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MEMORANDUM TO: Paul Piquado
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 Antidumping Duty Administrative Review (2013-2014): Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China

Summary

We analyzed the case and rebuttal briefs of interested parties in the 2013-2014 administrative review of the antidumping duty order covering tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (PRC). As a result of our analysis, we made changes to the margin calculation from the Preliminary Results.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from parties:

CPZ/SKF

1. Whether to Collapse CPZ/SKF and Shanghai General Bearing Co., Ltd. (SGBC)
2. Calculation of Steel Bar Transportation Cost
3. Surrogate Value (SV) for Truck Freight
4. SV for Labor Rate
5. Unreported Steel Producer Distances to Subcontractors

Yantai CMC General Bearing Company (Yantai CMC)

6. The Department of Commerce (the Department) Should Discontinue its Separate Rate Practice

[1] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 38665 (July 7, 2015) (Preliminary Results), and accompanying Preliminary Decision Memorandum (TRBs Preliminary Decision Memo).

7. The Denial of Separate Rate Status for Yantai CMC is not Supported by Record Evidence
8. Assigning Yantai CMC the PRC-Wide Rate is Contrary to Law
9. The Department's Separate Rate Tests and Resulting Use of AFA are Inconsistent with the World Trade Organization (WTO) Agreements

Background

On July 7, 2015, the Department published the Preliminary Results of the 2013-2014 administrative review of the antidumping duty order on TRBs from the PRC. This final results of administrative review covers four exporters, two of which the Department selected as mandatory respondents for individual examination; CPZ/SKF and Yantai CMC. The period of review (POR) is June 1, 2013, through May 31, 2014.[2]

We invited parties to comment on the Preliminary Results. In August 2015, we received case briefs from The Timken Company (the petitioner), CPZ/SKF, and Yantai CMC. In the same month, we also received rebuttal briefs from the petitioner and CPZ/SKF. On September 29, 2015, the Department held a public hearing at the request of the petitioner. After analyzing the comments received, we changed the weighted-average dumping margin for CPZ/SKF from that presented in the Preliminary Results.

Margin Calculations

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

- We corrected our calculation of steel bar transportation to include the weight of the turned ring rather than the total amount of steel used to make the ring.[3] See Comment 2 below;

- We calculated the SV for truck freight using the average distance from two industrial areas in Bangkok city to the Bangkok port.[4] See Comment 3 below;

- We calculated labor using use Thailand's National Statistics Office Labor Force Survey (NSO Labor Force Survey) data for "manufacturing" for the POR.[5] See Comment 4 below; and

- We corrected our steel supplier distance calculation to include distances related to steel supplied by trading companies.[6] See Comment 5, below.

[2] See 19 CFR 351.213(e)(1)(i).

[3] See Memorandum from Blaine Wiltse, Senior International Trade Compliance Analyst, to the File, entitled, "Calculation Adjustments for Changshan Peer Bearing Co., Ltd. and Peer Bearing Company for the Final Results," dated January 4, 2016 (CPZ/SKF Final Analysis Memo), at 3.

[4] Id., at 2.

[5] Id., at 2.

[6] Id., at 3.

Scope of the Order

Imports covered by the order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Discussion of the Issues

CPZ/SKF Issues

Comment 1: *Whether to Collapse CPZ/SKF and SGBC*

Prior to the POR, CPZ/SKF became affiliated with another producer of TRBs located in the PRC, SGBC, a company currently excluded from the antidumping (AD) order on TRBs.[7] In the Preliminary Results, we found that there existed a significant potential for manipulation of prices and production between CPZ/SKF and SGBC, based on evidence contained on the record of this review. Therefore, we preliminarily found it appropriate to collapse these two companies and treat them as a single entity for purposes of this proceeding.[8]

CPZ/SKF disagrees with the Department's preliminary decision to collapse it with SGBC. According to CPZ/SKF, the Department may only collapse producers under 19 CFR 351.401(f) when the following conditions are met: 1) the producers are affiliated; 2) they have production facilities for similar or identical products that would not require substantial retooling to restructure manufacturing priorities; and 3) there is a significant potential for the manipulation of price or production. CPZ/SKF concedes that the first prong of the regulation is met, and it does not contest the Department's finding that both it and SGBC produce the same products. However, it disagrees that there is any basis for concluding that a significant potential for manipulation exists, given the facts on the record of this review.

CPZ/SKF notes that it shares a common ultimate parent company (AB SKF) with SGBC, and CPZ/SKF recognizes that this company has the ability to exercise control over both companies

[7] There is also an ongoing reinstatement changed circumstances review (CCR) involving SGBC. The preliminary results of this CCR are currently due in March 2016.

[8] See Preliminary Results, 80 FR at 38665; see also Memorandum from The Team to Melissa Skinner, Director Office II, dated June 30, 2015, entitled "Whether to Collapse Changshan Peer Bearing Company Ltd. and Shanghai General Bearing Company Ltd. in the 2013-2014 Antidumping Duty Administrative Review of Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China" (Collapsing Memo) at 14.

because of its majority ownership. However, CPZ/SKF claims that the Department has accorded disproportionate weight to this fact, contravening the preamble to the regulations,[9] its long-standing practice, [10] and court precedent.[11] Indeed, CPZ/SKF notes that, in the most recently-completed segment of this proceeding, the Department explicitly rejected the idea that common control by a parent company alone is sufficient to find a significant potential for the manipulation of price or production.[12]

Rather, CPZ/SKF notes that 19 CFR 351.401(f)(2) permits the Department to consider the following factors when determining whether a significant potential for manipulation exists: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through sharing of sales information, facilities, or employees, involvement in production decisions, or significant transactions between the affiliated producers. CPZ/SKF finds it legally meaningful that the regulation uses the term "firm" in subsection (ii) and "producers" in subsection (iii). According to CPZ/SKF, the use of the word "producers" in (iii) limits the Department's analysis of intertwined operations to those between the producers themselves (rather than between producers and a parent company). CPZ/SKF claims that this conclusion is not only clear from the language of the regulations, it is also consistent with the Department's stated intention that collapsing not occur in virtually every case where two producers are affiliated based on common control.[13] CPZ/SKF notes that, in this case, the Department found no evidence that its operations are intertwined with SGBC's.

According to CPZ/SKF, the relevant question under the regulations is whether there is a significant potential to manipulate production and pricing in a way that would reduce dumping

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[9] See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27345 (May 19, 1997) (Preamble), which indicates that the collapsing regulation requires something beyond the potential for manipulation that is inherent in the relationship between affiliated companies.

[10] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea, 71 FR 29310 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 13 (where the Department did not collapse two affiliated producers, despite the fact that the level of common ownership between them was substantial); Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Germany, 67 FR 3159 (January 23, 2002), and accompanying Issues and Decision Memorandum at Comment 15 (where the Department determined not to collapse companies "almost completely owned by the same parent," despite the fact that the companies shared members of their supervisory board, shared a common affiliated supplier and sold merchandise to each other).

[11] See, e.g., Allied Tube and Conduit Corp. v. United States, 127 F. Supp. 2d 207, 222 (U.S Court of International Trade (CIT) 2000) (citing New World Pasta Co. v. United States, 316 F. Supp. 2d 1338, 1345 (CIT 2004), which states that the evidence required to justify a collapsing determination "goes beyond that which is necessary to find common control").

[12] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review, 2012-2013, 80 FR 4244 (January 27, 2015), and accompanying Issues and Decision Memorandum at Comment 4.

[13] CPZ/SKF contends that the operations of a parent and subsidiary are always intertwined based on the nature of their relationship because parents generally elect subsidiary board members, approve corporate actions, and provide services to increase overall efficiency.

liability.[14] CPZ/SKF contends that a parent's ability to collect information from subsidiaries is irrelevant unless there is a significant potential for that parent to use the information to coordinate production or pricing to evade dumping duties.[15]

CPZ/SKF contends that, here, there was not a significant potential for AB SKF to manipulate price or production to evade dumping duties. With respect to the sharing of financial information, CPZ/SKF agrees that its U.S. affiliate, Peer Bearing Company (Peer), sends AB SKF financial information (via its parent company SKF USA). However, CPZ/SKF maintains that these data (i.e., trial balances which do not contain detailed sales, pricing, or production figures) are at too high a level to permit AB SKF to use them to evade duties. Further, CPZ/SKF contends that the sharing of this information is irrelevant to the Department's analysis because, as noted above, the intertwined operations section of the regulations does not extend beyond the producers themselves.

CPZ/SKF also acknowledges that SKF USA appoints the board of directors of SGBC's U.S. affiliate, General Bearing Corporation (GBC),[16] and both SKF USA and GBC share certain officers. However, CPZ/SKF contends that these three officers play no role in GBC's pricing decisions and are not responsible for selecting employees who would perform this function for GBC. Thus, CPZ/SKF maintains that SKF USA similarly cannot manipulate GBC's pricing so as to avoid dumping duties.

CPZ/SKF notes that the Department's preliminary decision relied heavily on information contained in a document taken during the verification conducted at Peer during this review. [17] CPZ/SKF states that this document outlines AB SKF's transfer pricing policy (TPP) with its subsidiaries; however, it claims that the Department misinterpreted certain key provisions, and,

[14] As evidence of this, CPZ/SKF cites Slater Steels Corp. v. United States, 316 F. Supp. 2d 1368, 1372 (CIT 2004) (Slater) (stating that the policy rationale behind the collapsing regulation is to "prevent affiliated companies . . . from manipulating price or production activities of subject merchandise to the affiliated company with the lowest margin, and thereby circumventing the antidumping law"; Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Administrative Review, 74 FR 65518 (December 10, 2009), and accompanying Issues and Decision Memorandum at Comment 1 (stating that the Department's "reference to manipulation in this context pertains to potential behavior that is not necessarily unlawful, but rather is designed to avoid paying higher dumping duties"); Preliminary Determinations of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon-Quality Steel Plate Products From Italy, 64 FR 41213, 41217 (July 29, 1999) (where the Department found that it was not appropriate to collapse two producers because there was "not a significant potential for the manipulation of price or production in order to evade antidumping duties").

[15] See Steel Threaded Rod From India: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part; 2012-2013, 79 FR 40714 (July 14, 2014), and accompanying Issues and Decision Memorandum at Comment 1 (quoting Koyo Seiko Co., Ltd. v. United States, 516 F. Supp. 2d 1323, 1346 (CIT 2007), stating that the Department looks to "relatively unusual situations, where the type and degree of relationship is so significant that it finds there is a strong possibility of price manipulation").

[16] CPZ/SKF notes that GBC, not SKF USA, appoints GBC's senior managers.

[17] See Memorandum from Stephen Bailey, Senior Analyst, to the File, entitled "Verification of CPZ/SKF Bearing Co., Ltd. in the 2013-2014 Administrative Review of Tapered Roller Bearings from the People's Republic of China," dated August 6, 2015, (CPZ/SKF Verification Report) at Exhibit 3.

as a result, the Department cannot use this document to support its conclusions.[18] For example, CPZ/SKF contends that there is no basis for the Department's finding that AB SKF "will oversee most of the business functions of its affiliates";[19] CPZ/SKF maintains that, not only is this an impossible task – given that there are more than 85 of them – but also the Department found no evidence at verification (for CPZ/SKF) or on SGBC's financial statements (for SGBC) that the language underlying this conclusion applies to either producer.

