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June 2, 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 the Administrative Review
of the Antidumping Duty Order on Diamond Sawblades and Parts
Thereof from the People's Republic of China

Summary

We analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC) covering the period November 1, 2012, through October 31, 2013. As a result of our analysis, we made changes in the margin calculations. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is a complete list of the issues for which we have received comments and rebuttal comments from the interested parties:

1. Separate Rate
 - a. ATM Single Entity – Separate Rate Status
 - b. ATM Single Entity – Cash Deposit Rate
 - c. ATM Single Entity – Whether AFA Is Appropriate
 - d. ATM Single Entity – Presumption of Government Control
 - e. Bosun – Transactions with SASAC
2. Untimely Filed Separate Rate Applications
3. Value-Added Tax
4. Differential Pricing
 - a. Statutory Authority
 - b. Withdrawn Targeted Dumping Regulations
 - c. Cohen's *d* Test
 - d. Denial of Offsets for Non-Dumped Sales When Using the A-T Method
 - e. Aggregation of A-A and A-T Comparison Results
5. Surrogate Values
 - a. Argon, Nitrogen, and Oxygen
 - b. Cores



- c. Diamond Powder
- d. Financial Statements
- e. Weihai's Steel Types 2 and 3
- f. Tin Powder
- g. Truck Freight
- 6. Request To Apply Adverse Facts Available
 - a. Weihai's Metal Powders
 - b. Bosun's Diamond Powders
 - c. Bosun's Binder, Cut Fluid, Ink, and Mixed Gas

Background

On December 4, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades from the PRC.¹ We extended the due date for the final results of review to June 2, 2015.²

We invited interested parties to comment on the *Preliminary Results*. We received case³ and rebuttal⁴ briefs from various parties to this administrative review. Pursuant to interested parties' requests, we held a hearing on April 15, 2015.

Company Abbreviations

ATM – Advanced Technology & Materials Co., Ltd.

ATMI – AT&M International Trading Co., Ltd

ATM Single Entity – ATM, ATMI, BGY, Cliff, and HXF

BGY – Beijing Gang Yan Diamond Products Co.

Bosun – Bosun Tools Co., Ltd.

CISRI – China Iron and Steel Research Institute Group

Cliff – Cliff International Ltd.

Danyang Huachang – Danyang Huachang Diamond Tools Manufacturing Co., Ltd.

HXF – HXF Saw Co., Ltd.

KM – K.M. & A.A. Co., Ltd.

SASAC – State-Owned Assets Supervision and Administration Commission of the State Council of the People's Republic of China

Shanghai Starcraft – Shanghai Starcraft Tools Company Limited

The petitioner – Diamond Sawblades Manufacturers Coalition

Trigger – Trigger Co. Philippines, Inc.

¹ See *Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 71980 (December 4, 2014) (*Preliminary Results*), and the accompanying Preliminary Decision Memorandum.

² See the memorandum to Associate Deputy Assistant Secretary Gary Taverman entitled “Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review” dated April 1, 2015, and the memorandum to Deputy Assistant Secretary Christian Marsh entitled “Diamond Sawblades and Parts Thereof from the People's Republic of China: Second Extension of Deadline for Final Results of Antidumping Duty Administrative Review” dated May 5, 2015.

³ See the case briefs filed by various parties on March 10, 2015.

⁴ See the rebuttal briefs filed by various parties on March 20, 2015.

Tyrolit – Tyrolit Thai Diamond Company Limited
Weihai – Weihai Xiangguang Mechanical Industrial Co., Ltd.
Wuhan Wanbang – Wuhan Wanbang Laser Diamond Tools Co.

Other Abbreviations

A-A – average-to-average
A-T – average-to-transaction
ACCESS – Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System
APA – Administrative Procedure Act
AUV – average unit value
BOM – bill of material
CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – Court of International Trade
Company Law – the 1994 Company Law of the PRC
CONNUM – control number
CVD – countervailing duty
Doing Business – Doing Business 2014 – Trading Across Borders in Thailand
EP – export price
FOPs – factors of production
Georgetown Memorandum – the Department’s memorandum to Assistant Secretary David M. Spooner entitled “Countervailing Duty Investigation of Coated Free Sheet Paper from the People’s Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion Are Applicable to China’s Present-Day Economy” dated March 29, 2007
GTA – Global Trade Atlas
HTS – Harmonized Tariff Schedule
I&D Memo – Issues and Decision Memorandum adopted by a *Federal Register* notice of final determination of an investigation or final results of review
LTFV – less than fair value
NME – non-market economy
POR – period of review
SAA – Statement of Administrative Action accompanying the URAA
SG&A – selling, general, and administrative
SRA- separate rate application
SRC – separate rate certification
SOE – State-Owned Enterprise
The Act – The Tariff Act of 1930, as amended
T-T – transaction-to-transaction
URAA - Uruguay Round Agreements Act
USTR – U.S. Trade Representative
VAT – value-added tax
WTO – World Trade Organization

Diamond Sawblades Administrative Determinations and Results

LTFV Final – Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances, 71 FR 29303 (May 22, 2006), as amended in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 76 FR 35864 (June 22, 2006).

Section 129 Partial Revocation – Certain Frozen Warmwater Shrimp From the People's Republic of China and Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders, 78 FR 18958 (March 28, 2013).

Diamond Sawblades 1 – Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010, 78 FR 11143 (February 15, 2013).

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

Diamond Sawblades 3 - 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).

Scope of the Order

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

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order.

Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates

that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, the Department included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by CBP.⁵

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

Surrogate Country

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

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate.⁷ It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.⁸

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

⁵ See *Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011).

⁶ See *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 12-14.

⁷ See, e.g., *LTFV Final*, 71 FR at 29307, and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006).

⁸ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 79392 (December 30, 2013) (*Initiation Notice*).

the information on the record of this review, we continue to find that the respondents that received separate rates in the *Preliminary Results* are eligible for separate rates.

Neither the statute nor the Department's regulations addresses the establishment of a rate to be applied to companies not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Our practice in this regard has been to average the margins for the selected companies, excluding margins that are zero, *de minimis*, or based entirely on facts available. Consistent with that practice and the *Preliminary Results*, we have assigned the weighted average of the two selected respondents' rates based on their ranged U.S. sales values. The two selected respondents for which we calculated individual margins in this review are Bosun and Weihai. For the final results of this review, because we changed the dumping margins for Bosun and Weihai, the rate assigned to the eligible non-selected separate rate companies likewise changes to 2.34 percent.⁹

Discussion of the Issues

Separate Rate

ATM Single Entity – Separate Rate Status

Comment 1: The ATM Single Entity argues that the Department's preliminary denial of the separate rate status for the ATM Single Entity based on *Advanced Technology & Materials Co., Ltd. v. United States*, Court No. 2014-1154, 2014 U.S. App. LEXIS 20800 (Fed. Cir. 2014) (*Advanced Technology & Materials Co., Ltd.*) should be reversed. In particular, the ATM Single Entity argues that record evidence does not support denial of its separate rate status and the denial amounts to the application of an adverse inference to a cooperative respondent. The petitioner disagrees and argues that the Department should maintain its decision to deny the ATM Single Entity a separate rate because the ATM Single Entity has not supplied information to rebut the presumption of government control determined in the prior review.

Department's Position: In *Diamond Sawblades 2*, we granted separate rate status to the ATM Single Entity.¹⁰ Based on the separate rate status we granted to the ATM Single Entity in *Diamond Sawblades 2*, the ATM Single Entity filed its SRC for BGY, one of the five companies that comprise the ATM Single Entity in this review. In its SRC, BGY stated that nothing has changed with respect to its ownership compared to the review period in *Diamond Sawblades 2*.¹¹ Three of the four other companies that comprise the ATM Single Entity (ATM, ATMI, and HXF) filed a no-shipment letter.¹² In the recent remand redetermination for *Diamond Sawblades 2*, we denied the ATM Single Entity's separate rate status which we granted in *Diamond Sawblades 2* and treated the ATM Single Entity as part of the PRC-wide entity.¹³ Therefore,

⁹ See the memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Calculation of Separate Rate for Eligible Non-Selected Respondents" dated concurrently with this Issues and Decision Memorandum.

¹⁰ See *Diamond Sawblades 2*, 78 FR at 36167, and the accompanying I&D Memo at Comment 1.

¹¹ See the ATM Single Entity's SRC for BGY dated February 28, 2014, at 6-7.

¹² See the ATM Single Entity's no shipment letter for ATM, ATMI, and HXF dated February 28, 2014.

¹³ See the final remand redetermination pursuant to *Diamond Sawblades Manufacturers Coalition v. United States*, Court No. 13-00241, slip op. 14-112 (Ct. Int'l Trade September 23, 2014), dated May 18, 2015, and available at

because the ATM Single Entity's SRC is based on *Diamond Sawblades 2* and we subsequently have determined in a remand redetermination that the ATM Single Entity was not eligible for separate rate status in *Diamond Sawblades 2*, the SRC confirms the continued treatment of the ATM Single Entity as part of the PRC-wide entity. Also, when companies that are part of the PRC-wide entity file no-shipment letters, we do not make no-shipment determinations for them; they continue to be part of the PRC-wide entity.¹⁴ Therefore, for these final results of review we continue to treat the ATM Single Entity as part of the PRC-wide entity.

ATM Single Entity – Cash Deposit Rate

Comment 2: The ATM Single Entity argues that the *Section 129 Partial Revocation*¹⁵ prevents the Department from collecting cash deposits from the ATM Single Entity after the publication of the notice of the final results of this review. The ATM Single Entity claims that, given the revocation of the order in part, and because the petitioner's appeal of the *Section 129 Partial Revocation* at the CIT has been stayed pending the completion of the CAFC appeal of the separate rate issue, the Department should instruct CBP not to collect cash deposits from the ATM Single Entity. The ATM Single Entity suggests that the Department follow the example in *Diamond Sawblades and Parts Thereof From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2010-2011: Amended Final Results*, 78 FR 46569 (August 1, 2013).

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

Department's Position: We will collect cash deposits, to the extent appropriate, and liquidate entries of subject merchandise exported by the ATM Single Entity in a manner that is consistent with the *Section 129 Partial Revocation*. The antidumping duty order on diamond sawblades from the PRC was revoked, in part, with respect to ATM, BGY, and HXF, effective March 22, 2013.¹⁶ Consistent with the *Section 129 Partial Revocation*, with no order in place as of March 22, 2013, with respect to ATM, BGY, and HXF, we are not collecting cash deposits for ATM, BGY, and/or HXF. While there was previously a temporary restraining order and then a preliminary injunction issued by the CIT in *Advanced Technology & Materials Co., Ltd.*, consolidated court number 09-511 enjoining us from lifting suspension of liquidation for incoming entries of subject merchandise exported by the ATM Single Entity, the injunction has

<http://enforcement.trade.gov/remands/14-112.pdf> (*Diamond Sawblades 2 Remand*).

¹⁴ See, e.g., *Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098, 77099 (December 20, 2013), unchanged in *Diamond Sawblades 3*.

¹⁵ See *Section 129 Partial Revocation* (revoking the order with respect to ATM, BGY, and HXF for entries made on or after March 22, 2013).

¹⁶ See *Section 129 Partial Revocation*.

dissolved as there is a final and conclusive court decision in that litigation.¹⁷ We intend to instruct CBP to liquidate at the PRC-wide rate entries of diamond sawblades from the PRC exported by the ATM Single Entity and entered during the POR except entries of diamond sawblades from the PRC from ATM, BGY, and/or HXF that entered on or after March 22, 2013, the effective date of the *Section 129 Partial Revocation*, which revoked the order with respect to these companies.¹⁸

ATM Single Entity – Whether AFA Is Appropriate

Comment 3: The ATM Single Entity opposes the Department’s preliminary decision to treat it as part of the PRC-wide entity and assign the ATM Single Entity the PRC-wide rate, which it argues is an AFA rate. The ATM Single Entity argues that the Department did so without (1) a proper statutory authority or (2) taking actions in conformance with the APA. According to the ATM Single Entity, sections 735(c)(1)(B)(i)(I) and (II) of the Act provide only two means of calculating antidumping duty margins: 1) the weighted-average dumping margin for each exporter and producer individually investigated, and 2) the estimated all-others rate for all exporters and producers not individually investigated. The ATM Single Entity argues that the PRC-wide rate which the Department applied to it was not based on either of these methods. The ATM Single Entity explains that the Department’s practice in NME countries is at odds with the Department’s practice in market economy cases and that there is no basis in the law, regulations, or on the case record to apply a different standard in NME cases than in market economy cases. The ATM Single Entity states that, with regard to NME cases, the Department handles separate rates the same way it handles all-others rates in market economy cases, *i.e.*, non-examined companies receive an average rate of the examined companies, and then argues that the PRC-wide rate is not an average rate that is meant to estimate a dumping margin as allowed by section 735(c)(1)(B)(i)(II) of the Act but is, rather, a punitive rate.

The ATM Single Entity argues that the adverse nature of the PRC-wide rate is clear because the PRC-wide rate used in this review is based on a finding in the LTFV investigation where the PRC-wide entity failed to respond to the Department’s requests for information (13 companies did not respond to quantity and value questionnaires). Furthermore, the ATM Single Entity argues that, because (1) nothing in the statute allows the Department to apply an AFA rate to a cooperative company, such as the ATM Single Entity in this review, and (2) no questioned part of the PRC-wide entity in this review failed to respond to Department’s requests for information, AFA is not appropriate for the purposes of determining the antidumping duty applicable to the PRC-wide entity.

The ATM Single Entity argues that, even if the Department has the authority to assign an NME-wide rate, it cannot do so in this review because neither the PRC-wide entity nor the PRC government is under review in this review. The ATM Single Entity states that, because the Department did not initiate a review of the PRC-wide entity as there were no review requests for the PRC-wide entity, it is impossible for the PRC-wide entity to be uncooperative. The ATM

¹⁷ See *Advanced Technology & Materials Co., Ltd. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013) (*Advanced Tech.* 2013), *aff’d*, *Advanced Technology & Materials Co., Ltd.*

¹⁸ The *Section 129 Partial Revocation* is currently the subject of on-going litigation at the CIT in *Diamond Sawblades Manufacturers’ Coalition v. United States*, Court No. 13-00168.

Single Entity argues that, because the PRC-wide entity is a legal fiction that cannot respond to questions, (which it was not asked), the Department has created an irrebuttable presumption which is contrary to due process.

The ATM Single Entity argues that, because no review of the PRC-wide entity was requested pursuant to 19 CFR 351.212(c), antidumping duties for the ATM Single Entity should be assessed “at the rates equal to the cash deposit of, or bond for, estimated antidumping duties...required on that merchandise at the time of entry, or withdrawal from warehouse for consumption” because the PRC-wide entity (which we determined the ATM Single Entity is part of) is not under review. The ATM Single Entity reiterates that an AFA rate cannot be applied to an entity, single or otherwise, that is not subject to review, and has not been given the opportunity to respond.

The ATM Single Entity argues that, because it cooperated to the best of its ability with the Department’s requests for information (by submitting BGY’s SRC), there is no basis for assigning an AFA rate to it for the final results of this review. The ATM Single Entity argues further that the Department has not explained the burden of proof that is required to rebut the presumption of government control. The ATM Single Entity claims that the Department assigns an AFA rate to a company that it determines to be under state ownership and deemed sufficient to be ineligible for a separate rate, regardless of the company’s level of cooperation.

The petitioner argues that the Department’s denial of the separate rate status for the ATM Single Entity is not an application of an AFA rate but is rather a straightforward application of its single rate practice in NME cases. The petitioner states that the Department should continue to assign the PRC-wide rate, as determined in the LTFV investigation, to the ATM Single Entity, because it has not established its independence from the PRC government.

The petitioner argues that record evidence supports the Department’s preliminary denial of the separate rate for the ATM Single Entity. The petitioner explains that, in the immediately preceding review, the ATM Single Entity did not receive a separate rate because the record of that review did not show any meaningful differences in the ATM Single Entity’s ownership structure or management compared to the record of the original investigation. The petitioner explains further that the ATM Single Entity did not come forward in this review with information substantiating the emergence of meaningful differences.

The petitioner argues that our application of the 164.09 percent, as established in the LTFV investigation as the single rate for the PRC-wide entity, is not the assignment of an AFA rate in this review. The petitioner contends that the PRC-wide rate is not assigned in response to a party’s failure to cooperate and therefore does not need to be corroborated. The petitioner explains that a respondent does not need to be uncooperative to be deemed part of the PRC-wide entity; rather, a respondent may be wholly cooperative but simply unable to demonstrate its independence from the PRC government. The petitioner explains that the PRC-wide entity is comprised of all PRC diamond sawblade producers/exporters that have not shown their independence from the PRC government, and are therefore determined to be affiliated and entitled only to a single rate. The petitioner states that, in the current POR, the ATM Single Entity has not demonstrated its independence from the PRC government. Additionally, the

petitioner disagrees with the notion that the Department has not explained what is required of the ATM Single Entity to rebut the presumption of government control or that the presumption itself is irrebuttable. The ATM Single Entity need only demonstrate meaningful differences between the circumstances at issue in the LTFV investigation and this review with respect to board memberships, directorships, and ownership of SASAC, CISRI, and the members of the ATM Single Entity to rebut the presumption of government control with respect to the *de facto* criteria at issue.

Department's Position: The Department considers the PRC to be an NME 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.¹⁹ 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."²⁰ In its decision to uphold the Department's practice of assigning a PRC-wide rate, the CAFC stated 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.²¹ The CAFC recognized a close correlation between an NME economy and government control of prices, output decisions, and allocation of resources under sections 771(18)(B)(iv)-(v) of the Act and found the Department's presumption to be reasonable.²² The CAFC also affirmed in *Transcom* our application of a PRC-wide rate to all parties ineligible for a separate rate.²³ The CAFC in *Transcom* also found that an AFA rate is not punitive.²⁴

The ATM Single Entity objects to the application of the 164.09 percent rate to the PRC-wide entity and, thereby, the ATM Single Entity, on the basis that this rate is allegedly an AFA rate. The ATM Single Entity argues that section 776(b) of the Act requires a party's failure to cooperate to the best of its ability as a prerequisite before the Department is permitted to apply

¹⁹ See, e.g., *Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997) (*Sigma*).

²⁰ See *1,1,1,2-Tetrafluoroethane 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 I&D Memo at Comment 1 (Explaining the Department's practice with respect to separate rates as upheld by the CAFC 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.)

²¹ See *Sigma*, 117 F.3d at 1405-06.

²² *Id.*, at 1406.

²³ 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 BIA-based rate to a particular party unless that party has failed to provide information to Commerce or has otherwise failed to cooperate, the statute 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 (Instead, the objective of BIA is to aid Commerce in determining dumping margins as accurately as possible). The litigation in *Transcom* covered three periods of reviews 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 (December 13, 1996). During those periods, we called AFA the best information available (BIA). *Id.*

²⁴ See *Transcom*, 294 F.3d at 1376.

an adverse inference. Therefore, in the ATM Single Entity's view, because the ATM Single Entity has been cooperative, the statutory requirements for AFA have not been met and the Department is not permitted to apply the 164.09 percent PRC-entity rate (which the ATM Single Entity believes is based on AFA) in any manner with respect to the ATM Single Entity's margin. However, in *Advanced Tech. 2013*, the CIT addressed the issue as to whether the PRC-wide rate is an adverse rate, stating "Commerce did not apply adverse facts available to {the ATM Single Entity}, Commerce rather found that {the ATM Single Entity} had not rebutted the presumption of state control and assigned it the PRC-wide rate."²⁵ 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."²⁶ In the investigation at issue in *Advanced Tech. 2013*, the PRC-wide entity received a rate based on AFA because certain members of the PRC-wide entity failed to cooperate.²⁷ As an initial matter, in these final results of review, the Department is not assigning the 164.09 percent rate preliminarily assigned to the PRC-wide entity in the *Preliminary Results*. Rather, we are assigning the rate recently determined for the PRC-wide entity in the *Diamond Sawblades 2 Remand*, 82.05 percent.²⁸ To the extent that rate was determined, in part, based on the 164.09 percent rate, the 82.05 percent rate is not an application of AFA to the PRC-wide entity in this review; rather, it reflects, in part, the rate applied to the PRC-wide entity based on the actions of the PRC-wide entity in the investigation, and the ATM Single Entity's experience as a fully cooperative mandatory respondent in *Diamond Sawblades 2* which subsequently was determined to be part of the PRC-wide entity in *Diamond Sawblades 2 Remand*.²⁹ The 82.05 percent rate is the pre-existing PRC-wide rate and it is our practice to apply such a rate to a PRC-wide entity which includes companies that failed to rebut the presumption of government control but which do not have non-cooperative elements.³⁰

Further, we disagree with the ATM Single Entity's contention that the PRC-wide entity is a legal fiction that cannot respond to questions and that the PRC-wide entity was not asked any questions. All potential exporters upon which we initiated the review were instructed to file either an SRA or SRC if they intended to qualify for a separate rate.³¹ Each potential or actual element of the PRC-wide entity is able to answer questions about its individual experience. As mentioned above, in *Sigma*, the CAFC affirmed that it was within the Department's authority to employ a presumption of state control in a NME country and found the presumption reasonable,

²⁵ See *Advanced Tech. 2013*, 938 F. Supp. 2d at 1351.

