UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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Investigation
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March 4, 2016

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 Final Determination of the Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China

I. SUMMARY

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

II. BACKGROUND

The period of investigation (POI) is July 1, 2014, through December 31, 2014. On October 15, 2015, the Department of Commerce (Department) published its Preliminary Determination in the less than fair value (LTFV) investigation of PET resin from the PRC, and on November 10, 2015, we published a Correction of Preliminary Determination. In the Preliminary Determination, we noted that we did not have usable information on the record for valuing Thai brokerage and handling and inland freight.[2] Subsequently, one of the mandatory respondents, Jiangyin Xingyu New Material Co., Ltd. (Xingyu), asked that the Department place on the record the complete Trading Across Borders excerpt from the World Bank's Doing Business in Thailand 2015 report (Doing Business in Thailand).[3]

[1] See Certain Polyethylene Terephthalate Resin From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 62024 (October 15, 2015) (Preliminary Determination) and accompanying Decision Memorandum ("Preliminary Decision Memorandum"); see also Certain Polyethylene Terephthalate Resin From the People's Republic of China: Notice of Correction to Preliminary Affirmative Less Than Fair Value Determination, 80 FR 69643 (November 10, 2015) (Correction of Preliminary Determination).

[2] See Preliminary Decision Memorandum at 27.

[3] See Letter from Xingyu, entitled "Request to Supplement Record," dated October 30, 2015.

On November 12, 2015, the other mandatory respondent, Far Eastern Industries (Shanghai) Ltd. (FEIS) requested a public hearing to address issues that might be raised in case and rebuttal briefs.[4] On November 16, 2015, DAK Americas LLC, M&G Chemicals, and Nan Ya Plastics Corporation, America (collectively, Petitioners) also requested such a hearing, as did Xingyu.[5]

Between November 16, 2015, and November 20, 2015, the Department verified the information submitted by mandatory respondent FEIS, including information regarding FEIS' collapsed affiliate Oriental Industries (Suzhou) Ltd. Between November 23, 2015, and November 27, 2015, the Department verified the information submitted by Xingyu, including information regarding Xingyu's collapsed affiliates Jiangsu Xingye Plastic Co. Ltd. (Xingye), Jiangyin Xingjia Plastic Co., Ltd., Jiangyin Xingtai New Material Co., Ltd., and Jiangsu Xingye Polytech Co., Ltd. We issued the verification reports on December 17, 2015, and December 10, 2015, respectively.[6]

On December 28, 2015, Petitioners, FEIS, and Xingyu each submitted case briefs.[7] On January 5, 2016, we notified FEIS and Xingyu that we were rejecting their December 28, 2015, case briefs because they contained certain new, untimely factual information.[8] FEIS and Xingyu resubmitted their case briefs, having redacted the untimely information that the Department had identified.[9] On January 11, 2016, Petitioners and FEIS each submitted rebuttal briefs.[10]

On February 10, 2016, the Department held a public hearing.

III. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is polyethylene terephthalate (PET) resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process.

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[4] See Letter from FEIS, entitled "Request for Hearing," dated November 12, 2015.

[5] See Letter from Petitioners, entitled "Petitioners' Request for Public Hearing," dated November 16, 2015, and Letter from Xingyu, entitled "Request for Hearing," respectively.

[6] See "Verification of Far Eastern Industries (Shanghai) Ltd. in the Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China," dated December 17, 2015 (FEIS Verification Report), and "Verification of Jiangyin Xingyu New Material Co., Ltd. in the Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China," dated December 10, 2015 (Xingyu Verification Report).

[7] See Letter from Petitioners, entitled "Petitioners' Case Brief," Letter from FEIS, entitled "Case Brief of Far Eastern Industries (Shanghai) Ltd.," and Letter from Xingyu, entitled "Refiling – Xingyu Case Brief", respectively.

[8] See Letters from Robert James to FEIS and Xingyu, respectively, dated January 5, 2016.

[9] See Letter from FEIS, entitled "Re-Submission of FEIS Case Brief," dated January 7, 2016 (FEIS Case Brief) and Letter from Xingyu, entitled "Refiling – Xingyu Case Brief," dated January 6, 2016 (Xingyu Case Brief), respectively.

[10] See Letter from Petitioners, entitled "Petitioners' Rebuttal Brief" (Petitioners' Rebuttal Brief), dated January 11, 2016, and Letter from FEIS, entitled "Rebuttal Brief of Far Eastern Industries (Shanghai) Ltd.," dated January 11, 2016 (FEIS Rebuttal Brief), respectively.

The merchandise subject to this investigation is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

IV. CHANGES SINCE THE PRELIMINARY DETERMINATION

We made changes from the Preliminary Determination, as discussed below, and as described in the Xingyu Final Analysis Memorandum and in the FEIS Final Analysis Memorandum.[11] Included among those changes, with respect to Xingyu, we applied facts available, pursuant to section 776(a) of the Tariff Act of 1930, as amended (the Act), to one of Xingyu's incorrectly calculated factors of production (FOP), as discussed in the Xingyu Final Analysis Memorandum (see Comment 17, below). The other changes we are making in this final determination are: deducting letter of credit costs from Xingyu's brokerage and handling expenses (see Comment 4, below), no longer adding brokerage and handling expenses in the valuation of inputs (see Comment 5, below), various minor changes identified at the FEIS verification (see Comment 11, below), and an adjustment to reported FEIS U.S. inland freight expense (see Comment 15, below).

V. USE OF ADVERSE FACTS AVAILABLE

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping duty (AD) statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d)

[11] See Memoranda to the File, entitled "Analysis Memorandum for Jiangyin Xingyu New Material Co., Ltd. for the Final Determination of Certain Polyethylene Terephthalate Resin from the People's Republic of China," dated March 4, 2016 (Xingyu Final Analysis Memorandum), and "Analysis Memorandum for Far Eastern Industries (Shanghai) Ltd. for the Final Determination of Certain Polyethylene Terephthalate Resin from the People's Republic of China," dated March 4, 2016 (FEIS Final Analysis Memorandum), respectively.

of the Act.[12] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[13]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.
Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

In the Preliminary Determination, we determined that 20 PRC exporters and/or producers of merchandise under consideration named in the petition did not timely respond to the Department's quantity and value questionnaire. We further determined that because non-responsive PRC companies had not demonstrated their eligibility for separate rate status, the Department considers them part of the PRC-wide entity. Finally, the Department preliminarily assigned a PRC-wide rate based on facts available, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, applying an adverse inference, pursuant to 776(b) of the Act.[14] No parties commented on this preliminary finding, and the Department continues to find that the PRC-wide entity, of which the 20 non-responding companies are a part, failed to cooperate to the best of its ability in responding to the Department's requests for information. The AFA rate applied in this final determination continues to be the highest calculated margin for a specific control number (CONNUM) for either of the mandatory respondents, as discussed below.

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[12] *See* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the USITC. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice).
[13] Id., 80 FR at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.
[14] See Preliminary Decision Memorandum at 18-21.

In order to induce the respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice is to select, as AFA, the higher of: (a) the highest margin alleged in the petition; or (b) the highest calculated rate for any respondent in the investigation.[15] In selecting a facts-available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. The Court of International Trade (CIT) has held that "the Department's practice of applying the highest previously determined overall rate to an uncooperative respondent as AFA is based on the presumption that such a rate is inherently adverse. This practice is longstanding, frequently used, and has been held, in most circumstances, to be lawful."[16]

In the Preliminary Determination, we determined that the highest CONNUM-specific margin of 145.94 percent demonstrated that the petition margin of 206.42 percent had no probative value. We, therefore, determined that the 206.42 percent rate has not been corroborated and, instead, used the highest calculated CONNUM-specific margin of 145.94 percent as the AFA rate applied to the PRC-wide entity.[17] After revising our margin calculations, based on the changes described below, the highest CONNUM-specific margin on the record is 126.58 percent for one of the Xingyu CONNUMs.[18] Therefore, the Department has determined to continue to assign the PRC-entity the highest CONNUM-specific margin of 126.58 percent. There is no need to corroborate the selected margin because it is based on information submitted by Xingyu in the course of this investigation, i.e., it is not secondary information.[19]

VI. DISCUSSION OF THE ISSUES

Comment 1: PTA Value
Comment 2: Brokerage and Handling Expense Source of Valuation
Comment 3: Brokerage and Handling Expense Denominator's Cargo Load Volume
Comment 4: Brokerage and Handling Expense Letter of Credit Cost
Comment 5: Addition of Brokerage and Handling Expense to FOP Surrogate Values
Comment 6: Inland Freight Expenses Source of Valuation
Comment 7: Inland Freight Expense Denominator's Cargo Load Volume
Comment 8: Inland Freight Expense Denominator's Distance
Comment 9: Thai Labor Values
Comment 10: Irrecoverable VAT
Comment 11 FEIS Verification Minor Corrections

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[15] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From the Russian Federation, 65 FR 5510, 5518 (February 4, 2000) (the Department applied the initiation margin as AFA); Final Determination of Sales at Less Than Fair Value: Certain Artists Canvas from the People's Republic of China, 71 FR 16116, 16118-19 (March 30, 2006).
[16] See Mueller Comercial de Mexico v. United States, 807 F. Supp. 2d 1361, 1371 (CIT 2011).
[17] See Preliminary Decision Memorandum at 20-21.
[18] See Xingyu Final Analysis Memorandum and FEIS Final Analysis Memorandum.
[19] See 19 CFR 351.308(c) and (d) and section 776(c) of the Act. See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793, 46794 (August 6, 2015) ("Section 502 provides that, in making AD and CVD determinations on the basis of the facts available, the Department is not required to corroborate, in certain circumstances, the information employed, to make certain estimates or demonstrations concerning that information, or to address certain claims regarding the 'alleged commercial reality' of non-cooperating parties.").

