTC's Case Brief at 33-36. GTC cites *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010). GTC further references the Preliminary SV Memo, GTC's Rebuttal SV Submission, GTC's Second SV Submission, Petitioners' Initial SV Comments.
[176] *See* Petitioners' Rebuttal at 31-32. Petitioners reference GTC's Case Brief and the Preliminary SV Memo.
[177] *See* Memorandum titled "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Final Results Margin Calculation for Guizhou Tyre Co., Ltd." at 3.
[178] *See* GTC's Rebuttal SV Submission at Exhibit 5D.
[179] *See* GTC's Supplemental SCDQR at Exhibit SD-5.
[180] *See* Petitioners' Case Brief at 36-37. Petitioners cite to: *Sigma*, 117 F.3d 1401.; *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 *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Order on Bars and Wedges*, 68 FR 53347 (September 10, 2003). Petitioners reference: Memorandum entitled "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Guizhou Tyre Co., Ltd.," dated September 30, 2014 ("GTC's Preliminary Analysis Memo"); and GTC's SCDQR.

notes that Petitioners did not offer any precedent for their proposed revision to the *Sigma* cap methodology.[181]

Department's Position: The Department's practice when the surrogate value for the material is based on import prices is to use the shorter of the reported distance, or the distance from the nearest port to the producer to value the materials transportation in the surrogate country.[182]

For the *Preliminary Results*, we used GTC's reported distance from the factory to the closest commercial port (*i.e.*, the Port of Fengcheng, at 710 km) as the *Sigma* cap distance. GTC provided evidence suggesting that the Port of Fengcheng is a major commercial Chinese port; Petitioners have not provided any evidence to the contrary and did not dispute GTC's assertion.[183] The record also demonstrates that GTC's ME input purchases and finished good exports predominantly transit through a different port (or ports), which is (are) at a greater distance from GTC's factory.[184] On this basis, Petitioners suggest we should alter the Department's long established practice of capping import distances to the closest port and should instead use the distance to the port actually utilized by GTC during the POR for its ME imports and export sales. As we stated in the PDM, and in accordance with the Department's practice,[185] we:

> adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Indonesian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma*...[186]

Petitioners' suggestion is without precedent and contrary to long-standing Department practice following the Federal Circuit's holding in *Sigma*; thus, we made no changes to GTC's *Sigma* cap for the final results.

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[181] *See* GTC's Rebuttal Brief at 14-15. GTC cites to *Sigma*, 117 F.3d 1401 *and Sawblades/PRC LTFV Final* (May 22, 2006). GTC references the following record submissions: GTC's submission entitled, "GTC 2nd and 3rd Supplemental Section C&D Responses: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated July 14, 2014 ("GTC's 2nd and 3rd SSCDR") and Petitioners' Case Brief.

[182] *See Sigma*, 117 F.3d 1401. Because of the litigation from which this practice arose, this materials transportation value is sometimes referred to as the *Sigma* freight.

[183] *See* GTC's 2nd and 3rd SSCDR at Exhibit S2-4.

[184] *See* GTC's SCDQR at Exhibit D-15 showing ME input purchases and the port of import. *See also* GTC's 2nd and 3rd SSCDR at 5 and 7, where GTC states its warehouse address in Guangzhou and the distances from the warehouse to the actual ports of export. *See also*, GTC's U.S. Sales Database.

[185] *See, e.g.*, *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 3779 (January 23, 2014) and accompanying decision memorandum, unchanged in *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).

[186] *See* PDM at 25.

Comment 17: Calculation of Double Coin's Truck Freight and Distance

Petitioners' Comments[187]

- The record is unclear whether Double Coin reported supplier distances at the *Sigma* cap, as requested by the Department; therefore, the Department should set the supplier distance to the *Sigma* cap for all NME inputs.
- The Department used the reported simple average of the distance to port for each Double Coin factory to calculate the distance applied for MEP inputs. However, because unique CONNUMs are produced at each facility and the factory-specific distances to port are available, the Department should use the factory-specific distances.
- Double Coin first reported that the Yangshan port was closest to both production facilities but later calculated the *Sigma* cap distance using the average from each factory to two Shanghai ports (Yangshan and Waigaoqiao, of which the latter is closest to each factory). However, Double Coin never stated that merchandise was actually shipped out of Waigaoqiao (or both Yangshan and Waigaoqiao) and record information suggests that Yangshan is the port predominantly used for international container shipping. Therefore, the Department should recalculate the domestic inland freight calculations and *Sigma* distances using only the Waigaoqiao distance.

Double Coin's Rebuttal[188]

- Double Coin complied with the Department's specific request to cap the individual distances for transactions with traders in the underlying supplier worksheets at the *Sigma* distance rather than the distance to the trader.
- The Department used the factory-specific capped distance in its calculation of normal value and domestic inland freight, precisely as Petitioners request.
- The Department verified that Double Coin exported subject merchandise out of both ports.