CPZ/SKF contends that the Department's conclusion that AB SKF, "as a majority shareholder in its subsidiaries, has the ability and authority to control all activities of its subsidiaries including sales and production" [20] is similarly over-reaching. CPZ/SKF maintains that AB SKF does indeed have this authority, but so does every parent company with respect to its subsidiaries. CPZ/SKF disagrees that the language cited in support of this conclusion demonstrates that AB SKF is exercising its authority, particularly since that language does not discuss the specifics of the activities that AB SKF controls.

CPZ/SKF further disagrees that a particular sentence in the TPP signifies that AB SKF is "in a position to control the pricing and production of its affiliates."[21] CPZ/SKF asserts that the TPP clearly states that the passage[22] containing the sentence in question only applies to "contract manufacturers" and only where a particular situation applies. However, CPZ/SKF asserts that neither condition clearly applies to CPZ/SKF, a fact seemingly acknowledged in one place in the Collapsing Memo and denied in another.[23] According to CPZ/SKF, the truth of its assertion can be confirmed via a review of the related-party transactions section of its financial statements.[24]

Finally, CPZ/SKF disagrees with the Department's conclusion that "even if certain policies are not currently imposed by AB SKF upon a particular SKF Group member, the document clearly illustrates that the parent company provides policy guidance to the SKF Group members that it controls."[25] CPZ/SKF argues that the fact that a parent provides guidance to certain subsidiaries does not suggest that it is likely to provide policy guidance to all subsidiaries. In any event, CPZ/SKF asserts that much more than "policy guidance" is required to create a significant potential for the manipulation of pricing or production of subsidiaries.

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[18] Because CPZ/SKF has claimed business proprietary treatment for the contents of the TPP, we are unable to discuss the language at issue here. For further information, see CPZ/SKF's case brief at 8-14; see also the Collapsing Memo at 9-14.

[19] See the Collapsing Memo at 13.

[20] Id.

[21] Id.

[22] See CPZ/SKF Verification Report at page 27 of Exhibit 3.

[23] See the Collapsing Memo at 10. Specifically, CPZ/SKF notes that the Department first stated that it was unclear whether CPZ/SKF was a {non-contract manufacturer} and then implied later that CPZ/SKF must be a contract manufacturer (i.e., because CPZ/SKF provided the document to the Department, it must apply to CPZ/SKF).

[24] For the specifics of this argument, see CPZ/SKF's case brief at 13.

[25] See the Collapsing Memo at 13.

Finally, CPZ/SKF acknowledges that the CPZ/SKF and SGBC produce a limited number of the same products, and share certain suppliers and customers. However, CPZ/SKF asserts that the ability to produce some of the same products has no bearing on the question of manipulation, which the Department must consider separately under the regulations.[26] With respect to shared suppliers and customers, CPZ/SKF maintains that the Department has failed to explain how this information is relevant, especially given that the numbers are small, the services that the suppliers provide are different, and the record does not show that any party is collecting sales and pricing to these customers and/or coordinating which products were sold to them.

Based on the foregoing, CPZ/SKF contends that the Department should treat it and SGBC as separate entities for purposes of the final results.

The petitioner agrees with the Department's decision to collapse CPZ/SKF and SGBC in the preliminary results. In support of this position, the petitioner argues that CPZ/SKF's interpretation of 19 CFR 351.401(f)(2) is too narrowly construed. The petitioner asserts that, because 19 CFR 351.401(f)(2)(iii) provides a non-exhaustive list of factors for the Department to consider, the Department does not need to find that all (or, indeed, any) of the factors listed are needed to make an affirmative collapsing determination.[27] Additionally, the petitioner notes that the Department has collapsed non-producing affiliates in other proceedings.[28] Thus, the petitioner contends that, even if the regulation does specifically discuss intertwined operations between affiliated producers, the regulation in no way limits the Department to considering only intertwined operations between affiliated producers or compels the Department to make a negative collapsing determination if the producers' operations are not intertwined.

The petitioner maintains that record evidence supports the Department's decision to collapse CPZ/SKF and SGBC. The petitioner finds the Department's focus on the relationship among Peer, GBC, and SKF USA relevant to the question of whether the potential for the manipulation

[26] As support for this statement, CPZ/SKF cites Slater, 316 F. Supp. 2d at 1374 (directing the Department to "focus on the companies' production facilities and on whether or not 'substantial retooling' of facilities would be required 'in order to restructure manufacturing priorities... without reference to the factors that bear on the manipulation' issue. . . This is what is required under the regulation, Commerce's own practice, and the Preamble").

[27] See Preamble, 62 FR at 27346 and Chlorinated Isocyanurates From the People's Republic of China: Final Results of June 2008 Through November 2008 Semi-Annual New Shipper Review, 74 FR 68575 (December 28, 2009), and accompanying Issues and Decision Memorandum at Comment 3 (where the Department stated that it "need not find all three criteria in 19 CFR 351.401(f)(2) to be present in order to treat affiliated producers as a single entity"); Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 48195 (August 18, 2008), and accompanying Issues and Decision Memorandum at Comment 1 (where the Department stated that "the regulation is not exhaustive of the situations that may call for collapsing of affiliated entities, and the Department has developed a practice of collapsing entities that do not qualify as producers"); and Catfish Farmers of Am. v. United States, 641 F. Supp.2d 1362, 1372 (CIT 2009) (where the CIT held that the "regulation's list of factors is non-exhaustive and merely suggests three factors for Commerce to examine in establishing potential control").

[28] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 78 FR 55676 (September 11, 2013), and accompanying Issues and Decision Memorandum at Comment 1 (where the Department determined that "where non-producing entities are affiliated, and there exists a significant potential for manipulation of prices and/or export decisions, the Department has considered such entities, as well as any other affiliated entities (where appropriate), as a single entity").

of price or production exists. Specifically, the petitioner asserts that the relationship between SKF USA and its wholly-owned subsidiaries Peer and GBC provides insight into the relationship between Peer and GBC, and the fact that Peer shares financial data with SKF USA and SKF USA and GBC share board members and officers signifies that GBC has access to Peer's financial data.[29] Thus, the petitioner argues that this type of information sharing and overlapping control gives rise to the potential for manipulation because the individuals that directly control GBC and SKF USA are in a position to obtain and use information regarding Peer's sales. The petitioner further argues that it would be in the interest of Peer's and GBC's parent companies to manipulate pricing so as to minimize dumping liability.

The petitioner finds CPZ/SKF's main argument regarding (i.e., that a parent's ability to control its subsidiaries exists in every parent-subsidiary relationship) too simplistic. Rather, the petitioner contends that CPZ/SKF has failed to take into account the facts in this case, including GBC's access to information created by the sharing of certain officers and financial information.

With respect to the TPP, the petitioner contends that CPZ/SKF's arguments similarly overlook the importance of the TPP with respect to the potential for manipulation of prices or production. The petitioner asserts that there need not be actual manipulation, only the potential for it, and the TPP demonstrates this potential when it states, for example, that AB SKF is "in a position to control pricing and production of its affiliates."[30] The petitioner argues further that, even though there may be no evidence on the record that certain provisions in the TPP apply to CPZ/SKF, the importance of the TPP again is not to demonstrate that AB SKF has exercised control over its subsidiaries, but rather to show that it has the ability and willingness to do so.

Finally, the petitioner maintains that overlapping customers, models, or suppliers are important because they are indicative of the ease with which CPZ/SKF and SGBC could modify their current activities in order to minimize dumping. Thus, the petitioner contends that the Department should continue to collapse CPZ/SKF and SGBC for purposes of the final results.

Department's Position:

After reexamining the facts on the record with respect to this issue, we find that there is an insufficient basis to collapse CPZ/SKF and SGBC in this segment of the proceeding. Therefore, we treated CPZ/SKF and SGBC as separate companies for purposes of the final results.

In accordance with 19 CFR 351.401(f)(1), the Department will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility and there is significant potential for the manipulation of price or production. In this case, it is undisputed that the two companies are affiliated and have production facilities capable of producing the same products without substantial retooling. Thus, we find that the first two prongs of the collapsing

[29] The petitioner also makes certain additional arguments with respect to common board members which are based on facts which are not part of the public record of this case. For further discussion, see the petitioner's case brief at 7-8.

[30] See the Collapsing Memo at 13.

regulation have been met. With respect to the third prong, however, we no longer find that the record of this review supports a finding that there exists a significant potential for the manipulation of price or production.

In regards to significant potential for manipulation of price or production, 19 CFR 351.401(f)(2) states that the Department may consider the following factors:

(i) The level of common ownership;

(ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and

(iii) the degree to which operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

It is clear from the language of this regulation that the Department may consider the above-listed factors, but it is not bound by them when conducting its analysis. Further, the Preamble explicitly states that these factors are "non-exhaustive."[31] As a result, the Department has developed a practice of considering the totality of the circumstances particular to the case at hand in analyzing the factors, where we find that no one factor is necessarily dispositive and not all three factors listed in the regulation are required.[32]

In this case, CPZ/SKF and SGBC are members of the SKF Group of companies, as are their U.S. affiliates Peer and GBC, and the level of common ownership among these companies is significant.[33] However, as noted above, the degree of affiliation among affiliates is but one part of the Department's collapsing analysis. While CPZ/SKF and SGBC are indeed affiliated, the record of this case establishes that both companies operated completely independently during the POR: There were no transactions between the companies, and they shared no facilities, employees, or pricing/production information;[34] similarly, they had no common board members

[31] See Preamble, 62 FR at 27346 (stating that "paragraph (f)(2) contains the non-exhaustive list of factors that the Secretary will consider in determining whether there is a significant potential for manipulation (emphasis added)); see also 19 CFR 351.402(f)(2) (listing the factors that "the Secretary may consider" (emphasis added)).

[32] See, e.g., Final Determination of Less-Than-Fair Value Investigation: Steel Concrete Reinforcing Bars from the Republic of Korea, 69 FR 19399 (April 13, 2004), and accompanying Issues and Decision Memorandum; and Dongkuk Steel Mill Co. v. United States, Court No. 04-00190, Slip Op. 05-75 (CIT June 22, 2005); Koyo Seiko Co. v. United States, 516 F. Supp. 2d 1323, 1346 (CIT 2007); see also Preamble, 62 FR at 27345-46 (stating that collapsing determinations are "very much fact-specific in nature, requiring a case-by-case analysis, as reflected in the Department's determinations in actual cases…").

[33] See CPZ/SKF's CPZ/SKF's Section A Response, dated September 25, 2014, at A-1 and A-5, which states that AB SKF ultimately owns 100 percent of CPZ/SKF, Peer, and GBC, and it has a controlling interest in SGBC.

[34] See CPZ/SKF's Supplemental Sections A and C Response, dated January 21, 2015, at 6-10 stating that neither company shares sales information with the other, and that they share no production facilities, production employees, or administrative functions. This response also states the companies are not involved in each other's day-to-day pricing or production decisions, nor do they have any transactions with each other.

or managers.[35] Further, although the companies did have two suppliers in common, they had many more which were not the same. Absent additional evidence, the existence of a few common suppliers does not support a finding that there exists a significant potential for the manipulation of production.

We disagree with CPZ/SKF that the Department's analysis should end here, based on the language of the regulation. In order to make an informed and reasoned collapsing decision, it is essential to consider the totality of the facts on the record, not only those directly related to the exporter/producers themselves; thus, we find the actions of all affiliated parties involved in the production or sale of the merchandise under consideration to be potentially relevant to our analysis.