Comment 1: PTA Value

Xingyu argues the Department erred in the Preliminary Determination when it valued purified terephthalic acid (PTA), a major input into PET resin, using Thai import statistics under HTS 2917.36 for calendar year 2014, rather than using either price data from the PCI Xylenes & Polyesters (PCI) report that Xingyu had submitted on the record or the price data from an Asian Pacific ICIS report (ICIS data).[20] Xingyu asserts that the Department did not conform to its practice when evaluating surrogate value data of considering "several factors, including whether the surrogate values are publicly available, contemporaneous with the POI, representative of broad market average, tax and duty-exclusive, and specific to the inputs being valued."[21]

Xingyu states that the Department's policy and practice is designed to conform to the statutory requirement that the Department rely on the "best available information."[22] Xingyu argues that the Department's discretion with regard to determining the appropriate surrogate values "is curtailed by the purpose of the statute, i.e., to construct the product's normal value as it would have been if the {non-market economy (NME)} country were a market economy country."[23] Xingyu notes the Department is not at liberty to ignore a respondent's own experience or the nature of the FOP for which a surrogate value is sought.[24] Xingyu states the United States Court of Appeals for the Federal Circuit (CAFC) has ruled "a surrogate value must be as representative of the situation in the NME country as is feasible," and that "{w}hether analogous information from the surrogate country is 'best' will necessarily depend on the circumstances, including the relationship between the market structure of the surrogate country and a hypothetical free-market structure of the NME producer under investigation."[25]

Xingyu argues that the HTS data used to value PTA in the Preliminary Determination were not specific to the inputs being valued, were not contemporaneous with the POI, and do not represent a broad-market average. Xingyu argues the Department should use the PCI report data or, alternatively, the ICIS data, to value PTA for the final determination because those are the only data on the record relating to PTA values that conform to the requirements of Policy Bulletin

[20] See Letter from Xingyu to the Department, January 6, 2016 (Xingyu Case Brief) at 1, citing Xingyu's September 8, 2015 surrogate values submission at Exhibit 1 (PCI report) and FEIS's July 16, 2015 surrogate country comments at Exhibit B, Attachment 1, respectively. Xingyu claims the ICIS data cover "the Asia Pacific region, including Thailand."
[21] Id. at 2, citing the Preliminary Decision Memorandum, which in turn cited Policy Bulletin 04.1.
[22] Id. at 2, citing 19 U.S.C. § 1677b(c)(1).
[23] Id. at 2-3, citing Rhodia, Inc. v. United States, 185 F. Supp. 2d 1343, 1351 (CIT 2001).
[24] Id. at 3, citing Zhengzhou Harmoni Spice Co., Ltd. et. al. v. United States, 617 F. Supp. 2d 1281 (2009) at 1300, which stated "Commerce should be mindful that, when valuing an intermediate product in an NME country case, it must find a surrogate representative of that intermediate product."
[25] Id., citing Nation Ford Chemical v. United States, 166 F.3d 1373, 1373-1377 (CAFC 1999).

04.1. and Department practice, as well as the statute and court precedent.

With regard to specificity to the inputs being valued, Xingyu cites a court decision, Taian Ziyang, indicating product specificity is of greater importance than other factors.[26] Xingyu states the PCI report data and the ICIS data are prices for PTA – purified terephthalic acid – the input used by Xingyu, while the import data on HTS 2917.36 cover the broader category of "terephthalic acid and its salts."[27] Xingyu states that while Thai HTS 2917.36 is further broken down into 2917.36.00.101 ("terephthalic acid") and 2917.36.00.201 ("salts of terephthalic acids"), there is no evidence that any purified terephthalic acid was imported into Thailand under 2917.36 at all.[28] Xingyu also argues that the vast majority of the Thai imports used in the calculation of the surrogate value (2014 imports) were salts of terephthalic acid. Xingyu states that Xingyu used acid in its product process, not salts, and argues that while terephthalic acid can be purified and is a commercially traded product, nothing on the record shows that "salts of purified terephthalic acid" is a normal commercially traded commodity. Xingyu states this further distinguishes the basis for the value calculated from the import data from the input actually consumed by Xingyu, and claims "{t}he wildly varying unit values between acid and salts further suggest there is a meaningful difference" between salts of terephthalic acid and purified terephthalic acid.[29]

Xingyu claims the Department faced a similar purity specificity issue in a prior proceeding with regard to a surrogate value for polysilicon and found spot prices and contract prices published in a report were superior to the import data because the report was specific to the purity levels and was based on significant quantities.[30] According to Xingyu, in that case, like this one, the Department was confronted with an insignificant, non-specific import figure, and unlike here, the Department rejected it as the basis for the surrogate value.[31]

With regard to contemporaneity to the POI, Xingyu states the Department relied on an import unit value for PTA that was based almost entirely on imports that occurred in a single month prior to the POI, noting that all but four kilograms of the total relevant imports into Thailand (i.e., not from non-market or otherwise excluded countries) in calendar year 2014 entered in

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[26] See Xingyu Case Brief at 4, citing Taian Ziyang Food Co. v. United States, 783 F. Supp. 2d 1292, 1330 (CIT 2011) (Taian Ziyang), in turn referencing Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, 366 F. Supp. 2d 1264, 1273-74 (CIT 2005), as stating certain surrogate value selection was justified where the Department treated product-specificity as a "more important factor" than other criteria; and Ad Hoc Shrimp Trade Action Comm. v. United States, 618 F.3d 1316, 1320 (CAFC 2010) as affirming the selection of "product-specific data" as "best available information."
[27] Id. at 5 (emphasis in original).
[28] Id.
[29] Id. at 5-6.
[30] Id. at 4, citing Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Affirmative Preliminary Determination of Critical Circumstances, 77 FR 31309 (May 25, 2012) and accompanying Decision Memorandum at 5, unchanged in Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 24. As Petitioners note, there does not appear to be such a "Decision Memorandum" in that preliminary determination. See Petitioners' Rebuttal Brief at 24 (footnote 14).
[31] Id. at 4-5.

March 2014, prior to the POI.[32] Xingyu also states the PCI report and ICIS data indicate that PTA prices in the six months prior to the POI, which include March 2014, were not representative of POI prices. Xingyu cites PCI report data to show that the "PCI Report's AUV {average unit value} for PTA during the first 6-months of 2014 was $882.34/kilogram and the AUV for PTA during the POI was $750.20/kilogram."[33] Xingyu concludes, therefore, that the surrogate value used by the Department in its Preliminary Determination fails the contemporaneity criterion, and states the PCI report data and ICIS data are exactly contemporaneous with the POI.