[187] *See* Petitioners' Case Brief at 23-28. Petitioners cite to: *Sigma*, 117 F.3d 1401; and *Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442 (Fed. Cir. 1994). Petitioners also cite to their own freight calculations provided at Exhibit 1 to the Case Brief. Petitioners reference: Department Letter entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Revised FOP and U.S. Sales Databases," dated September 16, 2014 ("Request for Revised Databases"); Double Coin's submission entitled, "Revised US and FOP Databases Certain New Pneumatic Off-the-Road Tires from China," dated September 23, 2014 ("Double Coin's Post-Verification Corrections"); the Department Letter to Double Coin entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Questionnaire" dated December 16, 2013 ("Initial Questionnaire"); Letter from Petitioners entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Rebuttal Factual Information and Comments on Double Coin's Supplemental Section C and D Questionnaire Responses," dated July 14, 2014 ("Petitioners' July 14 Rebuttal") at Attachment 2 ("Comparing Shanghai's Major Shipping Ports," by Jeremy Chapman, dated March 22, 2011 ("Shanghai Shipping Ports")); Letter from Double Coin entitled, "Section A Response of Double Coin Holdings and China Manufacturers Alliance, LLC," dated January 22, 2014 ("Double Coin SAQR"); Double Coin's Verification Report; Double Coin's 2nd Supplemental ACD Response; Double Coin's Preliminary Analysis Memo; Double Coin's SCQR; and Double Coin's Supplemental C&D Response.

[188] *See* Double Coin's Rebuttal Brief at 22-25. Double Coin cites to *Sigma*, 117 F.3d 1401 and references the following submissions: Double Coin's Verification Report; the *Shanghai Shipping Ports* article in Petitioners' July 14 Rebuttal; Double Coin's Post-Verification Corrections; and Petitioners' Case Brief.

Department's Position: Petitioners note that the record is unclear as to whether Double Coin re-reported supplier distances as instructed in the Department's post-verification Request for Revised Databases. We note that Double Coin certified that it made all requested corrections in its Post-Verification Corrections submission and further confirmed that it capped the underlying line item distances at the distance to the port for the trading companies (rather than the distance to the trading companies), as requested. Though Double Coin's resubmission did not include the underlying worksheets demonstrating the change for every supplier (nor was such information requested), our review of the changes to the overall distances reported for each input between the most recent factors of production ("FOP") database and the preceding database demonstrate that the requested changes were properly reported. As such, we do not agree with Petitioners that the record is sufficiently unclear as to provide compelling reason to further alter the calculation.

Furthermore, as Double Coin points out, our margin calculation used the factory-specific capped distance for each NME-source input, and did not use an average distance of the two factories to calculate freight costs as alleged by Petitioners. As such, we continue to use the factory-specific capped distance where applicable in our NV calculation and for the domestic inland freight distance.

With respect to the specific ports used to calculate the distance from factory to port, Double Coin asserts that the Department's statement in the verification report that "as part of our review of the sales trace packages, we checked the various adjustments and discounts, movement expenses, and other expenses, and we noted no discrepancies from what Double Coin reported" makes "crystal clear" that "the Department has completely verified the distances reported." Double Coin asserts that "{t}hus… the Department verified that Double Coin exported the subject merchandise out of both Yangshan and Waigaoqiao Ports during the POR."[189] As an initial matter, we disagree with Double Coin's characterization of our verification findings. In this case, the Department reviewed with company officials and verified that the distances between the production factories and Shanghai ports was consistent with the distances reported. Our report noted no discrepancies with respect to reported movement expenses in general, including these factory distances. However, "{v}erification is a spot check and is not intended to be an exhaustive examination of the respondent's business. (Commerce) has considerable latitude in picking and choosing which items it will examine in detail,"[190] and we did not specifically spot check that "Double Coin exported the subject merchandise out of both Yangshan and Waigaoqiao Ports during the POR", nor did we make any statement to that effect.[191]

Regardless of our issue with Double Coin's characterization of our findings, as noted above, Double Coin reported and we verified the distance to two Shanghai ports. While Petitioners cite to information suggesting that the Yangshan port is becoming (or is already) the primary port of export for international container cargo shipments and that the Waigaoqio port is increasingly

[189] *See* Double Coin's Verification Report at 24 and Rebuttal Brief at 25.
[190] *See F.lli De Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000); *see also NTN Bearing Corp. of Am. v. United States*, 186 F. Supp. 2d 1257, 1296 (CIT 2002).
[191] Indeed, a review of shipment-related documentation identifying port of export (*e.g.*, invoices, bills of lading, PRC and U.S. customs documentation, *etc.*) shows that the port of export is generally listed only as "Shanghai," and does not identify the specific facility. *See, e.g.*, the sales trace packages in Double Coin's Verification Report at PRC VE-5 and US VE-10.

utilized for intra-Asian shipping,[192] there is simply no evidence on the record to confirm that all shipments were shipped from the Yangshan port or that subject merchandise could not have been shipped from the Waigaoqiao port. As Shanghai contains two international container ports, absent affirmative information that one is the exclusive port of exportation, we find no basis for changing the current calculation.