²⁶ *Id.* citing *The Watanabe Group v. United States*, 2010 Ct. Intl. Trade LEXIS 144; Court No. 09-00520, slip op. 2010-139, at 9, n.8 (*Watanabe Group*). See also *Peer Bearing Company – Changshan v. United States*, 587 F. Supp. 2d 1319, 1327 (CIT 2008) ("... 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.")

²⁷ See *LTFV Final*, 71 FR at 35865.

²⁸ See *Diamond Sawblades 2 Remand* at 9.

²⁹ *Id.* See also *OTR Tires Final* and the accompanying I&D Memo at Comment 1 unchanged in *OTR Tires Amended Final*.

³⁰ 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).

³¹ See *Initiation Notice*, 78 FR at 79393.

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.³²

For administrative reviews for which the notice of opportunity was published before December 4, 2013, the Department conditionally reviewed the NME entity; therefore, even absent a request, the NME entity could be subject to the review if an exporter subject to the review did not demonstrate that it is separate from the entity.³³ The *Initiation Notice* states that “if one of the above-named companies does not qualify for a separate rate, all other exporters of Diamond Sawblades and Parts Thereof 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.”³⁴ In this review, in addition to the ATM Single Entity, 25 individually named respondents that failed to demonstrate their eligibility for separate rates are part of the PRC-wide entity and, accordingly, the PRC-wide entity is subject to this review.³⁵ *Transcom* held that, in addition to the named companies in an initiation notice, conditionally reviewed companies also received sufficient notice in the initiation.³⁶

Consistent with the *Diamond Sawblades 2 Remand*, we assigned the ATM Single Entity the PRC-wide rate of 82.05 percent, which is the simple average of the previously-assigned PRC-wide rate (164.09 percent) and the calculated final margin for the ATM Single Entity (zero percent) in the *Diamond Sawblades 2*.³⁷ The application of the 82.05 percent is in line with our practice of pulling the current PRC-wide rate forward for application to a PRC-wide entity for which there are no grounds to apply AFA.³⁸

Finally, because the PRC-wide entity, including the ATM Single Entity, is subject to review, we intend to liquidate the ATM Single Entity’s entries as we explained in Comment 2, *supra*. We have no basis to liquidate the ATM Single Entity’s entries as entered.

ATM Single Entity – Presumption of Government Control

Comment 4: The ATM Single Entity argues that the Department’s presumption of government control and separate rates practice is unreasonable and that the Department may not presume that a Soviet-style state-controlled communist economic system exists for antidumping duty purposes and does not exist for countervailing duty purposes in the PRC. The ATM Single Entity explains that the Department found in the Georgetown Memorandum that the “current nature of China’s

³² See *Sigma*, 117 F.3d at 1405-06.

³³ See *Antidumping Proceedings: 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, 65970 (November 4, 2013). See also, *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 78 FR 65612 (November 1, 2013) (The opportunity to request this review was published on November 1, 2013; therefore, the changes to the Department’s practice are not applicable to the review).

³⁴ See *Initiation Notice* 78 FR at 79398 n.6.

³⁵ See *Preliminary Results*, 78 FR at 71981 n.11 and the accompanying Decision Memorandum at 10-11.

³⁶ See *Transcom*, 294 F.3d at 1379.

³⁷ See *Diamond Sawblades 2*, 78 FR at 36167, and *Diamond Sawblades 2 Remand*.

³⁸ See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197, 20199 (April 15, 2015), and the accompanying I&D Memo at Comment 1.

economy does not” give rise to the same issues litigated in *Georgetown Steel Corp. v. United States*, 801 F.2d 1308, 1310 (Fed. Cir. 1986) (*Georgetown Steel*), many of which involved “Soviet-style economies” essentially under a single central authority or central control that would result in the presumption of state ownership.

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

Department’s Position: As the Department has explained in the previous reviews, the ATM Single Entity has conflated the concepts of the “NME-wide entity” for antidumping duty assessment purposes with the “single economic entity” that characterized those economies in *Georgetown Steel*.³⁹ The Department’s analysis in the Georgetown Memorandum focused only on the latter concept. The CAFC and the Department characterized those economies “as economies with a marked absence of market forces, in which: (p)rices are set by central planners. ‘Losses’ suffered by production and foreign trade enterprises are routinely covered by government transfers. Investment decisions are controlled by the state. Money and credit are allocated by the central planners. The wage bill is set by the government. Access to foreign currency is restricted. Private ownership is limited to consumer goods.”⁴⁰ In other words, the government is the entire economy for all intents and purposes. Given the reforms discussed in the Georgetown Memorandum, the Department found that a single central authority no longer comprises the PRC’s economy and that the policy that gave rise to the *Georgetown Steel* litigation does not prevent the Department from concluding that the PRC government has bestowed a countervailable subsidy upon a Chinese producer.⁴¹

As explained above, in proceedings involving NME countries such as the PRC, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. This presumption stems not from an economy comprised entirely of the government (*e.g.*, a firm is nothing more than a government work unit), but rather from the NME-government’s use of a variety of legal and administrative levers to exert influence and control (both direct and indirect) over the assembly of economic actors across the economy.⁴² As such – and contrary to the ATM Single Entity’s assertions – this presumption is patently different from a presumption that all firms are one and the same as the government, such that they comprise a monolithic economic entity. Moreover, the presumption underlying the separate rates test was upheld in *Sigma*, 117 F.3d at 1405-06, where the CAFC affirmed the Department’s separate rates test as reasonable, stating that the statute recognizes a close

³⁹ See *Diamond Sawblades 1* and the accompanying I&D Memo at Comment 2, *Diamond Sawblades 2* and the accompanying I&D Memo at Comment 2, and *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 4.

⁴⁰ See Georgetown Memorandum at 4, citing *Georgetown Steel* quoting *Carbon Steel Wire Rod from Poland; Final Negative Countervailing Duty Determination*, 49 FR 19375, 19376 (May 7, 1984).

⁴¹ See *Diamond Sawblades 1* and the accompanying I&D Memo at Comment 2, *Diamond Sawblades 2* and the accompanying I&D Memo at Comment 2, and *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 4.

⁴² *Id.*

correlation between an NME and government control of prices, output decisions, and the allocation of resources. The CAFC also stated that it was within the Department's authority to employ a presumption of state control for exporters in an NME-country and to place the burden on the exporters to demonstrate an absence of central government control.⁴³

Firms that do not rebut the presumption are assessed a single antidumping duty rate, *i.e.*, the NME-Entity rate.⁴⁴ However, in recognition that elements of the PRC's economy are transitioning away from the state-controlled economy, the Department has developed the separate rates test.⁴⁵ 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).⁴⁶

Bosun – Transactions with SASAC

Comment 5: The petitioner argues that Bosun should be treated as part of the PRC-wide entity because Bosun's payments to SASAC for the purchase of certain companies (collectively referred to as the Tiantong companies in Bosun's rebuttal brief) from SASAC indicate that Bosun is under the *de facto* control of the PRC government. The petitioner contends that a small percentage of the payments Bosun made to SASAC were for the right to use land and a larger percentage of the payments were compelled by SASAC to settle the liabilities of the Tiantong companies. Specifically, the petitioner claims that certain loans Bosun provided to the Tiantong companies are actually cash handouts to the PRC government and adding those loans to the total value of Bosun's transactions show that the land use portion of the transaction consists of a minority percent of the total transaction. The petitioner also alleges that Bosun made a loss in this transaction. The petitioner argues that Bosun is unable to make independent decisions with respect to its disposition of profits, as evidenced by Bosun's transactions involving the Tiantong companies and the associated right to use land.

Bosun argues that it paid money to SASAC to buy the right to use land and the entire amount of money that it paid SASAC was necessary to buy the right to use land. Bosun states that the board meeting decision on the record shows that this is the case. Bosun insists that SASAC's classification of the money Bosun paid in this transaction is irrelevant to Bosun's purpose for paying the money, *i.e.*, right to use land. Bosun explains that SASAC classified this money as land fees and other things such as deferred salary because SASAC was going to use this money for certain purposes such as paying deferred salary. Bosun maintains that SASAC's classification of this money is not Bosun's concern as long as the total price is what Bosun can accept to buy the right to use land. Bosun explains that it has been a separate rate company since

⁴³ See *Sigma*, 117 F.3d at 1405-06.

⁴⁴ See 19 CFR 351.107(d), which provides that "in an antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers."

⁴⁵ See *Diamond Sawblades 1* and the accompanying I&D Memo at Comment 2, *Diamond Sawblades 2* and the accompanying I&D Memo at Comment 2, and *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 4.

⁴⁶ See Georgetown Memorandum at 9.

the investigation and the only difference in this review is the acquisition of the Tiantong companies.

Bosun disagrees with the petitioner's characterization of the loans that it provides to the Tiantong companies. Bosun explains that, because the Tiantong companies are bound by the loan agreements to pay back the principal with interest to Bosun, the loans are not mere giveaways to SASAC. Bosun denies that it made a loss in this transaction. Bosun explains that the transfer price of 50 percent of the shares of one of the Tiantong companies to a real estate company was well above 50 percent of the purchase price Bosun paid so Bosun made a profit from this share transfer alone. Bosun explains further that this share transfer itself is evidence that the purpose of this transaction was for Bosun to buy the right to use land for real estate development. Bosun states that it transferred the shares to secure the real estate company as a partner in the land development. Bosun reiterates that it made independent decisions with respect to its disposition of profits. Bosun contends that the petitioner has hyper-focused on only one of the four *de facto* criteria in distorting Bosun's transaction with SASAC.

Department's Position: We disagree with the petitioner. For the periods of the investigation and the prior administrative reviews, we determined that Bosun is eligible for a separate rate.⁴⁷ Bosun made the transactions at issue with SASAC and the loan agreements with the Tiantong companies during those periods for which we previously determined that Bosun is eligible for a separate rate.⁴⁸ Therefore, Bosun made these transactions as a separate rate company and we will not revisit our prior decisions in the prior segments of this proceeding to grant Bosun separate rate status. Moreover, the petitioner relies solely on the total amount of money Bosun paid SASAC and loaned to the Tiantong companies to allege that Bosun's disposition of profit is under SASAC's *de facto* control. However, we find no basis upon which to re-evaluate the business decision that Bosun made during a prior segment where we already made a determination to grant Bosun separate rate status. It is understandable that a private company buying an SOE in the PRC must pay the purchase price to the PRC government in order to privatize the SOE. In addition, the loans are not free giveaways as the petitioner suggests, because the Tiantong companies must pay back the loan principal and interest to Bosun pursuant to loan agreements.⁴⁹

We have found that Bosun has been eligible for a separate rate since the time of the investigation and also when it purchased and loaned money to the Tiantong companies.⁵⁰ Bosun's purchase of the Tiantong companies resulted in privatizing former SOEs from SASAC's ownership and control. The privatization of the Tiantong companies by Bosun does not alone serve as evidence that Bosun is under the *de facto* government control.

⁴⁷ See *LTFV Final*, 76 FR at 29309, 35865, *Diamond Sawblades 1*, 78 FR 11145, *Diamond Sawblades 2*, 78 FR at 36167, 42931, and *Diamond Sawblades 3*, 79 FR at 42931.

⁴⁸ See Bosun's second supplemental response dated October 27, 2014, at Exhibits S2-1, S2-2, and S2-4, and the Bosun final analysis memorandum dated concurrently with the Issues and Decision Memorandum.

⁴⁹ *Id.*

⁵⁰ See, e.g., Bosun's section A response dated May 6, 2014, at Exhibit A-10, *LTFV Final*, 71 FR at 29309, 35865, *Diamond Sawblades 1*, 78 FR 11145, *Diamond Sawblades 2*, 78 FR at 36167, 42931, and *Diamond Sawblades 3*, 79 FR at 35724. See also Bosun's second supplemental response dated October 27, 2014, at Exhibits S2-1 through S2-4, and the Bosun final analysis memorandum for the dates of the purchase and loan agreements.

Untimely Filed Separate Rate Applications

Comment 6: The Department rejected the SRAs filed by Danyang Huachang, Shanghai Starcraft, and Wuhan Wanbang because they filed the public versions of the SRAs in an untimely manner⁵¹ and preliminarily treated these three companies as part of the PRC-wide entity. These three respondents request that the Department reconsider our rejection and accept their rejected SRAs for the final results. They claim that, right before the filing deadline, ACCESS malfunctioned. Specifically, they explain that, because ACCESS took too long to accept SRAs and delayed issuing the confirmation receipt for filing the SRAs, they filed the same SRAs repeatedly right around the deadline, which was March 4, 2014, at 5:00 p.m. They also claim that, although the public versions of their SRAs were filed minutes after the deadline due to the ACCESS malfunction, the business proprietary versions of their SRAs were filed in a timely manner. The petitioner requests that the Department continue to reject their SRAs and treat them as part of the PRC-wide entity.

Department's Position: For the final results of this review, we reconsidered the record evidence and have granted Danyang Huachang, Shanghai Starcraft, and Wuhan Wanbang separate rates. Their SRAs demonstrated (1) that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies and (2) the absence of *de jure* and *de facto* governmental control over their respective export activities.⁵² With regard to the purported issues associated with ACCESS, we acknowledge that ACCESS malfunctioned right before the deadline for filing. In addition, these respondents provided copies of e-mails from ACCESS notifying them of the rejections of several duplicate submissions of the SRAs they filed between 4:47 p.m. and 6:19 p.m. on March 4, 2014.⁵³ Therefore, we have accepted these previously rejected SRAs.⁵⁴ This is consistent with our acceptance of a submission we had originally rejected in another proceeding because it missed the 5:00 p.m. deadline also on March 4, 2014, due to the same type of ACCESS malfunction.⁵⁵

⁵¹ The original due date for the SRAs was February 28, 2014. Because these three companies' counsel reported problems with submitting separate rate application via ACCESS on the original due date and because the Department was closed on the next business day, March 3, 2014, due to hazardous weather, the deadline was no later than 5:00 p.m. Eastern Time on March 4, 2014. (At the time these three companies submitted the SRAs, the acronym of ACCESS was IA ACCESS. See 19 CFR 351.303, as amended in *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014).

⁵² See the SRAs filed by these three respondents filed on March 4, 2014. See also *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 6-10 for more discussion on granting the separate rate status.

⁵³ See the request for reconsideration of the rejected SRAs dated August 13, 2014, at Attachments 2, 3, and 7.

⁵⁴ See the memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Acceptance of Previously Rejected Separate Rate Applications and Rejection and Deletion of Duplicate Submission" dated June 1, 2015, and the SRAs filed by these three respondents on March 4, 2014.

⁵⁵ See the request for reconsideration of the rejected SRAs dated November 25, 2014, at Attachments 1 and 2. See also *Calcium Hypochlorite From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 43393 (July 25, 2014), and the accompanying Preliminary Decision Memorandum at 4, unchanged in *Calcium Hypochlorite From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 74065 (December 15, 2014).

Value-Added Tax

Comment 7: Bosun and Weihai argue that the Department's preliminary deduction of un-refunded VAT from U.S. price is a violation of section 772(c)(2)(B) of the Act and *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Bosun and Weihai claim that the un-refunded VAT at issue is the tax for the imports of raw materials from other countries into the PRC, not the export tax specifically mentioned in section 772(c)(2)(B) of the Act. Weihai explains that the exportation of the subject merchandise is exempt from, not subject to, the payment of VAT. Bosun and Weihai contend that categorizing the VAT that is not fully refunded upon exportation as export tax in section 772(c)(2)(B) of the Act is a violation of *Chevron's* first prong which requires the agency to comply with the clear intent of Congress when Congress has directly spoken to the precise question at issue. Bosun and Weihai claim that, because section 772(c)(2)(B) of the Act is clear and unambiguous with respect to export tax, the Department has no discretion to construe it otherwise to deduct un-refunded VAT as export tax from U.S. price.

Bosun and Weihai state that they did not pay VAT or any other export tax upon exportation of the subject merchandise because the Chinese authorities exempt the exports of finished goods from VAT. Weihai contends that the VAT rate is zero percent for the subject merchandise because the Interim Regulations list the zero percent tax rate for taxpayers that export goods. Bosun and Weihai insist that the unrefunded VAT is a result of the purchase and importation of raw materials, not the exportation of the subject merchandise, and that the payment of VAT does not originate with the exportation of subject merchandise. Weihai claims that this VAT is not different from income or payroll taxes, for example, it pays in connection with production and sales of subject merchandise. Weihai explains that it would have paid this VAT regardless of whether the sales were domestic or exports. Weihai contends that the statute does not allow the Department to interpret the irrevocable VAT as an export VAT because the statute is unambiguous with the export tax.

Citing, *e.g.*, *Magnesium Corp. v United States*, 166 F.3d 1364, 1370-71 (Fed. Cir. 1999), Bosun argues that the CAFC upheld the Department's decision not to capture domestic taxes imposed upon the purchase of raw materials in the PRC because there is no reliable way to determine whether or not an export tax has been included in the price of a product from an NME. Bosun contends that this rationale has not changed despite the Department's recent decision to deduct the unrefunded VAT. Bosun claims that the Department's methodology in the deduction of unrefunded VAT is based on pure speculation, not substantial evidence on the record. Even if the Department is concerned about respondents receiving some benefits from the NME methodology in the form of tax on production not fully rebated, according to Bosun, the Department's deduction of unrefunded VAT is a wrong way to address the concern.

The petitioner argues that the Department should continue to deduct the unrefunded VAT from the U.S. price. According to the petitioner, both Bosun and Weihai reported that the VAT was 17 percent during the POR with the VAT rebate of nine percent applicable to exports of the subject merchandise. The petitioner explains that neither Bosun nor Weihai offered new arguments that would justify reconsidering the Department's position concerning this issue as explained in, *e.g.*, *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 6.

Citing *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), and the accompanying I&D Memo at Comment 7, the petitioner argues that cases such as *Magnesium Corp.* do not reject the Department's deduction of unrebated VAT. The petitioner explains that those cases simply agreed with the Department's decision not to do so back in the time when the PRC economy was different from today's PRC economy.

Department's Position: For the reasons explained below, we continue to apply our preliminary formula to adjust the VAT to deduct from the reported U.S. prices an amount for irrecoverable VAT.

In 2012, we announced a change of methodology with respect to the calculation of the EP or CEP to include an adjustment of any un-refunded (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.⁵⁶ In this announcement, we stated that when a NME government has imposed an export tax, duty, or other charge on subject merchandise *or on inputs* used to produce subject merchandise, from which the respondent was not exempted, we will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.⁵⁷ 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.⁵⁸ That stands in contrast to China's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.⁵⁹ This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of the U.S. price, the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.⁶⁰

In response to the claims that we do not have the statutory authority to adjust for VAT, section 772(c)(2)(B) of the Act authorizes us to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Bosun and Weihai argue that Chinese VAT is not an export tax, duty or charge, but they misstate what is at issue. The issue is the irrecoverable VAT, not VAT *per se*. In this context, irrecoverable VAT, as defined in Chinese law, is a net VAT

⁵⁶ See *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012) (*Methodological Change*).

⁵⁷ *Id.*, 77 FR at 36483; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and the accompanying I&D Memo at Comment 5 (*Chlorinated Isocyanurates*).

⁵⁸ See, e.g., *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 6, *Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) (*Wood Flooring*), and the accompanying I&D Memo at Comment 3, and *Methodological Change*, 77 FR at 36483.

⁵⁹ See Bosun's section C response dated May 30, 2014, at 42 and Exhibit C-5 and C-6, and Weihai's section C response dated June 12, 2014, at 49-50 and Exhibits C-25 and C-26.

⁶⁰ See *Methodological Change*, 77 FR at 36483.

burden that arises solely from, and is specific to, exports.⁶¹ It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost. Irrecoverable VAT is, therefore, an “export tax, duty, or other charge imposed” on exportation of the subject merchandise to the United States. The statute does not define the term(s) “export tax, duty, or other charge imposed” on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in Chinese law and, therefore, can be considered to be “imposed” by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.⁶²

Our methodology, as explained above, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Bosun and Weihai reported that the standard VAT levy on the subject merchandise is 17 percent and the VAT rebate rate for the subject merchandise is nine percent.⁶³ For the final results, therefore, we removed from U.S. price an amount calculated based on the difference between these rates (*i.e.*, eight percent) applied to the export sales value (*i.e.*, U.S. price net of international movement expenses), consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.⁶⁴

Irrecoverable VAT is defined as (1) the free-on-board value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.⁶⁵ The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulation.⁶⁶

Our methodology is based on removing irrecoverable VAT on exports, which is product-specific and is explicitly defined in Chinese tax regulations.⁶⁷ Our deduction of product-specific irrecoverable VAT from the price of the subject merchandise is a reasonable and accurate methodology because the export tax, duty, or other charge is a product-specific expense that is directly linked with the exportation of the subject merchandise. Our method of relying on the

⁶¹ See, *e.g.*, *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 6.

⁶² See *Methodological Change*, 77 FR at 36483, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) (citing SAA accompanying the URAA, H.R. Doc. No. 103-106, vol. 1, 827, reprinted in 1995 U.S.C.C.A.N. 3773, 4172).

⁶³ See Bosun’s section C response dated May 30, 2014, at 42 and Exhibit C-5 and C-6, and Weihai’s section C response dated June 12, 2014, at 49-50 and Exhibits C-25 and C-26.