At the heart of this collapsing issue is whether the corporate structure of the U.S. affiliates (Peer, GBC, and their shared parent, SKF USA) creates a significant potential for the manipulation of U.S. price or production, such that the Group as a whole can minimize its dumping liability and/or evade AD duties altogether. It is important to note that the standard in the regulations is not simply the possibility for manipulation; the regulations require that potential to be "significant." Specifically, the Preamble states:

> {W}e have retained the word "significant" with respect to the potential for manipulation. The suggestion that the Department collapse upon finding any potential for price manipulation would lead to collapsing in almost all circumstances in which the Department finds producers to be affiliated. This is neither the Department's current nor intended practice.[36]

After considering the arguments made by the parties and reevaluating the facts on the record, we now conclude that a significant potential for the manipulation of price or production does not exist.

With respect to SKF USA's control of the two U.S. affiliates via ownership and common board members/officers, we agree that this control places SKF USA in a position to affect the U.S. pricing behavior of Peer and GBC. However, we find no basis on the record to conclude that this control differs from the ability of any parent to direct or control the actions of its affiliates, and, thus, we do not find it determinative. Further, there is no evidence on the record showing that any of the parties provides the others access to its specific sales and pricing information,[37] nor that SKF USA was involved in the operations of either affiliate (beyond the routine collection of high level financial data). Finally, we note that the record reflects that Peer and GBC had no

[35] See CPZ/SKF's CPZ/SKF's Supplemental Sections A and C Response, dated January 21, 2015, at 6-10 (stating that no managerial employees or board members of CPZ/SKF sit on the board of directors SGBC or vice versa).

[36] See Preamble, 62 FR at 27345.

[37] We agree with CPZ/SKF that Peer's provision of trial balance information to SKF USA is useful for the consolidation of the Group's financial statements, but that information is not detailed enough to provide SKF USA knowledge of pricing on a customer- or product- level. Further, while SKF USA may have the power to collect pricing information from both of its affiliates, we again find that this power is generally present in parent/subsidiary relationships and not unique to these circumstances.

interaction with each other,[38] no shared employees, and only a handful of the same customers (out of hundreds).

With respect to the TPP, it is clear that this document establishes a Group-wide transfer pricing policy, and that the policy generally applies to SKF affiliates (including CPZ/SKF and SGBC, as members of the Group). However, in light of CPZ/SKF's arguments with respect to the TPP, we agree that we are unable to draw additional conclusions with respect to it that would be supported by probative record evidence, and, thus, we find that its existence neither weighs in favor of, nor against, a collapsing decision.

Finally, we agree with CPZ/SKF that the relevant question here is whether the ability to manipulate price or production permits companies to evade an AD order (a proposition not challenged by the petitioner). The purpose of the collapsing regulation is to prevent affiliated companies from evading AD duties by shifting production and sales to an exporter with a low AD rate and away from a high-rate company.[39, 40] Where companies are acting (or are likely to act) in concert to sell their products in the U.S. market, it is appropriate to treat them as a single entity and assign them a single rate. However, as the Preamble makes clear, the collapsing regulation is not intended to apply to companies who merely are affiliated; there not only has to be a potential for manipulation, but that potential has to be significant. In this case, CPZ/SKF is a company with a dumping rate of just above de minimis and SGBC is excluded from the AD order on TRBs. However, it is important to note that SGBC's revocation pertains only to TRBs that it produces itself in the PRC; thus, CPZ/SKF cannot sell its own products through SGBC in order to evade AD duties. In other words, TRBs produced by CPZ/SKF are subject to the AD order, irrespective of the entity which exports them, and, thus, we see no advantage to CPZ/SKF in selling its products through SGBC. Similarly, we see little advantage to CPZ/SKF's shifting all production of TRBs destined for the United States to SGBC, given that such a shift would require CPZ/SKF to exit the U.S. market. While this scenario is not impossible, we find it implausible, given CPZ/SKF's current low cash deposit rate and its recent history of low or no dumping margins.

For the reasons set forth above, we do not find that the record supports a finding of a significant potential for manipulation. To summarize, CPZ/SKF and SGBC are affiliated producers who make a small number of the same products and sell to a small number of the same customers. However, they do not interact with each other, nor do they share personnel or information. They

[38] See Memorandum from Stephen Bailey, Senior Analyst, to the File, entitled "Verification of Peer Bearing Company in the 2013-2014 Administrative Review of Tapered Roller Bearings, and Parts Thereof, from the People's Republic of China," dated June 26, 2015, at 4.

[39] See Slater Steels Corp. v. United States, 279 F. Supp. 2d 1370, 1376 (CIT 2003), which states, "The policy rationale behind collapsing is to prevent affiliated exporters with same or similar production capabilities to channel production of subject merchandise through the affiliate with the lowest potential dumping margin and thereby circumvent the United States antidumping law."

[40] We note that the collapsing regulation is also intended to address other situations, none of which are at issue here. For example, the collapsing regulation prevents companies from minimizing NV by sourcing production for sales in comparison markets from their most efficient producers and production for U.S. sales from their less efficient producers. It also permits the Department to assign rates to affiliated companies that are setting their prices jointly (i.e., the price discriminator is the collapsed entity, not the individual companies).

have a common parent, and they sell through U.S. affiliates which also have a common owner. But those affiliates do not interact with each other, nor is there evidence that they provide their owner with information on their day-to-day operations. Finally, while all the parties appear to be subject to a common transfer pricing policy established by the ultimate parent of the SKF Group, this policy does not appear to direct pricing to the ultimate customer, nor to control how subject merchandise is produced. Thus, we find that the totality of the evidence on record for this segment of the proceeding does not support a determination to collapse CPZ/SKF and SGBC.

Although we find that the record in this segment of the proceeding does not support a collapsing determination at this time, we recognize the importance of a collapsing decision to the accuracy of our dumping calculations. Therefore, we intend to request additional information from CPZ/SKF in subsequent segments of this proceeding, and we will reevaluate this conclusion if the facts differ there.

Comment 2: *Calculation of Steel Bar Transportation Cost*

CPZ/SKF argues that in the Preliminary Results, the Department failed to multiply the cost per kilogram of transporting steel bar for heat treatment by the weight of the steel being transported. CPZ/SKF contends that it is appropriate to multiply by the weight of the turned ring rather than the total amount of steel used to make the ring because the rings undergo heat treatment after they have been turned. Accordingly, CPZ/SKF contends the Department should revise its margin calculation to take this into account.

The petitioner did not comment on this issue.

Department's Position:

We agree with CPZ/SKF and corrected the steel bar transportation costs to include the weight of the steel being transported.[41]

Comment 3: *SV for Truck Freight*

In the Preliminary Results, the Department valued truck freight using data from a World Bank survey, published in Doing Business in Thailand: 2015 (Doing Business 2015).[42] The Department preliminarily based its calculation of the SV for truck freight on the average distance from Bangkok industrial areas to the Bangkok port and the port of Laem Chabang (i.e., 85.355 kilometers (km)) and a merchandise weight of 10,000 kilograms.

The petitioner argues that the Department should instead base this calculation solely on a distance from Bangkok to the port of Bangkok (i.e., 12.5 km). The petitioner maintains that the Department should follow the survey parameters and make conversions based on how the data were reported in the survey. According to the petitioner, this action would be consistent with the

[41] See CPZ/SKF Final Analysis Memo at 3.

[42] See the petitioner's Surrogate Value Comments, dated December 19, 2014 (Petitioner 1st SV Comments), at Attachment 9.

Department's valuation of movement charges in other cases; for example, the petitioner notes that the Department converts brokerage and handling costs found in the World Bank's Doing Business reports into a cost per ton based on a weight of 10 tons, because that is consistent with how survey participants were instructed to report costs.[43] The petitioner argues that the World Bank's Doing Business reports need to maintain the relationship between cost and quantity, because mixing different sources of data results in an inconsistent ratio calculation and distorted result.[44]

The petitioner argues that the Department should revise the SV truck freight calculation with regard to the port to which goods are shipped for transport and the location from which the goods are shipped in Bangkok. With regard to the port, the petitioner maintains that the Department should use the port of Bangkok in its SV truck calculation because the World Bank survey contains assumptions demonstrating that Bangkok is the port used for reporting purposes. For instance, Doing Business 2015 identifies a number of case study assumptions, including "the seaport most commonly used by traders in <<Survey_City>> is considered," and "The main seaport is assumed to be <<DB_tab_Port>>").[45] The petitioner maintains that Doing Business 2015 expressly states that the port used is Bangkok.[46] Further, the petitioner argues that the Department recently used the port of Bangkok to calculate truck freight, recognizing Bangkok port as the port reflected in the report[47] and rejecting the use of a distance to the port of Laem Chabang.[48]

With regard to the starting location for reporting freight costs, the petitioner contends that the starting point for the distance to the port should be a location within Bangkok city itself, and not the industrial areas surrounding Bangkok that the Department used in the Preliminary Results. The petitioner contends that, even though the Department used the Bangkok industrial areas as the starting point for the freight calculation in previous reviews, Doing Business 2015 contains new information demonstrating that freight distances are reported from the city of Bangkok and not industrial areas outside Bangkok. The petitioner points to certain assumptions in the survey issued to participants to collect data for the Doing Business report which show export costs require the reporting of "Cost of inland transport (from warehouse in <<Survey_City>> to seaport) and handling (loading and unloading)";[49] the petitioner contends that the report specifies

[43] See Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 80 FR 34893 (June 18, 2015) (PVLT Tires), and accompanying Issues and Decision Memorandum at Comment 15.

[44] In support of this assertion, the petitioner cites, e.g., Certain Polyester Staple Fiber from the People's Republic of China, 80 FR 4542 (January 28, 2015) (Polyester Staple Fiber), and accompanying Issues and Decision Memorandum at 26.

[45] See World Bank, Trading Across Borders Questionnaire at 3, included in Petitioner 1st SV Comments at Attachment 10B.

[46] See Doing Business 2015 at 64 included in Petitioner 1st SV Comments at Attachment 10A.

[47] See PVLT Tires, at Comment 15.

[48] Id.

[49] See World Bank, Trading Across Borders Questionnaire at 3, included in Petitioner 1st SV Comments at Attachment 10B.

that the survey city is Bangkok.[50] The petitioner asserts that, while the Doing Business 2015 survey requires the reporting of a distance "in" Bangkok,[51] most of the Bangkok industrial areas in the report and used by the Department in its calculation are not within Bangkok city itself. The petitioner contends that only Bang Chan Industrial Estate and Ladkrabang Industrial Estate are in Bangkok.[52]

The petitioner also contends that Doing Business 2015 removed language used in previous versions that the location of a "standardized company" is the "periurban area of the economy's largest business city."[53] Instead, the petitioner argues that the Word Bank report states that a standardized company is located "in" the largest business city, a point which the petitioner says is supported by recent Department decisions.[54]

Finally, the petitioner asserts that the Department should use the recalculated distance of 12.5 km in the SV truck freight calculation. The petitioner contends that the Department used this distance in other proceedings before the Department and that the distance is commensurate with the average of the distances from Bangkok's commercial (i.e., non-residential and non-agricultural) districts to the port of Bangkok (i.e., 15 km).[55] Additionally, the petitioner contends that the 12.5 km distance is also corroborated by the average distance between the addresses of the 48 entities acknowledged as contributing to the Doing Business 2015 report and the port of Bangkok (i.e., 9.41 km).[56]

CPZ/SKF contends that the underlying data in Doing Business 2015 supports a finding that the distances do not reflect only transportation to the port of Bangkok. CPZ/SKF notes that the survey does not specify that respondents only report transportation to the port of Bangkok; rather, CPZ/SKF notes that the survey questions contained in this report do not instruct companies to report their freight costs specifically from Bangkok to the port of Bangkok, but instead to take into account their most commonly used seaport. Given that Laem Chabang is a deep sea port that handles approximately 75 percent of the country's container volume, while the Bangkok port is unable to handle larger vessels, CPZ/SKF maintains that it is likely that Laem Chabang is the port most commonly used to import and export goods from Bangkok and thus the survey respondents would report the cost of shipping goods through Laem Chabang. Additionally, CPZ/SKF argues that the Doing Business 2015 survey only requests the cost of

[50] See Doing Business 2015 at 64 included in Petitioner 1st SV Comments at Attachment 10A.