With regard to broad-market averages, Xingyu characterizes the Thai import volume of 20.332 metric tons as not representative of a broad-market average, as it is primarily based on imports of only one month that were primarily from one country and were of a quantity that is commercially insignificant. Xingyu states that 99.9 percent of the total imports in question occurred in March 2014, which is hardly representative of broad-market averages from the POI (i.e., July 2014 through December 2014). Xingyu states that 98 percent of the total imports in question, or approximately 20 metric tons, were from one country in one month: Taiwan in March 2014.[34] Xingyu states this amount comprises about one container load, and compares this to a single purchase by Xingyu that amounted to almost 3,000 metric tons.[35]

Xingyu states the courts have ruled that import statistics can only be the basis for a surrogate value "after concluding that they are based on commercially significant quantities." In Shanghai Foreign, Xingyu states, the court found that the Department had erred in disregarding an alternative domestic source while failing to establish that the import value relied on was based on a statistically or commercially significant quantity.[36] Xingyu argues that 20.332 tons is not commercially significant, noting that the Thai import volume in question represents 0.00074 percent of the quantity of the 2,740,000 metric tons of PTA produced in Thailand each year. Xingyu also notes that even the smallest Thai producers manufacture over 24,000 times more PTA than the Thai import volume in question.[37] Xingyu states Thailand exports a significant amount of PTA, while importing practically no PTA. Xingyu concludes these differences in magnitude between imports, which Xingyu claims are trivial, and production and exports, which Xingyu contends are substantial, support a finding that reliance on the value based on Thai import volumes is wholly unreasonable and commercially unfeasible.[38] Xingyu claims that a producer of PET resin would be unable to source its PTA from imports, and cites a decision of the CIT, finding that "the preference for domestic data {as the basis for a surrogate value} is most appropriate where the circumstances indicate that a producer in the hypothetical market would be unlikely to use an imported factor in its production process."[39]

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[32] See Xingyu Case Brief at 6.
[33] Id., citing the PCI report at 3. These figures were cited per kilogram, but Xingyu apparently intended to refer to values of $882.34/metric ton and $750.25/metric ton, respectively.
[34] Id. at 7.
[35] Id., citing Xingyu's July 16, 2015 surrogate value submission at Exhibits 12 and 13.
[36] Id. at 8, citing Shanghai Foreign Trade Enterprises Co., Ltd. v. United States, 318 F. Supp. 2d 1339 (CIT 2004) (Shanghai Foreign).
[37] Id., citing PCI report. Xingyu reiterates that the imports in question, under HTS 2917.36, cannot be assumed to consist of PTA, as opposed to "terephthalic acid and salts."
[38] Id. at 9.
[39] Id., citing Hebei Metals & Minerals Imp. & Exp. Corp. v. United States, 366 F. Supp. 2d 1264, 1274 (CIT 2005).

Xingyu also notes that the CIT has found that the Department must consider a respondent's own purchase quantity and consumption in determining whether a surrogate value is based on a commercially significant quantity.[40] Xingyu also cites precedent for the rejection of the use of import statistics as the basis for a surrogate value because "they contained an insignificant quantity of imports not representative of the {respondent's} PET chip purchase volume or consumption experience."[41] Xingyu states that during the POI, it alone, amongst various Chinese producers of PET resin, purchased almost 750,000 metric tons of PTA and consumed almost 510,000 metric tons of PTA.[42] Xingyu states that its consumption of a few thousand metric tons of PTA per day during the POI supports a finding that the Thai import volumes referenced above could not supply a PET resin producer in any commercial capacity.[43]

Xingyu argues that the PTA prices in the PCI report should be used as the basis for calculating the surrogate value of that input because, of the available options, it is the most specific to the input, it is based on a commercial quantity, it is entirely contemporaneous, and it represents the price a Thai producer of PET resin would incur, or would most likely incur.[44]

With regard to specificity, Xingyu states the prices in the PCI report are for PTA rather than the broader category of terephthalic acid and salts.[45]

As for commercial quantity, Xingyu states "{t}he PCI Reports are based on the PTA prices from all Thai PTA producers, which together produce 2,740,000 tons of PTA each year," and that "{a}ssuming production is even throughout the year, the PCI price for the POI is based on roughly 1,370,000,000 kilograms," which Xingyu notes "is more than adequate to supply several significant PET resin manufacturers similar to Xingyu."[46]

Turning to contemporaneity, Xingyu notes the PCI report price information covers months of the POI.[47] Xingyu clarifies that its proposed calculation of POI prices of PTA based on monthly PCI report prices utilizes a lag of one month because the prices in any given month are labeled as "finalized price" and thus, Xingyu claims, "represent the actual prices paid in the previous month," as clarified by the authors of the report.[48]

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[40] See Xingyu Case Brief at 9-10, citing Juancheng Kangtai Chem. Co. v. United States, 2015 CIT LEXIS 94, *65-66, 78 (CIT August 21, 2015), which Xingyu argues found the Department's refusal to consider the respondent's actual purchasing and consumption quantity at odds with the Department's practice regarding other surrogate values and the statutory objective in general through its statement that "the commercial significance of import statistics is not something in the abstract, they must be reflective of, if not 'exactly reflecting', such significance in comparison with actual experience, of the producers or exporters of the input under consideration, to the extent possible."
[41] Id. at 10, citing Fuwei Films (Shandong) Co., Ltd. v. United States, 837 F. Supp. 2d 1347, 1355 (2012).
[42] Id., citing Xingyu's July 9, 2015 section D response at Exhibits 7 and 1, respectively. Note that Xingyu is citing data not of Xingyu alone, but of the consolidated entity consisting of Xingyu and its four affiliated producers, as the title of Exhibit 7 ("Consolidated Spreadsheets") indicates.
[43] Id.
[44] Id. at 17.
[45] Id. at 5.
[46] Id. at 12.
[47] Id. at 6.
[48] Id. at 13.

With regard to representativeness of a broad market average, Xingyu claims that "{t}he PCI Report is based on prices from all Thai domestic PTA manufacturers" and that "all record evidence shows that a Thai PET resin producer would have to rely on domestic PTA and not imports," and, therefore, the PCI report's domestic value is the most representative of the Thai industry. Xingyu also states that the PCI report "specifically states that the prices {in the report} are tax and duty exclusive but for the 7% VAT {value-added tax}, which can be backed out mathematically."[49]

Xingyu states the Department's only identified deficiencies with the PCI report is that the Department incorrectly considered the report to be private and not reflective of actual transactions.[50] With regard to the latter point, Xingyu states the prices in the report are not quotes or estimates but, rather, "are the actual 'prices finalized' each month by the Thai PTA manufacturers," as noted above.[51]

With regard to the Department characterization of the PCI report in its <u>Preliminary Determination</u> as a "private study," and therefore not publicly available, Xingyu first states that the Department's reference to its rejection of pricing data in a recent decision in another case was not because it found it was necessarily unusable, but rather due to the absence of problems with import data it used instead and due to the perceived lack of guidance regarding the pricing data with respect to whether it was tax and duty exclusive and whether it was representative of a broad market average.[52] In this case, with respect to options for surrogate values for PTA, Xingyu argues that there are problems with the Thai import data, as discussed above, and there are no deficiencies with regard to the proposed PCI report (or ICIS price data submitted by FEIS) with regard to tax and duty exclusion or representativeness of a broad market average.[53]

Xingyu notes that before the <u>Preliminary Determination</u>, Petitioners raised concerns about the "private nature" of the PCI report. However, Xingyu states the case discussed by Petitioners was one in which the Department ultimately declined to use a source because it was not "sufficiently insulated from conflict of interest," and declined to use another source because the public prices were ranged inconsistently and the published values could deviate substantially from the actual data.[54] Xingyu claims there are no concerns about market acceptability or conflict of interest with respect to the PCI report.[55]

Xingyu states PCI is a "well-established consulting company for the polyester and raw materials markets," which "maintains daily, weekly, and monthly PTA prices for Asia, the Americas, and Europe." Xingyu contends that "{t}hese prices are seen as reliable in the market and used for

[49] <u>See</u> Xingyu Case Brief at 12.
[50] <u>Id.</u>, citing Preliminary Decision Memorandum at 14.
[51] <u>Id.</u> at 12-13, citing Xingyu's September 8, 2015 surrogate values submission at Exhibit 1, at page 2 of PCI report.
[52] <u>Id.</u> at 13, citing <u>Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013</u>, 80 FR 4542 (January 28, 2015) (<u>PSF from the PRC</u>) and accompanying Issues and Decision Memorandum at Comment 2.
[53] <u>Id.</u> at 13.
[54] <u>Id.</u> at 14, discussing <u>Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China</u>, 69 FR 70997 (December 8, 2004) (<u>Shrimp from the PRC</u>) and accompanying Issues and Decision Memorandum at Comment 1.
[55] <u>Id.</u> at 13-14.

forecasting prices and tracking the market," and that its "reports are available publicly on their webpage for a subscription fee."[56] Xingyu states it made an inquiry to obtain the Thai-specific PTA prices, rather than the consolidated Asia prices offered in these downloadable reports. Xingyu claims that PCI explained the prices in the Thai report are gathered and maintained by PCI based on the methodology governing the publication of prices and data in its reports.[57] Xingyu states that these Thai prices were not obtained in response to a request by Xingyu, which Xingyu claims would not have been possible, because when Xingyu requested PCI to report such data, it was already long after the POI.[58] Xingyu claims the PCI report specifically lists the sources of the Thai price data and the terms of the PTA prices.[59] Xingyu claims "{t}he prices are also not quotes, but the actual prices paid by the delineated companies in Thailand for the purchase of domestic PTA in the previous month."[60]