⁶⁴ See *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People’s Republic of China*, 79 FR 25572 (May 5, 2014) (*Prestressed Wire*), and the accompanying I&D Memo at Comment 1, and *Wood Flooring* and the accompanying I&D Memo at Comment 3.

⁶⁵ See *Prestressed Wire* and the accompanying I&D Memo at Comment 1, n. 35, and *Wood Flooring* and the accompanying I&D Memo at Comment 3.

⁶⁶ See *Prestressed Wire* and the accompanying I&D Memo at Comment 1, n. 36, and *Wood Flooring* and the accompanying I&D Memo at Comment 3.

⁶⁷ See *Prestressed Wire* and the accompanying I&D Memo at Comment 1, and *Wood Flooring* and the accompanying I&D Memo at Comment 3.

standard formula provided for under Chinese tax law and regulation is straightforward, consistent, and a verifiable method to make this adjustment under section 772(c)(2)(B) of the Act. In that respect, the irrecoverable VAT formula for taxation purposes is solely a function of the rates under Chinese regulation and the respondent-specific export value of subject merchandise.

There could be any number of differences between the irrecoverable VAT reported for Chinese tax purposes and how the irrecoverable VAT is actually recorded in a given respondent's records. For all of the reasons stated above, we will not consider allocations across all company sales or across sales of products with different VAT schedules. The irrecoverable VAT liability is determined on a product-specific basis, and it is on this basis that we will consider respondent-specific claims for adjustments to the standard formula, taking into account whether such adjustments are permitted under Chinese law and regulation and supported with record evidence.

Our analysis is consistent with our current VAT policy and our treatment of VAT in recently completed NME cases.⁶⁸

Differential Pricing

Statutory Authority

Comment 8: Bosun argues that the Department lacks statutory authority to conduct the DP analysis in this review under section 777A(d)(1)(B) of the Act and 19 CFR 351.414(b). According to Bosun, section 777A(d)(1)(B) of the Act authorizes the Department to use the A-T method as an alternative only in investigations, not in administrative reviews. Citing, *e.g.*, *Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006), Bosun explains that Congress intentionally included investigations in and omitted administrative reviews from section 777A(d)(1)(B) of the Act. Therefore, Bosun contends, the Department should not interpret the absence of the statutory provision with respect to the use of the A-T method in administrative reviews as a statutory gap that can be filled with the statute that authorizes the use of the A-T method in investigations. Bosun claims that 19 CFR 351.414(b) was amended in 2012 and has no effect after *Gold East Paper (Jiangsu) Co., Ltd. v. United States*, 918 F. Supp. 2d 1317, 1327 (CIT 2013) (*Gold East*) concluded that the predecessor provision remains in force.

The petitioner argues that section 777A(d)(1) of the Act does not provide an express limitation or implied prohibition on the Department's DP analysis in administrative reviews. Citing, *e.g.*, *Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36719 (June 30, 2014), and the accompanying I&D Memo at Comment 1, the petitioner explains that the Department is authorized to fill the gap in the construction of the statute with respect to the use of the DP analysis in administrative reviews.

⁶⁸ See *Prestressed Wire* and the accompanying I&D Memo at Comment 1, *Wood Flooring* and the accompanying I&D Memo at Comment 3, and *Chlorinated Isocyanurates* and the accompanying I&D Memo at Comment 5A. See also *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 6 and *Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 13833 (March 17, 2015), and the accompanying I&D Memo at Comment 7.

Department's Position: We do not agree with Bosun's assertion that we have no authority to use the A-T method in administrative reviews. Section 771(35)(A) of the Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." By definition, a "dumping margin" requires a comparison of normal value and EP or CEP. Before making the comparison required, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act discusses the standard comparison methods (*i.e.*, A-A and T-T) in investigations and then provides for an alternative comparison method (*i.e.*, A-T) that is an exception to the standard methods when certain criteria are met. For reviews, section 777A(d)(2) of the Act discusses the maximum length of time over which the Department may calculate weighted-average normal value when using the A-T method. Section 777A(d)(2) of the Act has no provision specifying the comparison method to be employed in administrative reviews. However, concluding that the statute makes no provision for comparison methods in administrative reviews would infer that Congress did not give us the authority to use a comparison method at all in administrative reviews, with the result that we would not be permitted to make a comparison of normal values and EPs or CEPs in order to calculate a dumping margin as described in section 771(35)(A) of the Act.

We find that, contrary to Bosun's claim, the silence of the statute with regard to application of the A-T comparison method in administrative reviews does not preclude us from applying such a practice in administrative reviews. Indeed, the CAFC stated that the "court must, as we do, defer to Commerce's reasonable construction of its governing statute where Congress leaves a gap in the construction of the statute that the administrative agency is explicitly authorized to fill or implicitly delegates legislative authority, as evidenced by the agency's generally conferred authority and other statutory circumstances."⁶⁹ Further, this "silence has been interpreted as 'an invitation' for an agency administering unfair trade law to 'perform its duties in the way it believes most suitable' and courts will uphold these decisions {s}o long as the {agency}'s analysis does not violate any statute and is not otherwise arbitrary and capricious."⁷⁰

To fill this gap in the statute, the Department promulgated regulations to specify how comparisons between normal value and EP or CEP would be made in administrative reviews. With the implementation of the URAA, the Department promulgated the final rule in 1997 in which 19 CFR 351.414(c)(2) stated that the Department would normally use the A-T method in administrative reviews. In 2010, the Department published *Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings: Proposed Rule; Proposed Modification; Request for Comment*, 75 FR 81533 (December 28, 2010) pursuant to section 123(g)(1) of the URAA. This proposal was in reaction to several WTO Dispute Settlement Body panel reports which had found the denial of offsets for non-dumped sales in administrative reviews to be inconsistent with the WTO obligations of the United States. When considering the proposed revisions to 19 CFR 351.414, the Department gave proper notice and opportunity to comment to all interested parties.

⁶⁹ See *U.S. Steel Corp. v. United States*, 621 F.3d 1351, 1357 (Fed. Cir. 2010) (*U.S. Steel Corp.*).

⁷⁰ See *Mid Continent Nail Corp. v. United States*, 712 F. Supp. 2d 1370, 1376-77 (CIT 2010), citing *U.S. Steel Group v. United States*, 96 F.3d 1352, 1362 (Fed. Cir. 1996).

Pursuant to section 123(g)(1)(D) of the URAA, in September 2011, the USTR submitted a report to the House Ways and Means and Senate Finance Committees which described the proposed modifications, the reasons for the modifications, and a summary of the advice which the USTR had sought and obtained from relevant private sector advisory committees pursuant to section 123(g)(1)(B) of the URAA. Also, in September 2011, pursuant to section 123(g)(1)(E) of the URAA, the USTR, working with the Department, began consultations with both congressional committees concerning the proposed contents of the final rule and the final modification. As a result of this process, the Department published *Final Modification for Reviews*. These revisions were effective for all preliminary results of review issued after April 16, 2012, and thus they apply to this administrative review.

The regulations revised in 2012 describe the methods by which normal value can be compared to EP and CEP in LTFV investigations and administrative reviews (*i.e.*, A-A, T-T, and A-T).⁷¹ These comparison methods are distinct from each other. When we use the T-T or A-T method, a comparison is made for each export transaction to the United States. When we use the A-A method, a comparison is made for each group of comparable export transactions for which the EPs or CEPs have been averaged together (*i.e.*, for an averaging group). We do not interpret the Act or the SAA to prohibit the use of the A-A comparison method in administrative reviews, nor does the Act or the SAA mandate the use of the A-T comparison method in administrative reviews; 19 CFR 351.414(c)(1) fills the gap in the statute concerning the choice of a comparison method in the context of administrative reviews. In both LTFV investigations and administrative reviews, the A-A method will be used unless we determine that another method is appropriate in a particular case. Because Congress did not specify the comparison method for administrative reviews, we have great discretion in selecting the appropriate comparison method in administrative reviews. Therefore, we have authority to consider the application of the A-T method as an alternative comparison methodology in administrative reviews, which the CIT has affirmed.⁷²

Withdrawn Targeted Dumping Regulations

Comment 9: Bosun argues that the Department should not conduct the TD or DP analysis in this review. Bosun explains that 19 CFR 351.414(f) (2008) (the section that covered the TD analysis) is still in effect because the Department did not properly withdraw it. Bosun states that the court in *Gold East* disagreed with the Department's assertion that it withdrew 19 CFR 351.414(f) (2008) properly and required the Department to first submit the proposal for notice and comment. According to Bosun, while the Department took steps to withdraw 19 CFR 351.414(f) (2008) properly, the very request for comments on its new methodology demonstrates that it has not yet undertaken all necessary steps to replace the original TD methodology and procedure. Because the petitioner did not file a timely TD allegation against Bosun in this review and the Department has not followed other procedural or substantive requirements in 19 CFR 351.414(f) (2008), according to Bosun, the Department should not conduct the TD or DP analysis for the final results.

⁷¹ See 19 CFR 351.414(b) (2012).

⁷² See *CP Kelco Oy and CP Kelco US, Inc. v. United States*, 978 F. Supp. 2d 1315 (CIT 2014).

The petitioner contends that the Department rejected the same arguments raised in other cases such as *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71087 (December 1, 2014) (*Welded Pipe and Tube*), and the accompanying I&D Memo at Comment 6. The petitioner argues that, because the Department satisfied the APA requirements for withdrawing the TD regulations, the Department does not need to use the withdrawn regulations, *i.e.*, 19 CFR 351.414(f)(1)(ii) and (2) (2008). The petitioner also argues that *Gold East* involves an investigation, not an administrative review.

Department's Position: The targeted dumping regulations withdrawn in the *2008 Withdrawal*⁷³ are no longer in effect and, when they were in effect, they applied only to the LTFV investigations, not administrative reviews. Likewise, *Gold East* involves a LTFV investigation, not an administrative review.⁷⁴ Furthermore, the currently effective 19 CFR 351.414 specifically fills the statutory gap regarding the selection of an appropriate comparison method in the context of administrative reviews.⁷⁵ This process was done with proper notice and opportunity to comment, and no party could reasonably have been left with the impression that the Department would be bound by the withdrawn targeted dumping regulations in administrative reviews.

In any event, the targeted dumping regulation was properly withdrawn pursuant to the APA. During the withdrawal process, the Department engaged the public to participate in its rulemaking process. In fact, the Department's withdrawal of its regulations in 2008 came after two rounds of soliciting public comments on the appropriate targeted dumping analysis.

The Department solicited the first round of comments in October 2007, more than one year before it withdrew the regulation, by publishing a notice in the *Federal Register* seeking public comments on what guidelines, thresholds, and tests it should use in conducting an analysis under section 777A(d)(1)(B) of the Act.⁷⁶ As the notice explained, because the Department had received very few targeted dumping allegations under the regulations then in effect, it solicited comments from the public to determine how best to implement the remedy provided under the statute to address masked dumping. The notice posed specific questions, and allowed the public 30 days to submit comments. Various parties submitted comments in response to the Department's request.⁷⁷ After considering those comments, the Department published a proposed new methodology in May 2008 and again requested public comment.⁷⁸ Among other things, the Department specifically sought comments "on what standards, if any, {it} should

⁷³ See *Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008) (*2008 Withdrawal*).

⁷⁴ See *Gold East and Gold East Paper (Jiangsu) Co., Ltd. v. United States*, Consol. Court No. 10-00371, 2015 Ct. Intl. Trade LEXIS 36 (CIT 2015).

⁷⁵ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

⁷⁶ See *Targeted Dumping in Antidumping Investigations; Request for Comment*, 72 FR 60651 (October 25, 2007) (*Targeted Dumping*).

⁷⁷ See, *e.g.*, *Certain Cut-to-Length Carbon-Quality Steel Plate Products From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 54264 (September 11, 2014) (*CTL Plate*), and the accompanying I&D Memo at Comment 3 n.18.

⁷⁸ See *Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations*, 73 FR 26371, 26372 (May 9, 2008).

adopt for accepting an allegation of targeted dumping.”⁷⁹ Several of the submissions⁸⁰ received from parties explained that the Department’s proposed methodology was inconsistent with the statute and should not be adopted.⁸¹ Moreover, several entities explicitly stated that the Department should not establish minimum thresholds for accepting allegations of targeted dumping because the statute contains no such requirements.⁸²

After considering the parties’ comments the Department explained that because “the provisions were promulgated without the benefit of any experience on the issue of targeted dumping, the Department may have established thresholds or other criteria that have prevented the use of this comparison methodology to unmask dumping.”⁸³ For this reason, the Department determined that the regulation had to be withdrawn.⁸⁴ Although this withdrawal was effective immediately, the Department again invited parties to submit comments, and gave them a full 30 days to do so.⁸⁵ The comment period ended on January 9, 2009, with several parties submitting comments.⁸⁶

The course of the Department’s decision-making demonstrates that it sought to actively engage the public. This type of public participation is fully consistent with the APA’s notice-and-comment requirement.⁸⁷ Moreover, various courts have rejected the idea that an agency must give the parties an opportunity to comment before every step of regulatory development.⁸⁸ Rather, where the public is given the opportunity to comment meaningfully, consistent with the statute, the APA’s requirements are satisfied. The touchstone of any APA analysis is whether the agency, as a whole, acted in a way that is consistent with the statute’s purpose.⁸⁹ Here, similar to the agency in *Fed. Express Corp.*, the Department provided the parties more than one opportunity to submit comments before issuing the final rule. As in *Fed. Express Corp.*, the Department also considered the comments submitted and based its final decision, at least in part, upon those comments. Just as the court in *Fed. Express Corp.* found all of those facts to indicate that the agency’s actions were consistent with the APA, so too the Department’s actions here demonstrate that it fulfilled the notice and comment requirements of the APA.

The APA does not require that a final rule that the agency promulgates must be identical to the rule that it proposed and upon which it solicited comments.⁹⁰ Here, the Department actively

⁷⁹ *Id.*

⁸⁰ *See, e.g., CTL Plate* and the accompanying I&D Memo at Comment 3 n.21.

⁸¹ *See, e.g., CTL Plate* and the accompanying I&D Memo at Comment 3 n.22.

⁸² *See, e.g., CTL Plate* and the accompanying I&D Memo at Comment 3 n.23.

⁸³ *See 2008 Withdrawal.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *See, e.g., CTL Plate* and the accompanying I&D Memo at Comment 3 n.27.

⁸⁷ *See, e.g., Arizona Pub. Serv. Co. v. EPA*, 211 F.3d 1280, 1299-1300 (D.C. Cir. 2000) (holding that the EPA’s decision to not implement a rule upon which it had sought comments did not violate the APA’s notice and comment requirements because the parties should have understood that the agency was in the process of deciding what rule would be proper).

⁸⁸ *See Fed. Express Corp. v. Mineta*, 373 F.3d 112, 120 (D.C. Cir. 2004) (*Fed. Express Corp.*) (holding that the Department of Transportation’s promulgation of four rules, each with immediate effect, only after the issuance of which the public was given the opportunity to comment, afforded proper notice and comment).

⁸⁹ *Id.*

⁹⁰ *See, e.g., First Am. Discount Corp. v. CFTC*, 222 F.3d 1008, 1015 (D.C. Cir. 2000).

engaged the public in its rulemaking process; it solicited comments and considered the submissions it received. In fact, that the numerous comments prompted the Department to withdraw the regulation demonstrates that the Department provided the public with an adequate opportunity to participate. In doing so, the Department fully complied with the APA.

Further, even if the two rounds of comments that the Department solicited before the withdrawal of the regulation were insufficient to satisfy the APA's requirements, the Department properly declined to solicit further comments pursuant to the APA's "good cause" exception. This exception provides that an agency is not required to engage in notice and comment if it determines that doing so would be "impracticable, unnecessary, or contrary to the public interest."⁹¹ The CAFC recognized that this exception can relieve an agency from issuing notice and soliciting comment where doing so would delay the relief that Congress intended to provide; in *National Customs Brokers*,⁹² the CAFC rejected a plaintiff's argument that the U.S. Customs Service failed to follow properly the APA in promulgating certain interim regulations when it had published these regulations without giving the parties a prior opportunity to comment. Moreover, although the U.S. Customs Service solicited comments on the published regulations, it stated that it "would not consider substantive comments until after it implemented the regulations and reviewed the comments in light of experience" administering those regulations.⁹³ The U.S. Customs Service explained that "good cause" existed because the new requirements did not impose new obligations on parties, and emphasized its belief that the regulations should "become effective as soon as possible" so that the public could benefit from "the relief that Congress intended."⁹⁴ The court recognized that this explanation was a proper invocation of the "good cause" exception and explained that soliciting and considering comments was *both* unnecessary (because Congress had passed a statute that superseded the regulation) "*and* contrary to the public interest because the public would benefit from the amended regulations."⁹⁵ For this reason, the court affirmed the regulation against the plaintiff's challenge.⁹⁶

In short, the regulation at issue may have had the unintentional effect of preventing the Department from employing an appropriate remedy to consider whether the A-A method is the appropriate tool with which to measure the extent to which a respondent is dumping. Such effect would have been contrary to congressional intent. Notwithstanding that we satisfied the APA's requirements as discussed above, the Department's revocation of such a regulation without additional notice and comment was based upon a recognized invocation of the "public interest" exception because good cause existed to waive the notice and comment period.⁹⁷

Finally, Bosun does not address and *Gold East* did not analyze the question of harmless error, which is critical because a lack of prior notice and comment is not sufficient to invalidate a regulation where the error is harmless.⁹⁸ Indeed, the CIT recently held that, under nearly

⁹¹ See 5 USC 553(b)(B).

⁹² See *National Customs Brokers and Forwarders Association of America, Inc. v. United States*, 59 F.3d 1219 (Fed. Cir. 1995) (*National Customs Brokers*).

⁹³ *Id.*, at 1220-21.

⁹⁴ *Id.*, at 1223.

⁹⁵ *Id.*, at 1224 (emphasis added).

⁹⁶ *Id.*

⁹⁷ See, e.g., *Welded Pipe and Tube* and the accompanying I&D Memo at Comment 6.

⁹⁸ See *Intercargo Ins. Co. v. United States*, 83 F.3d 391, 394 (Fed. Cir. 1996).

identical facts, a party was not harmed by the *2008 Withdrawal* and the withdrawn regulations no longer bind us.⁹⁹ Similarly, Bosun's failure to (1) submit any comments before or after the *2008 Withdrawal* or (2) identify any arguments not already presented by other interested parties demonstrates that, even if not properly withdrawn, the Department's withdrawal of the targeted dumping regulations was harmless with respect to Bosun.

Accordingly, there is no basis to apply the withdrawn targeted dumping regulations for the final results of this review.

Cohen's d Test

Comment 10: Bosun argues that the Department did not disclose the DP analysis methodology. Specifically, Bosun argues that the Department did not disclose (1) the historical context and purpose of the DP analysis, and (2) the related mathematical formulas or how and where the DP analysis diverged from such original mathematical formulas. Bosun requests that the Department disclose them and invite comments from parties. Bosun states that this request is reasonable because the Department gathers factual information from mandatory respondents even as the case brief deadline approached.

According to Bosun, the Cohen's *d* test is a statistical measure developed to express and evaluate the difference between the means of two independent samples drawn from populations with a common standard deviation or as a measure of effect size. Bosun explains that the Cohen's *d* statistics are calculated by finding the difference between the means of two samples and dividing this number by an estimator for the common standard deviation. Bosun explains further that the use of the "pooled" standard deviation for two samples as an estimator for the common standard deviation is a currently accepted practice. Bosun states that the pooled standard deviation is calculated by taking the square root of the weighted average of the two sample variances in which the weight-averaging is by the number of observations in each sample.

Bosun explains that the Department calculated the pooled standard deviation for the Cohen's *d* statistics by adding the sample variances of the test group and the base group, dividing the sum of this addition by two, and then taking the square root. Bosun contends that this calculation does not weigh each sample variance by the number of transactions in each group, misses a crucial aspect of the formula for calculating the pooled standard deviation, and produces an inaccurate result unless the test and base groups have an equal number of transactions. Bosun claims that more unequal sample sizes produce a greater difference in the sample standard deviation. Thus, Bosun argues, the Cohen's *d* coefficient over the DP analysis threshold of 0.8 is a product of the use of an incorrect formula.

Bosun claims that the Department uses too few transactions in the test and base groups in the Cohen's *d* test. Bosun argues that applying the Cohen's *d* test when there are at least two transactions in both the test and base groups is unsound because the Cohen's *d* test is (1) a biased

⁹⁹ See *Beijing Tianhai Indus. Co., Ltd. v. United States*, 7 F. Supp. 3d 1318 (Ct. Int'l Trade 2014) (explaining that where plaintiff did not (1) submit any comments before or after the *2008 Withdrawal* and (2) identify any arguments not already presented, the Department's failure to invite notice and comment prior to issuing the *2008 Withdrawal* constituted harmless error).

estimator for the true effect size and (2) even more biased when the total number of transactions in the samples being compared is less than 20. Bosun contends that, as a result, the calculated Cohen's *d* coefficient will be larger than the true effect size in terms of absolute value and its use could potentially result in producing a coefficient greater than the DP threshold of 0.8 when the true effect size is less than 0.8, particularly when the total number of transactions in both samples is less than 20. Bosun suggests an alternative methodology, *e.g.*, Hedges' *g*, to accurately estimate effect size in such an instance.