[51] Id., at 62.

[52] See CPZ/SKF Surrogate Value Comments, dated December 19, 2014 (CPZ/SKF SV Comments), at Attachment SV-7.

[53] See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013, 80 FR 41476 (July 15, 2015) (Multilayered Wood Flooring), and accompanying Issues and Decision Memorandum at Comment 9; World Bank, Doing Business 2014, Economy Profile: Thailand, at 72, included in CPZ/SKF SV Comments, at SV-6.

[54] See PVLT Tires, at Comment 15.

[55] See Bangkok Post, Area Zoning: 12 Clusters in Bangkok, included in the petitioner's Second Surrogate Value Comments, dated June 1, 2015 (Petitioner 2nd SV Comments), at Attachment 6; Wikipedia, Bangkok, excerpt also included in Petitioner 2nd SV Comments, at Attachment 7.

[56] See Petitioner 2nd SV Comments, at Attachment 5.

transporting goods and not the port; CPZ/SKF maintains that, absent record evidence, there is no way to know whether the costs reported are for the port of Bangkok or other ports.

With regard to the source of the SV data, CPZ/SKF argues that the Department should use the truck freight expense stated in the World Bank's Doing Business in Thailand: 2014 (Doing Business 2014) because this source is contemporaneous with the POR. CPZ/SKF maintains that regardless of the petitioner's argument that Doing Business 2015 purportedly identifies the relevant port, Doing Business 2015 data are current as of June 1, 2014, the day after the end of the current POR, while Doing Business 2014 data are current as of June 1, 2013, the start of the current POR. CPZ/SKF argues that for this reason Doing Business 2014 is contemporaneous with the POR and should be used by the Department. Moreover, CPZ/SKF contends that in the previous review of TRBs from the PRC, despite an email from the World Bank indicating that the Doing Business 2014 study assumes transportation is to the seaport in Bangkok, the Department used an average distance to the Bangkok and Laem Chabang ports and it should do so in this current review. Consequently, CPZ/SKF argues that there is no evidence that 12.5 km is representative of the shipment distance for survey participants.

Additionally, CPZ/SKF argues that the 12.5 km distance is flawed because it is based on traveling from the center of Bangkok to the port, rather than from the industrial outskirts of Bangkok to the port. CPZ/SKF contends that the petitioner's reliance on Doing Business 2015 omission of any reference to the "periurban" area of Bangkok when measuring distances is misplaced because the values are the same for both the 2014 and 2015 versions of Doing Business. CPZ/SKF contends that this demonstrates that the World Bank did not change its methodology or assumptions from 2014 to 2015. CPZ/SKF claims that the Department has relied on the 2015 figure in recent cases and still measures the distance from the industrial areas in and around Bangkok.[57]

In the alternative, if the Department decides to measure all distances from within Bangkok city limits, CPZ/SKF argues that it should use only the industrial areas of Bangkok. CPZ/SKF maintains that arbitrarily measuring distances from Bangkok's city center, as proposed by the petitioner, is contrary to record evidence showing that the center of Bangkok is home to historic, cultural, and governmental sites and not industry. CPZ/SKF asserts that the petitioner makes an arbitrary assumption that the companies in the Doing Business 2015 survey are in the center of Bangkok city. CPZ/SKF contends that it is unlikely to find a warehouse shipping container being loaded in the city center instead of one of the few major industrial areas in Bangkok. Moreover, though the petitioner contends that the average distance from the "commercial districts" of Bangkok to the port of Bangkok supports its proposed distance of 12.5 km, CPZ/SKF maintains that the petitioner's definition of "commercial district" is overly broad and includes any area not designated solely as residential or agricultural. CPZ/SKF contends that the petitioner includes shipment areas (e.g., historical and cultural conservation and tourism areas, suburban community center areas, etc.) that contradict the assumed shipment areas (i.e.,

[57] In support of this position, CPZ/SKF cites Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 41480 (July 15, 2015) (Steel Wire Garment Hangers), and accompanying Issues and Decision Memorandum at Comment 17; and Multilayered Wood Flooring, at Comment 9.

warehouses) in the World Bank report, which are likely on the outskirts of a city.[58] CPZ/SKF contends that, if the Department declines to use distances from a periurban area, the Department should use the average distances between the two industrial areas within Bangkok (Bang Chan and Ladkrabang Industrial Estates) to both the Bangkok and Laem Chabang ports. The distance from Bang Chan Industrial Estate to the port of Bangkok is 34.4 km, and 114 km to the port of Laem Chabang. The distance from Ladkrabang Industrial Estate to the port of Bangkok is 39.8 km, and 106 km to the port of Laem Chabang. The average of all of these distances is 73.56 km.

Finally, CPZ/SKF argues that, because the list of survey participants includes only those participants that agreed to be identified for the World Bank report (i.e., two participants, in the case of the trading borders section of the report), it is impossible to determine how many participants contributed to the trading across borders section and are not included in the list. CPZ/SKF contends further that the participants on the list appear to be law, accounting, or consulting firms which would not be involved in shipping containers to the port and, therefore, should not be included in the calculation of freight. CPZ/SKF also maintains that it is not clear whether the listed parties are those who participated by helping to draft or review the report or if the list includes those who filled out surveys for the report. Moreover, CPZ/SKF argues that because the survey requests the distance from the warehouse to the port, the addresses provided may be irrelevant because a business may have an office in one location and a warehouse in another.

Department's Position:

For these final results, the Department continues to rely on information published in Doing Business 2015 which is contemporaneous with the POR. Further, as explained below, we found that using a distance of 37.1 km as the truck freight distance more closely follows the survey parameters than the distance of 85.355 km, which we used in the Preliminary Results. The distance of 85.355 km used in the Preliminary Results is the average of the distances from the periurban area around Bangkok to the ports of Bangkok and Laem Chanbang. The freight distance of 37.1 km is the average distance between the two industrial estates in Bangkok city, Bang Chan Industrial Estate and Ladkrabang Industrial Estate, to the port of Bangkok. As explained below, we chose this distance because it represents the best available information on the record of this review.[59]

As a threshold matter, we disagree with CPZ/SKF that the Department should use Doing Business 2014 because it is contemporaneous to the POR. While the freight information contained in Doing Business 2015 is "current as of June 2014" (and thus published outside the POR), it is based on information collected with respect to shipments made during the entire POR, and thus we find that it more accurately reflects the cost to ship merchandise during the period currently under consideration. By contrast, Doing Business 2014, published June 1, 2013, is reflective of freight rates in effect prior to its publication and prior to the current POR.

[58] See World Bank, Trading Across Borders Questionnaire at 3, included in Petitioner 1st SV Comments, at Attachment 10B (asking respondents to report the expense of inland transportation "from warehouse in «Survey_City» to seaport").

[59] See CPZ/SKF SV Comments, at Attachment SV-7.

Therefore, we continued to rely on Doing Business 2015 as the source of our surrogate truck freight.

The Department relies on two factors in Doing Business reports for determining the distance used to calculate the truck freight surrogate value: the standardized company's location and the destination port. With respect to the first factor, we agree that previous Doing Business reports assumed that the standardized company was located in the "periurban area."[60] In past cases, the Department relied on the description of the "periurban area" on the records of the proceedings in question when selecting distances; based on this information, we started with companies located in the "industrial areas" of the Bangkok Metropolitan Region.[61] In addition, because previous Doing Business reports did not specifically identify the destination port, when the Department relied on information in those reports, the Department used the distance from the "industrial areas" to the port of Laem Chabang, or from the industrial areas to the Bangkok port, or the average of these two distances.[62, 63] In the absence of more specific information, these assumptions were reasonable.[64]

However, the Doing Business 2015 report assumes that the standardized company is located in Bangkok city, and not the "periurban area," and explicitly identifies the destination as "Port Name: Bangkok."[65] Furthermore, the Doing Business 2015 report instructs its respondents to report the expense of inland transportation "from warehouse in <<Survey_City>> to seaport."[66]

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[60] See 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) (Hand Trucks), and accompanying Issues and Decision Memorandum at Comment 8; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012-2013, 80 FR 4244 (January 27, 2015) (TRBs from the PRC AR 26), and accompanying Issues and Decision Memorandum at Comment 1; Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013, 80 FR 7576 (February 11, 2015), and accompanying Preliminary Decision Memorandum (Bedroom Furniture Prelim Memo) at 17, unchanged in Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission, In Part, of Administrative Review and Final Results of New Shipper Review; 2013, 80 FR 34619 (June 17, 2015) (Wooden Bedroom Furniture); and 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) (Tie Wire), and accompanying Issues and Decision Memorandum at Comment 4.

[61] Id.

[62] See Hand Trucks, at Comment 8, TRBs from the PRC AR 26, at Comment 1, Bedroom Furniture Prelim Memo at 17, unchanged in Wooden Bedroom Furniture, and Tie Wire, at Comment 4.

[63] We note that CPZ/SKF's reliance on Steel Wire Garment Hangers and Multilayered Wood Flooring is misplaced. In Multilayered Wood Flooring the Department used Doing Business 2014, while in Steel Wire Garment Hangers, CPZ/SKF cites a preliminary decision which is not yet final.

[64] We note that CPZ/SKF maintains that in a prior segment of this review the Department used an average distance to the Bangkok and Laem Chabang ports despite an email from the World Bank indicating that the Doing Business 2014 study assumed transportation to the "seaport located in Bangkok." However, we find that this description was ambiguous and, unlike the description here, it was not contained in the actual Doing Business 2014 report.

[65] See Doing Business 2015 at 64 included in Petitioner 1st SV Comments at Attachment 10A.

Thus, we find that the distance on the record which is most consistent with the start and destination points identified in Doing Business 2015 is 37.1 km. This figure represents the average of the distances between the Bang Chan Industrial Estate and Ladkrabang Industrial Estate (i.e., known industrial areas in Bangkok) to the port of Bangkok.

We disagree with CPZ/SKF that the 73.56 km distance satisfies the survey parameters, as it represents an average of four distances, two of which are to Laem Chabang. As noted above, Laem Chabang is not identified as the destination port in the Doing Business report; instead, in the current review, the Doing Business 2015 report clearly identifies the destination as "Port Name: Bangkok." Further, we disagree with CPZ/SKF that the port of Bangkok can only handle small vessels, given that information on the record indicates that the port of Bangkok is one of the two largest ports in Thailand.[67] Moreover, the "Trading Across Borders Methodology" section of the Doing Business 2015 report states that the report measures costs (including truck freight) associated with "standardized cargo of goods by sea transport" (e.g., 20 ft. containers). Therefore, information on the record indicates that the Bangkok Port is also capable of handling container ships.