Xingyu claims Petitioners' references to other instances of the Department's rejection of pricing source alternatives for surrogate values are easily distinguished from the PCI report that Xingyu proposes for valuation of PTA in this case. In one, Xingyu notes, the Department declined to use a single proprietary price quote for marine insurance that was specific to a party's inquiry in a private email.[61] In another, Xingyu stated that the Department had a practice of not relying on unpublished studies conducted on behalf of respondents, but used a published study to value honey.[62] In another case, the Department found that because Infodrive India reported more imports than the Indian government reported, it was not a reliable source to adjust the Global Trade Atlas (GTA) data.[63] Xingyu emphasizes the sources of information for the PCI report are known and its data are available to subscribers to PCI. Xingyu contends that the PCI report does not contain price quotes, is based on actual transaction prices, is not proprietary, and is not a privately commissioned study.[64]

Xingyu notes the Department has relied upon many sources that require a paid subscription for access, including GTA, for example.[65] Xingyu states the CIT has affirmed the use of such data that can be obtained by parties who went to the market and asked for them.[66]

Despite Xingyu's claims that the price data in the PCI report do not constitute price quotes, Xingyu adds the court has even affirmed the use of price quotes over import statistics, noting that

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[56] See Xingyu Case Brief at 14, citing Xingyu's September 8, 2015 surrogate values submission at Exhibit SV-3.
[57] Id. at 14-15, citing Xingyu's September 8, 2015 surrogate values submission at page 2 of Exhibit 1.
[58] Id. at 15.
[59] Id. at 15, citing Xingyu's September 8, 2015 surrogate values submission at pages 2 to 3 of Exhibit 1.
[60] Id. at 15.
[61] Id., citing 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) (PC Steel Tie Wire) and accompanying Issues and Decision Memorandum at Comment 6.
[62] Id., citing Honey from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Reviews, 70 FR 9721 (February 25, 2005) and accompanying Issues and Decision Memorandum at Comment 2.
[63] Id. at 15-16, citing Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order, 76 FR 70706 (November 15, 2011) and accompanying Issues and Decision Memorandum at Comment 3.
[64] Id. at 16.
[65] Id.
[66] Id., citing Jining Yongjia Trade Co. v. United States, 34 CIT 1510, 1522-1523 (CIT 2010).

while there is "room for debate as to the precise meaning of 'public availability'….there is no question that the focus of Commerce's concern about information that is not publicly available is the potential for manipulation," and that "it is undisputed that there is not even a scintilla of evidence on the record here to suggest that the four price quotes are in any way the product of manipulation or distortion, or are tainted by collusion."[67] Regarding price quotes, Xingyu cites another case in which the Department indicated it has a history of relying on price quote information for the primary input.[68]

Xingyu alternatively states that if the Department decides not to use the PCI report price data as the basis for the surrogate value for PTA, it should rely upon the POI ICIS price data to value PTA. Xingyu states that the ICIS pricing data are superior to the Thai import data because, like the PCI report prices, they are specific to PTA and are contemporaneous with the POI. Xingyu claims that the ICIS source documentation identifies the ICIS prices as tax and duty free, and Xingyu claims they are representative of a broad market average, even if they are not specific to Thailand alone. Xingyu notes that the ICIS price data, like the PCI report data and sources the Department uses for surrogate valuation, such as GTA, are available to the public through subscription.[69]

FEIS states the surrogate value the Department used for PTA in the Preliminary Determination, $1.89 per kilogram, a per unit value FEIS indicates is considerably above the average price paid FEIS for PTA in the POI. FEIS claims this value by itself generates a dumping margin even before other FOPs are included or deductions are made to the gross unit prices of FEIS's U.S. sales. FEIS claims this demonstrates the inappropriateness of using Thai import data under HTS 2917.36 to value PTA.[70]

FEIS also argues that HTS 2917.36 is not specific to PTA, because it includes terephthalic salts, which FEIS argues disqualifies use of that HTS number for valuation of PTA, given that specificity should be the primary consideration in selecting a surrogate value.[71] FEIS, like Xingyu, notes that the Thai tariff schedule further segregates HTS 2917.36 into HTS 2917.36.00.101, which covers terephthalic acid, and 2917.36.00.201, which covers the salts of terephthalic acid, and that this confirms that the broader Thai category of HTS 2917.36 is not specific to PTA used by FEIS.[72] FEIS argues that this more detailed analysis contradicts Petitioners' claim that 2917.36 is specific, as does Petitioners' concession that there exist two distinct products or "forms" under that HTS. Regarding Petitioners' claim that the acid and salts are both specific to PTA because they were treated as such in a 2009 European Union subsidy case, FEIS argues a six year old initiation of a subsidy (not antidumping) case in the European Union is irrelevant to this U.S. antidumping proceeding.[73]

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67 See Xingyu Case Brief at 16, citing Jinan Yipin Corp. v. United States, 971 F. Supp. 2d 1296 (CIT 2014).
68 Id. at 16-17, citing Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2010-2011, 78 FR 17350 (March 21, 2013) (Fish Fillets 2013).
69 Id. at 17.
70 See FEIS Case Brief at 2.
71 Id. at 3, citing Taian Ziyang at 1292.
72 Id. at 4.
73 Id.

As further evidence of a lack of specificity, FEIS notes that the AUVs of the country/month combination specific Thai imports of HTS 2917.36 range from $1.75 per kilogram to $233 per kilogram, with individual country/month combinations of small volumes at per kilogram values such as $233 per kilogram, $43 per kilogram, and $37 per kilogram. FEIS argues such low quantity/high volume purchases indicate the merchandise in question was not PTA such as that used by FEIS to produce subject merchandise.[74] FEIS argues the small individual quantities, and overall quantity of merchandise imported into Thailand during the period in question (calendar year 2014) are evidence that the product in question is not PTA of the type being used by PET resin producers such as FEIS, as no producer with a continuous production process would purchase such miniscule quantities[75] Finally, FEIS notes that Xingyu submitted a sample PRC customs import document covering the PTA that Xingyu used to produce PET chips, and the Chinese tariff number identified on the document (2917.36.11) refers specifically to "purified terephthalic acid" and "not 'other than' purified terephthalic acid (which would cover salts)."[76] FEIS notes that in Fish Fillets 2014, the Department declined to use a broader HTS category that included "fish oil, whether or not refined," because there existed a different category that was more specific to the input being valued. FEIS argues, therefore, that the Department should follow its practice in Fish Fillets 2014 and avoid using HTS 2917.36 to value PTA because it is not specific to PTA.[77]

With regard to the broad market average criterion considered by the Department when evaluating potential sources for surrogate valuation, FEIS argues that the 20.332 metric ton quantity relied upon by the Department is too small to be a representative sample. FEIS notes that this quantity of PTA would not even be close to sufficient for one typical day of production of PET chips at FEIS's facilities.[78]

With regard to contemporaneity, FEIS notes the data used by the Department for the Preliminary Determination to value PTA, Thai imports during calendar year 2014, are not fully contemporaneous with the POI, which only covers the second half of 2014. FEIS observes that the Department did not discuss in its Preliminary Determination why it used calendar year import data rather than just POI import data, but speculated it was because the POI data alone were only two kilograms, with an AUV of $142.50 per kilogram, and that such a small quantity, and such an aberrationally high unit value, would be inappropriate as a basis for the surrogate value.[79] FEIS states that use of full year 2014 data, rather than POI data alone, is distortive because, as noted by the U.S. International Trade Commission (USITC), PTA prices declined 28.4 percent during the POI.[80]

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[74] See FEIS Case Brief at 3-4.
[75] Id. at 5.
[76] Id. at 5, citing Xingyu's September 8, 2015 surrogate values submission at Exhibit SV-13 (customs document) and Exhibit SV-12 (description of certain China HTS schedule tariff numbers).
[77] Id. at 4, citing Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 79 FR 19053 (April 7, 2014) (Fish Fillets 2014) and accompanying Issues and Decision Memorandum at Comment XXIII.
[78] Id. at 6.
[79] Id. at 7.
[80] Id. at 9-10, citing Certain Polyethylene Terephthalate Resin from Canada, China, India, and Oman, Inv. Nos. 701-TA-531-533 and 731-TA-1270-1273 (Preliminary), USITC Pub. 4531 (May 2015) (USITC Preliminary Report) at page 18 and page V-1.