Bosun argues that the Department should not use the Cohen's *d* test as a test of statistical significance because it is simply a standardized measure of the difference between two means. Bosun explains that the Cohen's *d* test can produce the coefficient over 0.8 even when the difference between the means of two groups is not statistically significant. Bosun states that it is unreasonable to rely on the Cohen's *d* coefficient to find a statistically significant difference between the means of two groups. Bosun requests that the Department discontinue the use of the current DP analysis until it can be fully evaluated and revised to meet the bare minimum reasonable statistical method.

Bosun argues that counting sales at prices above the mean as passing the Cohen's *d* test does not unmask TD because sales at above average prices cannot reasonably be characterized as targeted. Bosun requests that the Department exclude targeted sales that are not dumped because there is no unmasking of dumping when there is no dumping.

With respect to Bosun's claim that the Department did not disclose the DP analysis methodology, the petitioner states that the Department rejected similar arguments in *Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65182 (November 3, 2014) (*Citric Acid*), and the accompanying I&D Memo at Comment 1-D. The petitioner explains that the Department fully explained the DP analysis in the *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 14-16 and disclosed the margin calculation programs which include all calculations, including the DP analysis, for the *Preliminary Results*.

The petitioner argues that the Department's use of the simple average in the calculation of the Cohen's *d* statistics is correct. The petitioner also argues that the Cohen's *d* test is not biased for the true effect size. With respect to these issues, the petitioner states that, in *Citric Acid* and the accompanying I&D Memo at Comment 1-D, the Department explained in detail the reasons it rejected the arguments that are identical with Bosun's in this review. Citing *Certain Steel Nails From the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014), and the accompanying I&D Memo at Comment 7, the petitioner contends that, as a generally recognized statistical measure of effect size, the Cohen's *d* test does not need to measure a statistically significant difference because the statute does not require the difference be statistically significant. Finally, citing, *e.g.*, *Wood Flooring* and the accompanying I&D Memo at Comment 1.C, the petitioner supports the Department's use of both low-priced and high-priced sales in the DP analysis to determine whether a pattern of prices that differ significantly exists and whether masking of dumping is occurring.

Department's Position: Bosun does not argue that our Cohen's *d* test violates the statute. Rather, Bosun puts forth several reasons unrelated to the statute why it believes that the DP analysis should be modified from the *Preliminary Results*. The statute does not direct how we measure whether there is a pattern of prices that differs significantly or how we calculate the pooled standard deviation of the Cohen's *d* coefficient. On the contrary, we have exercised our discretion in a reasonable manner as conferred by Congress on this matter. As explained in the *Preliminary Results* and below, our DP analysis is reasonable and the use of the Cohen's *d* test as a component of this DP analysis is in no way contrary to law.¹⁰⁰

In the *Preliminary Results*, we fully described our DP analysis for examining the two requirements under section 777A(d)(1)(B) of the Act.¹⁰¹ Also, our preliminary margin program for Bosun includes the calculations we used for the *Preliminary Results*, including our examination of whether there exists a pattern of prices that differ significantly and whether or not the A-A method can account for such differences.¹⁰² We made available the preliminary margin calculation program as well as other preliminary results documents and data for Bosun on ACCESS after the *Preliminary Results* was signed and issued, consistent with 19 CFR 351.224(b).

With respect to Bosun's argument that our use of a simple average of the sample variances of the test and base groups, when calculating the pooled standard deviation, creates inaccurate results, we reiterate that the statute does not direct how we should determine whether a pattern of prices that differ significantly exists, let alone how to calculate the pooled standard deviation of the Cohen's *d* coefficient. Furthermore, Bosun has provided no support to substantiate its argument. Our intent is to rely on a reasonable approach that affords predictability and we find that a simple average (*i.e.*, giving equal weight to the test and comparison groups) is the best way to accomplish this goal when we determine the pooled standard deviation. The use of a simple average equally weighs a respondent's pricing practices to each group and the magnitude of the sales to one group does not skew the outcome. This approach is reasonable and consistent with section 777A(d)(1)(B)(i) of the Act.¹⁰³

Our use of the Cohen's *d* test is based on the entire population of Bosun's U.S. sales and, therefore, there are no estimates involved in the results and "statistical significance" is not a relevant consideration. Moreover, for our application of the Cohen's *d* test, it is unnecessary to consider sampling size, randomness of the sample, or to include a measure of the statistical significance of its results, as this analysis includes all of Bosun's sales in the U.S. market. The Cohen's *d* test "is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group."¹⁰⁴ Within the Cohen's *d* test, the Cohen's *d* coefficient is calculated based on the means and variances of the test group and the comparison group. The test and comparison groups include all of the U.S. sales of comparable merchandise reported by the respondent. As such, the means and variances

¹⁰⁰ See, *e.g.*, *Citric Acid* and the accompanying I&D Memo at Comment 1.D.

¹⁰¹ See *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 14-16.

¹⁰² See the preliminary analysis memorandum for Bosun dated November 26, 2014, and the attached preliminary margin calculation programs and logs. See also the final analysis memorandum for Bosun dated concurrently with this Issues and Decision Memorandum and the attached final margin calculation programs and logs.

¹⁰³ See *Citric Acid* and the accompanying I&D Memo at Comment 1.D.

¹⁰⁴ See *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 15.

calculated for these two groups are the actual values for both the test and comparison groups, and are not estimates which include sampling errors. Statistical significance is used to evaluate whether the results of an analysis rise above sampling error (*i.e.*, noise) present in the analysis and is dependent on the sampling technique and sample size. Our application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of Bosun's sales in the U.S. market and, therefore, these values contain no sampling error. Accordingly, sampling technique, sample size, and statistical significance are not relevant considerations in this context.

If Congress intended to require a particular result be obtained, with a level of "statistical significance" of price differences as a condition for finding that there exists a pattern of prices that differ significantly, then Congress presumably would have used language beyond the stated requirement and more precise than "differ significantly." This is what Congress did, for example, with respect to enacting the sampling provision for respondent selection in section 777A(c)(2)(A) of the Act. But it did not do so with respect to the determination of the existence of a pattern in section 777A(d)(1)(B)(i) of the Act. As the executive agency tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, we do not agree with Bosun's opinion that the term "significantly" in the statute can mean only "statistically significant." The law includes no such directive.¹⁰⁵

Our analysis, including the use of the Cohen's *d* test, reasonably fills the statutory gap as to how to determine whether a pattern of prices "differ significantly."¹⁰⁶ Further, the consideration of "statistical significance" is to determine, from a sample of a larger population, an estimate of what the actual values (*e.g.*, the mean or variance) of the larger population may be with a "statistical significance" attached to that estimate. As discussed above, our use of the Cohen's *d* test is based on the entire population of Bosun's U.S. sales, and, therefore, there are no estimates involved in the results and accordingly "statistical significance" is not a relevant consideration. Our application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of a respondent's sales in the U.S. market, and, therefore, these values contain no sampling error. All of Bosun's U.S. sales in its U.S. sales database make its "statistical significance" argument inapposite.¹⁰⁷

With respect to Bosun's argument that sales at above average prices cannot reasonably be characterized as targeted, the statute does not require that we consider only lower priced sales in the DP analysis. We have the discretion to consider sales information on the record in our analysis and to draw reasonable inferences as to what the data show. It is reasonable for us to consider both lower-priced and higher-priced sales in the Cohen's *d* analysis because higher-priced sales are equally likely as lower-priced sales to create a pattern of prices that differ significantly. Further, higher-priced sales will offset lower-priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets for non-dumped sales that can mask dumping. The statute states that we may apply the A-T method if "there is a pattern of export prices . . . for comparable merchandise that differ significantly among purchasers, regions, or periods of time," and we explain "why such differences cannot be

¹⁰⁵ See, *e.g.*, *CTL Plate* and the accompanying I&D Memo at Comment 1.

¹⁰⁶ *Id.*

¹⁰⁷ See *Citric Acid* and the accompanying I&D Memo at Comment 1.D.

taken into account” using the A-A method.¹⁰⁸ Further, the SAA states with reference to section 777A(d) of the Act, and TD that:

In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.¹⁰⁹

The SAA further states that

New section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods, *i.e.*, where targeted dumping may be occurring.¹¹⁰

Therefore, the concept of the pattern of prices that differ significantly is clearly linked to prices that are higher than other prices that may be dumped (*i.e.*, lower prices) as well as to lower prices.¹¹¹

The statute directs us to consider whether there exists a pattern of prices that differ significantly. The statutory language references prices that “differ” and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute does not require that we consider only higher-priced sales or only lower-priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. We have explained that higher-priced sales and lower-priced sales do not operate independently; all sales are relevant to the analysis.¹¹² By considering all sales, higher priced sales and lower priced sales, we are able to analyze an exporter’s pricing practice and to identify whether there is a pattern of prices that differ significantly. Moreover, if we find that such a pattern of prices that differ significantly among purchasers, regions, or periods of time does exist, then this signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in discriminatory pricing behavior, there is cause to continue with the DP analysis to determine whether the A-A method or the T-T method can account for such pricing behavior. Accordingly, both higher and lower priced sales are relevant to our analysis of the exporter’s pricing behavior when examining the requirement under section 777A(d)(1)(B)(i) of the Act.¹¹³

In our DP analysis, we include non-dumped U.S. sales that are priced below the average prices. Lower or higher priced sales could be dumped or could be masking other dumped sales. This is not relevant in answering the question of whether there exists a pattern of prices that differ significantly because our DP analysis includes no comparisons with normal values and section

¹⁰⁸ See section 777A(d)(1)(B) of the Act.

¹⁰⁹ See SAA at 842.

¹¹⁰ *Id.*, at 843.

¹¹¹ See *Citric Acid* and the accompanying I&D Memo at Comment 1.D.

¹¹² See *Wood Flooring* and the accompanying I&D Memo at Comment 1.C.

¹¹³ See *Citric Acid* and the accompanying I&D Memo at Comment 1.D.

777A(d)(1)(B)(i) of the Act contemplates no such comparisons. Section 777A(d)(1)(B)(i) of the Act specifies a “pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions or periods of time.” Such a pattern is strictly between the sale prices in the U.S. market, and has no relationship with the comparable normal values for these U.S. sales. Accordingly, consideration of whether these U.S. sales are dumped is not part of fulfilling this requirement. Indeed, the lower-priced U.S. sales could be below their normal value, the high-priced U.S. sales could also be below their normal value, or none of the U.S. sales could be below their normal value. Such a determination is not part of this statutory requirement. Therefore, the Cohen’s *d* test, in its application to determine whether there exists a pattern of prices that differ significantly, is not required to consider whether these sales are also “dumped” as asserted by Bosun.¹¹⁴

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

Comment 11: Bosun claims that, even if it continues to use the DP analysis in the final results of this review, the Department should not use zeroing in NME proceedings. Bosun argues that *Union Steel v. United States*, 713 F.3d 1101, 1106 (Fed. Cir. 2013) (*Union Steel*), which affirmed the Department’s use of zeroing in *Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) (*Corrosion-Resistant Carbon Steel Korea*), applies to market economy proceedings only, and does not apply to NME proceedings because of the statutory difference between market economy proceedings and NME proceedings in calculating normal values. According to Bosun, the Department calculates the average normal value on a yearly basis in NME proceedings as opposed to a monthly basis in market economy proceedings, which is central to the CAFC decision in *Union Steel*, 731 F.3d at 1108.

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

The petitioner states that the Department rejected Bosun’s argument in the last review on the basis that market economy cases, including the underlying case in *Union Steel*, uses constructed value as normal value. The petitioner contends that *Union Steel* does not limit the use of the A-T method only to market economy cases. Citing *Citric Acid* and the accompanying I&D Memo at

¹¹⁴ *Id.*

Comment 1-C, the petitioner claims that there is no difference between market economy and NME cases in that both cases calculate normal values using period-wide averages.

Department's Position: In *Union Steel* the CAFC affirmed the Department's explanation that it may interpret the statute to permit the denial of offsets for non-dumped sales with respect to the A-T comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the A-A comparison method in investigations.¹¹⁵ The CAFC also affirmed the Department's explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews.¹¹⁶ Indeed, the court noted that although the Department recently modified its practice "to allow for offsets when making A-A comparisons in administrative reviews . . . {t}his modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns."¹¹⁷

Likewise, in *U.S. Steel Corp*, the CAFC sustained the Department's decision to no longer apply zeroing when employing the A-A comparison method in investigations while recognizing the Department's intent to continue to apply zeroing in other circumstances. Specifically, the court recognized that the Department may use zeroing when applying the A-T comparison method where patterns of significant price differences are found.¹¹⁸

We also disagree with Bosun's contention that the CAFC's decision in *Union Steel* is limited to market economy reviews. Bosun asserts that the A-T method used in market economy reviews differs from the methodology employed in administrative reviews of antidumping duty orders for a NME. While Bosun suggests that the "average" normal value is a monthly average in market-economy reviews, but a yearly value covering the entire review period in NME reviews, this is only true where normal value is based on comparison market sale prices; Bosun ignores market economy reviews where normal value is based on constructed value. Therefore, the argument that *Union Steel* applies only to market economy reviews where normal value was based on comparison market sales overlooks the fact that even the review underlying the *Union Steel* decision involved the use of constructed value.¹¹⁹ Although the Department modified its cost-calculation methodology in that review, the Department's normal practice is to calculate an annual weighted-average cost for the POR.¹²⁰

Cost of production is calculated according to a statutory formula by adding together several costs and expenses, including the cost of materials, fabrication, containers, coverings, and other processing costs, and selling, general, and administrative expenses. . . . The constructed value of merchandise, which is the basis for normal value when there are insufficient sales in the exporting country

¹¹⁵ See *Union Steel*, 731 F.3d at 1106.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ See *U.S. Steel Corp*, 621 F.3d at 1355 n.2, 1362-63

¹¹⁹ See *Corrosion-Resistant Carbon Steel Korea*.

¹²⁰ See, e.g., *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006) (*Wire Rod Canada*), and the accompanying I&D Memo at Comment 5, which explains our practice of computing a single weighted-average cost for the entire period.

or a third country, is the sum of the same costs and expenses used to calculate cost of production, plus realized profits. . . . Under its standard methodology, Commerce determines cost of production by calculating a single weighted-average cost for the period of review.¹²¹

Section 773(e) of the Act discusses the use of constructed value as the basis for normal value, and contains no limits regarding the time period for production costs used to calculate constructed value as the basis for normal value. In fact, the Department's practice, as explained above, is to calculate a single, weighted-average CONNUM-specific cost for the review period. We use annual average costs in order to even out swings in production costs experienced by respondents over short periods of time. In this manner, we smooth out the effect of fluctuating raw material costs.¹²² Likewise, in NME reviews, such as this one, pursuant to section 773(c)(1) of the Act, the Department calculates a single CONNUM-specific weighted-average normal value for the review period in a manner similar to how it calculates constructed value, except that it values the FOPs utilizing, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

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

Aggregation of A-A and A-T Comparison Results

Comment 12: Weihai claims that the calculations the Department preliminarily used for the mixed comparison method are inconsistent with *Final Modification for Reviews*. Specifically, Weihai explains that the mixed comparison method uses the standard A-A method for the sales that did not pass the Cohen's *d* test and the alternative A-T method for the sales that passed the Cohen's *d* test. According to Weihai, the Department used the mixed comparison method because between 33 percent and 66 percent of Weihai's U.S. sales showed a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods, and passed the Cohen's *d* test. Weihai does not challenge the Department's use of the mixed comparison method but it contends that the Department erred in its calculations by zeroing the overall results found for the sales that did not pass the Cohen's *d* test, rather than offsetting the overall results of those sales with the overall results for the sales that passed the Cohen's *d* test. Weihai argues that zeroing the dumping results of the sales for which the standard A-A method was used disfavors those sales over the sales for which the alternative A-T method was used. According to Weihai, it was the Department's intent to merge these two groups without regard to zeroing but the calculations did not reflect the Department's intention. Weihai requests that the Department modify its calculations so the sales for which the A-A method was used are not zeroed before being combined with the sales for which the A-T method was used.

¹²¹ See *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077, 1084 (Fed. Cir. 2001).

¹²² See *Wire Rod Canada* and the accompanying I&D Memo at Comment 5.

The petitioner argues that the Department's preliminary calculations were correct. The petitioner explains that the *Final Modification for Reviews* allows offsetting non-dumped sales in the A-A method but it does not require such an offset in the A-T method. The petitioner explains further that the *Final Modification for Reviews* does not specify how to manage offsetting in the combination of the A-A and A-T methods. The petitioner describes Weihai's proposed methodology as double offsetting. The petitioner states that the Department rejected Weihai's argument in the last review because Weihai's proposed methodology would defeat the purpose of the A-T method where a pattern of EPs or CEPs for comparable merchandise was found that differed significantly among purchasers, regions, or period of time.

Department's Position: For the final results, we continue to use the same mixed comparison method that we used in the *Preliminary Results*. Consistent with the *Final Modification for Reviews*, in an administrative review, we use the A-A method unless we determine that another method is appropriate in a particular case.¹²³ With the A-A method, we compare the EP or CEP with the normal value. When the normal value exceeds the EP or CEP, the comparison result is the amount of dumping on an average basis. The amount of dumping for all sales is the sum of these comparison results where the normal value exceeds the EP or CEP. This amount of dumping may then be offset by the comparison results for those sales where the EP or CEP exceed the normal value, up to the amount of dumping found for these sales.

When we have determined that the A-A comparison method is not appropriate in a particular case, we may use the A-T comparison method as an alternative. With the A-T method, we also compare the EP or CEP with the normal value. When the normal value exceeds the EP or CEP, the comparison results is the amount of dumping for that export transaction. The amount of dumping for all sales is the sum of these comparison results where the normal value exceeds the EP or CEP. However, for the A-T method, there is no offset to this amount for the export transactions where the EP or CEP exceed the normal value.

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

We disagree with Weihai's proposal that we grant offsets for the amount by which EP or CEP exceeds normal value for those sales being evaluated using the A-A method not only to the amount of dumping found for those sales evaluated using the A-A method, but also to the amount of dumping found for those sales evaluated using the A-T method. The A-A method and the A-T method are different comparison methods which are provided for in the statute and regulations and which are distinct and independent from each other. We also find that results from our calculations under each of these methods (or other methods by which we may calculate

¹²³ See 19 CFR 351.414(c)(1) and *Final Modification for Reviews*, 77 FR at 8102 and 8114.

the amount of dumping for a group of sales, such as facts available or the T-T method) are distinguishable. To calculate the weighted-average dumping margin for a respondent whose sales have been evaluated using more than one comparison method, we reasonably aggregate the results of each of these distinct comparison methods, specifically summing the amount of dumping and the U.S. sales value for each of these methods. To allow for offsets when combining the results of the mixed comparison approach would defeat the purpose of the A-T method where a pattern of EPs or CEPs for comparable merchandise was found that differed significantly among purchasers, regions, or periods of time. Such an approach would allow the results of A-A method to reduce or completely negate the results of the A-T method prescribed by section 777A(d)(1)(B) of the Act. Instead, by preserving the results of the A-T method, we ensure that the purpose of the A-T method of uncovering masked dumping is fulfilled, just as it is when we apply the A-T method as a singular comparison method. Weihai has not pointed to any specific provisions in the *Final Modification for Reviews* that is inconsistent with our practice.

Surrogate Values

Argon, Nitrogen, and Oxygen

Comment 13: Weihai argues that the GTA data for the HTS headings we preliminarily used to calculate the surrogate values for argon, nitrogen, and oxygen do not identify any specific type of these three inputs. Specifically, Weihai claims that these GTA data do not provide disaggregated data for individually valuing these three inputs. Weihai contends that the GTA data “must necessarily be inclusive of the cost of container,” *i.e.*, high pressure cylinders for storing and carrying these inputs. For these reasons, Weihai asserts, the GTA data the Department preliminarily used for these three inputs are unsuitable for the final results. Weihai requests that the Department use the statistics for these three inputs in the financial statements of Bhoruka Gases Limited (Bhoruka), which is an Indian company. According to Weihai, Bhoruka’s financial statements, which it submitted in its surrogate value comments dated June 25, 2014, at Exhibit 16, provide the necessary data matching with the specific types of these three inputs and conversion factors that the Department can use to calculate the surrogate values for these three inputs. Weihai explains that the Department has consistently preferred and applied the data in Bhoruka’s financial statements over the GTA data to value industrial grade of oxygen because Bhoruka’s financial statements reported the price data for pure and industrial grades of oxygen.

The petitioner states that the Department preliminarily valued these three inputs using Thai import data that are broad-market averages and contemporaneous with the POR. The petitioner argues that India is not an economically comparable country for purposes of this review. The petitioner argues further that the Indian price quote at issue comes from a single source which dates back to 1996 and thus is not contemporaneous with the POR. The petitioner requests that the Department continue the preliminary valuation of these three inputs for the final results of this review.