With respect to CPZ/SKF's argument that the transport cost (i.e., $210 per container) did not change from Doing Business 2014 to Doing Business 2015,[68] and, thus, we should continue to use the periurban distance which underpinned the transport cost in 2014, we also disagree. As noted above, Doing Business 2015 specifies that the destination is Bangkok Port and assumes that standardized company is located in the Bangkok city, not the "periurban area." We note further that the questionnaire used to solicit information for Doing Business 2015 asked logistics providers for the transport cost from a warehouse in a survey city, which is explicitly defined as Bangkok city in the report.[69] Thus, we find that CPZ/SKF pointed to no record evidence that would cause us to not rely on explicit statements and information found in Doing Business 2015.

We also disagree with the petitioner that the suggested truck freight distance of 12.5 km is appropriate. The starting point of the petitioner's distance calculation is Bangkok city center, which the petitioner "corroborates" using two alternatives: 1) the average distance from all commercial districts in Bangkok to the port of Bangkok (15 km); and 2) the average distance between the identified parties in the Doing Business 2015 report to the port of Bangkok (9.41 km). However, we find no evidence that Bangkok's city center or commercial districts contain warehouse areas of a type referenced in Doing Business 2015; in contrast, the record does

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[66] See Petitioner 1st SV Comments at Attachment 10B, Trading Across Borders Questionnaire for Doing Business 2015, 3.2(II)7 Cost of inland transport (from warehouse in <<Survey_City>> to seaport) and handling (loading and unloading).

[67] Id.

[68] See CPZ/SKF's August 11, 2015, rebuttal comments (CPZ/SKF rebuttal comments) at 4.

[69] See CPZ/SKF SV Comments at Appendix SV-6, Trading Across Border Survey for Doing Business 2014, 3.2(II)7 Inland transportation and handling, (loading and unloading) costs from warehouse in <<Survey_City>> to seaport); see also Petitioner 1st SV Comments at Attachment 10B, Trading Across Borders Questionnaire for Doing Business 2015, 3.2(II)7 Cost of inland transport (from warehouse in<<Survey_City>> to seaport) and handling (loading and unloading). See also Doing Business 2015 at 64: "information on the required documents and the time and cost to complete export and import is collected from local freight forwarders, shipping lines, customs brokers, port officials and banks."

contain evidence that these areas are comprised of historical and government buildings.[70] Additionally, while the petitioner provided a listing of the distances to the port of Bangkok from the 48 companies identified in the Doing Business 2015 report, we note that this report also states that only two of these entities contributed to the inland freight cost information; thus, the petitioner's calculation includes starting points irrelevant to the question of the appropriate freight distance. Given that the starting point of the "commercial district" distance suffers from the same defects as the distance proposed by the petitioner and the starting point of the "report contributors" distance is based on extraneous information, we disagree that either the 15 km or the 9.41 km distance is corroborative and/or representative of the distance from a typical, exporting company to the port of Bangkok.

Given the information on the record, we used as the starting point of the calculation the two industrial estates locations (Bang Chan Industrial Estate and Ladkrabang Industrial Estate). Not only are these areas within the city of Bangkok, but these area are known industrial areas that we find it reasonable to presume would house warehousing facilities typical to exporting firms. Thus, we find that these areas represent the most reliable and best evidence for the starting point of our distance calculation. As such, we are using 37.1 km (the average of the distance from Bang Chan Industrial Estate (i.e., 34.4 km) and Ladkrabang Industrial Estate (i.e., 39.8 km), to the port of Bangkok) as the truck freight distance.[71]

Comment 4: *SV for Labor Rate*

In the Preliminary Results, the Department valued labor using labor cost data for "Manufacturing of bearings, gears, gearing and driving elements" contained in 2012 Industrial Census data published by Thailand's National Statistics Office (2012 NSO data) and adjusted for inflation using the consumer price index (CPI).

The petitioner argues that for the final results, the Department should instead use NSO Labor Force Survey data for "manufacturing" for the POR. The petitioner maintains that, if two sources of data are publicly available, represent a broad market average, and are tax- and duty-exclusive, the Department typically prefers specificity over contemporaneity because it can inflate values using the CPI.[72] The petitioner maintains, however, that the Department will rely on more contemporaneous data over more specific data if the contemporaneous data are the best available. This includes a scenario where there is a "significant" lag time between the more specific data and POR, which is present in this case.[73]

The petitioner contends that like 2012 NSO data, NSO Labor Force Survey data are publicly available, represent a broad market average, and are tax- and duty- exclusive. Additionally, because the NSO Labor Force Survey data are contemporaneous and specific to the input at issue

[70] See Petitioner 2nd SV Comments, at Attachment 7.

[71] See CPZ/SKF SV Comments at Attachment SV-7.

[72] See Polyester Staple Fiber, at Comment 5.

[73] Id.

(i.e., direct, indirect, and packing labor),[74] the petitioner asserts that they represent the best information available. By contrast, the petitioner argues that the 2012 NSO data are not contemporaneous with the POR, and adjusting these data for inflation using the CPI poses a bigger problem than that raised by the lesser specificity of the NSO Labor Force Survey data. The petitioner contends that, between 2011 and the POR, manufacturing labor wages in Thailand grew at a rate of 36.1 percent, a much higher rate than the CPI rate of 6.2 percent during the same period. The petitioner asserts that it is reasonable to assume that the labor costs for bearing manufacturing increased at a similar pace. Thus, the petitioner contends that adjusting the labor rate using the CPI does not result in an accurate labor rate for the POR.[75] The petitioner argues that, like in PVLT Tires, the Department should find that using the CPI to inflate the 2011 labor rate may not reflect the actual increase in wages between 2011 and the POR.[76]

The petitioner adds that all occupational labor sectors, except those involving "legislator, senior officials, and managers" and "skilled agricultural and fishery workers," which the petitioner claims would not include the types of workers that produce TRBs, showed higher wage growth rates than the inflation rate.[77]

CPZ/SKF argues that the Department should continue to rely on 2012 NSO data adjusted by the inflation rate of 6.2 percent. CPZ/SKF contends that the wage increase in 2011 in Thailand was due to an increase in the Thai national minimum wage to 300 baht for all provinces. CPZ/SKF argues that, depending on the province, the minimum wage increased anywhere from 46 percent to 99 percent from the end of 2010 to the beginning of 2013. CPZ/SKF contends that the minimum wage increase to 300 baht per day represents an 83 percent increase over the 2010 average wage for the four provinces of Thailand, which was 163.75 baht per day.[78]

[74] To support its position, the petitioner cites Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 65616 (November 5, 2014), and accompanying Preliminary Surrogate Value Memorandum at 6 (selecting contemporaneous data for general manufacturing over 2006 data for fabricated metal parts and noting that "the POR Manufacturing-Specific NSO Data are the best available information because the POR Manufacturing-Specific NSO Data are industry- . specific and is contemporaneous with the POR .. .") unchanged in Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013, 80 FR 13332 (March 13, 2015); Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 39060 (July 8, 2015), and accompanying Preliminary Surrogate Value Memorandum at 6 ("In this case, we find that the Manufacturing-specific NSO Data are the best available information to value the labor input because it is industry-specific.").

[75] See PVLT Tires, at Comment 13.

[76] In support of this position, the petitioner cites PVLT Tires, at Comment 13, arguing that in response to the respondents' argument in that case that a change in the manufacturing wage rate was not representative of the tire industry, the Department found that labor increases in wages for the tire industry were more comparable to labor increases in general manufacturing.

[77] Id.

[78] See CPZ/SKF rebuttal comments at 9.

CPZ/SKF maintains further that the 36.1 percent increase in wages is the result of the wage increase for those pre-2010 workers in the "Manufacturing, electricity, gas, and water" industry (42 percent) who were earning less than the minimum wage.[79]

CPZ/SKF argues that Chinese employees who make TRBs are "skilled workers producing high-precision products."[80] CPZ/SKF contends that, accordingly, these workers were likely earning close to the 376.6 bath per day average wage rate in 2011 for workers engaged in the manufacture of bearings, gears, gearing and driving elements even prior to the minimum wage increase to 300 baht per day. CPZ/SKF contends that, if wages for these workers increased at a rate close to the CPI of 6.2 percent, new wages would be around 400 baht per day, a 33 percent increase over the minimum wage. CPZ/SKF maintains, therefore, that the 2011 wage for workers engaged in the manufacturer of bearings, gears, gearing and driving elements was not "significantly"[81] affected by the minimum wage increase. Accordingly, CPZ/SKF argues that the Department cannot find that the industry-specific wage rate more likely followed the pattern of the wage rate for the entire manufacturing sector than the pattern of the CPI.

Department's Position:

For these final results, the Department changed its labor rate surrogate value and used NSO Labor Force Survey data as proposed by the petitioner. We find that record evidence supports a change for the reasons explained below.

In Labor Methodologies, the Department decided to change to the use of ILO Chapter 6A from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.[82] The Department did not, however, preclude all other sources for evaluating labor costs in non-market economy (NME) antidumping proceedings. Rather, we continue to select the best available information to determine SVs for inputs such as labor.[83]

In this review, parties placed on the record the Thai 2012 NSO data and NSO Labor Force Survey data. In the Preliminary Results, the Department valued labor using 2012 NSO data adjusted for inflation because we preliminarily determined that these data were the best information on the record and specific to the bearings industry.[84]

[79] Id.

[80] Id., at 10.

[81] Id.

[82] See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092, 36093 (June 21, 2011) (Labor Methodologies).

[83] See Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

[84] See TRBs Preliminary Decision Memo at 19.

The petitioner argues that the Department should use NSO Labor Force Survey data because the data are publicly available, represent a broad market average, are tax- and duty- exclusive, are specific to the industry in question, and are more contemporaneous than 2012 NSO data. While we agree that NSO Labor Force Survey data are more contemporaneous than 2012 NSO data, in the Preliminary Results we determined that 2012 NSO data were more specific than anything else on the record. However, a closer examination of record evidence for these two data sources reveals that NSO Labor Force Survey data better reflects the full spectrum of labor (i.e., fully loaded, direct and indirect) costs expressed within ILO Chapter 6A data and, in this sense, the NSO Labor Force Survey data are preferable.

In Labor Methodologies, the Department found that the ILO Chapter 6A is the primary source of labor cost data, in that these data best account for all direct and indirect labor costs.[85] Since ILO Chapter 6A data for Thailand are not on the record of this review, we compared the direct and indirect labor cost elements in the bearings industry data and the general manufacturing data to the same elements described in the ILO Chapter 6A definition.[86] Specifically, the ILO Chapter 6A data comprise compensation of employees, employers' expenditure for vocational training and welfare services (e.g., training), the cost of recruitment and other miscellaneous items (e.g., work clothes, food, housing), and taxes.[87] The general manufacturing data include cash for average wage, bonus, overtime, and other income, as well as in kind compensation for food, clothes, housing, and others. The bearings industry data includes wages, salaries, overtime, bonus, fringe benefits (medical care, others), and employer's contribution to social security.[88] Thus, the bearings industry data includes compensation of employees but excludes employer's expenditure for vocational training and welfare services, the cost of recruitment and other miscellaneous items. As such, we find that the direct and indirect labor costs included in the general manufacturing data to be a closer match to all costs covered by the ILO Chapter 6A labor data. Thus, while the bearings industry data is specific to the relevant industry, it is neither contemporaneous with the POR, nor does it reflect the fully-loaded labor costs. Therefore, we find that the general manufacturing labor data provides the best available information for purposes of these final results.