FEIS argues that the AUV based on the full calendar year 2014, $1.89 per kilogram, is also aberrationally high in comparison to benchmark data on the record.[81] FEIS refers to the CIT's findings regarding benchmark data and their impact on the analysis of surrogate values. According to the CIT, benchmark data need not reflect the actual price of the inputs into foreign merchandise; benchmark data need not come from an economy comparable to the foreign producer's; benchmark data need not be contemporaneous with the period of review; and if benchmarks on the record reveal "possible aberrations," the Department must defend its surrogate value choices.[82] FEIS claims that the average market economy purchase prices paid for PTA by FEIS during the POI and the ICIS PTA price data that FEIS put on the record demonstrate a similar POI world price for PTA that falls well below the $1.89 per kilogram value calculated by the Department from Thai import data. FEIS identifies other information on the record it characterizes as well below the surrogate value used by the Department in the Preliminary Determination: PCI report data put on the record by Xingyu demonstrating a POI average of $0.88042 per kilogram; calendar year 2014 South Africa import AUV of HTS 2917.36 submitted by Petitioners equaling $0.94 per kilogram; and POI Indonesia import AUV of HTS 2917.36 submitted by Petitioners equaling $0.88 per kilogram. FEIS states it finds the Indonesia AUV a reasonable and realistic one.[83]

FEIS argues the Department should use the ICIS price data to value PTA. FEIS cites the claim that "ICIS offers independent and reliable pricing and market intelligence for the global petrochemical, energy and fertilizer markets" and ICIS "covers more than 180 commodities and all major trading regions."[84] FEIS states that the ICIS data are publicly available, contemporaneous with the POI, specific, representative of a broad market average (based on weekly data), tax & duty exclusive, and non-aberrational. FEIS notes that "{w}hile the data is not from Thailand only, it is from Asia Pacific."[85] FEIS states that the Department did not reject the use of ICIS data outright in a case cited by Petitioners but, rather, simply found that information did not constitute the best available information.[86] FEIS argues that in this case, the ICIS data better meet the Department's surrogate value criteria than the calendar year Thai import data under HTS 2917.36, as the latter are not specific to PTA, involve volumes too small to be the basis of a representative market average, and generate aberrational prices.[87]

Finally, FEIS states that the PCI report submitted by Xingyu perfectly meets the Department's surrogate value criteria, in that it is specific to the PTA consumed by the respondents, contemporaneous with the POI, is a broad market average, is tax and duty exclusive (except for the 7 percent VAT), and it is publicly available.[88] FEIS rejects the Department's characterization of the PCI report as a "private price study," claiming the prices in the report are not

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[81] See FEIS Case Brief at 7.
[82] Id. at 7-8, citing Blue Field (Sichuan) Food Industrial Co., Ltd. v. United States, No. 12-00320, Slip Op. 13-142 (CIT 2013).
[83] Id. at 8-9.
[84] Id. at 10, citing Xingyu's July 27, 2015, surrogate country and value rebuttal comments at Ex. SV-6 (July 27, 2015), a page from the ICIS website.
[85] Id. at 11.
[86] Id., citing PSF from the PRC and accompanying Issues and Decision Memorandum at Comment 2.
[87] Id. at 11-12 and 14.
[88] Id. at 12-13.

quotes/estimates but "in fact are actual 'finalized' {sic} each month by the Thai PTA manufacturers."[89] FEIS asserts PCI is a reputable consulting company for the polyester and raw materials markets, maintaining daily, weekly, and monthly PTA prices for Asia, the Americas, and Europe.[90] FEIS states the requirement to pay for data does not make such information "non-public" or somehow suspect, and FEIS states it is its understanding that the Thai PTA prices requested by Xingyu from PCI were prices maintained by PCI in the ordinary course of business.[91]

In its rebuttal brief, Petitioners state that the statute directs the Department to rely on the "best available information" in selecting surrogates to value a respondent's reported FOPs,[92] and state that while the Department's well-established practice is to rely generally on import statistics from the principal surrogate country to value direct material inputs, the courts have recognized that where the Department "is faced with the choice of selecting among imperfect alternatives, it has the discretion to select the best available information for a surrogate value so long as its decision is reasonable."[93] Petitioners urge the Department to continue to rely upon Thai import statistics to value PTA in the final determination, as the alternative sources proposed by respondents (the PCI report and ICIS price data) are significantly flawed and neither is a superior source of surrogate information relative to the Thai import statistics.[94]

Petitioners state that the PCI report information is not publicly available, preventing the Department from confirming the accuracy and reliability of those data.[95] Petitioners state the Department has a long-standing practice of not relying on information not publicly available, including information derived from privately commissioned studies.[96] Petitioners note that in <u>PC Steel Rail Tie Wire</u>, the Department found a proposed source was not publicly available because the "information is not publicly available" on the source's website and "could not be obtained without direct correspondence" with the source, noting also that the fact "an interested party may need to conduct private correspondence with the information source" to obtain the information "calls into question the public availability of the data" in question.[97] Petitioners also note that the Department and the courts have long concluded that it is not appropriate to use a surrogate value contained in an unpublished study conducted on behalf of respondents.[98] Petitioners indicate that the Department has referred to the superiority of official government import statistics to data that are privately compiled and not reflective of all ports of entry.[99]

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[89] <u>See</u> FEIS Case Brief at 13, citing Xingyu's September 8, 2015 surrogate values submission at Ex. SV-1, page 2.
[90] Id., citing Xingyu's September 8, 2015 surrogate values submission at Exhibit SV-3.
[91] <u>Id.</u> at 13.
[92] <u>See</u> Petitioners' Rebuttal Brief at 2, citing 19 USC § 1677b(c)(1).
[93] <u>Id.</u> at 2-3, citing <u>e.g.</u> <u>CS Wind Vietnam Co. v. United States</u>, Slip Op. 14-128 at 6, 2014 CIT LEXIS 129, *7 (November 3, 2014) (quoting <u>Catfish Farmers of Am. v. United States</u>, 641 F. Supp. 2d 1362, 1377 (CIT 2009)).
[94] <u>Id.</u> at 3.
[95] <u>Id.</u> at 4.
[96] <u>Id.</u> at 4-5, citing <u>PC Steel Rail Tie Wire</u> and accompanying Issues and Decision Memorandum at Comment 6.
[97] <u>Id.</u> at 5, citing <u>PC Steel Tie Wire</u> and accompanying Issues and Decision Memorandum at Comment 6.
[98] Id. at 6-7, citing <u>Honey From the People's Republic of China; Notice of Final Results of Antidumping Duty New Shipper Reviews</u>, 70 FR 9271 (February 25, 2005) and accompanying Issues and Decision Memorandum at Comment 2, which in turn cites <u>Writing Instrument Manufactures Assoc. v. United States</u>, 984 F. Supp. 629, 635-639 (CIT 1997), and <u>Shrimp from the PRC</u> and accompanying Issues and Decision Memorandum at Comment 1.
[99] <u>Id.</u> at 7-8, citing <u>Frontseating Service Valves From the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order</u>, 76 FR 70706 (November 15,

Petitioners argues that even if the Department finds that the PTA pricing data that PCI makes available on its website to paying subscribers is "publicly available," which Petitioners contend it is not, that information reflects broad, aggregated, regional pricing information identified as "for Asia, the Americas, and Europe."[100] Petitioners state that after the initiation of the investigation, Xingyu commissioned PCI to prepare a private study that isolated and separately reported Thai-specific PTA pricing, and that such information is not even remotely "publicly available" because it is not available to paying subscribers, who can only obtain the consolidated Asia prices available in downloadable reports on PCI's website. Consequently, Petitioners argue, there is no way for the Department or other parties to confirm independently the accuracy of the Thai pricing information in the PCI report, which disqualifies those data for purposes of valuing PTA for the Department's calculations.[101]

Petitioners state that Xingyu's attempt to distinguish the PCI report from the privately-commissioned study submitted by a respondent in Shrimp from the PRC, on the theory that the former is sufficiently insulated from conflicts of interest, is flawed. Petitioners state that Xingyu's claim that Thai PTA prices are subsumed in the consolidated Asia prices that PCI provides to subscribers is not supported by the PCI report or the clarification about the report that Xingyu obtained from PCI. Petitioners state that those documents do not state that PCI collected Thai domestic prices in the normal course of business, or that such prices were subsumed in the consolidated Asia prices normally provided by PCI.[102] Petitioners state that the PCI report only notes the same methodology was employed as was employed for other reports, and that the clarification only states that the buyers normally have a four-week's supply of material inventory so that its cost of PTA reflects the price at which it purchased PTA the month prior.[103]

Petitioners argue that the claimed need to lag the PCI report data (to consider for example August PCI report "price" data to reflect the prices actually paid in the previous month) demonstrates that the PCI reported monthly values are just estimates of prices, specifically PCI's evaluation of consumer's costs in the month referenced based on the consumer's purchases in the previous month. Consequently, even if the PCI report were assumed to reflect information pertaining to the Thai PTA market, they would not reflect a collection of Thai prices for sales by PTA producers.[104]