Comment 18: Whether Truck Freight Costs are Over-Counted

- Double Coin asserts that the Department inadvertently multiplied the truck freight rate SV by the distance and then by the consumption of raw materials, resulting in an exponential over-counting of freight costs.[193]
- Petitioners point out that Double Coin's argument presumes that the freight cost and the SV are first summed and then that sum is multiplied by the amount of the material (which would provide an incorrect result, if true), but the SAS program calculates this correctly and no change is necessary.[194]

Department's Position: Upon review, we confirm that the equation used in the margin calculation did not actually contain the mathematical errors noted by Double Coin and the freight variables are properly calculated on a per tire basis in the program. While the calculation would indeed over-count freight if the equations operated as argued by Double Coin, Petitioners are correct that this is not the way they actually function in the program. As such, no change is necessary for these final results.[195]

Comment 19: Surrogate Value for Double Coin's Polyester Cord Inputs

- Double Coin contends that the Department inadvertently utilized an incorrect HTS code for valuing Double Coin's consumption of polyester cord. Specifically, Double Coin suggested price data for Indonesian imports of HTS subcategory 5902.20 ("Tire Cord Fabric, Of High Tenacity Yarns, Of Nylon Or Other Polyamides, Polyesters Or Viscose Rayon: Of Polyesters") but the Department instead valued the input using price data for Indonesian imports of HTS subcategory 5509.22 ("Yarn, Not Sewing Thread, of Synthetic Staple Fiber Not For Retail Sale Greater Than 85% Weight Of Polyester Staple Fibers Multiple (folded) Or Cabled Yarn"), but offered no explanation for why it deviated from the suggested SV in the Preliminary SV Memo.[196]
- No other interested party provided comment on this issue.

Department's Position: For the final results, we valued Double Coin's polyester cord input using HTS 5902.20, rather than HTS 5509.22, which was used for the *Preliminary Results*. The description of products included in HTS 5902.20 specifies polyester "tire cord fabric… {made of} polyesters," while HTS 5509.22 pertains to "Yarn, Not Sewing Thread, of Synthetic Staple

[192] *See* Comparing Shanghai's Major Shipping Ports, in Petitioners' July 14 Rebuttal at Attachment 2.
[193] *See* Double Coin's Case Brief at 69-72. Double Coin references the Double Coin Preliminary Analysis Memo.
[194] *See* Petitioners' Rebuttal Brief at 18-19. Petitioners reference Double Coin's Case Brief.
[195] *See* Double Coin's Final Analysis Memo at Attachment II (*i.e.*, Margin Program Output).
[196] *See* Double Coin's Case Brief at 72-73. Double Coin references the Preliminary SV Memo and Double Coin's SV Comments.

Fiber Not For Retail Sale Greater Than 85% Weight Of Polyester Staple Fibers Multiple (folded) Or Cabled Yarn." Therefore, as the description of HTS 5902.20 appears to be specific to Double Coin's polyester cord input, was requested for use as the best available category by Double Coin, and there is no contradictory evidence on the record, we are valuing Double Coin's tire cord inputs using Indonesian price data for imports of HTS 5902.20 for the final results.[197]

Comment 20: Surrogate Values for Double Coin's Cinder and Calcium Oxide By-products

Double Coin's Comments[198]

- Double Coin argues that, without explanation, the Department valued cinder and calcium oxide byproducts with a coal SV rather than the byproduct-specific price data on the record.
- Double Coin submits that, if the Department finds that an offset cannot exceed input price:
  - It strongly disagrees with this practice, as it is tantamount to cherry-picking data; and
  - Should the Department continue to incorrectly cap the byproduct offset, because both bituminous and anthracite coal were reported as used in production, the cap should reflect the respective values of the each type of coal consumed, rather than just capping the offset at the value of bituminous coal.

Petitioner's Comments[199]

- Petitioners note that the Department has repeatedly recognized the "unreasonable result" of assigning more value to a waste product than to the input material from which the waste is produced and, thus, should continue to apply a SV to Double Coin's coal waste products that is no higher than the lowest SV for its coal inputs.