Department’s Position: For the final results, we continue to calculate the surrogate values for argon, nitrogen, and oxygen based on the GTA statistics for the HTS headings 2804.21, 2804.30, and 2804.40, respectively, as we did in the *Preliminary Results*, because (1) the data are

contemporaneous with the POR and (2) the GTA statistics represent a broad-market average that is tax- and duty-exclusive.¹²⁴ Moreover, these GTA statistics are import statistics of Thailand, the primary surrogate country in this review and, thus satisfy our preference to use surrogate values from a single country when possible.¹²⁵ Weihai reported that it consumed argon and nitrogen in both liquid and gaseous forms¹²⁶ and oxygen in gaseous form.¹²⁷ This is consistent with the HTS subheadings we have selected. Although the GTA statistics for the HTS headings 2804.21, 2804.30, and 2804.40 cover argon, nitrogen, and oxygen without identifying their subcategories, Weihai has not demonstrated that any lack of specificity in these HTS headings distorted our preliminary surrogate values for argon, nitrogen, and oxygen that Weihai used. Weihai's only arguments are that (1) these HTS headings do not identify the specific types of argon, nitrogen, and oxygen that it consumed and (2) our preliminary surrogate values for them "must necessarily be inclusive of the cost of container." These arguments do not demonstrate that our preliminary valuations of argon, nitrogen, and oxygen were unfairly high or otherwise distortive. Moreover, contrary to its assertion, Weihai reported that it consumed gaseous oxygen only during the POR.¹²⁸

We evaluated Bhoruka's financial statements and found the same deficiencies that we identified in Bhoruka's financial statements (provided by Weihai) in the last review.¹²⁹ Bhoruka's financial statements are not contemporaneous with the POR because they date back to 1996.¹³⁰ Moreover, we prefer country-wide information such as government import statistics to information from a single source, and we prefer industry-wide values to values of a single producer because industry-wide values better represent prices of all producers in the surrogate country.¹³¹ We also prefer to value factors using prices that are broad market averages because "a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country."¹³² Bhoruka's financial statements are a single source from a country that is not at the level of the economic development of the PRC.¹³³ Thus, unlike the GTA data, Weihai's suggested surrogate values do not represent industry-wide values or broad market averages from a country at the level of economic development of the PRC. Moreover, as explained earlier, Weihai's suggested surrogate values are not contemporaneous with the POR.

Bhoruka's financial statements also are not as specific as Weihai claims to be. Although Bhoruka's financial statements provide the prices for gas oxygen and liquid nitrogen, they do not

¹²⁴ See *Certain Steel Nails From the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review*, 2010-2011, 78 FR 16651 (March 18, 2013) (*Steel Nails*), and the accompanying I&D Memo at Section M. Sodium Bicarbonate.

¹²⁵ See *Clearon Corp. v. United States*, Court No. 08-00364, 2013 Ct. Intl. Trade LEXIS 27, at *19-22 (CIT 2013) (*Clearon Corp.*).

¹²⁶ See Weihai's section D response dated June 12, 2014, at 21-22.

¹²⁷ See Weihai's first supplemental response dated August 26, 2014, at 19.

¹²⁸ *Id.*

¹²⁹ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 11.

¹³⁰ See Weihai's surrogate value comments dated June 25, 2014, at Exhibit 16.

¹³¹ See, e.g., *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 33406 (July 13, 2009) (*Certain Pencils*), and the accompanying I&D Memo at Comment 4.

¹³² See *Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Order Administrative Review*, 71 FR 34893 (June 16, 2006) (*Honey*).

¹³³ See Weihai's surrogate value comments dated June 25, 2014, at Exhibit 16.

provide the prices specifically for gaseous nitrogen, gaseous argon, and liquid argon, which Weihai used during the POR¹³⁴ As stated above, there is no evidence demonstrating that our reliance on the GTA statistics for the three HTS headings resulted in distortive valuations of argon, nitrogen, and oxygen. Also, there is no evidence that Bhoruka's financial statements are better than the GTA statistics we preliminarily used. We find that the GTA statistics constitute the best available information on the record and, accordingly, we do not need to rely on Bhoruka's financial statements that are single-sourced and nearly two decades old.¹³⁵

Cores

Comment 14: The petitioner requests that the Department value cores based on the GTA statistics for HTS subheading 8202.31.10000. The petitioner disagrees with the Department's preliminary determination that the AUV from these statistics is unreasonably high. The petitioner contends that the Department's build-up methodology to value cores, as explained in the *Preliminary Results* and the accompanying Preliminary Decision Memorandum at 22, is unreliable and does not reasonably accomplish the goal of calculating the margins as accurately as possible because this methodology undervalues the cores that respondents purchased from unaffiliated NME suppliers.

The petitioner explains that this HTS subheading covers blanks for hand saws, blades for saws of all kinds, and circular saw blades with working parts of steel. The petitioner argues that the Department considers, *inter alia*, the quality, specificity, and contemporaneity of the source information in selecting surrogate values to calculate margins as accurately as possible. In response to the Department's preliminary finding that the AUV from this HTS subheading is unreasonably high, the petitioner states that the AUV at issue, \$32.45/kg, is reasonable in light of the actual prices Weihai paid to purchase cores from its unaffiliated NME suppliers and reported in Weihai's supplemental response and verification exhibit. The petitioner contends that, even conceding that respondents' NME purchase prices are distorted by government interference, there appears to be no basis to reject this AUV as unreasonably high when compared to the NME purchase prices. The petitioner claims that, even if this HTS subheading covers steel cores for circular sawblades with working parts of steel, not steel cores for diamond sawblades, it does not lead to the conclusion that this AUV is inappropriate as the surrogate value for cores because the Department's preliminary valuation methodology for cores is manifestly inappropriate. The petitioner states that, because the steel cores for sawblades with working edges of different materials undergo highly similar production processes, any differences between steel cores for sawblades with steel working parts and steel cores with working parts of diamond segments do not affect their costs in meaningful ways.

Bosun believes that the Department's build-up methodology provides the best available information required by the statute and thus justifies not relying upon the petitioner's suggested AUV to value cores. Bosun notes that the petitioner did not challenge the Department's valuation of Bosun's cores. Citing, *e.g.*, *Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318

¹³⁴ *Id.*

¹³⁵ See *Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1331 (CIT 2013) ("Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets.").

(October 18, 2011) (*Wood Flooring LTFV Final*), and the accompanying I&D Memo at Comments 14 and 17, Bosun states that the Department has rejected comparisons between public import statistics and confidential market purchase benchmarks in past cases. Bosun contends that the petitioner's suggested AUV is inaccurate and based on speculation and an HTS subheading that contains goods of a less certain nature and processing, *e.g.*, hand saw blades in a wide variety of sizes and types. Bosun explains that the build-up methodology is reasonable and accurate because it includes the quantity of steel in the cores the respondents produced.

Weihai argues that the petitioner's core valuation analysis is distorted because the petitioner cherry-picked heavy cores, *i.e.*, core types 3, 4, and 5, with higher prices to justify its proposed valuation of cores. Weihai explains that the relatively light core type 1 should be the main focus of this analysis because core type 1 is the overwhelming majority of cores Weihai purchased. Weihai states that all five core types that it reported are very different from each other. Weihai demonstrates that applying \$32.45/kg to the average unit weight of core (kg/piece) of each type of core reveals the true distortion the petitioner's valuation methodology for cores would yield. Moreover, according to Weihai, even with the heavy core types 3, 4, and 5 that the petitioner used as examples to substantiate its argument, the petitioner's core valuation methodology would overvalue core types 3, 4, and 5 by more than 1,000 percent. Weihai also explains that the petitioner's valuation methodology for cores would yield aberrational surrogate values for core types 1 and 2 as well.

Weihai criticizes the petitioner's use of the prices in the FOP verification report for Weihai. Weihai claims that those prices are just sample cores purchase prices from only one supplier in November 2012. In response to the petitioner's arguments, Weihai reiterates that it did not sell cores to unaffiliated U.S. customers and that it reported core diameters in inches, not millimeters. In response to the petitioner's claim that the Department's preliminary valuation of cores can be very low, Weihai contends that it is because the example the petitioner cited covers certain cores with low weight. Moreover, according to Weihai, the petitioner's suggested AUV is based on the HTS subheading that covers toothed, strip, and discs types of blanks. Weihai believes that they are finished goods that can be used independently for cutting operations. Weihai explains that such blanks are not the toothless disc types of cores Weihai used as parts to produce diamond sawblades. Citing, *e.g.*, *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264 (CIT 2005), Weihai argues that this HTS subheading is too broad to be a viable data source to value cores. Finally, Weihai claims that the Indian and Thai price quotes that it submitted in its surrogate value comments further impeach the petitioner's suggested AUV. Weihai requests that the Department continue to use the build-up methodology with the three inputs (*i.e.*, steel, labor, and electricity) that the company reported for self-produced cores.

Department's Position: We disagree with the petitioner. We find that the products covered by this Thai HTS subheading, *e.g.*, toothed blanks, are different from the cores used in the production of diamond sawblades.¹³⁶ When we can value cores respondents purchased from NME suppliers using the inputs they used to self-produce the identical types of cores, *i.e.* cores for diamond sawblades, we do not need to resort to an AUV derived from a Thai HTS subheading for merchandise different from cores for diamond sawblades (with the exception of

¹³⁶ See the FOP verification report for Weihai dated February 20, 2015, at 10 and Exhibit 18 at 21-29 (the verification report).

circular physical appearance in general). In the last review, with the petitioner's support, we decided that this build-up methodology is the best methodology to value cores in the absence of a better alternative.¹³⁷ We do not consider that an AUV based on an HTS subheading for non-identical products is a better alternative to the build-up methodology, which is based on the inputs for the production of the identical products, cores for diamond sawblades. Even if the build-up methodology uses inputs consumed for the production of cores with specifications different from the cores purchased from NME suppliers, we find that such differences within the identical products, cores for diamond sawblades, do not justify the use of the alternative valuation methodology the petitioner proposes.

We find that the prices Weihai paid to its unaffiliated NME suppliers and the petitioner used in its price comparisons are unsuitable as benchmarks to determine whether the petitioner's suggested AUV is reasonable because these prices are (1) Weihai's business proprietary information and thus do not necessarily represent industry-wide prices available to other producers and (2) NME prices presumably distorted by the PRC government interference.¹³⁸ Accordingly, we did not rely on Weihai's actual NME purchase prices for our decision not to use the petitioner's proposed AUV.

We also find that the petitioner's methodology in attempting to demonstrate the reasonableness of its proposed AUV itself is flawed because the petitioner did not take into account the weight of the cores that Weihai purchased from NME suppliers when the petitioner used the NME prices of these cores in its demonstration. We tested the petitioner's methodology by taking into account the weight of these cores and we found that the petitioner's proposed AUV overvalues cores much more than the petitioner claims in its demonstration.¹³⁹ This leads us to conclude that the petitioner's demonstration methodology is flawed because, by averaging the weight of all cores Weihai reported, the petitioner's demonstration methodology masks the fact that valuing certain cores with this AUV, *i.e.*, \$32.45/kg, can result in valuing cores at much higher prices than the petitioner claims with its demonstration. Both Bosun and Weihai reported cores in a weight/piece basis for each CONNUM.¹⁴⁰ So, for example, if a particular core a respondent purchased from an unaffiliated NME supplier can be reasonably valued at \$32.45/piece in Thailand, this core weighs 10 kilograms, and the respondent reported this core on a kilogram/piece basis for a CONNUM in its FOP database, then the use of this AUV would result in valuing this core at \$324.50/piece, which is 10 times higher than the reasonable surrogate price, \$32.45/piece.

For these reasons, we do not find the AUV advocated for by the petitioner is the best available information. We did not use the Indian and Thai price quotes in rejecting the petitioner's proposed AUV because we find the petitioner's proposed AUV unreliable without relying on those price quotes as benchmarks. Moreover, those Indian and Thai price quotes have serious deficiencies that we identified also in the last review as well.¹⁴¹ We continued to use the build-

¹³⁷ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 12.

¹³⁸ See *Wood Flooring LTFV Final* and the accompanying I&D Memo at Comments 14 and 17.

¹³⁹ See the Weihai final analysis memorandum for more analysis of the petitioner's price comparisons which include Weihai's business proprietary information.

¹⁴⁰ See Bosun's section D response dated May 30, 2014, at Exhibit D-4 and Weihai's first supplemental response dated August 26, 2014, at Exhibit S-2.

¹⁴¹ See Comment 15, *infra*.

up methodology using the inputs (*i.e.*, steel, labor, and electricity) that Bosun and Weihai reported for their self-produced cores.

Diamond Powder

Comment 15: For the final results, Weihai requests that the Department value diamond powder using the Thai and Indian price quotes dated January 28, 2013, and May 18, 2011, respectively. Weihai explains that these price quotes were issued to an independent third party in the course of a commercial inquiry. According to Weihai, these price quotes represent commercial transaction prices for several grades of commonly traded industrial diamond sawblades. Weihai describes these price quotes as high-quality with specific descriptions of different diamond powders used for producing diamond sawblades. Weihai argues that the Thai price quote is contemporaneous with the POR but concedes that the Indian price quote is slightly non-contemporaneous with the POR. Weihai insists, however, that the Indian price quotes' level of specificity and the fact that they are domestic price quotes outweigh their non-contemporaneity. Weihai asserts that domestic price data are probative of the price actually payable by a hypothetical NME producer. Weihai claims that these non-contemporaneous price quotes can be inflated or deflated, as applicable, using a suitable price index. Weihai opposes the Department's preliminary valuation of diamond powder based on the GTA statistics for HTS heading 7105.10.00 (diamond (natural & synthetic) dust & powder).

The petitioner explains that Weihai never called the preliminary AUV for diamond powder aberrational, non-specific to its diamond powders, or otherwise unreasonable. According to the petitioner, Weihai simply argues that there are times when price quotes provide best information available to value inputs, despite the Department's preference not to use price quotes. The petitioner contends that Weihai did not demonstrate that these two price quotes are the best information available to value diamond powders. The petitioner explains that the Indian price quote is not (1) contemporaneous with the POR and (2) from an economically comparable country, whereas the Department's preliminary AUV is from the primary surrogate country and contemporaneous with the POR. The petitioner explains that the Thai price quote is contemporaneous with the POR and from the primary surrogate country but there is no guarantee that it was (1) not cherry-picked and (2) produced in an actual transaction. The petitioner maintains that a single transaction cannot represent broad-market averages and that price quotes do not constitute domestic price data in the sense of actual transaction prices.

According to the petitioner, Weihai did not even demonstrate that (1) the specifications in these two price quotes correspond to the types of diamond powders Weihai used in its production process and/or (2) HTS subheading 7105.10.00 does not cover specific types of diamond powders Weihai used in its production. The petitioner also contends that the three court cases Weihai cited to support its claim either (1) do not appear to have involved price quotes or (2) appear to have involved a situation in which the import data on the record was manifestly not specific to the input at issue. The petitioner claims that these two price quotes are not accurate, reliable, or otherwise superior to the AUV the Department preliminarily used to value diamond powders.

Department's Position: For the final results, we continue to value diamond powder based on the GTA statistics for HTS heading 7105.10.00. We find that the Thai and Indian price quotes do not provide viable alternatives for valuing diamond powders. The Indian price quote is not contemporaneous with the POR.¹⁴² Also, we prefer country-wide information such as government import statistics to information from a single source and we prefer industry-wide values to values of a single producer because industry-wide values better represent prices of all producers in the surrogate country.¹⁴³ In addition, we prefer to value FOPs using a single surrogate country where we have usable data.¹⁴⁴ We generally do not to use price quotes if other suitable publicly available data is on the record because (1) price quotes do not represent actual prices or broad ranges of data and (2) we do not know the conditions under which they are solicited and whether or not they are self-selected from a broader range of quotes.¹⁴⁵ The Thai price quote is from a single source, Yangkong Enterprise Co., Ltd. (Yangkong), and the Indian price quotes is from Orion International.¹⁴⁶

While these price quotes appear to be very specific with a list of prices for different types of diamond powder, the appearance of “specificity” with details in these price quotes does not enhance their reliability or address our general concerns over price quotes for several reasons. The Thai price quote does not identify the recipient of the price quote.¹⁴⁷ Because we do not know the party to which Yangkong issued the price quote, we do not know the conditions under which it was solicited and whether or not it was self-selected from a broader range of quotes. We also cannot ascertain that the prices in the Thai price quote represent actual prices in sales of diamond powder.

Weihai submitted its Indian price quote for diamond powders in its surrogate value comments dated June 25, 2014, at Exhibit 15B. From this exhibit, we identified the same deficiencies that we identified in Exhibit 15B of Weihai's surrogate value comments dated June 13, 2013, which Weihai filed for the last review.¹⁴⁸ The companion Indian price quotes Weihai submitted in Exhibit 15A of Weihai's surrogate value comments dated June 25, 2014, also contained the same deficiencies that we identified in Exhibit 15A of Weihai's surrogate value comments dated June 13, 2013, in the last review.¹⁴⁹ Both Exhibits 15A and 15B were issued by Orion International.¹⁵⁰ Exhibit 15A contains the Indian price quotes for cores and Exhibit 15B contains the Indian price quotes for cores and diamond powders.¹⁵¹ In the first and third administrative reviews, Weihai requested that the Department use price quotes to value diamond powders but we decided not to use these Indian price quotes.¹⁵² In this review, as in the first review, Weihai

¹⁴² See Weihai's surrogate value comments dated June 25, 2014, at Exhibits 5 and 15.

¹⁴³ See, e.g., *Certain Pencils* and the accompanying I&D Memo at Comment 4.

¹⁴⁴ See *Clearon Corp.*, 2013 Ct. Intl. Trade LEXIS 27, at *19-22.

¹⁴⁵ See *Fish Fillets* and the accompanying I&D Memo at 9.

¹⁴⁶ See Weihai's surrogate value comments dated June 25, 2014, at Exhibits 5 and 15.

¹⁴⁷ *Id.*, at Exhibit 5.

¹⁴⁸ *Id.*, at Exhibit 15B and *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 12 for the specific deficiencies that we identified and explained in detail.

¹⁴⁹ See Weihai's surrogate value comments dated June 25, 2014, at Exhibit 15A and *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 12 for the specific deficiencies that we identified and explained in detail.

¹⁵⁰ See Weihai's surrogate value comments dated June 25, 2014, at Exhibits 15A and 15B.

¹⁵¹ *Id.*

¹⁵² See *Diamond Sawblades 1* and the accompanying I&D Memo at Comment 12 and *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 12.

did not explain how the specific descriptions of diamond powders in the Indian price quotes are relevant to the diamond powders that it purchased and used during the POR.¹⁵³ Therefore, we are unable to determine whether the diamond powder prices in the Indian price quote are representative of the range of prices Weihai paid to purchase diamond powders with various specifications.¹⁵⁴ In the third review, we found that the circumstances in which Orion International issued these Indian price quotes in Exhibits 15A and 15B are questionable, particularly with respect to the price quotes for cores. We explained thoroughly the questionable nature of the Indian price quotes and, for those reasons, we decided that these Indian price quotes are unreliable to value cores and diamond powders.¹⁵⁵ For the same reasons, we did not use these Indian price quotes to value diamond powders for the final results of this review. Moreover, the Indian price quotes predate the POR by more than a year, which constitutes an additional reason not to use the Indian price quotes.

Finally, the Indian price quotes come from India, which is not one of the potential surrogate countries at the level of economic development of the PRC. When we have viable source data from the primary surrogate country to value diamond powders, we do not need to find source data from a country that is not at the level of economic development of the PRC.

Financial Statements

Comment 16: For the *Preliminary Results*, the Department used Trigger's 2013 financial statements. For the final results, the petitioner recommends that the Department use the 2013 financial statements of KM and/or Tyrolit. Respondents recommend that the Department continue to use Trigger's financial statements.

The petitioner argues that the Department should select the financial statements from the primary surrogate country when available and that, therefore, the Department should select the financial statements of Tyrolit and/or KM. The petitioner argues that the defects in Trigger's financial statements are more serious than the lack of detail in Tyrolit's financial statements. The petitioner states that Trigger is a company located in the Philippines, which is not one of the six potential surrogate countries in this review. Citing, *e.g.*, *Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1333 (CIT 2014), the petitioner asserts that the Department may not rely on surrogate values from a country that is not at the level of economic development of the PRC, even if the Department has concerns over the reliability or specificity of information available from the primary surrogate country for a particular input. Citing *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1371-72 (Fed. Cir. 2010), the petitioner states that the only exception in which the Department may resort to surrogate values from a country not at the level of economic development of the PRC is when it is impossible for the Department to do otherwise. The petitioner claims that, in this review, the Department has viable financial statements from KM and Tyrolit.

¹⁵³ See *Diamond Sawblades 1* and the accompanying I&D Memo at Comment 12.

¹⁵⁴ *Id.*

¹⁵⁵ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 12 for our explanation of the details of the questionable nature of the Indian price quotes our decision not to value cores based on them and Comment 14 for our decision not to value diamond powders based on them for the same reasons we stated in Comment 12.

The petitioner contends that, because Trigger sells nearly all of its products to its Japanese parent company, Trigger incurs no selling expenses and Trigger's profit ratio is 0.40 percent, which the petitioner claims to be well below that of KM or Tyrolit. The petitioner also contends that Trigger's Japanese parent company's delay or withholding of payments to Trigger created inventory carrying costs and interest-free loans not reported as SG&A costs. According to the petitioner, Trigger's markups, which the petitioner explains as "income from sales less cost of sales divided by income from sales," were 9.73 percent in 2012 and even less at 5.12 percent in 2013. By comparison, the petitioner claims, KM's markups were 19.04 percent and 21.90 percent in 2012 and 2013, respectively, and Tyrolit's markups were 32.03 percent in 2012 and 33.46 percent at 2013, respectively, and more stable. The petitioner believes that the decrease in Trigger's 2013 markup, low profits, low return on assets, low ratio of gross profit to operating expenses, and significant outstanding receivables from its Japanese parent company demonstrate that Trigger's performance is not driven by market conditions but by the needs and desires of its Japanese parent company.