Additionally, Petitioners note that domestic Thai price data, such as those Xingyu claims are represented by the PCI report price data, should not be used because the record indicates that there is significant PCI overcapacity in Thailand, that there has been subsidization of PTA production by the Thai Board of Investment, and that the Government of India has found there to have been below cost sales of PTA in Thailand in a recent antidumping finding. The 2014 annual report of a Thai PTA producer, Indorama Ventures, states "{t}he industry has been affected by severe overcapacity."[105] That same financial statement notes that "certain

2011), and accompanying Issues and Decision Memorandum at Comment 3.
[100] See Petitioners' Rebuttal Brief at 8-9.
[101] Id. at 9-10.
[102] Id. at 10, citing Xingyu's September 8, 2015 surrogate values submission at Exhibits 1 and 2.
[103] Id.
[104] Id. at 10-11.
[105] Id. at 11-12, citing FEIS's July 16, 2015 surrogate country comments at Attachment 23 (introduction page 16).

subsidiaries incorporated in Thailand have been granted privileges by the Board of Investment at various times relating to their manufacturing of…purified terephthalic acid….”[106] In its antidumping finding, issued in April 2015 and covering an April 2012 through March 2013 period of investigation, the Government of India determined not only that Thai producers were dumping PTA in India, but also that some domestic Thai sales of PTA were made below cost in various months.[107] Petitioners argue that for these reasons, even if the PCI price report data were considered to be valid domestic Thai prices not influenced by Xingyu's commercial interactions with PCI, reliance on Thai domestic PTA prices for factor valuation would be inappropriate.

Petitioners argue that the inappropriateness of the PCI report's Thai price data is further underscored by Xingyu's own POI purchasing patterns. Petitioners note that if PTA were available in the PRC at the surrogate value of $0.75 per kilogram that Xingyu calculated from the Thai data in the PCI report, there would have been no reason for Xingyu and its collapsed affiliates to purchase PTA from market economy suppliers at the average market economy POI price that Xingyu and those affiliates actually paid.[108]

Petitioners argue that the ICIS price data proposed by FEIS are flawed because they reflect prices throughout Asia and, thus, are not specific to any country on the list of potential surrogate market economy countries (i.e., Thailand). Petitioners argue that the statute states explicitly that the factors of production should be based on the best available information regarding the value of such factors in a market economy country or countries considered to be appropriate, and that the Department will normally value all factors in a single surrogate country.[109] Petitioners state that FEIS acknowledges this shortcoming, though also claiming, incorrectly, that the ICIS price data fulfill all the Department's preferences for a surrogate value.[110] Petitioners note that the representation of the ICIS price data as reflecting prices throughout Asia indicates a high likelihood that those data incorporate pricing information from the PRC, and perhaps even Vietnam, both of which the Department considers to be non-market economies. Petitioners note that the Department does not consider non-market economy data as suitable for valuing factors of production in non-market economy cases.[111]

Regarding FEIS's attempt to challenge Petitioners' characterization of the Department's recent rejection of ICIS price data in PSF from the PRC, Petitioners note the Department stated that those data "d{o} not constitute the best available information" in part because those data are "not specifically associated with the primary surrogate country." In that case, Petitioners note, the Department relied on national import statistics to value the factor in question, instead of pricing data that are regional and, therefore, inappropriate.[112]

Petitioners argue that the Department should continue to rely upon the national import statistics

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106 See Petitioners' Rebuttal Brief at 12, citing FEIS's July 16, 2015 surrogate country comments at Attachment 23, page 249 (note 33).
107 Id. at 12-13, citing Petitioners' September 18, 2015 surrogate values submission at Attachment 1.
108 Id. at 13-14, citing proprietary data from Xingyu's July 8, 2015 section D response and averaging of PCI report data in Xingyu's September 25, 2015 Pre-Preliminary Comments submission at Exhibit 1.
109 Id. at 16, citing 19 USC § 1677b(c)(1) and 19 CFR § 351.408(c)(2), respectively.
110 Id. at 15, citing FEIS case brief at 11 and 17.
111 Id. at 16-17.
112 Id. at 17-19, citing PSF from the PRC and accompanying Issues and Decision Memorandum at Comment 2.

of Thailand that it used to value PTA for the Preliminary Determination because they are specific to the input in question, and are reflective of a broad market average. Petitioners argue that it is not necessary for these data to be fully contemporaneous with the POI (the data include the POI but extend six months prior to it). Regarding specificity, Petitioners state that the respondents do not challenge that PTA is covered under the HTS subheading 2917.36, but that they claim it is too general because it covers not only PTA but also other types of terephthalic acid (i.e., other than "purified") and salts of terephthalic acid.[113] Petitioners counter that respondents have not submitted information demonstrating "purified terephthalic acid" and "terephthalic acid" are significantly different substances. Petitioners assert that the European Union treated PTA and terephthalic acid as a single like product in a countervailing duty investigation.[114] Regarding salts of terephthalic acid, Petitioners note that Xingyu's own source of PTA information, the PCI report, even characterized Thai imports of PTA as those classified under HTS subheading 2917.36.[115]

Furthermore, Petitioners argue that Taian Ziyang does not require the Department to depart from its multi-factor non-hierarchical analysis for selecting the best available information for factor valuation. Petitioners note that Taian Ziyang is not on point: the Department's use of certain price quotes in that case after remand was compliance with the court remand "under protest" and without additional analysis to determine whether the price quotes in question the Court directed the Department to use were supported by substantial evidence.[116] Petitioners note that in a subsequent case, the Department rejected a party's argument that cited Taian Ziyang for the proposition that the specificity of a potential data source should carry more probative value than other considerations when it relied on basket category classifications for surrogate value calculation.[117] In short, Petitioners argue that the HTS subheading 2917.36 is specific to PTA and, in any case, the Department should not rely solely on specificity when selecting the appropriate source for factor valuation.

Regarding broad market averages, Petitioners argue that the Department should reject respondents' claims that the 20.332 metric tons of Thai imports during 2014 under HTS subheading 2917.36 are not reflective of a broad market average. Petitioners note that the vast majority of those imports, approximately 20 metric tons, were from Taiwan, and that volume accounts essentially for an ocean-going container load full of product.[118] Petitioners state that such a volume could have been used to supplement the other sources of PTA cited by respondents.

Petitioners also argue that the volume of merchandise at issue does not, in and of itself, require a

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[113] See Petitioners' Rebuttal Brief at 20.
[114] Id. at 20-21, citing Petitioners' September 18, 2015 surrogate values submission.
[115] Id. at 21, citing Xingyu's September 8, 2015 surrogate values submission at Exhibits SV-1 and SV-15.
[116] Id. at 22, citing Final Remand Results of Third Redetermination Pursuant to Remand; Taian Ziyang Food Co., Ltd. v. United States, Ct. No. 05-00399, at 2-3 (March 5, 2012).
[117] Id. at 23, citing Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 55808 (September 11, 2012) and accompanying Issues and Decision Memorandum at Comment 3.
[118] Id. at 24-25, citing Xingyu's Case Brief at 7 (regarding the 20 metric ton amount), and Xingyu's July 16, 2015 surrogate value submission at Exhibit S-12 (identifying maximum ocean-going container weights of approximately 28 metric tons).

finding that the value associated with it is not reliable, noting that FEIS's claim that the merchandise was not PTA destined for use in PET resin manufacturing and was likely acid has no support on the record.[119] Petitioners argue that Xingyu has mischaracterized the CIT's holding in Shanghai Foreign when it claims that ruling stands for the proposition that import statistics can only be the basis for a surrogate value after concluding they are based on commercially and statistically significant quantities.[120] Petitioners state that the CIT's holding contemplated two distinct determinations: an analysis of whether the volume associated with the surrogate value is commercially significant, and an analysis of whether the value is aberrational relative to other values on the administrative record.[121] Petitioners assert that the $1.89 per kilogram (FOB basis) Thai import AUV for the year 2014 used by the Department in the Preliminary Determination to value PTA is not aberrational, as it is generally comparable to the AUVs for other potential surrogate countries during the same calendar year 2014 period.[122]