Department's Position: Double Coin submits that the Department's use of price data for Indonesian imports of HTS 2701.12 ("Bituminous Coal, Not Agglomerated", *i.e.*, the SV used to properly value bituminous coal energy inputs) to value Double Coin's reported offset quantities of cinder and calcium oxide byproducts sold during the POR for the *Preliminary Results* must have been a ministerial error, since Double Coin instead reported Indonesian price data for imports of HTS 2620 ("Ash And Residues (Except From Iron Or Steel Manufacture) Containing Arsenic, Metals Or Their Compounds") as the most appropriate information from which to value these byproducts, and the Department did not further explain why it declined to utilize this by-product-specific data. At the outset, we note that the use of the HTS 2701.12 SV to value cinder and calcium oxide by-products was not in error but, rather, consistent with our practice (discussed below) that the surrogate used to value a by-product offset will be capped at the value of the surrogate used to value the input from which that by-product offset was produced if no more appropriate value can be found. However, we acknowledge that we neglected to discuss our reasoning our Preliminary SV Memo.

[197] *See* Final Surrogate Value Memo.
[198] *See* Double Coin's Case Brief at 72-73. Double Coin references Double Coin's SV Comments and the Preliminary SV Memo.
[199] *See* Petitioners' Rebuttal Brief at 19-20. Petitioners cite to *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). Petitioners reference: Double Coin's SV Comments; Preliminary SV Memo; and Double Coin's Case Brief.

Double Coin reported that it sells the ash and residue by-products (*i.e.*, coal cinder and calcium oxide) resulting from its consumption of coal, which were used as an energy input in the production of subject merchandise.[200] Double Coin consumes two types of coal in the production of subject merchandise, bituminous (valued using HTS 2701.12 import data, with an average unit value ("AUV") of $0.15 USD/Kg) and anthracite (valued using HTS 2701.11 ("Anthracite Coal, Not Agglomerated") with an AUV $0.43 USD/Kg).[201] On the other hand, the AUV of Double Coin suggested data to value the by-product coal waste (*i.e.*, Indonesian price data for imports under the four-digit HTS 2620 category including any type of non-ferrous residue containing metals) is $37.77 USD/Kg: over 250 times greater than the price selected to value the bituminous coal inputs from which this by-product is derived (and over 85 times the value of the SV for anthracite coal).

We find it unreasonable to assign a higher value to a waste product than to its input product. Double Coin asserts that there is no logic to using an HTS code of the raw material as the surrogate value for the byproduct of that raw material, as the Department verified that the by-products in question are by-products of using coal, not coal itself, and that this practice is tantamount to cherry-picking the surrogate data. Despite Double Coin's objections, the Department has a long-standing practice of rejecting or capping the by-product SV in instances where the by-product SV exceeds the SV of the product from which it was derived.[202] Indeed, recent case precedent supports the practice of rejecting and/or capping a scrap SV when it is of a higher price than the SV for the input which created the scrap byproduct in question.[203]

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[200] *See* Double Coin's SCDQR at Exhibit D-8.

[201] Both Petitioners and Double Coin accept that these are the proper input-specific HTS subcategories from which to value the coal inputs and neither party has provided objection as to the suitability of the Indonesian AUVs for valuing Double Coin's coal FOPs in this review. *See* Double Coin's SV Comments at Attachment I and Petitioners' Initial SV Submission at 10.

[202] *See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) ("*Steel Nails/PRC*") at Comment 12 ("In the Final Determination Pursuant To The Remand Order From The U.S. Court Of International Trade In Paslode Division of Illinois Tool Works, Inc. v. United States, Ct. No. 9712–02161 (Jan. 15, 1999), the Department stated that "It is clear that our steel scrap value selection produced an unreasonable result – a value for steel wire rod scrap (0.8390 USD/kg) that exceeded the price for steel wire rod (0.3119 USD/kg) – one that cannot be explained by any notes or data..." We find that in this case, the facts match this situation closely in that one of the suggested HTS categories for the valuation of steel scrap (7204.41.00) has a value greater than the value the Department determined in Comment 10 above. While we acknowledge that HTS category 7204.41.00 includes an explicit reference to "shavings" and that "shavings" were clearly identified as among the types of scrap generated by respondents, the HTS description is is {sic} not the only relevant factor for the Department to consider in valuing steel scrap. As discussed above, reliance on this value will produce an unreasonable result. Therefore, we are using only HTS category 7204.49.00 to value steel scrap.")