The petitioner insists that Trigger's use of prison labor makes Trigger's financial statements unreliable to calculate financial ratios because Trigger's access to such labor, which cannot freely negotiate market-based wage as non-prison laborers can, affects its profit and expenses and financial performances. The petitioner explains that Trigger's income tax liability rose from 10.5 percent of profit before tax in 2012 to 80.50 percent of profit before tax in 2013 because its income was so small in 2013. In addition, according to the petitioner, Trigger's financial statements reveal that Trigger owes an outstanding tax liability of P 81,652.31 as a result of an investigation by the Philippine government.

The petitioner claims that Tyrolit is a producer of identical merchandise and disagrees with the Department's preliminary decision that KM is not a producer of comparable merchandise. The petitioner insists that KM's website and promotional materials demonstrate that KM is a producer of comparable merchandise, *i.e.*, vitrified and resinoid grinding wheels. Citing *LTFV Final* and the accompanying I&D Memo at Comment 1, the petitioner contends that grinding wheels are merchandise comparable to diamond sawblades. The petitioner contends further that Weihai's parent company also produces vitrified grinding wheels and that such wheels are abrasive products similar to diamond sawblades.

Bosun and Weihai both oppose the use of the Thai financial statements to calculate the financial ratios for the final results of this review. Weihai argues that it is the Department's practice to select publicly available financial statements from market economy surrogate companies that produce identical or comparable merchandise based on the specificity, contemporaneity, and quality of data. According to Weihai, the product specificity is the key consideration in selecting financial statements and the financial statements must be sufficiently detailed to provide a reliable source for surrogate financial ratios.

Bosun and Weihai explain that the Department may select surrogate source data from a country other than the primary surrogate country if the selected surrogate source data represent the best information available and if the data from the primary surrogate country is unavailable or otherwise defective. Bosun and Weihai challenge the petitioner's reliance on *Jiaxing Brother*, which, according to Bosun, is currently on appeal. Bosun states that the CIT did not explained in

Jiaxing Brothers why the Department was not obligated to select the best available information but apparently concluded that the surrogate value at issue from the primary surrogate country was not seriously defective. Weihai explains that *Jiaxing Brothers* is inapposite because, after the data from the primary surrogate country, Thailand, were found unreliable, the Department had other potentially viable data to consider using data from another potential surrogate country, *i.e.*, the Philippines, before resorting to the Indian data. Weihai also distinguishes this review from *Downhole Pipe and Equip. LP v. United States*, 887 F. Supp. 2d 1311 (CIT 2012) in that this CIT case involved the use of non-public U.S. data when the data from the primary surrogate country was both publicly available and product-specific.

Bosun also challenges the petitioner's reliance on *Dorbest Ltd.* to support the claim that a secondary surrogate country can only be a source when it is impossible to find surrogate values from the primary surrogate country. Bosun states that *Dorbest Ltd.* requires the Department to obtain surrogate values from economically comparable countries to the extent possible except in situations where such data were not available or were irretrievably tainted by some statistical flaw. Bosun claims that *Dorbest Ltd.* supports the Department's preliminary use of Trigger's financial statements because *Dorbest Ltd.* upheld that the Department may (1) rely on multiple countries and (2) disregard data from the primary surrogate country if they are defective. Bosun distinguishes *Dorbest Ltd.* from this case in that the CAFC found the Department's use of certain labor data from a country with per capita GNI of over \$39,000 is the use of data from a non-comparable country when the PRC's per capita GNI was \$960 and overturned the Department's final results. Bosun and Weihai contend that the Philippines is only a less comparable country, not a totally non-comparable country like in *Dorbest Ltd.* Weihai explains that the Philippines continues to be economically comparable to the PRC based on its latest per capita GNI of \$2,470, which is within the bounds of the per capita GNI of lower and middle income countries (\$1,877) and higher and middle income countries (\$6,987). As such, Weihai claims, the Philippines continues to be at a similar, though arguably not at the same, level of economic development as the PRC (\$5,740).

Citing, *e.g.*, *Peer Bearing Company-Changshan v. United States*, 752 F. Supp. 2d. 1353, 1373 (CIT 2011), Bosun and Weihai state that, to the extent that the data considerations outweigh the difference in levels of economic development, the Department's policy is to use data from countries that are not at the same level of economic development as the PRC but still at a level of economic development comparable to the PRC. Citing, *e.g.*, *Jacobi Carbons Ab v. United States*, 992 F. Supp. 2d 1360, 1363 (CIT 2014), Weihai explains that the preference for data from the primary surrogate country may be important but it is not absolute because the Department must evaluate the data from the primary surrogate country against competing data available from countries other than the primary surrogate country. Bosun and Weihai insist that the Thai financial statements contain several defects that outweigh the fact that Thailand is more economically comparable to the PRC than the Philippines is. Bosun explains that the Department's use of Trigger's financial statements is consistent with *Dorbest Ltd.* and *Diamond Sawblades 3* and analogous with other cases, such as *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4539 (January 28, 2015), and the accompanying I&D Memo at Comment 2, in which the Department relied on Bulgarian price data to value chlorine because the price data from Thailand, the primary surrogate country, was aberrant, distortive, and unreliable.

Bosun and Weihai claim that Tyrolit's financial statements lack the same crucial details as they did for the last review. Citing *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 16, Bosun and Weihai reiterate specific deficiencies in Tyrolit's financial statements that the Department found with respect to direct materials, factory overhead supplies, manufacturing overhead, and net financing costs. Bosun states that Tyrolit's financial statements have only thirteen delineated items under expenditure, while Trigger's financial statements have over fifty delineated cost items. Weihai argues that Tyrolit's financial statements seriously lack details with basket category lines similar to the ones the Department identified in the last review. According to Weihai, Tyrolit's financial statements do not (1) itemize specific expenses under the "Cost of Sales" and "Management Expense" and (2) apparently have a line for selling expenses. Weihai contends that Tyrolit's financial statement's only factory overhead is depreciation and the Department uses such financial statements only as a last resort when more detailed financial statements do not exist on the record. Moreover, Weihai claims, Tyrolit's financial statements show business transactions with one of the petitioner companies, Diamond Products, Inc. and thus has conflict of interest to be reliable as surrogate financial statements.

Bosun and Weihai argue that the Department should not use Tyrolit's financial statements because Tyrolit received countervailable subsidies. Citing, *e.g.*, Omnibus Trade and Competitiveness Act of 1988, H.R. Rep. No. 100 576, at 59, (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547, 1623-24, and *Jiaying Brothers Fastener Co. v. United States*, 751 F. Supp. 2d 1345, 1352 (CIT 2010), Bosun and Weihai claim that the Department does not need to conclude that a company received countervailable subsidies in order to find the company's financial statements unsuitable for calculation of surrogate financial ratios if there are reasons to suspect that the company may have received actionable subsidies. Bosun and Weihai explain that Tyrolit received subsidies that are identical or very similar to the subsidies the Department found to be countervailable in separate CVD investigations. Further, Bosun and Weihai point out that Trigger's financial statements are available. Weihai explains that Tyrolit's production of identical merchandise does not tilt the scale toward the use of Tyrolit's financial statements because it is the Department's practice not to use financial statements of a producer of identical merchandise that received countervailable subsidies when other viable financial statements from a producer of comparable merchandise exist.

Bosun and Weihai support the Department's preliminary decision that KM is not a producer of comparable merchandise. Bosun and Weihai assert that KM's financial statements do not support the petitioner's claim that KM produces grinding wheels. According to Bosun and Weihai, KM's financial statements list only whetstone, hand gliders, and polished stone as the items that KM produces. Bosun contends that producing grinding wheels is not KM's primary business, if it even does produce grinding wheels. Bosun explains that, in the LTFV investigation, the Department found that one diamond grinding wheel producer produces too many dissimilar products to be considered as a producer of comparable merchandise. Bosun claims that, with only ten delineated items, KM's financial statements is lacking in detail much like Tyrolit's financial statements.

Citing *Certain Steel Nails from the People's Republic of China: Final Results of the First New Shipper Review*, 75 FR 34425 (June 17, 2010), and the accompanying I&D Memo at Comment 4,

Weihai argues that it is the Department's established practice to accord greater weight to the information contained within the financial statements over the company's website information. Weihai contends that the grinding wheels KM produces are glass products designed for polishing or dressing of the surfaces instead of cutting metals accomplished by circular saw blades. Finally, Weihai claims that the petitioner submitted the English translation of a vital portion of KM's financial statements in an untimely manner. Weihai states that the Department does not use financial statements with inadequate English translation.

Weihai explains that Trigger mainly produced comparable merchandise and Trigger's small production of non-comparable merchandise does not disqualify Trigger's financial statements as a viable source to calculate surrogate financial ratios. Citing *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163, 70166 (November 25, 2014) (*Activated Carbon*), Weihai claims that the petitioner's argument concerning Trigger's relationship with its Japanese parent company is speculative in nature because, if sales price distortion existed between the two, appropriate Customs and income tax authorities would have investigated them pursuant to the jurisdictional transfer pricing rules.

With respect to the use of prison labor, Bosun and Weihai state that Trigger's use of prison labor accounts for only 3.5 percent of Trigger's total labor costs. Weihai contends that Trigger publicly disclosed its use of prison labor and the petitioner did not establish that Trigger distorted its financial statements with the prison labor. Bosun argues that the petitioner did not support its claim that this prison labor is a subsidy program that makes Trigger's financial statements unreliable. Bosun contends that the prison labor appears "to be a charitable act perhaps as a part of a work rehabilitation program for female inmates." Regardless, Bosun argues, all labor costs should be excluded from the calculation of financial ratios "because the Department's applied ILOA 6A labor cost accounts for all labor expenses – direct, indirect, administrative, general, subcontracting, etc." Under this approach, according to Bosun, Trigger's labor cost is not technically excluded but is placed in the denominator for raw materials, direct labor, and energy. As such, Bosun states, should Trigger's labor cost be undervalued due to the small percentage of the prison labor, this fact would actually overestimate the cost of labor because this denominator would be slightly undervalued. Bosun argues that, when Trigger is engaged in the production of comparable merchandise in a country at the level of economic development of the PRC, the Department has no concern about Trigger's financial statements' representation of the respondents' production experience.

In response to the petitioner's claim that Trigger's financial statements do not show selling expenses, Weihai lists several line-item expenses that it claims to be related to Trigger's selling activities. Bosun states that (1) selling expenses are generally a small part of a company's SG&A expense, as seen in Tyrolit's financial statements, and (2) the lack of delineated selling expenses in Trigger's financial statements only shows that the company did not delineate its selling expenses in the financial statements and provides the Department with no reasonable basis to make any further finding.

In response to the petitioner's argument concerning Trigger's markups, tax liabilities, and certain accounting receivables Trigger's Japanese parent company, Weihai contends that the Department

does not look behind the financial statements to address such tangential and unsupported arguments. Bosun contends that the petitioner's calculation of Trigger's markup is flawed because it does not take into account all factors in pricing, costs, and sales. Bosun argues that KM's financial statements show long-term loans apparently with free interests and Tyrolit's financial statements show multiple large transactions with its international affiliates. Bosun explains that Trigger's financial statements reveals that Trigger resolved the tax liability issue in 2013 and has no pending tax liability issues. In response to the petitioner's argument concerning Trigger's 0.40 percent profit, Bosun notes that Trigger's sales dropped in 2013 and Weihai explains that the 0.40 percent profit is appropriate to capture Weihai's financial experience.

Department's Position: For the final results of this review, we continue to use Trigger's financial statements to calculate surrogate financial ratios as we did in the *Preliminary Results*. We also used Trigger's financial statements to calculate surrogate financial ratios in *Diamond Sawblades 2* and *Diamond Sawblades 3*.¹⁵⁶ Trigger's financial statements in this review are similar to the ones we used for *Diamond Sawblades 2* and *Diamond Sawblades 3*.

First, we do not find that KM produced comparable merchandise during the POR or the fiscal year 2013. KM's financial statements clearly state that KM produced whetstone, hand glider, and polished stone.¹⁵⁷ These are not merchandise identical or comparable to the subject merchandise. Also, nothing in KM's financial statements indicates that it produced any type of grinding wheels during the POR or fiscal year 2013.¹⁵⁸ To support its claim that KM produces grinding wheels, the petitioner exclusively relies on (1) KM's company website pages printed on October 28, 2014, a year after the end of the POR and 10 months after the end of fiscal year 2013, and (2) the company information for KM that the petitioner apparently downloaded or printed from <http://www.nanasupplier.com>, which does not show dates for either website publication or website printing.¹⁵⁹ Nothing in these website pages indicates that KM produced grinding wheels during the POR or fiscal year 2013. Moreover, even if these website pages did indicate that KM produced grinding wheels during the POR or fiscal year 2013, the information presented in KM's financial statements, to which we accord a greater weight and which are audited for fiscal year 2013, does not indicate that KM produced grinding wheels; we would not rely exclusively on website pages indicating that KM produced grinding wheels when we have more reliable audited financial statements, which contain no evidence that KM produced grinding wheels during either the POR or fiscal year 2013.¹⁶⁰ Therefore, we find it reasonable to rely on KM's financial statements and determine that KM did not produce identical or comparable merchandise during the POR or the fiscal year 2013. Moreover, KM's financial statements lack detailed line items such as inventories open and closed.¹⁶¹ Our decision to exclude KM's financial statements from consideration leaves the financial statements of Trigger and Tyrolit to consider for the final results of this review.

¹⁵⁶ See *Diamond Sawblades 2* and the accompanying I&D Memo at Comment 11 and *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 20.

¹⁵⁷ See the petitioner's surrogate value comments dated November 3, 2014, at Exhibit 1A.

¹⁵⁸ *Id.*, at Exhibit 1A.

¹⁵⁹ *Id.*, at Exhibit 1B.

¹⁶⁰ See *Certain Steel Nails from the People's Republic of China: Final Results of the First New Shipper Review*, 75 FR 34425 (June 17, 2010), and the accompanying I&D Memo at Comment 4.

¹⁶¹ See the petitioner's surrogate value comments dated November 3, 2014, at Exhibit 1A.

Section 773(c)(1) of the Act directs us to base the valuation of the factors of production on “the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate. . . .” In order to calculate surrogate financial ratios, we select financial statements from market-economy surrogate companies based on the “specificity, contemporaneity, and quality of the data.”¹⁶² For this purpose, we normally use publicly available financial statements in accordance with 19 CFR 351.408(c)(4).¹⁶³ Where possible, we do not calculate financial ratios based on financial statements that show discrepancies or lack of specificity with respect to certain line items.¹⁶⁴

The three financial ratios we calculate are 1) manufacturing overhead as a percent of raw materials, direct labor & energy; 2) SG&A expenses as a percent of raw materials, direct labor, energy, manufacturing overhead, and traded/finished goods; and 3) profit as a percent of raw materials, direct labor, energy, manufacturing overhead, traded/finished goods, SG&A and interest.¹⁶⁵

Tyrolit’s financial statements in this review contain the same deficiencies that we identified in Tyrolit’s financial statements in the last review.¹⁶⁶ Tyrolit’s financial statements do not include specific line items necessary for our calculation of the surrogate financial ratios in this review. Tyrolit’s financial statements show a line item expense for “Raw materials and consumables used.” While the petitioner treats this line-item expense as direct materials,¹⁶⁷ it is not clear whether this line-item expense includes direct material costs only or direct material costs as well as other expenses such as factory overhead, which we need to segregate from direct material costs in order to calculate the surrogate manufacturing overhead ratio. Unlike Trigger’s financial statements, Tyrolit’s financial statements do not explain whether the “consumables used” in this expense can be disaggregated further with specific line item expenses for direct materials and factory overhead supplies.¹⁶⁸ In contrast, Trigger’s financial statements show line item expenses for “Direct Materials” and “Factory Overhead,” under which “Factory supplies” is one of the ten listed factory overhead line items (i.e., “Depreciation,” “Factory supplies,” “Light, power and water,” “Employees’ benefits and welfare,” “Rent,” “Security services,” “Fuel and lubricants,” “Production supervision,” “Repairs and maintenance,” and “Miscellaneous expense”).¹⁶⁹ In Trigger’s financial statements, the “Factory Overhead” section allows us to categorize two line items as “Labor,” one line item as “Energy,” and seven line items as “Manufacturing Overhead”

¹⁶² *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People’s Republic of China*, 71 FR 53079 (September 8, 2006) and the accompanying I&D Memo at Comment 1.

¹⁶³ *Certain Frozen Warmwater Shrimp from the People’s Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 52049 (September 12, 2007) and the accompanying I&D Memo at Comment 2.

¹⁶⁴ See *Wood Flooring* and the accompanying I&D Memo at Comment 2.

¹⁶⁵ See the memorandum to the File entitled “Diamond Sawblades and Parts Thereof from the People’s Republic of China: Surrogate Values for the Final Results of Review” (Final Surrogate Value Memorandum) dated concurrently with this I&D Memo, at Exhibit 1, Financial Ratios tab.

¹⁶⁶ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 16.

¹⁶⁷ See the petitioner’s surrogate values comments dated June 25, 2014, at Exhibit 3A.

¹⁶⁸ *Id.* at Exhibit 3A, note 19.

¹⁶⁹ See Weihai’s surrogate value comments dated November 4, 2014, at Exhibit 8A, Trigger’s 2013 Financial Statements at 22.

for our calculation of financial ratios.¹⁷⁰ Notably, however, with Tyrolit’s financial statements, the only line item identifiable as “Manufacturing Overhead” for our calculation of financial ratios is “Depreciation.”¹⁷¹ Here, we do not find it reasonable to conclude that the only manufacturing overhead amount is depreciation, particularly in light of the fact that depreciation is only one of many manufacturing overhead amounts listed in Trigger’s financial statement. In prior NME cases, we did use financial statements that provided depreciation as the only overhead for our calculation of financial ratios under unique circumstances, but when available on the record we prefer to use financial statements that contain the full level of details,¹⁷² including line-item expenses that comprise manufacturing overhead.¹⁷³ In addition, Trigger’s financial statements provide detailed line items for “Net Financing Costs” (i.e., “Interest income,” “Dividend and other income,” “Realized foreign exchange gain (loss),” “Bank charges,” “Unrealized foreign exchange gain (loss),” and “Loss on disposal.”) From the list of these line items in Trigger’s financial statements, we categorized “Dividend and other income” as “Profit (P) and Adjustment to Profit” and all other line items as “SG&A and Interest (SGA)” for our calculation of financial ratios in this review. In contrast, Tyrolit’s financial statements provide the line item “Net financing costs” with no further details.¹⁷⁴ Trigger’s financial statements provide a level of detail similar to Bosun’s financial statements¹⁷⁵ and Weihai’s financial statements¹⁷⁶ whereas Tyrolit’s financial statements do not.

Trigger is located in the Philippines, a country the Office of Policy did not include in its list of potential surrogate countries. However, while the Philippines is not at the same level of economic development as the PRC, we find that it remains at a level of economic development comparable to the PRC. The 2012 per capital GNI was \$5,740 for the PRC, \$3,420 for Indonesia (the listed potential surrogate country with the lowest per capita GNI), and \$2,470 for the Philippines.¹⁷⁷ In prior cases, when we were not able to find viable data sources to value certain inputs within the primary surrogate country or other potential surrogate countries listed in an Office of Policy memorandum, we have relied on surrogate data from countries that are not at the same level of economic development as the PRC, but still at a level of economic development comparable to the PRC for valuing those inputs.¹⁷⁸ Section 773(c)(4)(A) of the Act directs us to value FOPs using, “to the extent possible, the prices or costs of factors of production in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country...” and the only viable financial

¹⁷⁰ See the Final Surrogate Value Memorandum at Exhibit 1, Financial Ratios tab.

¹⁷¹ See the petitioner’s surrogate values comments dated June 25, 2014, at Exhibit 3A.

¹⁷² See *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) (*Xanthan Gum*), and the accompanying I&D Memo at Comment 2.

¹⁷³ See Weihai’s surrogate value comments dated November 4, 2014, at Exhibit 8A, Trigger’s 2013 Financial Statements at 22.

¹⁷⁴ See the petitioner’s surrogate values comments dated June 25, 2014, at Exhibit 3A.

¹⁷⁵ See Bosun’s section A response dated May 6, 2014, at Exhibits A-10 and A-11.

¹⁷⁶ See Weihai’s section A response dated May 12, 2014, at Exhibits A-19B and A-19C.

¹⁷⁷ See the memorandum from Office of Policy dated February 6, 2014 (Office of Policy memorandum). See also Weihai’s surrogate country comments dated February 14, 2014, and February 18, 2014.