Petitioners contest FEIS's claim that the $1.89 per kilogram AUV used by the Department in the Preliminary Determination is "aberrationally high" because it is a unit value that FEIS indicates is much higher than the price FEIS paid a market economy supplier for PTA. FEIS further claims that this value is much higher than the ICIS price data values. Petitioners state that FEIS ignores multiple other elements that might affect such a comparison, such as the relative volumes of its purchases of PTA, the value of Xingyu's purchases of PTA, the relative volumes of Xingyu purchases of PTA, and the values of other countries' imports of PTA under HTS subcategory 2917.36.[123] Petitioners state that both FEIS and Xingyu and its collapsed affiliates purchased only limited volumes from market economy countries without widely-available export subsidies.[124] Petitioners elaborate on why the AUVs of market economy purchases by FEIS and Xingyu are not relevant for valuation purposes, and note that FEIS and Xingyu only purchased a limited portion of their PTA at the market economy prices they proffer as benchmarks.[125] Petitioners note that FEIS's concession regarding the POI-contemporaneous AUV for Indonesia imports under HTS subheading 2917.36, $1.04 per kilogram, undermines the basis for relying on the lower values of FEIS's market economy purchases of PTA as a benchmark for valuing that input.[126]

Petitioners challenge FEIS's claim that variations in AUVs across countries for Thai imports under HTS subheading 2917.36 in 2014 undermines the reliability of those Thai import statistics for purposes of valuing PTA. Petitioners state that FEIS ignores the fact that high values are associated with a limited number of small volume shipments, collectively accounting for a miniscule portion of the total imports. Petitioners note that the aforementioned 19.86 metric tons of imports from Taiwan account for 97.7 percent of the total imports, with an AUV of $1.75 per

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[119] See Petitioners' Rebuttal Brief at 25.
[120] Id., citing Xingyu Case Brief at 8.
[121] Id. at 25-26, citing Shanghai Foreign at 1353 ("If Commerce concludes that the quantity is insignificant, then it must determine if the Indian Import Statistics price is aberrational relative to other market-based sources for pig iron prices.").
[122] Id. at 26 and 33. For additional discussion of those AUVs, see below.
[123] Id. at 28.
[124] Id. at 28, citing FEIS's September 2, 2015 supplemental response at Exhibit 2SE-55-d-a and Xingyu's July 8, 2015 section D response at Exhibit D-7.
[125] Id. at 28-30.
[126] Id. at 30, citing Petitioners' September 8, 2015 surrogate values submission at Attachment IND-Summary.

kilogram.[127] Petitioners state that it is the Department's practice to exclude small volume imports where the values are deemed distortive, and note the courts have upheld this practice.[128] Petitioners note that if the Department determines that 2014 imports under HTS subheading 2917.36 were distortive because they represent small quantities and extremely different values (which Petitioners indicate may involve thousands of percent greater than the mean), it may exclude those imports from its analysis in valuing PTA.[129]

Regarding contemporaneity, Petitioners state that the Department was reasonable in its decision to use a more expansive period than the POI to capture more Thai imports, given that the import volume for Thailand during the POI was only two kilograms.[130] Petitioners note that this was consistent with the Department's reliance upon non-contemporaneous values from the primary surrogate country in other proceedings in circumstances where the contemporaneous information on the record does not provide an appropriate or reliable basis to value the specific factor of production.[131]

Petitioners argue that if the Department elects not to rely on Thai import statistics to value PTA in its final determination, there are a number of alternative sources of surrogate value information on the record involving import statistics for potential surrogate countries in this investigation (i.e., South Africa and Romania) and from countries the Department previously found (i.e., Indonesia) or soon may find (i.e., Mexico) economically comparable to the PRC.[132] Petitioners summarize the calculated AUVs based upon HTS subheading 2917.36 for each of these countries based upon information on the record of this investigation.[133] For the calendar year 2014, Petitioners submitted the following AUVs by country and time period (POI versus calendar year 2014), with their corresponding volumes and import statistic sales bases:

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[127] See Petitioners' Rebuttal Brief at 30-3, citing FEIS Case Brief at Exhibit 1. This compares to the $1.89 per kilogram AUV resulting from use of all of the 2014 Thai imports from non-NME and otherwise non-excluded market economy countries, the figure used by the Department in the Preliminary Determination to value PTA.

[128] Id. at 31, citing, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China, 68 FR 27530 (May 20, 2003) and accompanying Issues and Decision Memorandum at Comment 1, and Sichuan Changhong Elec. Co. v. United States, 30 CIT 1481, 1500-01, 460 F. Supp. 2d 1338, 1356 (CIT 2006), quoting Shakeproof Assembly Components Div. of Illinois Tool Works v. United States, 23 CIT 479 485, 59 F. Supp. 2d 1354, 1360 (CIT 1999).

[129] Id. at 32. Petitioners cite the Thai imports from Poland, Belgium, and Germany as ones to consider for possible exclusion, but acknowledge FEIS also challenges the Thai import data for other countries (e.g., the 400 kilograms from Japan, which were at an AUV of $7.05 per kilogram). Id. at 31, citing FEIS Case Brief at 3.

[130] Id. at 26-27.

[131] Id. at 27, citing Fresh Garlic From the People's Republic of China: Final Results and Final Rescission, in Part, of the 2008-2009 Antidumping Duty Administrative Review, 76 FR 37321 (June 27, 2011) (Fresh Garlic from the PRC) and accompanying Issues and Decision Memorandum at Comment 3, where the Department expanded the period during which prices were averaged and applied an input-specific wholesale price index.

[132] Id. at 33-35, citing the Department's May 28, 2015 surrogate country and value letter (for South Africa and Romania), 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 13-14, unchanged in Fish Fillets 2014 at Comment 1 (for Indonesia), and Certain Corrosion-Resistant Steel Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 75 (January 4, 2016) and accompanying Decision Memorandum at 8 (for Mexico). Petitioners also note the Department used the South Africa import data to value PTA for the initiation of this investigation. Id. at 33 (footnote 33, citing the initiation notice).

[133] See Petitioners' September 8, 2015 Thai surrogate values submission at Attachment Thai-3.

Mexico (POI): $1.58 per kilogram (CIF basis), 83 metric tons
Mexico (2014): $1.61 per kilogram (CIF basis), 150 metric tons
Indonesia (POI): $1.04 per kilogram (CIF basis), 2001 metric tons
Indonesia (2014): $1.04 per kilogram (CIF basis), 2002 metric tons
South Africa (2014): $0.94 per kilogram (FOB basis), 2298 metric tons
South Africa (2014): $1.05 per kilogram (CIF basis),[134] 2298 metric tons
Romania (POI): $1.17 per kilogram (CIF basis), 242 metric tons
Romania (2014): $1.25 per kilogram (CIF basis), 432 metric tons

Petitioners note that the Department recently used Indonesia as the primary surrogate country in a case in which Indonesia did not appear on the Office of Policy's list of countries at the same level of economic development as the PRC because of the importance of the primary factor of production.[135] Petitioners note that if the Department finds such significant issues with all Thai sources of valuation for the primary input, PTA, the precedent in Fish Fillets 2014 would support the use of Indonesia or Mexico not only as the source for a surrogate value for PTA, but for all surrogate values.

Department Position:

The Department reviews surrogate value information on a case-by-case basis, and in accordance with section 773(c)(1) of the Act, selects the "best available information regarding the values of such factors in a market economy country or countries considered to be appropriate."[136] In accordance with section 773(c)(4) of the Act, the Department also utilizes, to the extent possible, prices in one or more market economy countries that are at the same level of economic development as the nonmarket economy country, and a significant producer of comparable merchandise. When selecting surrogate values for use in an NME proceeding, the Department's practice is to use, where possible, prices that are net of taxes and import duties, contemporaneous with the POI, publicly available, representative of a broad market average of prices, and specific to the input in question.[137] In addition, the Department has a preference for using prices from a single primary surrogate country whenever possible.[138]

[134] The "CIF basis" referenced for South Africa is based on Petitioners' own attempt to adjust the official FOB data, as provided by GTA, to a CIF basis. See Petitioners' July 16, 2015 surrogate values submission at 3 and Attachment 1-A, revised in Petitioners' September 8, 2015 South Africa surrogate values submission at 4-5 and Attachment RSA-Routing and Exhibit RSA-1-C. The revised methodology estimates ocean freight and marine insurance expenses from Riyadh, Saudi Arabia to Durban, South Africa, with additional data provided to show those estimates are conservatively low, based on estimated ocean freight expenses to South Africa from various other countries (i.e., Germany, Australia, the United States, Brazil, and Japan).
[135] Id. at 34 and 35, citing Fish Fillets 2014 and accompanying Issues and Decision Memorandum at Comment 1.
[136] See section 773(c)(1) of the Act and 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) and accompanying Issues and Decision Memorandum at Comment 9.
[137] See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decision Memorandum at Comment 6. See also Policy Bulletin 04.1, "Non-Market Economy Surrogate Country Selection Process," March 1, 2014.
[138] See 19 CFR 351.408(c)(2).

After considering the various alternatives for valuation of PTA, in light of the above-enumerated criteria, we continue to determine that GTA data for calendar year 2014 Thai imports of HTS 2917.36 are the best available information on the record from which to value PTA, as discussed below.