[203] *See, e.g., MSG/PRC LTFV* (September 29, 2014) at Comment 11 ("A by-product by definition is less valuable than the input from which it is derived. Where there is no evidence that the by-product is a value-added by-product, assigning a by-product a value that is higher than the value of the input from which it is derived is unreasonable. In this investigation, the quantity of the by-product reported exceeds the quantity of the primary input consumed in the production of that by-product. Thus the extended value of the by-product exceeds the extended value of the primary input. Therefore, in the instant investigation, the Department finds it appropriate and reasonable to cap the specific by-product quantity at the specific FOP input amount."); *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (Tuesday, October 18, 2011) ("*MLWF/PRC*") at Comment 24 ("For purposes of this final determination, the Department has valued Layo Wood's byproducts using a simple average of the surrogate values for Layo Wood's wood veneer and wood core inputs… As explained in *Steel Nails* and argued by Petitioner, the Department has found in past cases that it may

Accordingly, we capped the value of the SV used to value coal by-products to the value of the coal input SVs for these final results, as in the *Preliminary Results*, as Double Coin provides no compelling argument to depart from this established practice. However, Double Coin was correct to note that *Preliminary Results* margin calculation capped these SVs only to the value of the bituminous coal SV, though the waste by-products were produced by the consumption of both bituminous and anthracite coal during the POR. Accordingly, for the final results, we used price data for Indonesian imports of merchandise classified under both HTS subcategory 2701.12 and 2701.11 to create a single by-product cap SV (apportioned based on reported consumption of each type of coal input) to value Double Coin's coal waste offset.[204]

Comment 21: Calculation of Double Coin's Warranty Costs

- Petitioners note that the Department's margin program is set up to reduce CEP U.S. prices by reported warranty expenses, in accordance with section 772(d)(1)(B). However, because Double Coin reported warranty expenses as a negative number, the calculation improperly added any such reported expenses to U.S. price. Petitioners request the Department correct this inadvertent error for the final results.[205]
- No other interested party provided comment on this issue.

Department's Position: As noted by Petitioners, the *Preliminary Results* margin program is correctly set up to reduce CEP U.S. prices by reported warranty expenses. However, because Double Coin reported warranty expenses as a negative number,[206] the calculation of the sum of all CEP selling expenses added a negative number, resulting in the improper subtraction of reported U.S. direct selling expenses (of which the negative warranty expenses are the only

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disregard a surrogate value when it is clear that the selection of that surrogate value would yield an unreasonable result. The facts of this case closely match those of *Steel Nails*, in that the AUV of Philippine HTS 4401.30 {*i.e.*, the scrap by–product} would be higher than the surrogate values used for Layo Wood's log, veneer and core inputs {*i.e.*, the inputs from which the scrap by–product is produced}. All parties, including the Petitioner, acknowledge that HTS 4401.30 offers the most specific description of Layo Wood's byproducts. While we agree that the HTS description provided by Philippine HTS 4401.30 includes the terms "sawdust" and "scrap," the HTS description is not the only relevant factor for the Department to consider. In this case, as was the case in Steel Nails, we find that the valuation of a scrap byproduct with a surrogate value higher than the substantive inputs into that scrap product would produce an unreasonable result not explained by the record. Consequently, we have valued Layo Wood's byproducts using a simple average of the surrogate values for Layo Wood's wood veneer and wood core inputs." *See also, Fish Fillets/Vietnam 11–12* (July 2, 2013) at comment VI.B, stating that the Department finds it unreasonable that the surrogate value for fish oil byproducts (derived from whole fish) would be higher than their main input (*i.e.*, whole fish). Whereas the "unreasonable" SV was still used to value fish oil, because it was input specific, the fish oil SV was capped at the price of the SV for the whole fish input product. *See also* C*ertain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012) (*Fish Fillets/Vietnam 10–11*) at Comment II.B.3, where the Department capped broken fillet by-products at the value for whole live fish because broken fillets were not a value-added byproduct.

[204] *See* Final Surrogate Value Memo for more information regarding the weighted-average calculation of this SV cap.

[205] *See* Petitioners' Case Brief at 20-21. Petitioners cite to: section 772(d)(1)(B) of the Act. Petitioners reference Double Coin's Preliminary Analysis Memo and Double Coin's SCDQR.

[206] *See* Double Coin's SCQR at 42. *See also,* Double Coin's Section C sales database.

component) from total CEP selling expenses.[207] Accordingly, we corrected this error by subtracting the negative U.S. direct selling expenses from the calculation of CEP selling expenses (*i.e.*, subtracting a negative value, resulting in the proper addition of warranty expenses to the sum of all CEP selling expenses).[208]

Comment 22: Conversion of the Truck Freight Surrogate Value Applied to Double Coin's Coal Consumption

- Petitioners note that the Department mistakenly applied a per kilogram ("Kg") truck freight rate to determine freight for per metric ton ("MT") coal values; thus, the freight value calculated for the transport of coal to Double Coin's factories is 1000 times lower than it should be. Accordingly, the Department should also adjust the per-Kg coal freight SV to a per-MT unit of measure, consistent with the per-MT manner in which Double Coin reported coal FOPs.[209]
- No other interested party provided comment on this issue.