Because we find that the NSO Labor Force Survey data represent the best available data for valuing labor in this review, we consider the petitioner's argument -- that adjusting 2012 NSO data and inflating this value using the CPI does not result in an accurate labor rate due to the large increase in wages between 2011 and the POR -- to be moot. Furthermore, with respect to CPZ/SKF's argument regarding the rise in the minimum wage in Thailand, as explained above, we chose NSO Labor Force Survey data because they are the best information available on the record. If we were to follow our methodology from the Preliminary Results and inflate 2012 NSO data for the final results as advocated by CPZ/SKF, 2012 NSO data would still not capture the full spectrum of labor costs expressed within ILO Chapter 6A data. In this respect, the Department determines that using a data source that reflects the costs associated with labor in the

[85] See Labor Methodologies, at 36092-36093.

[86] See PVLT Tires, at Comment 13, where the Department discusses the ILO Chapter 6A data.

[87] Id.

[88] See Petitioner 1st SV Comments at Attachment 6B.

bearings industry results in a more fulsome and accurate representation of labor costs in the PRC, regardless of whether that source is inflated. As explained above, the NSO Labor Force Survey data do just that as they contain fully-loaded labor costs. As such, this source is the best information available with which to value the surrogate value for labor.

Comment 5: *Unreported Steel Producer Distances to Subcontractors*

The petitioner argues that in calculating freight costs associated with CPZ/SKF's purchases of steel, the Department failed to take into account the distances between the steel producers and the subcontractors for certain steel inputs purchased through trading companies.[89] The petitioner contends that, because these distances relate to steel purchased by CPZ/SKF, they should be included in the weighted-average distance calculation for freight.

CPZ/SKF did not comment on this issue.

Department's Position:

We agree with the petitioner. The Department normally includes the distance traveled for all input purchases when calculating the weighted-average distance for freight. For the final results, we included these distances in our weighted-average distance calculation for steel.[90]

Yantai CMC Issues

Comment 6: *The Department Should Discontinue its Separate Rate Practice*

In the Preliminary Results, the Department found that Yantai CMC was not eligible for a separate rate because it failed to demonstrate an absence of de facto government control.[91] Yantai CMC disagrees with this decision, arguing that it has participated in TRBs proceedings for over 20 years, and each time the Department granted Yantai CMC a separate rate after examining its corporate structure and operations. Therefore, Yantai CMC maintains that the Department should conduct a full separate rate analysis and assign it a separate rate in this proceeding. Further, Yantai CMC contends that the Department should reconsider its separate rate test both in practice and as applied to Yantai CMC in light of its obligations under U.S. law.

Yantai CMC argues that the Department's separate rate practice is inconsistent with U.S. law. Yantai CMC maintains that the Department is required under the unambiguous language of section 735(c)(5) of the the Act to assign an all-others rate to all exporters and producers not individually investigated. Yantai CMC argues further that the Department's separate rate practice is not set forth in the Act, nor is it in any Department regulation.[92] As such, Yantai

[89] See CPZ/SKF's April 2, 2015, supplemental Section D questionnaire response at Exhibit SD 2-47.

[90] See CPZ/SKF Final Analysis Memo at 3.

[91] See TRBs Preliminary Decision Memo at 7.

[92] In support of this argument, Yantai CMC cites "Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Reviews Involving Non-Market EconomyCountries" (April 5, 2005), the sample Separate Rate Application issued for Chinese cases available at http://ia.ita.doc.gov/, and the July

CMC contends that the Department's separate rate practice is merely a policy, and the policy is contrary to U.S. law.

Yantai CMC maintains that, even if the Department does not find that its separate rate practice contravenes U.S. law, it is no longer appropriate as a policy matter to apply a separate rate practice to the PRC. Yantai CMC argues that, just as the Department abandoned its non-application of countervailing duty (CVD) cases against the PRC in the course of a review, it should similarly abandon its separate rate practice in this proceeding. Yantai CMC maintains that the separate rate practice was originally developed to prevent NMEs from "manipulating export and production" among their exporters in order to circumvent U.S. antidumping measures.[93] Yantai CMC contends that the PRC has undergone significant economic reforms over the last fifty years such that the rationale behind the separate rate practice is no longer applicable.[94] Accordingly, Yantai CMC argues that the rebuttable presumption that all PRC exporters are under government control is unsupported by fact or policy.

Yantai CMC maintains that the Department has granted separate rates to PRC exporters even when owned by state-owned enterprises (SOEs) since the Department's decision in Silicon Carbide.[95] Yantai CMC contends that pursuant to PRC market reforms, PRC enterprises operate with complete decisional and operational autonomy, with no government interference in daily export operations.[96] Indeed, Yantai CMC argues that the PRC government has no legal authority to "manipulate export and production" with the goal to circumvent antidumping duties.[97]

Yantai CMC cites to the Department's 2007 decision, reflected in the Georgetown Steel Memo, to apply CVD to the PRC in arguing reforms in the following areas present a significantly different picture than the traditional communist system of the early 1980s:[98]

- Wages and prices;
- Access to foreign currency;
- Personal property rights and private entrepreneurship;
- Foreign trading rights; and
- Allocation of financial resources.[99]

5, 2013, and De Facto Criteria for Establishing a Separate Rate in Antidumping Proceedings Involving Non-Market Economy Countries, 78 FR 40430 (July 5, 2013).

[93] See Yantai CMC's August 6, 2015, case brief (Yantai CMC case brief) at 6.

[94] Id.

[95] See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide).

[96] See Yantai CMC case brief at 6.

[97] Id.

[98] See Memorandum from Shauna Lee-Alaia and Lawrence Norton, Office of Policy, Import Administration, to David Spooner, Assistant Secretary for Import Administration, "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, available at http://enforcement.trade.gov/download/prc-fsp/CFS%20China.Georgetown%20applicability.pdf (Georgetown Steel Memo).

[99] See Yantai CMC case brief at 4 and 7-8.

Yantai CMC contends that these reforms cited as support for the Department's application of CVD law to China directly contravene the assumption in NME cases that all entities in an NME are subject to government control absent those entities passing the separate rate test.

First, Yantai CMC maintains that de jure government control by the PRC government over a company's export activities can no longer be presumed because of the 1994 Company Law and the submission of business and export licenses, both of which demonstrate exporter decisions that are independent of the government.[100] Second, Yantai CMC contends that the de facto presumption of government control over domestic or export pricing is refuted by the Department's finding that "market forces now determine prices for more than 90 percent of the products traded in China."[101] Yantai CMC argues that based on the findings in the Georgetown Steel Memo, the Department should presume an *absence* of both de jure and de facto PRC government control. Moreover, Yantai CMC maintains that the Department cannot simultaneously find that the PRC government and PRC companies are both separable and inseparable from one another depending on whether it is an antidumping or CVD proceeding, given that the analysis will depend on the same issues and facts.[102]

Yantai CMC contends that, were the Department to cease its separate rate practice with respect to the PRC, it would still consider the PRC to be an NME similar to CVD cases against the PRC which employ an NME CVD practice (e.g., use of benchmarks). Yantai CMC argues that a decision to abandon the separate rate test does not mean that the PRC would be considered a market economy; the Department would still apply its SV practice for calculating NV, especially because the statute does not require the separate rate test.

Yantai CMC maintains that even if the Department is unwilling to abandon its separate rate test, it should amend its de facto analysis to remove the "autonomy from the government in making decisions regarding the selection of management" criterion. Yantai CMC contends that the Department noted in the Georgetown Steel Memo at page 8 that SOEs have the legal right to act as independent entities under the 1994 Company Law, including independent import and export decisions on amounts and price. As a result, Yantai CMC argues that autonomy in management decisions has no relevance in determining an exporter's independence from government control.

The petitioner argues that the Department's separate rate practice is supported by law and has been upheld by the courts in previous Department proceedings.[103] The petitioner contends that

[100] Id., at 9.

[101] Id., at 10, citing Georgetown Steel Memo at 5 (quoting The Economist Intelligence Unit, Country Commerce: China, 2006, p. 73).

[102] To support its position that the Department needs to analyze this apparent discrepancy between antidumping and CVD practice, Yantai CMC cites Advanced Tech. & Materials Co., Ltd. v. United States, 938 F. Supp. 2d 1342, 1352-53 (CIT 2013). Yantai CMC claims that the Court of International Trade recognized this as a "meritorious argument," though it did not actually reach the merits of the issue. See Yantai CMC case brief at 11.

[103] 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 (April 15, 2015) (OTR Tires), and accompanying Issues and Decision Memorandum at Comment 1.

the Department has rejected similar arguments and the U.S. Court of Appeals for the Federal Circuit (CAFC) has affirmed the Department's authority to use its separate rate practice.[104] The petitioner argues further that Yantai CMC's reliance on the Georgetown Steel Memo is misplaced as the Department has rejected this same argument in other proceedings. The petitioner cites to OTR Tires and PVLT Tires in arguing that the Georgetown Steel Memo focused on the concept of the single economic entity rather than the NME-wide entity. Accordingly, the petitioner claims that the Georgetown Steel Memo discusses reforms associated with the absence of a Chinese central authority that comprises the PRC economy, thus allowing the Department to conclude that a countervailable subsidy has been bestowed upon a PRC producer. The petitioner contends that the Department concluded in the two above cases that the Georgetown Steel Memo does not apply to the issue of the PRC-wide entity in antidumping proceedings.[105]

Department's Position:

We disagree with Yantai CMC. As the petitioner noted, the Department recently reaffirmed that the analysis in the Georgetown Steel Memo focused only on the concept of the single economic entity that characterized the economies in Georgetown Steel[106] and that it would be incorrect to conflate that concept with the concept of the NME-wide entity for antidumping assessment purposes.[107] Given the reforms discussed in the Georgetown Steel Memo, the Department found that a single central authority no longer comprises the PRC's economy and that the policy that gave rise to the Georgetown Steel litigation does not prevent the Department from concluding that the PRC government has bestowed a countervailable subsidy upon a PRC producer. As such, we agree with the petitioner that the analysis in the Georgetown Steel Memo is inapplicable to the issue of the PRC-wide entity in antidumping proceedings.

In antidumping proceedings involving NME countries such as the PRC, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. This presumption stems not from an economy comprised entirely of the government (e.g., a firm is nothing more than a government work unit), but rather from the NME-government's use of a variety of legal and administrative levers to exert influence and control (both direct and indirect) over the assembly of economic actors across the economy. As such, this presumption is patently different from a presumption that all firms are one-and-the same as the government, such that they comprise a monolithic economic entity. Moreover, the presumption underlying the separate rates test was upheld in Sigma,[108] where the CAFC affirmed the Department's separate rates test as reasonable, stating that the statute recognizes a close

[104] See Georgetown Steel Corp. v. United States, 801 F.2d 1308 (CAFC 1986) (Georgetown Steel); see also 1,1,1,2-Tetrafluroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 62597 (October 20, 2014) (Tetra from China), and accompanying Issues and Decision Memorandum at Comment 1; OTR Tires, at Comment at 1 ("{W}e disagree with Double Coin's contention that the Department has no authority to issue a rate for the NME entity."); and PVLT Tires, at Comment 13.

[105] See OTR Tires, at Comment 1; and PVLT Tires, at Comment 13.

[106] See Georgetown Steel, 801 F.2d at 1308.

[107] See PVLT Tires, at Comment 36.