¹⁷⁸ See, e.g., *Freshwater Crawfish Tail Meat From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2012-2013*, 79 FR 60134 (October 6, 2014), and the accompanying Preliminary Decision Memorandum at 4-5, unchanged in *Freshwater Crawfish Tail Meat From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2012-2013*, 79 FR 75535 (December 18, 2014).

statements available on the record of this review are Trigger's financial statements. Trigger produces circular saw blades comparable to diamond sawblades¹⁷⁹ and Tyrolit "is engaged in manufacturing and selling of diamond cutting wheel and parts of diamond cutting wheel."¹⁸⁰ However, even if Tyrolit manufactures products that are identical or more comparable to the products Trigger produces, as explained above, Tyrolit's financial statements do not provide the level of necessary detail that Trigger's financial statements provide. When we have two sets of financial statements – one with comparable products and usable details and another with identical and/or more comparable products but lacking necessary details – we find it reasonable to use the set of financial statements with comparable products and usable details, as we did in the last review.¹⁸¹

Although the petitioner has challenged Trigger's financial statements based on Trigger's use of subcontract labor, Trigger's financial statements are the only usable statements on this record. In addition, because we are relying on industry-specific labor data from the National Statistical Office (NSO) of the Thai government to value labor separately, we are not valuing labor using surrogate financial statements.¹⁸² Also, with regard to petitioner's argument concerning Trigger's selling expenses, or lack thereof, and Tyrolit's selling expenses, we find that Tyrolit's selling expenses include line-item expense categories that are also present in Trigger's financial statements. Tyrolit's income statements make a reference to note 18 for the selling expenses ("Cost of sales") and the note 18 lists the following line-items: "Salary and wages and other employee benefits," "Depreciation," "Transportation," "Utility costs," "Raw materials and consumables used," and "Changes in inventories of finished goods and work in progress."¹⁸³ We find the same types of line-item expenses in Trigger's financial statements as well and, in Trigger's financial statements, detailed line-item expenses tie with the total expense amounts in the income statement.¹⁸⁴ For these reasons, we do not find that Tyrolit's selling expenses are unique to it and not to Trigger's and we do not find that Tyrolit's selling expenses distinguish Tyrolit's financial statements from Trigger's financial statements.

With respect to Trigger's profit percentage and markups, we use financial statements of a surrogate company that made a profit but we do not set a minimum profit percentage or take into consideration the degree of profit when determining whether to use particular financial statements. Also, for the reasons explained above, Trigger's financial statements are the only viable financial statements for this review. Because we do not take into account the degree of the profit, *i.e.*, 0.4 percent in our selection of Trigger's financial statements, we also do not take into Trigger's markups and tax increases from 2012 to 2013, which are related to Trigger's profits, in our selection of Trigger's financial statements. With respect to the other tax liability in the amount of P 81,652.31, Trigger's financial statements report that the company received a notice of tax liability before the POR in 2012 and responded with a protest and resolved the issue

¹⁷⁹ See Weihai's surrogate value comments dated November 4, 2014, at Exhibit 8A, Trigger's 2013 Financial Statements at 1.

¹⁸⁰ See the petitioner's surrogate values comments dated June 25, 2014, at Exhibit 3A.

¹⁸¹ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 16.

¹⁸² Our use of the NSO statistics to value labor is not contested for the final results of this review.

¹⁸³ See the petitioner's surrogate values comments dated June 25, 2014, at Exhibit 3A.

¹⁸⁴ See Weihai's surrogate value comments dated November 4, 2014, at Exhibit 8A, Trigger's 2013 Financial Statements at 22-23 and Income Statement.

in 2013.¹⁸⁵ Trigger's financial statements also indicate that the company has no pending deficiencies in tax assessments or tax cases under investigation, litigation or prosecution as of August 31, 2013.¹⁸⁶ Therefore, we do not find that this reported tax liability matter undermines the specificity, contemporaneity, and quality of Trigger's financial statements. With respect to certain accounts receivables, we also find that they are not related to specificity, contemporaneity, and quality of Trigger's financial statements in this review. We also do not find that Trigger's sales of its products mostly to its Japanese parent company undermine the specificity, contemporaneity, and quality of Trigger's financial statements in this review. Moreover, both Bosun and Weihai reported affiliates through which they sold subject merchandise. The level of specificity of the line items in Trigger's financial statements and the deficiencies in other financial statements (*e.g.*, the lack of specificity of the line items in Tyrolit's financial statements) that we identified above makes Trigger's financial statements, which are contemporaneous with the POR, the only suitable financial statements available for us to calculate the financial ratios.

Because we find that Trigger's financial statements are the only usable financial statements to calculate financial ratios in this review and Tyrolit's financial statements are not suitable as a basis for surrogate financial ratios for the reasons explained above, we find the issues concerning the alleged receipt of countervailable subsidies and the conflict of interest moot.¹⁸⁷

Weihai's Steel Types 2 and 3

Comment 17: Weihai argues that the preliminary surrogate value for steel types 2 and 3, 111.66 Baht/kg, is aberrationally high compared to the last review's final surrogate value for these two steel types, 38.20 Baht/kg and other global steel price data that it placed on the record of this review. Weihai requests that the Department value these two steel types with last review's surrogate value for these two steel types after adjusting it for inflation. In the alternative, Weihai suggests, the Department should value these two steel types using a Ukrainian AUV from Metal Expert.

Weihai explains that a surrogate value should be a reasonably accurate estimate that does not lead to a substantial overvaluation. Weihai states that the Department cannot find certain data source unreliable for a specified reason and then apply a different standard to determine the reliability of a second data source. According to Weihai, a surrogate data source must be corroborated by other record evidence. Citing *Jinan Yipin Corp. v. United States*, 800 F. Supp. 2d 1226 (CIT 2011), Weihai claims that, even when all potential source data have flaws, the Department must make a reasoned decision as to its selection of the surrogate data and explain its rationale and substantiate its decision. In corroborating a surrogate data, Weihai argues, the Department should not summarily reject a benchmark or corroboration data only because the data would not be sufficient to be selected as a surrogate value. Citing, *e.g.*, *Zhengzhou Harmoni Spice Co. v. United States*, 617 F. Supp. 2d 1281, 1327 (CIT 2009), Weihai insists that just

¹⁸⁵ *Id.*, at 30.

¹⁸⁶ *Id.*

¹⁸⁷ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 16, in which we decided that the alleged receipt of countervailable subsidies by Tyrolit and other minor issues moot because, *inter alia*, we found Trigger's financial statements provide more specific line-item expenses.

because a certain set of data is insufficient to be a source for surrogate values does not mean that it cannot be a viable set of data for corroboration purposes. Weihai explains that a domestic price is preferred for the valuation of inputs under the Department's established practice.

Weihai explains that it is the Department's practice to evaluate whether a potential surrogate value is aberrational by comparing (1) the historic AUVs under the same HTS heading and (2) other benchmark data. Weihai claims that the threefold increase of the AUV under HTS subheading 7211.29.90043 just in one year, *i.e.* from 38.20 Baht/kg to 111.66 Baht/kg, is aberrational and inexplicable because it does not follow the consistent decline of the global prices of non-alloy cold-rolled steel plate since mid-2011 through the POR. Weihai explains that 111.66 Baht/kg is based on Thai imports of a commercially insignificant quantity of steel from only one country, *i.e.*, Japan, and this AUV is higher than the prices of non-alloy cold-rolled coils reported from Platts East Asia (which includes Japan). Weihai contends that, in *Peer Bearing Company-Changshan v. United States*, 752 F. Supp. 2d 1353, 1372-74 (CIT 2011), the CIT held that (1) a high AUV at issue is a substantially higher price not corroborated by other record evidence and (2) it is insufficient for the Department to explain that just because an AUV is high does not mean that it is aberrational.

Unlike 111.66 Baht/kg in this review, Weihai argues, 38.20 Baht/kg in the last review satisfies the statutory criteria for selecting a surrogate value and is corroborated by the steel prices that it submitted in its surrogate value comments. Weihai claims, for this review as it was for the last review, that 38.20 Baht/kg is reliable and specific surrogate value for the same inputs it used. Citing *Activated Carbon*, 79 FR at 70166, Weihai explains that the Department used a surrogate value from a prior POR with an adjustment for inflation for the current POR if it determined that the surrogate value from the prior POR represents the best available information on the record matching the input in question. Weihai requests that the Department do the same with 38.20 Baht/kg.

In the alternative, Weihai requests that the Department value steel types 2 and 3 using the Ukrainian domestic AUV of \$835.5/MT (\$0.8355/kg). Weihai explains that Ukraine is not the primary surrogate country but it is still one of the potential surrogate countries at the level of the economic development of the PRC. Citing, *e.g.*, *Shantou Red Garden Foodstuff Co. v. United States*, 880 F. Supp. 2d 1332, 1334-35 (CIT 2012), Weihai explains further that the statute does not limit the selection of surrogate values from the primary surrogate country alone and that the best available information may be selected from other potential surrogate countries. Weihai claims that this Ukrainian price is reliable because it is corroborated by other Ukrainian steel price data and U.S. steel price data in the surrogate value comments Weihai submitted.

The petitioner supports the Department's preliminary AUV for steel types 2 and 3. The petitioner maintains that HTS subheading 7211.29.90043 provides AUV for steel types specific to further-processed non-alloy steel less than 600mm wide, corresponding to the thicknesses of steel types 2 and 3. The petitioner claims that the preliminary AUV is specific to steel types 2 and 3, contemporaneous to the POR, publicly available, tax-exclusive, and representative of actual transactions in the primary surrogate country.

The petitioner contends that the preliminary AUV for steel types 2 and 3 are not aberrational. The petitioner explains that an AUV is aberrational only if (1) the import quantities during the POR were significantly diminished from those imported during past periods, (2) the AUV is between 1,000 percent and 2,000 percent higher than that of imports from any other country under consideration, and (3) the AUV for the same country varied substantially from the AUV from a prior period. The petitioner claims that Weihai did not satisfy the first and second criteria to prove that the preliminary AUV is aberrational.

The petitioner questions the validity of Weihai's benchmarks. The petitioner insists that steel prices in the benchmark data correspond to the steel types covered by HTS subheading 7211.29.90043 or steel types 2 and 3 that Weihai reported. The petitioner claims that the benchmarks consist of highly generalized prices for cold-rolled coil regardless of length, width, and chemistry obtained from various third party publications. The petitioner also claims that the benchmarks do not offer prices for annealed steel. Moreover, according to the petitioner, several of the benchmark prices are tax-inclusive and the tax-exclusive benchmark price does not appear to be relevant to steel type 3, as it relates to cold-rolled flats under a millimeter in thickness. The petitioner believes that Weihai did not use AUVs from other potential surrogate countries as benchmarks because they would not have supported Weihai's argument that the preliminary AUV is aberrational.

The petitioner explains that it is not necessary to value steel types 2 and 3 with the last review's AUV from the same HTS subheading with an inflation adjustment because the preliminary AUV in this review is not aberrational. The petitioner claims that Weihai's comparison of the AUVs for steel types 2 and 3 in this review and last review proves nothing more than the fact that price rises over time. The petitioner opposes the use of certain benchmark prices Weihai recommends that we use to value steel types 2 and 3. The petitioner argues that those prices have various deficiencies such as being tax-inclusive, limited to just one month of the POR, not specific to cold-rolled flats, not specific to annealed steel, and/or not specific to the widths of steel types 2 and 3.

Department's Position: For the final results, we continue to value steel types 2 and 3 based on the GTA statistics for HTS subheading 7211.29.90043 because this subheading provides the best available information.¹⁸⁸ In this review, Weihai provided the same description of steel types 2 and 3 that it did in the last review, *i.e.*, non-alloy cold-rolled, annealed steel plate with a chemical composition of 65 MnNH with width less than 600 mm and thickness greater than 1 mm (steel type 2) and less than or equal to 1 mm (steel type 3).¹⁸⁹ The product description of HTS subheading 7211.29.90043 has been the same in this and last reviews.¹⁹⁰ In the last review,

¹⁸⁸ We considered valuing steel type 3 based on the GTA data for HTS subheading 7211.29.90044 (other flat-rolled iron or non-alloy steel products, nesoi, under 600 mm wide, cold rolled, not clad, plated, or coated – anneal of a thickness of 0.5 mm or more but not exceeding 1 mm) because this HTS subheading covers the same products as the products covered by HTS subheading 7211.29.90043 with the exception of thickness, which is 0.5 mm or more but not exceeding 1 mm but there is no usable GTA data for the POR. See the Final Surrogate Value Memorandum, Exhibit 1, HTS Subheading 7211.29.90044 tab.

¹⁸⁹ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 17 and Weihai's section D response dated June 12, 2014, at 13.

¹⁹⁰ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 17 and the preliminary surrogate value memorandum at 7 and Exhibit 2, Master tab.

Weihai requested that we value steel types 2 and 3 based on the GTA statistics for HTS subheading 7211.29.90043 because steel type 2 (1) is a non-alloy steel, (2) is cold-rolled, (3) undergoes the manufacturing process which includes annealing, and (4) has the width of less than 600 mm and the thickness ranging between 1 mm and 3mm and because steel type 3 is identical with steel type 2 with the exception of thickness, which is less than or equal to 1 mm.¹⁹¹ In the last review, we agreed with Weihai and valued steel types 2 and 3 based on this HTS subheading.¹⁹²

In this review, Weihai agrees with the valuation of steel types 2 and 3 based on the GTA statistics for HTS subheading 7211.29.90043 because they are the same products as in the last review. Weihai's only contention is that this review's AUV based on these statistics is aberrationally high compared to the last review's AUV and the global steel prices that it supplied in its surrogate value comments dated June 25, 2014, at Exhibit 4, and dated November 4, 2014, at Exhibit 2. As explained below, we do not consider the global steel prices Weihai submitted to prove that this review's AUV is aberrational. This leaves only the two AUVs, one from this review and one from the prior review. With these two AUVs from different PORs to compare with no other reliable benchmark prices, we do not find a basis upon which to determine whether the AUV from the prior review period or the instant review period is aberrational and, if so, which one.¹⁹³ Therefore, we do not have sufficient historical AUVs on this record to conclude whether 111.66 Baht/kg is aberrationally high or 38.20 Baht/kg is aberrationally low.

We do not find that the Ukrainian steel AUV Weihai suggests as an alternative surrogate value is a viable alternative. The surrogate value comments Weihai submitted show that this Ukrainian price is for cold-rolled steel with certain physical size but does not show whether the steel (1) is alloyed or non-alloyed and (2) undergoes annealing as a part of the manufacturing process.¹⁹⁴ These two characteristics matter in our analysis because the steel types 2 and 3 are annealed non-alloy steel and HTS subheading 7211.29.90043 provides surrogate data with product descriptions matching these two characteristics. Moreover, some of the Ukrainian prices used to calculate this AUV are VAT-inclusive.¹⁹⁵ For these reasons, we find that the Ukrainian AUV is not a viable alternative to 111.66 Baht/kg, which is based on the price data for steel with a better matching description, i.e., non-alloyed and annealed cold-rolled steel, and tax-exclusive.

Finally, we do not find that the global steel prices in Weihai's surrogate value comments are sufficient to serve as benchmark or corroboration data to support its claim that 111.66 Baht/kg is aberrationally high because none of the prices in these global steel prices specifically covers non-alloyed annealed cold-rolled steel, like steel types 2 and 3.¹⁹⁶ Therefore, we are unable to conclude from Weihai's global steel price data whether, in the midst of the general decline of

¹⁹¹ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 17.

¹⁹² *Id.*

¹⁹³ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 19.

¹⁹⁴ See Weihai's surrogate value comments dated November 4, 2014, at Exhibit 2. Even though Weihai claims that the Ukrainian price is for non-alloyed steel, the source data in its surrogate value comments do not support the assertion and Weihai did not specifically state where in its surrogate value comments it shows that this Ukrainian price is for non-alloyed steel.

¹⁹⁵ *Id.*

¹⁹⁶ See, e.g., Weihai's surrogate value comments dated June 25, 2014, at Exhibit 4, and Weihai's surrogate value comments dated November 4, 2014, at Exhibit 2.

global steel prices that Weihai claims, the global prices of non-alloyed and annealed cold-rolled steel also declined.

Tin Powder

Comment 18: Weihai opposes the Department's preliminary valuation of tin powder based on the GTA statistics for HTS subheading 8007.00.30002 (tin powders and flakes). Weihai explains that the import volume under this HTS subheading was too small with the total quantity of 4,615 kilograms imported in at least 14 consignments (two from Italy and 12 from Japan) during the POR. Weihai argues that the values and unit prices for these import quantities do not represent the actual price of tin powder Weihai consumed and thus are not reliable as source data to value tin powder. Weihai requests that the Department value tin powder using the price quote for tin oxide from a Thai producer named Cover Asia Co., Ltd. (Cover Asia), for the final results.

The petitioner requests that the Department continue the preliminary valuation of tin powders for the final results. The petitioner asserts that HTS subheading 8007.00.30002 covers tin powder and is thus specific to tin powder. The petitioner reiterates that an AUV is aberrational only if (1) the import quantities during the POR were significantly diminished from those imported during past periods, (2) the AUV is between 1,000 percent and 2,000 percent higher than that of imports from any other country under consideration, and (3) the AUV for the same country varied substantially from the AUV from a prior period. The petitioner contends that Weihai satisfied none of these three criteria.

The petitioner opposes the use of the price quote from Cover Asia and questions the probative value of this price quote. The petitioner claims that this price quote covers tin oxide and there is no record evidence indicating that either Bosun or Weihai used tin oxide to produce subject merchandise. According to the petitioner, Weihai uses a material data safety sheet from a U.S. corporation to substantiate its claim that respondents use tin oxide to produce the subject merchandise. The petitioner states that this safety sheet lists inputs neither Bosun nor Weihai uses, *e.g.*, chromium metal, soluble molybdenum, *etc.*, and tin oxide is one of them.

Department's Position: For the final results, we continue to value tin powder as we did in the *Preliminary Results*. It is our practice to consider whether the potential surrogate value data on the record are from our primary surrogate country, publicly available, product-specific, representative of broad market average prices, contemporaneous with the POR, and free of taxes and import duties.¹⁹⁷ In this review, we find that HTS subheading 8007.00.30002 satisfies all of these criteria.

In the last review, in response to Weihai's request, we repeated our position that "it is not our normal practice to value FOPs based on price quotes."¹⁹⁸ Moreover, we find that the surrogate value based on the quantities imported into Thailand at 14 different times from two different

¹⁹⁷ *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 28801 (May 16, 2013), and the accompanying I&D Memo at Comment 6, in which we disagreed on a party's opposition to the use of a particular HTS code to value an input because the quantities of imports under that HTS code was too small.

¹⁹⁸ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 19.

countries under HTS subheading 8007.00.30002 is more representative of the actual prices of tin powder than the two prices listed in a single price quote for tin oxide.¹⁹⁹ Finally, this price quote is dated outside the POR.²⁰⁰ When there is no evidence that this price quote is more reliable than the GTA statistics we preliminarily used, we find it appropriate not to rely on this price quote that is single-sourced and outside the POR.²⁰¹ For the final results, we did not use the price quote from Cover Asia.

Truck Freight

Comment 19: Weihai requests that the Department recalculate the surrogate value for truck freight based on the Dxplace data,²⁰² not *Doing Business* as in the *Preliminary Results*. According to Weihai, the Dxplace data provide a comprehensive database concerning logistics in Thailand. Weihai explains that Dxplace provides a central database of truck freight data compiled from sources from vendors located throughout Thailand that cover different types of trucks used for different products and services in different conditions. Weihai claims that, for these reasons, the Dxplace data represent a broad geographical market average and thus is more representative than *Doing Business* is.

Weihai argues that *Doing Business* does not cover the broad market average of the truck freight because it covers only one route from the center of Bangkok to the Port of Bangkok. Weihai claims that *Doing Business* also lacks information regarding the type of truck used for transporting goods. Weihai contends that *Doing Business* does not provide the actual distance the freight traveled from the center of Bangkok to the Port of Bangkok; the Department used a secondary source to estimate the distance traveled and there may be reasonable doubts as to whether the unit freight charges based on such estimated distances are accurate. For these reasons, Weihai claims, *Doing Business* is inferior to the Dxplace data.

Weihai asserts that Dxplace provides a comprehensive database concerning logistics in Thailand. Weihai states that the Dxplace website lists several different transport service providers and contains detailed price statistics for road transportation of cargo by truck from Bangkok to different cities throughout Thailand in June 2010. Weihai claims that the Dxplace data have been collected from several freight forwarders and then categorized by province, service area, vehicle type, and product type. Weihai explains that the Dxplace data provide 228 different price points for three types of trucks from several transport service providers with the cost to ship from Bangkok to 76 different cities throughout Thailand. The more contemporaneous Dxplace data Weihai submitted in its surrogate value comments provide 250 price data points, according to Weihai. Moreover, Weihai explains, the Dxplace data provides truck freight cost for transporting cargo under full truck load conditions, *i.e.*, 15,075 kg for 6-wheel car, 23,000 kg for

¹⁹⁹ See Weihai's surrogate comments dated June 25, 2014, at Exhibit 5.

²⁰⁰ *Id.* Thai year 2557 is 2014 in the United States. See the petitioner's surrogate values comments dated June 25, 2014, at Exhibit 3A, Auditor's Statements dated March 4, 2014, in the English translation version and March 4, 2557, in the Thai original version.

²⁰¹ See *Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1331 (CIT 2013) ("Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets.").

²⁰² According to a respondent in another case, Dxplace is a comprehensive database of logistics in Thailand that provides (1) details of truck freight charges from Bangkok to 76 cities across Thailand and (2) information for three types of trucks yielding 228 price points. See *Xanthan Gum* and the accompanying I&D Memo at Comment 6-A.