Department's Position: Whereas Double Coin reported its coal consumption on a per MT basis (which we correctly valued using a SV reported on a per-MT unit of measure), we inadvertently applied a per-Kg per-Km SV in valuing the truck freight costs applicable this factor of production in the *Preliminary Results*. Accordingly, for the final results, we corrected this conversion error to report coal truck freight on a per-MT per-Km basis.[210]

Comment 23: Calculation of Credit Costs for Double Coin's Drop-Shipped Sales

- Petitioners point out that, for all sales, Double Coin calculated the number of days for which credit was extended by subtracting the reported invoice date by the reported payment date. However, for drop-shipped sales, because CMA does not invoice the customer until the customer receives delivery, the date of sale reported is different from the invoice date. Accordingly, the Department should recalculate credit expenses for drop-shipped sales by using the reported date of sale rather than the invoice date.[211]
- No other interested party provided comment on this issue.

Department's Position: For the *Preliminary Results*, as a result of the manner in which Double Coin reported credit expenses, the number of days for which credit was extended for Double

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[207] As these total summed CEP expenses are then deducted from the gross unit price, the ultimate effect was to improperly add warranty costs to U.S. price.

[208] *See* Double Coin's Final Analysis Memo (and Program Log at Attachment I thereto) for further details on this change.

[209] *See* Petitioners' Case Brief at 21-22. Petitioners reference Double Coin's Verification Report, Double Coin's Preliminary Analysis Memo, and the Preliminary SV Memo.

[210] *See* Double Coin's Final Analysis Memo (and Program Log at Attachment I thereto) for further details on this change.

[211] *See* Petitioners' Case Brief at 28-29. Petitioners cite to *Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Final Results of Antidumping Duty Administrative Review*, 73 FR 31961 (June 5, 2008) ("*HRS/India*") and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 70 FR 12648 (March 15, 2005). Petitioners reference: Double Coin's SAQR, Double Coin's 2nd Supplemental ACD Response; Double Coin's SCQR; and Double Coin's Supplemental C&D Response.

Coin was calculated by subtracting the reported invoice date by the reported payment date, as is the standard practice when the invoice date is reported as the date of sale (as it is in the instant case for Double Coin's sales of merchandise from its U.S. warehouses). However, Petitioners correctly note that, for Double Coin's drop-shipped sales, the date of sale reported is different from the invoice date because CMA does not invoice the customer until the customer receives delivery.[212] Accordingly, to calculate the most accurate margin possible for the final results, we recalculated credit expenses for drop-shipped sales using the reported date of sale rather than the invoice date, consistent with, for example, *HRS/India* (June 5, 2008).[213]

Comment 24: Calculation of Inventory Carrying Costs for Double Coin's Warehouse Sales

Petitioners' Comments[214]

- An analysis of the inventory carrying cost ("ICC") information reported by Double Coin shows that the ICC methodology used by Double Coin's results in an average of 13.5 days in inventory for each tire sold.
- Petitioners assert that it is "unclear" why Double Coin did not employ the "typical" methodology employed by respondents that do not track inventory-in (*i.e.*, computing a ratio of the average inventory value during the POR to the total sales during the POR and then applying that ratio to the number of days in a year), but that – when employing this "typical" methodology – the average time in inventory is 290.6 days. Record evidence supports the use of this latter figure, and Petitioners urge the Department to recalculate ICC using this average 290.6 days in inventory figure for the final results.

Double Coin's Comments[215]

- Petitioners' claims run contrary to verified information on the record which demonstrates that products were sold from inventory more quickly than they were being replaced; as such, Double Coin's methodology is acceptable and appropriate.
- Double Coin notes that the calculation espoused by Petitioners (and resulting 290.6 average days in inventory figure) is incorrectly based on total sales information of both subject and non-subject tires. However, in applying Petitioners' methodology only to the movement of subject merchandise (*i.e.*, a negative monthly balance), results in negative average costs and suggests the existing calculation may, in fact, overstate ICCs.

Department's Position: Because CMA does not track the movement of individual tires into its warehouse, the inventory carrying cost calculation must necessarily rely on an estimate of average days in inventory. Accordingly, the Department must assess the reasonableness of Double Coin's estimate and whether Petitioners' suggested alternative is a more accurate or otherwise suitable estimate of average days in inventory.

[212] *See* Double Coin's Supplemental C&D Response at 16-17 and 39-40.
[213] *See* Double Coin's Final Analysis Memo (and Program Log at Attachment I thereto) for further details on this change.
[214] *See* Petitioners' Case Brief at 30-31. Petitioners cite to their own analysis of the inventory carrying cost calculation provided at Exhibit 2 of the Case Brief. Petitioners reference: Double Coin's Verification Report and Double Coin's SCQR.
[215] *See* Double Coin's Rebuttal Brief at 25-27. Double Coin references the following submissions: Double Coin's Verification Report and Petitioners' Case Brief.