[108] See Sigma Corp. v. United States, 117 F.3d 1401, 1405-06 (CAFC 1997) (Sigma).

correlation between a NME and government control of prices, output decisions, and the allocation of resources. The CAFC also stated that it was within the Department's authority to employ a presumption of state control for exporters in an NME-country and to place the burden on the exporters to demonstrate an absence of central government control.[109]

Firms that do not rebut the presumption are assessed a single antidumping duty rate, i.e., the NME-Entity rate.[110] However, in recognition that parts of the PRC's economy are transitioning away from the state-controlled economy, the Department developed the separate rates test. In an economy comprised of a single, monolithic state entity, it would be impossible to identify separate firms, let alone rebut government control. Rather, the PRC's economy today is neither command-and-control nor market-based; government control and/or influence is omnipresent (which gives rise to the presumption) but not omnipotent (and hence, the presumption is rebuttable).
In the Department's experience applying the separate rate test, the de jure factors are not overridingly indicative of the absence of control of export activities in the typical case, but rather they demonstrate an ability on the part of the exporter to control its own commercial decision making. In large part, the laws and regulations that the Department has examined over the years, indicate that a certain level of control has devolved in that the commercial decision-making can lie with the various corporate entities operating under these laws and regulations, which in turn, merits an analysis of the record evidence to ensure that there is an absence of de facto aspects of government control over export activities. This is supported by our findings over the years that numerous PRC respondents operating under such laws also maintain de facto control over their export functions. These situations where parties are found to be entitled to a separate rate are, however, based on the individual facts with respect to each such party on the record of the segment. Because of the centralized control inherent in the PRC's status as an NME country, we presume that decision making of an enterprise in an NME country is under a form of centralized government control (whether at the central, provincial, or local level). Nevertheless, the PRC Company Law and other laws and regulations demonstrate that, within the PRC's NME, distance can exist between decisions made at the central government level and decisions made at the firm level with respect to exports. Thus, an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from granting a separate rate.

The Department also disagrees with Yantai CMC's reliance on a partial quote regarding prices in the PRC. The Georgetown Steel Memo states that "although price controls and guidance remain on certain 'essential' goods and services in China, the PRC Government has eliminated price controls on most products; market forces now determine the prices of more than 90 percent of products traded in China."[111] Yantai CMC argues that this language "refutes any de facto presumption of government control over domestic or export pricing."[112] However, this quote is a

[109] Id.

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

[111] See Georgetown Steel Memo at 5.

[112] Yantai CMC case brief at 10.

reference to deregulation of prices, i.e., phasing out of the direct, administrative price-setting common in command-and-control economies. It is not a reference, for example, to an absence of direct government control over resource allocations or government control or influence over economic actors that can fundamentally distort the price formation process. Therefore, the reference is not relevant to our requirements that NME companies seeking a separate rate demonstrate the absence of de jure or de facto control.

Comment 7: *The Denial of Separate Rate Status for Yantai CMC is not Supported by Record Evidence*

Yantai CMC contends that it has satisfied both the de jure and de facto prongs of the separate rate test and, thus, it should be granted a separate rate. Yantai CMC maintains that the Department correctly accepted its de jure independence from government control.[113] However, Yantai CMC argues that the Department's decision to deny it a separate rate based on de facto government control is unjustified and the Department should change this decision for the final results.

Yantai CMC argues that, despite the focus of the de facto analysis on export operations (i.e., price, quantities sold and customers), the Department focused on its autonomy from the PRC government in selecting management. Yantai CMC maintains that the Department's focus on management in this case is based on the flawed decision in the Diamond Sawblades[114] litigation, as reflected in the Second Remand of Diamond Sawblades,[115] which did not eliminate the Department's requirement to undertake both a de jure and de facto separate rate analysis.

Yantai CMC contends that the decision in Diamond Sawblades to deny a separate rate involved autonomy from the PRC government when selecting management. Yantai CMC notes that in the Second Remand of Diamond Sawblades the court agreed with the Department that government ownership was not dispositive of control. However, Yantai CMC argues that the impact of the Diamond Sawblades decision is that State-owned Assets Supervision and Administration Commissions of the State Council (SASAC) ownership of a company will result in a finding of government control and denial of a separate rate; Yantai CMC contends that this is unreasonable. Yantai CMC maintains that control denotes direction and coordination of export activities, which do not exist in this proceeding.

Yantai CMC contends that in December 2010 the Department solicited comments regarding its de facto separate rate criteria and based on these comments, it decided to make separate rate

[113] See Memorandum from Stephen A. Banea, International Trade Analyst, to The File, entitled "Separate Rate Analysis for Yantai CMC Bearing Co., Ltd.," dated June 30, 2015, (Separate Rate Memo) at 3-4.

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

[115] Yantai CMC cites Final Results of Redetermination Pursuant to Remand Order Diamond Sawblades and Parts Thereof from the People's Republic of China, Advanced Technology & Materials Co., Ltd. v. United, Consol. Ct. No. 09-00511, Slip Op. 12-147, at 6 (CIT 2012) (Second Remand of Diamond Sawblades) (citations omitted). This remand redetermination is on the Enforcement and Compliance website at http://enforcement.trade.gov/remands/12-147.pdf.

decisions on a case-by-case basis.[116] Yantai CMC argues that in De Facto Separate Rate Criteria Notice, the Department determined that government ownership, on its own, did not mean government control over export activities. Yantai CMC maintains that the Department interpreted Silicon Carbide to stand for the premise that application of a country-wide rate to government-owned enterprises may not be warranted in a given proceeding and that a respondent may receive a separate rate if it establishes both de jure and de facto absence of government control.[117] Yantai CMC argues that based on the De Facto Separate Rate Criteria Notice and Silicon Carbide, the Department cannot deem a certain level of government ownership to automatically represent de facto control and must conduct a de facto separate rate analysis of all aspects of Yantai CMC's export activities, not just ownership, in this proceeding.

Yantai CMC contends that information to support the following has been submitted on the record of this proceeding and establishes that it has satisfied the de facto prong of the separate rate test:[118] 1) none of its board members had relationships with national, provincial, or local government authorities; 2) there is no evidence that shareholders, managers, or board members interfered with the day-to-day operations of Yantai CMC; 3) there is no evidence of government involvement in setting export prices, negotiating and signing export contracts or price negotiations; 4) there is no government input in selecting management; 5) Yantai CMC's board members were all selected by legally-incorporated PRC entities subject to corporate law requirements regarding management and operations; 6) there is no evidence that Yantai CMC's board of directors interferes with its daily operations when overseeing Yantai CMC's management; 7) Yantai CMC retains proceedings from export sales and makes independent decisions regarding profits and losses; and 8) Yantai CMC only paid monies to government accounts for taxes and government-provided goods and services.[119]

Yantai CMC maintains that, based on the above, there is insufficient evidence to show government control over its export activities. Yantai CMC argues further that there are four degrees of separation between itself and the SASAC and absent control or linkage, the Department should not deny it a separate rate.

The petitioner argues that Yantai CMC's claim that there is no affirmative evidence showing Yantai CMC's board was involved in its daily operations is misplaced because the burden is on the respondent to show a lack of government control, not the Department. As a result, the petitioner contends that Yantai CMC failed to provide evidence sufficient to rebut the presumption of government control, and, thus, it is not entitled to a separate rate.

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[116] See De Facto Criteria for Establishing a Separate Rate in Antidumping Proceedings Involving Non-Market Economy Countries, 78 FR 40430 (July 5, 2013) (De Facto Separate Rate Criteria Notice).

[117] Id., 78 FR at 40443.

[118] See Yantai CMC's September 25, 2014, section A response (Yantai CMC Section A Response), at 8 and Yantai's April 16, 2015, sections A and C supplemental response.

[119] Id.

The petitioner contends that Yantai CMC's argument that prior affirmative separate rate findings support a similar finding in this review (see Comment 6, above) is misplaced as both the Court and the Department's prior separate rate determinations are irrelevant to the current record.[120]

Finally, the petitioner maintains that Yantai CMC is incorrect in arguing that the Department's decision to apply the PRC-wide rate is based wholly on government ownership. Rather, the petitioner asserts that the Department conducted a full analysis, recognizing that a majority shareholder would be expected to be able to control the selection of management and profits.[121] The petitioner contends further that the Department's analysis did in fact show that SASAC controlled Yantai CMC, with the selection of management being an important factor[122] in making this determination.[123] The petitioner argues that, based on SASAC's ability to control Yantai CMC, the Department's decision to not grant it a separate rate is consistent with its current practice.

Department's Position:

As we stated in the Preliminary Results, in proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,[124] as further developed in Silicon Carbide.[125]

In accordance with this separate rates test, the Department assigns separate rates to respondents in NME proceedings if respondents demonstrate the absence of both de jure and de facto government control over their export activities.[126]

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[120] See PVLT Tires, at Comment 13.

[121] See Separate Rate Memo at 4.

[122] See, e.g., Tetra from China, at Comment 1 (finding the absence of de facto control where all of the company's shareholders (which also appointed all of the members of the board) were ultimately government-owned, as well as where a company's majority shareholder is majority government-owned).

[123] Due the proprietary nature of this issue, see the Separate Rate Memo at 4 and 5 for a discussion of the ownership of Yantai CMC and the role of Yantai CMC's board of directors and management.

[124] See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers).

[125] See Silicon Carbide, 59 FR at 22585, 22586-89.

[126] See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007); Brake Rotors From the People's Republic of China; Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); and Notice of

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the Diamond Sawblades antidumping duty proceeding, and the Department's determinations therein.[127] In particular, we note that in litigation involving the diamond sawblades proceeding, the CIT found the Department's existing separate rates analysis deficient in the specific circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[128] Following the Court's reasoning, as affirmed by the CAFC, in recent proceedings, we concluded that where a government entity holds a majority ownership share, either directly or indirectly,[129] in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[130] This may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.

Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

[127] See Second Remand Determination in Advanced Technology & Materials Co., Ltd. v. United States, 885 F. Supp. 2d 1343 (CIT 2012) (Advanced Technology), affirmed in Advanced Technology & Materials Co., Ltd v. United States, 938 F. Supp. 2d 1342 (CIT 2013). See also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memo at 7, unchanged in Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment l.

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

[129] Yantai CMC appears to argue that *indirect* ownership is materially different from *direct* ownership for purposes of our analysis. See Yantai case brief at 17 (arguing that the corporate ownership linkage "is extremely attenuated"). We note, however, that in Advanced Technology & Materials, the majority-SASAC ownership was indirect. See Dispute Settlement Body (DSB) Remand at 8 (noting that SASAC owned 100% of CISRI, and CISRI in turn held a majority share in AT&M). Moreover, as explained below, in our Preliminary Results, we identified evidence showing an unbroken line of control between SASAC and Yantai CMC.

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

We agree with Yantai CMC that we found in the Preliminary Results that Yantai CMC has demonstrated a lack of de jure control. We continue to reach that conclusion in these final results. With respect to de facto control, as we stated in the Preliminary Results, the Department considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: 1) whether the export prices are set by, or are subject to the approval of, a government agency; 2) whether the respondent has authority to negotiate and sign contracts and other agreements; 3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and, 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[131]

As noted above, the CAFC has held that the Department has the authority to place the burden on the exporter to establish an absence of government control.[132] For the reasons explained below, the Department continues to find, based on consideration of the totality of the record evidence, that Yantai CMC has not demonstrated an absence of de facto government control, and is therefore not entitled to a separate rate.