10-wheel car, and 42,150 kg for trailer-teller. Weihai argues that, for these reasons, the Dxplace data satisfies better than *Doing Business* does the specificity criteria, which the CIT found in *Taian Ziyang Food Co., Ltd. v United States*, Consol. Court No. 05-00399, 2013 Ct. Intl. Trade LEXIS 82 (CIT 2013), to be the most important of the five criteria set forth in Enforcement and Compliance's Policy Bulletin 04.1. Weihai also argues that the Department used the Dxplace data in *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011-2012*, 79 FR 31298 (June 2, 2014) (*Steel Hangers*) and made similar decisions in other prior cases.

Weihai requests that, if the Department continues to value the truck freight based on *Doing Business*, then the Department revise the surrogate distance used to value the truck freight cost. Weihai explains that, because *Doing Business* does not identify the port of export considered for the truck freight data in it, the Department should not value the truck freight cost based on an assumption that the Port of Bangkok is the port of export. Weihai explains further that the Department has examined this issue and decided to use the simple average of the distances from Bangkok to the Port of Bangkok and the Port of Laem Chabang in recent administrative reviews, e.g., *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, 4247 (January 27, 2015) (*TRBs*). Weihai requests that the Department use a simple average of the distances from Bangkok to these two Thai ports to value the truck freight.

The petitioner requests that the Department continue to rely on *Doing Business* to calculate the surrogate values for truck freight because *Doing Business* represents a broad market average. The petitioner explains that, although *Doing Business* provides freight costs solely for the distance between the main city and the port, it reflects the freight costs of multiple vendors and users (i.e., shipping lines, customs brokers, port officials, and banks) and it is based on numerous users that provided the representative cost of shipping the goods from the factory to the port. The petitioner states that the *Doing Business* data provides a range of prices based on multiple individual prices collected from multiple parties and then averaged. The petitioner argues that there is no case precedent showing that a surrogate freight data source must list multiple individual prices.

The petitioner claims that the Dxplace data do not indicate how and where the data was obtained and whether the values refer to the full weight of the vehicle or the maximum theoretical carry capacity of the vehicle. The petitioner doubts Weihai's claim that the Dxplace.com data were obtained from several freight forwarders further categorized by province, service area, vehicle type, and product type. The petitioner explains that the documents Weihai filed to support this claim do not appear to (1) support its claim and (2) have been obtained from Dxplace.com but from a different Thai website apparently advertising soil-hauling services for landfills and reclamation sites. The petitioner also raises a question of how Weihai derived the full truck load conditions (i.e., 15,075 kilograms for the six-wheel cars, 23,000 kilograms for the 10-wheel cars, and 42,150 kilograms for trailers-teller). The petitioner also points to the Dxplace data's lack of freight rates for containers shipped from the factory to the port, which would be the primary method used to ship merchandise to the port.

The petitioner argues that the broad market average must be considered in light of the ultimate purpose of the surrogate value for truck freights. The petitioner explains that the Department uses the surrogate value for truck freight costs to value the costs of transporting (1) finished goods from a respondent's factory to the port and (2) inputs from input suppliers to a respondent's factory. The petitioner asserts that, because the *Sigma* cap limits the distance for input transportation to the distance to the nearest port, it is reasonable to value truck freight costs based on freight costs to or from a port, not the costs to ship goods between Bangkok and non-port locations. The petitioner states that the Dxplace data do not appear to reflect any freight values for shipments to the Port of Bangkok or Laem Chabang.

The petitioner contends that the Dxplace data cannot be determined to be contemporaneous with the POR because (1) their dates are either June 2010 or unspecified, (2) there is no information showing when they were collected (or the type of metrics used to collect the data) and (3) there is no indication whether they represent historical averages or a snapshot in time. The petitioner argues that the Department should not change the surrogate truck freight distance from between Bangkok and the Port of Bangkok to between Bangkok and the Port of Laem Chabang and that making such a change is inconsistent with the Department's practice and precedent. The petitioner claims that there is no record evidence suggesting that Thai shippers prefer the Port of Laem Chabang to the Port of Bangkok.

Department's Position: For the final results, we continue to use *Doing Business* for the surrogate value for truck freight and did not change the preliminary calculation of this surrogate value, with one exception explained below. The value for truck freight in *Doing Business* is publicly available and contemporaneous with the POR because the data in *Doing Business* are current as of June 1, 2013, which is within the POR.²⁰³ In selecting surrogate values for inputs, section 773(c)(1) of the Act directs us to use the "best available information." In determining the "best available information," it is our practice to consider the following five factors: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.²⁰⁴ Based on these criteria, we find that in this review *Doing Business* is the only reliable data source and is contemporaneous with the POR. Moreover, *Doing Business* provides a publicly available, broad market average freight rate that we have consistently found to provide the best available information in other prior cases to value truck freight.²⁰⁵ We prefer to value factors using prices that are broad market averages because "a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country."²⁰⁶ *Doing Business* contains data "collected from local freight forwarders, shipping lines, customs brokers, port officials and banks."²⁰⁷ Thus, although *Doing Business* provides freight costs solely for the distance between the main city and the port, because it reflects the freight costs of multiple vendors and users (*i.e.*, shipping lines, customs brokers, port officials and banks), it is a broad market average.²⁰⁸ Based on these facts and given

²⁰³ See the preliminary surrogate value memorandum at Exhibit 4, at 4.

²⁰⁴ See *Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012), and the accompanying I&D Memo at Comment 4.

²⁰⁵ See, *e.g.*, *Prestressed Wire* and the accompanying I&D Memo at Comment 4.

²⁰⁶ See *Honey*.

²⁰⁷ See the preliminary surrogate value memorandum at Exhibit 4, at 78.

²⁰⁸ See *Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 2366 (January 11, 2013) (*PSF*), and the accompanying I&D Memo at

that *Doing Business* is a World Bank publication, we find the quality of the data in this publication to be reliable, consistent with our decisions in other NME cases.²⁰⁹

We evaluated the Dxplace data Weihai provided and we found the same deficiencies that we identified regarding Dxplace data in the last review.²¹⁰ In this review, Weihai provided two sets of the Dxplace data.²¹¹ We do not consider the first set of the Dxplace data to be the best available information because, although it appears to provide multiple freight rates from multiple locations in Thailand, it (1) comes from June 2010, well before the POR and thus is not contemporaneous with the POR and (2) it is unclear if the prices are six-month averages or a snapshot in time.²¹² Absent evidence indicating whether this resource provides price data contemporaneous with the POR, we cannot consider this resource more reliable than *Doing Business*.²¹³ Also, for the first set of the Dxplace data, Weihai did not provide a worksheet and source documentation demonstrating how Weihai calculated the full cargo weights (15,075 kg for 6-wheel car, 23,000 kg for 10-wheel car, and 42,150 kg for trailers-teller) that Weihai used to calculate Weihai's proposed surrogate value for truck freight.²¹⁴

We also did not use the second set of the Dxplace data because it does not contain freight rates for trailers or containers shipped from the factory to the port, which would be the primary method used to ship merchandise to the port (as the petitioner points out).²¹⁵ The second set of the Dxplace data do not even indicate which time period these data cover and, thus, do not support Weihai's assertion that they are more contemporaneous with the POR.²¹⁶

With respect to contemporaneity, we prefer not to use non-contemporaneous freight rate data that may have been affected by various factors over time (*e.g.*, changes in demand for truck services, increasing energy costs, and constructions of new roads) for which the wholesale price data used for inflating a value to the POR will not necessarily account.²¹⁷ As explained above, record evidence does not demonstrate that the two sets of Dxplace data are contemporaneous. Although we do not know the precise time period that it covers, we know that the first set of the Dxplace data covers a certain time period in or before June 2010. As explained above, the record does not support the contention that the second set of the Dxplace data are contemporaneous with the

Comment 3. See also *CP Kelco US, Inc. v. United States*, Court No. 13-00288, slip op 15-27 at 16-19 (Ct. Int'l Trade March 31, 2015) (*CP Kelco US*) ("*Doing Business 2013* boasted breadth of a different kind: it tracked 'multiple vendors and users.'").

²⁰⁹ See *e.g.*, PSF and the accompanying I&D Memo at Comment 3 and *Diamond Sawblades 3* and the accompanying I&D Memo at 20. See also the preliminary surrogate value memorandum at Exhibit 4.

²¹⁰ See *Diamond Sawblades 3* and the accompanying I&D Memo at Comment 20 and Weihai's surrogate value comments dated June 25, 2014, at Exhibit 8.

²¹¹ See Weihai's surrogate value comments dated June 25, 2014, at Exhibits 8A and 8D.

²¹² *Id.*, at Exhibits 8A. See also *Prestressed Wire* and the accompanying I&D Memo at Comment 4.

²¹³ See *Prestressed Wire* and the accompanying I&D Memo at Comment 4.

²¹⁴ See Weihai's surrogate value comments dated June 25, 2015, at Exhibits 8B and 8C. Although Weihai did provide certain truck weights and freight weights for different types of trucks in Exhibit 8B of its surrogate value comments dated June 25, 2014, it did not provide narratives or worksheets demonstrating how it used Exhibit 8B to calculate these three full cargo weights.

²¹⁵ *Id.*, at Exhibit 8D. The e-mail on the first page of Exhibit 8D states, "Nevertheless, they have not had much data in connection with the trailer."

²¹⁶ *Id.* Nothing in Exhibit 8D clearly indicates that the second set of the Dxplace data covers any of the dates in Exhibit 8D.

²¹⁷ *Id.*

POR. Without knowing whether a freight data source is contemporaneous with the POR, we are not able to find that such various factors did not affect the freight rate data. Also, contrary to the respondents' claims, for the reasons stated above, both sets of the Dxplace data are not sufficiently specific for us to rely on to value truck freight. In addition, the CIT recently affirmed our selection of the *Doing Business* data over the Dxplace data.²¹⁸

For the above reasons, for the valuation of truck freight, *Doing Business* provides specific and usable data whereas both Dxplace datasets do not. Even with the flaws that Weihai claim exist in it, *Doing Business* is the only viable information on the record for calculating the surrogate value for truck freight because the Dxplace data are not contemporaneous with the POR and not sufficiently specific for us to rely on to value truck freight. Even though we relied on the Dxplace data to value truck freight costs in *Steel Hangers*, the specific Dxplace data on the record of this review are not reliable as explained above.

For the final results, consistent with *TRBs* and other recent cases,²¹⁹ we used the simple average of the two distances from Bangkok to the Port of Bangkok and from Bangkok to the Port of Laem Chabang. These two ports are major ports in Thailand.²²⁰ The surrogate distance we used for the final results of this review is 88.17 kilometers. This is the same distance used in *TRBs*, for which part of the POR overlapped with the POR for this review.²²¹ With this revision, the surrogate value for truck freights is \$0.00012kg/km for the final results of this review.

Comment 20: Bosun requests that the Department modify the valuation of the truck freight for diamond powders. Bosun explains that it reported diamond powders in carats in its FOP database, but that the Department valued the truck freight for transporting diamond powders from its suppliers using the surrogate value per kilogram, thus creating an inconsistency in the units of measure between the input and the surrogate transportation price for transporting the input. Bosun suggests that we correct this error by dividing the preliminary surrogate value for truck freight for diamond powders by 5000 carats, which equals one kilogram.

The petitioner opposes Bosun's request. According to the petitioner, Bosun has repeatedly stated that it reported diamond powders in kilograms. The petitioner cites to Bosun's original section D response at Exhibit D-6 and supplemental response dated January 16, 2015, at Exhibit S5-2 (resubmission of Exhibit S3-9) as examples where Bosun stated that it reported diamond powders in kilograms.

Department's Position: We agree with Bosun and have modified the surrogate value for truck freight for diamond powders accordingly. Bosun clearly reported in its supplemental response dated January 16, 2015, that it reported in its FOP database its consumption of diamond powders

²¹⁸ See *Xanthan Gum* and the accompanying I&D Memo at Comment 6-A, *aff'd CP Kelco US, Inc. v. United States*, 2015 Ct. Intl. Trade LEXIS 31, Court No. 13-00288, slip op 15-27 at 16-19 (Ct. Int'l Trade March 31, 2015).

²¹⁹ See, e.g., *TRBs* and the accompanying I&D Memo at Comments 1, *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), and the accompanying I&D Memo at Comment 4, *Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 44008 (July 29, 2014), and the accompanying I&D Memo at Comment 8.

²²⁰ *Id.*

²²¹ See *TRBs* and the accompanying I&D Memo at Comment 1.

in carats.²²² We find that this latest response corrects its earlier incorrect statements that it reported diamond powders in kilograms. Bosun's resubmission of Exhibit S3-9 in its supplemental response dated January 16, 2015, was simply a response to our request for a bracketing revision to Exhibit S3-9, which was originally submitted in its supplemental response dated November 13, 2015. Because Weihai also reported its diamond powders in carats, we made this modification for both respondents.

Request To Apply Adverse Facts Available

Weihai's Metal Powders

Comment 21: The petitioner requests that the Department apply AFA surrogate values to the metal powders that Weihai reported in its FOP database. The petitioner argues that Weihai grouped several metal powders into 11 metal powders that it reported in its FOP database and it was not until the FOP verification that these individual metal powders were revealed. The petitioner contends that Weihai's grouping of different metal powders into 11 reported metal powders deprived the Department and the petitioner of an opportunity to select surrogate values that accurately reflect the nature of the actual individual metal powders. The petitioner also contends that Weihai did not explain the basis for grouping individual metal powders into 11 reported metal powders. The petitioner explains that Weihai's grouping does not follow the Department's request that a respondent report each raw material used to produce a unit of the merchandise under consideration.

Weihai argues that the recently completed verification is not the first time in which it reported the list of individual metal powders grouped into categories of metal powders. Weihai asserts that it reported those individual metal powders in its original section D response at Exhibit D-7.2. Weihai contends that, if the petitioner raised this issue immediately after Weihai filed its Exhibit D-7.2, Weihai could have addressed this issue sooner. Weihai claims that, during the verification, the Department thoroughly reviewed the reported metal powders, reconciled Weihai's accounting books and production records, and found that Weihai had properly captured the usage of all relevant metal powders. Weihai states that it did not underreport the consumption of any type of metal powders in its FOP database. Weihai explains that, because the HTS subheadings for different types of metal powders would remain the same, Weihai simply grouped the consumption of different specifications of any given metal powder for valuation purposes. Weihai explains further that it maintains different specifications of the same metal powder, *e.g.*, iron powder, used in different ways. Weihai acknowledges that Bosun disaggregated different specifications of metal powders in its FOP database but the difference between the ways Bosun and Weihai reported their metal powders makes no difference because the surrogate value for different specifications of any particular metal powder remains the same.

Department's Position: We disagree with the petitioner. As Weihai claims, Weihai reported its individual metal powders in different groupings in its section D response at Exhibit D-7.2.²²³ During the verification, we examined several CONNUMs that we selected for examination and did not find any distorted or incorrect grouping of metal powders with different raw material

²²² See Bosun's supplemental response dated January 16, 2015, at 2.

²²³ See Weihai's section D response dated June 12, 2014, at Exhibit D-7.2.

codes.²²⁴ Therefore, we find that Weihai cooperated to the best of its ability in its reporting of individual metal powders and in how it grouped individual metal powders into categories and, accordingly, we find no basis to apply an AFA rate as the petitioner requests.

Bosun's Diamond Powders

Comment 22: The petitioner claims that Bosun used standard (not actual) consumption quantity in its reporting of diamond powders. The petitioner also claims that Bosun did not maintain records of the actual diamond weight contained in its finished product models of a particular product run. The petitioner states that Bosun justifies the use of the standard consumption quantity of diamond powders in its reporting by stating that, although such reporting would conceal yield loss resulting from actual usage, the purpose of CONNUM is to classify products and use the identical or similar products as the same comparable group of products, not to take into account the yield and loss of raw materials.

The petitioner contends that yield and loss of raw materials is a critical determination of the actual cost of the subject merchandise. The petitioner doubts Bosun's claim that it compiles monthly total actual consumption of each input for specific CONNUM during the POR in its accounting system because Bosun later admitted that it did not actually track actual consumption. As a result, the petitioner believes, Bosun's CONNUM is unusable. The petitioner argues that, because Bosun did not follow the Department's instructions and maintain required records to construct reliable CONNUMs and admit it until well into the review, the Department should apply the petition rate as AFA to Bosun.

Bosun argues that, whenever the petitioner raised this issue in its deficiency comments, the Department followed up with supplemental questionnaires and Bosun has fully explained in its supplemental responses. Bosun states that, in particular, in its supplemental response dated November 13, 2014, it fully explained its reporting methodology and stated that it reported the actual unit consumption quantity which accounts for yield loss. Bosun contends that the petitioner's argument does not take into account Bosun's supplemental response where it fully responded to the Department's request for information on this issue.

Department's Position: In our section C questionnaire, we did not specify whether Bosun should construct its CONNUMs using the standard or actual diamond quantities.²²⁵ In its response to our requests for information, Bosun constructed its CONNUMs using the standard consumption quantities of diamond powders based on its BOMs and explained that the actual consumption quantities (1) fluctuate from one production run to another and from one month to another month and (2) cannot be tied to the subject merchandise in CEP sales because it does not maintain the actual consumption quantities for finished product models of a particular product run. Because Bosun constructed its CONNUMs based on its own BOMs, we find that Bosun's use of the standard consumption quantities of diamond powders is a reasonable method to construct CONNUMs. Unlike reporting input quantities in an FOP database, reporting consumption quantities of an input for constructing CONNUMs is for classification purposes to group identical and similar products under one CONNUM, not to apply surrogate values to the

²²⁴ See the verification report at 11.

²²⁵ See the section C questionnaire dated March 31, 2014, at C-7.

quantities of inputs consumed for production. Even if the actual consumption quantities may be different from the standard consumption quantities, in this case we also allowed respondents to report other physical characteristics, *e.g.*, diamond mesh size and diamond grade, by grouping similar specifications into one specification code. Therefore, we find little, if any, difference between (1) reporting products with different actual consumption quantities under the same standard consumption quantity stated in the BOM and (2) grouping specific physical characteristics with different but similar specifications under the specification codes we established for, *e.g.*, diamond mesh size and diamond grade.²²⁶ For these reasons, we did not apply AFA to Bosun.

Bosun's Binder, Cut Fluid, Ink, and Mixed Gas

Comments 23: The petitioner requests that the Department apply partial AFA to the FOP data for the four inputs Bosun reported for the first time in this review in its November 13, 2014, supplemental response: binder, cut fluid, ink, and mixed gas. The petitioner argues that Bosun should have reported them in its original section D response, but that Bosun instead reported them with insufficient detail nearly six months after the submission of the original section D response and after the regulatory deadline for submission of surrogate value comments. The petitioner claims that Bosun's reporting of these inputs was untimely and deprived the Department and the petitioner of an opportunity to evaluate them and find appropriate surrogate values for them. The petitioner requests that the Department value the mixed gas using the surrogate value for nitrogen, which is highest value for a single gas, and the remaining three inputs using the surrogate value for silver powder.

Bosun argues that the petitioner did not exhaust its administrative remedies with respect to these four inputs. Bosun claims that it reported these four inputs in its supplemental response dated November 13, 2014, but the petitioner did not raise issues with them in its deficiency comments dated November 25, 2014. According to Bosun, upon the Department's request, it provided the descriptions of these four inputs in its supplemental response dated January 16, 2015, and the petitioner's deficiency comments dated January 26, 2015, again did not raise issues concerning these four inputs. Bosun contends that there is no basis to apply AFA on these four inputs. Bosun requests that the Department continue valuing the four inputs as it did in the *Preliminary Results*.

Department's Position: We find that Bosun timely submitted FOPs for binder, cut fluid, and ink. Bosun did not report FOPs for these three inputs in its original questionnaire but it reported FOPs in its timely November 13, 2014, supplemental response in response to our October 8, 2014, supplemental questionnaire, in which we asked questions about these three inputs.²²⁷ Upon our request in our January 6, 2015, supplemental questionnaire, Bosun explained how it used these three inputs in its production process of the subject merchandise.²²⁸ Based on Bosun's supplemental responses with respect to these three inputs and the production processes and technical descriptions in Bosun's original section D response at Exhibits D-1 and D-2, we find

²²⁶ *Id.*, at C-7 and C-8.

²²⁷ See Bosun's supplemental response dated November 13, 2014, and our supplemental questionnaire dated October 8, 2014. See also the petitioner's June 13, 2014, deficiency comments on Bosun's original section D response.

²²⁸ See Bosun's supplemental response dated January 16, 2015, at 4.

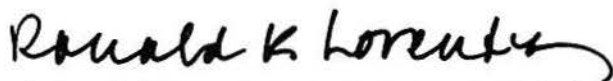
our preliminary valuation of these three inputs reasonable and no basis for applying AFA. Finally, with regard to fourth input, the quantity of mixed gas Bosun reported is so minuscule that even valuing the mixed gas with the surrogate value for nitrogen makes no difference to the margin calculation.²²⁹ Therefore, we also did not revise the valuation of the mixed gas.

Recommendation

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

Agree ✓

Disagree _____



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

June 2, 2015
(Date)

²²⁹ See the Bosun final analysis memorandum for business proprietary details concerning this issue.