As noted above and, in the verification report, CMA does not track individual tires to a specific shipment into their warehouses, and the accounting for warehouse inventory only tracks the quantity of a given product in and out of inventory.[216] Because they do not know when the first shipment of a tire that has gone out for sale came in, Double Coin utilized a last-in-first-out ("LIFO") method to estimate average days in inventory for reporting its inventory carrying costs because company officials know exactly when a tire went out for sale and exactly when the last instance of that type of tire came in to the warehouse.[217] As support for this method, CMA provided and Department officials reviewed documentation demonstrating that, for certain models of their larger selling tires, the inventory is moving out of inventory at a quicker pace than it is replaced.[218] As noted in our verification report and emphasized in Double Coin's rebuttal brief, our discussion with CMA officials and review of relevant documentation comported with information submitted to the record.[219]

Therefore, we previously found that the methodology used by Double Coin to determine average days in inventory is acceptable and verified that the relevant information was properly reported. Petitioners cite to no information and provide no reasoning as to why this methodology is unusable or unreliable. As such, we continue to find Double Coin's reported inventory carrying costs, based on CMA's LIFO method of estimating average days in inventory, to be acceptable and appropriate for use in these final results.

Petitioners request that the Department instead compute a ratio of the average inventory value during the POR to the total sales during the POR and then apply that ratio to the number of days in a year, arguing that this is the methodology typically employed by respondents that do not track inventory on a product specific basis. Petitioners further argue that record evidence supports the use of this latter figure, and that this methodology is a more accurate measure of days in inventory. First, though Petitioners claim that their suggested methodology is a more typical calculation, they cite to no precedent to support this claim. Furthermore, Petitioners reference no actual record evidence that supports the use of their proposed calculation, except to cite to a single note from CMA's financial statements that reference how inventory is valued for financial reporting purposes but provides no discussion of or insight into the calculation of days in inventory. Finally, aside from noting that Double Coin's methodology results in an average of 13.5 days in inventory and their own methodology results in an average of 290.6 days (with the implication that the large difference between these numbers, alone, represents *prima facie* evidence of the superiority of the latter figure), Petitioners provide no evidence or argument to support the contention that their calculation is more accurate or otherwise representative of Double Coin's commercial reality. As an initial matter, we find this argument insufficient to compel us to change the calculation. Moreover, as noted by Double Coin, this calculation is based on total sales and inventory values for all products both subject and non-subject. Therefore we do not find Petitioners' non-OTR-tire-specific calculation to be a more accurate estimation of the average days in inventory for subject merchandise than the calculation provided by Double Coin and used in the *Preliminary Results* (based on the LIFO movement of only subject OTR tires), and did not alter the ICC calculation for these final results.

[216] *See* Double Coin's Verification Report at 25-26 and US-VE 11.
[217] *Id*.
[218] *Id*. at US-VE 11.
[219] *Id*. at 26.

Comment 25: Differential Price Calculation

Petitioners' Comments[220]

- The preliminary margin identified that over 23 percent of Double Coin's sales were price differentiated based on the quarterly comparison of prices. However, a monthly comparison of prices increases the incidence of targeting to over 33 percent.
- The Department has historically relied upon domestic interested parties for the identification of targeted customers and time periods. Recently, in *Shrimp/Thailand 11-12*, the Department modified time periods used for this analysis in response to comments from the domestic interested parties. Accordingly, the Department should use month of sale as the measure of price differentiation for the final results.

Double Coin's Comments[221]

- Double Coin notes the Department's selected a quarterly basis for price analysis as a neutral and fair standard for evaluating differential pricing. Absent a specific reason to change, the Department should refrain from departing from this reasonable standard.
- Petitioners provide no specific justification, based on market knowledge or otherwise, for switching the analysis from quarters to months. Nor do they explain why this change is necessary for an analysis of Double Coin's sales, but not requested for other respondents.
- Third, even under monthly analysis, the percentage passing the Cohen's d test remains low and does not justify departure from average-to-average comparisons.

Department's Position: As noted by Petitioners, historically, the Department required an allegation of targeted dumping prior to employing a differential pricing analysis and looked to domestic interested parties as a starting point for information on the appropriate parameters

[220] *See* Petitioners' Case Brief at 31-35. Petitioners cite: *Differential Pricing Analysis: Request for Comments*, 79 FR 26720 (May 9, 2014) ("*Differential Pricing Comment Request*"); *Strip From the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 29700 (May 21, 2013) ("*PET Film/ UAE 10-11*"); *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008); *Certain Frozen Warmwater Shrimp From Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of Order (in Part); 2011-2012*, 78 FR 42497 (July 16, 2013) ("*Shrimp/Thailand 11-12*"); *Polyethylene Terephthalate Film, Sheet, and Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea*, 77 FR 75988 (December 26, 2012); *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422 (March 26, 2012) ("*Refrigerators/Mexico*"); *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012); *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008); *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008); *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008); *Antidumping Duties; Countervailing Duties*, 62 FR 27295 (May 19, 1997); and their own differential pricing analysis provided at Exhibit 3 to the Case Brief. Petitioners reference Double Coin's Preliminary Analysis Memo.