In the Preliminary Results, we determined, and record evidence supports, that Yantai CMC is indirectly majority-owned by SASAC. As noted above, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. In the Preliminary Results, we identified additional record evidence that we found (and continue to find) supports that expectation in this review.

Specifically, we note that evidence demonstrates that, via SASAC, the PRC government exercises its rights inherent in majority ownership, as expected. We found that SASAC has the ability to appoint the board of directors of its wholly-owned PRC company (company A), as reflected in company A's articles of association and a director appointment letter showing the actual exercising of such ability by SASAC.[133] Company A itself has the ability to appoint all board members of its wholly-owned PRC company (company B).[134] Company B in turn maintains majority ownership of Yantai CMC, with the ability to appoint the majority of Yantai CMC's Board.[135]

Moreover, Yantai CMC's Board appoints the General Manager, who is nominated by Company B.[136] Yantai CMC's Board also appoints other senior management positions.[137] Finally, the

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[131] See Silicon Carbide, 59 FR at 22586-89; and Notice of Final Determination of Sales at Less Than Fair Value; Furfuryl Alcohol From the People's Republic of China, 60 FR 22544, 22545 (May 8, 1995).

[132] See Sigma, 117 F.3d at 1405–06.

[133] See Yantai CMC's second supplemental section A response, dated May 28, 2015 (Yantai CMC 2nd Supp A QR), at Exhibits 2 and 3.

[134] See Yantai CMC's supplemental sections A and C response, dated April 16, 2015 (Yantai CMC Supp QR), at Exhibit S-7.

[135] Id., at Exhibit S-8.

[136] Id.

[137] Id.

record shows that overlap exists between the management of Yantai CMC, Company B, and Company A. The Chairman of Yantai CMC, is also a Vice-President at Company B; in addition, a member of Company B's Board of Directors and Deputy General Manager is also a Deputy General Manager at Company A.[138] In its case brief, Yantai CMC did not dispute our characterization of this evidence, which was explained in our Separate Rate Memo.[139]

Furthermore, though Yantai CMC makes arguments related to what it perceives as the absence of certain record evidence showing control, we note that the standard for determining separate rate status is that an NME exporter is presumed to be under government control until such a presumption is sufficiently rebutted. As such, Yantai CMC's citation to the purported absence of evidence of control or other demonstrable action on behalf of the PRC government does not rebut this presumption.

Based on the foregoing, and consistent with our view that a majority government ownership holding in and of itself means that the government exercises, or has the potential to exercise de facto control over a company's operations generally, we conclude that Yantai CMC does not satisfy the criteria demonstrating an absence of de facto government control over export activities. As a result, the Department continues to find that Yantai CMC has not demonstrated that it is free from de facto government control. Therefore, Yantai CMC remains ineligible for a separate rate for these final results.[140]

Comment 8: *Assigning Yantai CMC the PRC-Wide Rate is Contrary to Law*

Yantai CMC argues that should the Department continue to deny it a separate rate, it should apply a rate other than the PRC-wide rate. Yantai CMC claims that assignment of the PRC-wide rate is effectively an adverse facts available (AFA) rate, as it represents the rate assigned to the PRC-wide entity as AFA in a prior segment of this proceeding.[141] Yantai CMC maintains that the Department only applies AFA when a respondent has failed to cooperate to the best of its ability[142] (e.g., failed to respond to the Department's questionnaires, withdrew from the proceeding, or failed verification). Yantai CMC contends that the Department applies neutral facts available to cooperating respondents which answer questionnaires and pass verification.[143] Yantai CMC argues that it has cooperated fully with the Department in this proceeding, in which

[138] See Yantai CMC Section A Response at 2 and 8; see also Yantai CMC 2nd Supp A QR at 6 and 8.

[139] See Separate Rate Memo at pages 4 and 5.

[140] Due the proprietary nature of this issue, see the Separate Rate Memo at 4 and 5 for a discussion of the ownership of Yantai CMC and the role of Yantai CMC's board of directors and management.

[141] See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009), in which the PRC rate was based on total AFA, which was the highest rate calculated in any segment of the proceeding.

[142] See Ad Hoc Shrimp Trade Action Comm. v. United States, 675 F. Supp. 2d 1287, 1303 (CIT Trade 2009) (quoting Nippon Steel, 337 F.3d at 1381).

[143] See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 73 FR 57329 (October 2, 2008).

it has submitted "voluminous" questionnaire responses.[144] For the above reasons Yantai CMC contends that there is no basis for applying AFA to it.

The petitioner disagrees that the Department applied an AFA rate to Yantai CMC. The petitioner contends that the Department faced a similar argument in PVLT Tires, and in that case the Department rejected the respondent's argument on the basis that AFA and separate rates are two different concepts. The petitioner argues that, while AFA involves the failure of a party to cooperate with the Department, the respondent in PVLT Tires failed to provide evidence to rebut the presumption of government control and, as such, received the PRC-wide entity rate.[145] Similar to that case, the petitioner contends that Yantai CMC is not receiving an AFA rate but rather the PRC-wide entity rate.

Department's Position:

We disagree with Yantai CMC. In Advanced Technology II, the CIT addressed and rejected a similar argument, stating "Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide rate. These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate to the best of its ability whereas the PRC-wide rate applies to a respondent who has not received a separate rate."[146] As in that case, here, the Department is not applying AFA to Yantai CMC individually, but rather has found that Yantai CMC has failed to rebut the presumption of government control and as a result, we are assigning to it the rate applied to the PRC-wide entity.

Comment 9: *The Department's Separate Rate Tests and Resulting Use of AFA are Inconsistent with the WTO Agreements*

Yantai CMC argues that both the separate rate test and application of an AFA rate to the NME entity are inconsistent with the WTO Agreements. Specifically, Yantai CMC contends that conditioning individual dumping rates on establishing independence from the government are inconsistent with Articles 6.10 and 9.2 of the WTO's Antidumping Agreement, which require, absent a high number of exporters or producers, the calculation of dumping margins for each known exporter or producer. As support for this proposition, Yantai CMC cites Shrimp from

[144] See Yantai CMC case brief at 19.

[145] See PVLT Tires, at Comment 13.

[146] See Advanced Technology & Materials Co., Ltd., et al. v. United States, 938 F. Supp. 2d 1342 (CIT 2013) (Advanced Technology II) at 1351, citing Watanabe Group Slip-Op 10-139 at 8 ("Commerce's permissible determination that {a respondent} is part of the PRC-wide entity means that inquiring into {that respondent}'s separate sales behavior ceases to be meaningful.") and Jiangsu Changbao at 1312 (referencing Watanabe at 8) ("losing all entitlement to an individualized inquiry appears to be a necessary consequence of the way in which Commerce applies the presumption of government control… applying a countrywide AFA rate without individualized findings of failure to cooperate is no different from applying such a countrywide AFA rate without individualized corroboration.").

Vietnam[147] and EU Fasteners from China.[148] Yantai CMC claims that those WTO decisions establish that the Department's separate rate practice does not comply with its international obligations.

Yantai CMC maintains that in EU Fasteners from China, the Appellate Body considered the issue of whether an investigating authority can presume government control of all exporters and subject such exporters to a country-wide rate, absent exporters' and producers' meeting certain criteria to allow individual examination.[149]

Yantai CMC argues that the Appellate Body determined that the country-wide presumption is inconsistent with Articles 6.10 and 9.2, which establish a general rule requiring the investigating authority to individually calculate an AD rate for each known exporter.[150]

Yantai CMC contends that in Shrimp from Vietnam, the Department defended its separate rate test by claiming that it assigned a Vietnam-wide entity rate, as opposed to a Vietnam-wide country rate, thus considering those companies that had not established freedom from government export controls as part of one entity identified as "exporter" or "producer" under Article 6.10 of the Antidumping Agreement. Yantai CMC acknowledges that in EU Fasteners from China, the Appellate Body considered a similar argument and recognized an administering authority's right to consider State-influenced pricing and output to several companies could render these companies as one exporter due a single margin. However, Yantai CMC contends that the Appellate Body found that the test used must actually determine whether individual exporters are sufficiently integrated such that they constitute a single exporter. Yantai CMC maintains that the Appellate Body found the EU Individual Treatment (IT) Test did not satisfy that function because the IT Test was applied cumulatively and some factors did not address whether distinct exporters were sufficiently integrated.

Yantai CMC contends that, similar to EU Fasteners from China, the Department's separate rate test contains factors that fail to address integration and at least two factors, the appointment of management and disposition of profits as an exporter, do not speak to the issue of integration.

Finally, Yantai CMC maintains that, even assuming the Department's separate rate test is consistent with the Appellate Body's decision in EU Fasteners from China, it is not consistent with the WTO's Antidumping Agreement. Yantai CMC argues that the Appellate Body has decided that, as Articles 6.10 and 9.2 establish a general rule for the investigating authorities to individually calculate margins, it is the investigating authority's obligation to determine whether

[147] See Panel Report, United States- Anti-Dumping Measures on Certain Shrimp from VietNam, WT/DS404/R, adopted 2 September 2011 (Shrimp from Vietnam). The Panel Report was adopted by the DSB with no party appealing the decision. See WT/DS404/9 (5 September 2011).

[148] See Appellate Body Report, European Communities- Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, WT/DS397/AB/R, adopted 28 July 2011 (EU Fasteners from China).

[149] Id., at 358-370.

[150] Id., at 364.

one or more exporters have a relationship with the State such that they can be considered as a single entity;[151] a blanket presumption does not satisfy that obligation.

The petitioner maintains that Yantai CMC's arguments concerning modifying the separate rate practice pursuant to WTO's Settlement Body determinations were rejected in Tetra from China, where the CAFC determined that WTO reports are without effect under U.S. law unless adopted by a specific statutory scheme established under the Uruguay Round of Agreements Act (URAA), which has yet to occur.[152] Thus, the petitioner maintains that the Department should continue to deny Yantai CMC a separate rate.

Department's Position:

We disagree with Yantai CMC that our separate rates practice is inconsistent with U.S. law or our obligations under the WTO Agreements. The CAFC has affirmed the Department's authority under U.S. law to implement our separate rates practice.[153] In Sigma, the CAFC affirmed the Department's separate rates test as reasonable, stating that the statute recognizes a close correlation between an NME and government control of prices, output decisions, and the allocation of resources. The CAFC also stated that it is within the Department's authority to employ a presumption of state control for exporters in an NME, and to place the burden on the exporters to demonstrate an absence of central government control.[154]

We also disagree that the cited WTO decisions are relevant to our separate rates practice and decision in this case to find Yantai CMC to be under PRC-government control. The CAFC has held that WTO reports are without effect under U.S. law "unless and until such a report has been adopted pursuant to the specified statutory scheme" established in the URAA.[155] Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[156] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.[157] We note the Department has issued no new determination and the United States has adopted no change to its methodology pursuant to the URAA's statutory procedure.

[151] Id., at 376.

[152] See Tetra from China, at Comment 1.

[153] See Sigma, 117 F.3d at 1405-06.

[154] Id.

[155] See Corus Staal BV v. U.S. Dep't of Commerce, 395 F.3d 1343, 1347-1349 (CAFC 2005), cert. denied 126 S. Ct. 1023 (2006); accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (CAFC 2007).

[156] See, e.g., 19 U.S.C. §3533, 3538.

[157] See, e.g., 19 U.S.C. §3538 (implementation of WTO reports is discretionary).

Recommendation

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

Agree ✓ Disagree _____

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 JANUARY 2016
(Date)