[221] *See* Double Coin's Rebuttal Brief at 28-30. Double Coin cites to the *Differential Pricing Comment Request* (May 9, 2014) and references the following submissions: PDM and Petitioners' Case Brief.

examined in the resulting analysis.[222] Indeed, the Department cited the domestic industry's product expertise and intimate market knowledge as the basis for the deference given to said parties in establishing the analytical criterion on a case to case basis (*e.g.*, the effects of specific time periods on pricing in the U.S. market).[223] Accordingly, in order to properly focus its analysis in past cases where targeting was alleged, the Department would modify the time periods it examines for targeted dumping based on a domestic party's allegations.[224]

More recently, however, the Department adopted a standard price whereby a differentiation analysis is conducted automatically in each margin program to evaluate the incidence and prevalence of targeted dumping.[225] In adopting this regular methodology, the Department established quarterly time periods as the baseline standards for temporal analysis.[226] Additionally, the Department stated that in the context of ongoing and future proceedings, parties to the particular proceeding will have an opportunity to provide comments that are relevant to the possible use of an alternative comparison method in that proceeding.[227]

We find, however, that, Petitioners provide no concerns with respect to the standard quarterly analysis and cite to no evidence supporting the use of a monthly analysis. Indeed, the only reasoning underlying Petitioners' request appears to be that it would increase the incidence of differential pricing for Double Coin. Petitioners, however, do not request the Department to make this change for the other respondent examined in this review, where a monthly analysis would, presumably, have little effect on the incidence of differential pricing. We find this results-based argument insufficient and, in fact, contrary to the principles underlying the Department's historical deference to domestic parties' market knowledge in cases involving price targeting.

As further support for their request, Petitioners note that in the recent *Shrimp/Thailand 11-12* (July 16, 2013) case, the Department had indeed changed the periods it examined for the final results in a review when a domestic party alleged that different periods resulted in a sufficient showing of a pattern of prices. First, we note that this *Shrimp/Thailand 11-12* (July 16, 2013) case was decided prior to the adoption of the new differential pricing methodology pursuant to the *Differential Pricing Comment Request* (May 9, 2014). Second, while Petitioners are correct that the Department indeed agreed with the domestic party's request to modify the time periods for analysis (and, as in this case, did not cite any specific market knowledge or expertise), the Department's determination to modify the time periods in *Shrimp/Thailand 11-12* (July 16, 2013) simply reflected the Department's agreement with the petitioner that the monthly analysis of pricing employed in the preliminary results was inconsistent with the quarterly analysis initially requested by Petitioners under the former methodology, and thus found the requested quarterly basis to be the appropriate standard for the final results. As such, rather than exemplifying the extent of the deference given to domestic parties by the Department with respect to requests involving differential pricing, the *Shrimp/Thailand 11-12* (July 16, 2013) case

[222] *See, e.g.*, *PET Film/UAE 10-11* (May 21, 2013) and accompanying IDM at 2-4.
[223] *See Antidumping Duties; Countervailing Duties*, 62 FR 27295 (May 19, 1997)
[224] *See, e.g.*, *Refrigerators/Mexico* (March 26, 2012) and accompanying IDM at Comment 16.
[225] *See Differential Pricing Comment Request* (May 9, 2014).
[226] *Id.*, 79 FR at 26720 (May 9, 2014) ("Time periods are defined by the quarter within the period of investigation or administrative review based upon the reported date of sale.").
[227] *Id.*, 79 FR at 26722 (May 9, 2014).

represents a standard correction of an inadvertent error. Further, in changing the standard from a monthly analysis back to a quarterly one, *Shrimp/Thailand 11-12* (July 16, 2013) demonstrates exactly the opposite fact pattern and result than is advocated by Petitioners in the instant case.

As noted above, Petitioners provide no justification as to why a monthly analysis would be superior to existing analysis, based on market expertise or relevant knowledge otherwise, aside from the simple fact that it would increase the incidence of Double Coin's targeted sales above the minimum threshold. We find this insufficient reasoning to deviate from the standard quarterly analysis, and continue to employ the quarterly analysis for these final results. Accordingly, the differential pricing analysis continues to not confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and, therefore, we continue to use the average-to-average ("A-A") method to calculate the weighted-average dumping margin for Double Coin's reported sales.[228]

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review and the final weighted-average dumping margins in the *Federal Register*.

Agree ✓ Disagree _____

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

April 8, 2015

Date

[228] *See* Double Coin's Final Analysis Memo at Attachment II.