The record contains three surrogate value sources that parties have alleged are representative of Thailand, the primary surrogate country in this investigation. As an initial matter, we do not find that the ICIS pricing data are a reliable valuation source for PTA. Although those data are publicly available, and seemingly specific to the input being valued,[139] they are flawed in other respects. First, they are identified by their source as relating to "Asia Pacific," and are not specific to the primary surrogate country. Indeed, there is no conclusive indication that any Thai prices are reflected in the "Asia Pacific" data. There is indication, however, that the data might contain prices from countries that either are not at the same level of economic development as the PRC, or are PRC prices themselves.[140] Reliance upon PRC prices is problematic because, as indicated by Petitioners, use of surrogate prices that reflect PRC prices would be distortive, and would contradict the very basis for searching for an alternative source of valuation of the input than that from the NME country itself.

ICIS data are also flawed because, while FEIS has identified $0.84 per kilogram as the ICIS PTA price for the POI,[141] FEIS has not explained how it derived the $0.84 per kilogram value, as it provided two different sets of weekly ICIS "Asia Pacific" price data and did not show any calculation using one or both series.[142] One of those summaries of ICIS weekly price data is labeled by FEIS as "CFR India main port" and the other is labeled as "FOB NE Asin {sic} main port" Presumably, a simple average could have been calculated from one or both of those sets of data. More importantly, it is not clear that either of these values were based at all on Thai prices, or, as noted, that these do not reflect prices of NMEs such as the PRC. Also, the source documentation does not appear to indicate the extent to which the values are tax exclusive.[143] For some of these reasons, the Department has recently rejected ICIS as a source for surrogate value information.[144] In short, the ICIS pricing data are not usable for this investigation because of the problems discussed above.

Unlike the ICIS pricing data, the PTA price data in the PCI report is identified by the supplier of the data as specific to Thailand.[145] Also, it appears to be suitably tax exclusive.[146] It is identified as specific to PTA, which is the input used by respondents. That said, when summarizing data on Thai imports of "PTA," the report presents Thai import volumes that match the import

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[139] See FEIS's July 16, 2015 surrogate country comments at Exhibit B, Attachment 1.
[140] See, e.g., FEIS's July 16, 2015 surrogate values submission at Exhibit B (Attachment 1) to, which contains many dozens of pages of ICIS documentation, none of them with any reference to Thai prices, but with numerous references to PRC prices.
[141] Id. at Exhibit B (factors worksheet).
[142] Id. at Exhibit B (Attachment 1).
[143] Id.
[144] See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013, 80 FR 33241 (June 11, 2015), and accompanying Issues and Decision Memorandum at Comment 2, and PSF from the PRC, and accompanying Issues and Decision Memorandum at Comment 2.
[145] See Xingyu's September 8, 2015 surrogate values comments at Exhibit SV-1.
[146] Id.

volume for HTS 2917.36 ("terephthalic acid and its salts"), a category that includes "salts of terephthalic acids" as well as "terephthalic acid."[147] In that sense, it is not clear whether the prices contained in the report also reflect prices for terephthalic acid and its salts. Regardless, the PCI report data are not usable because it is unclear what specific information was requested of PCI by Xingyu, whether the data were available publicly, or even if the data existed prior to Xingyu's undocumented request for it. Xingyu made various unsubstantiated claims regarding the PCI report data in comments it submitted prior to the Preliminary Determination (reiterated in Xingyu's case brief): that the "prices were not obtained in response to a request by Xingyu;" that "the prices {are} maintained by PCI in the ordinary course of business and published as part of the Asia price reports available on its webpage;" that "{t}he report specifically lists the sources of the data and the terms of the PTA prices;" and that "{t}he prices are also not quotes, but the actual prices paid by the delineated companies in the Thailand for purchase of domestic PTA in the previous month."[148] These points are not confirmed by information on the record relating to the PCI report.

First, none of the PCI source documents on the record identify the parameters of what Xingyu requested from PCI.[149] The cover letter to the PCI report itself states simply "Please find enclosed herewith the PTA pricing data report."[150] Xingyu provided no documentation of its actual request to PCI for data, or the types of limitations or restrictions that may have been included with the request. With regard to the origin of the data that appear in the PCI report, no reference is made to when or how the Thai price data (covering January 2014 through March 2015) were collected, beyond PCI's statement in the report that "{t}he data is {sic} gathered and maintained by PCI Xylenes and Polyesters from various sources based on the methodology governing the publication of prices and data in our reports," that "{t}he sources cover all the major producers of PTA in Thailand…and cover the entire domestic market of Thailand," and that the prices "reflect the prevailing market conditions for purchasing PTA in Thailand."[151] The PCI website information submitted by Xingyu does not provide any specific detail regarding the data collection, consolidation, and reporting methodologies employed by PCI.[152] PCI's only

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[147] Compare, for example, the PCI report's March 2014 figure for imports of PTA into Thailand (20 metric tons, from Exhibit SV-1 of Xingyu's September 8, 2015 surrogate values submission) to the sum of the March 2014 imports of PTA identified in an exhibit entitled "Thailand Imports & Exports PTA" (20,328 kilograms, which rounds to 20 metric tons, from Exhibit SV-15 of Xingyu's September 8, 2015 surrogate values submission). The latter figure includes the 19.860 metric tons of imports from Taiwan, under the Thai HTS number 2917.36.00201, the "salts" number.

[148] See Xingyu's September 25, 2015 comments at 5. See also Xingyu's Case Brief at 15.

[149] See Xingyu's September 8, 2015 surrogate values submission at Exhibits SV-1, SV-2, and SV-3.

[150] Id. at Exhibit SV-1.

[151] Id.

[152] See Xingyu's September 8, 2015 surrogate values submission at Exhibit SV-3. In fact, those website pages suggest PCI does not normally employ the resources required to obtain pricing data for the Thai domestic market. The website indicates that its "main centres, in Guildford-UK and Kuala Lumpur-Malaysia are supported by offices in USA, Singapore, Korea, Taiwan, India, Pakistan, Turkey and Saudi Arabia," and that "{f}rom these locations {their} consultants and representatives support the industries in those regions." No reference is made to Thailand here, or in any of the sixteen pages from the website that Xingyu provided in Exhibit SV-3. On one of those pages, however, PCI claims that "PCI employs local specialists in China, Korea, Taiwan, India, Pakistan, Turkey, and the Middle East," that those specialists "provide vital and incisive on-the-ground information gathering, and are a local contact point for clients," and that they "{a}ll have a detailed knowledge of the polyester and intermediates industry in their respective countries and have wide experience of the petrochemical sector" (emphasis added). Id. Therefore, it is not evident what resources, if any, PCI normally devotes to obtaining information about the Thai

clarification to Xingyu on the record regarding methodology is PCI's statement that companies "usually take the earlier month's cost of feedstock as part of their costs in mention {sic} for the prevailing month."[153] Whatever this statement is intended to convey, it does not constitute a clear explanation of PCI's methodology (e.g., what information is requested from sources, what interaction occurs between the sources of information and PCI, how collected price information is consolidated into monthly averages, etc.). Indeed, it is unclear what the PCI report pricing data for PTA even represent, as evidenced from Xingyu's claim that a one-month adjustment is required to reflect prevailing prices, and PCI's seemingly contradictory response that the one-month difference relates to the typical time between purchase and consumption.[154] Even if PCI's clarification regarding "the earlier month's cost of feedstock" is assumed to mean that the information PCI collects and identifies as prices for one month are actually estimates of prices paid in the prior month, as Xingyu appears to suggest, that would undermine PCI's own characterization of the January 2014 through March 2015 chart of prices in the PCI report as "{t}he prices finalized each month in Thailand between 2014 and Q1 2015."[155]

With respect to the remaining surrogate valuation source on the record from the primary surrogate country, regarding specificity, the Thai import-based AUV, is based on a category named "terephthalic acid and its salts." This category covers not only PTA but also other terephthalic acid and salts of terephthalic acid. There is no evidence on the record that this subheading's coverage is so broad as to be incomparable. It is true that record evidence indicates that PTA is made from (other) terephthalic acid, and that salts of terephthalate may be made from PTA.[156] However, not only has the European Union equated HTS 2917.36 with "PTA,"[157] but, as noted above, PCI itself has used import data at that level of aggregation to determine Thai imports of "PTA." Also as noted above, even Xingyu itself has included the Thai HTS number limited to "salts of terephthalic acid" in an exhibit it entitled "Thailand Imports and Exports of PTA." In light of the foregoing, FEIS' reliance on Fish Fillets to support its argument regarding the purported non-specificity of the Thai import-based AUV is misplaced.

Although the Thai import data are not perfectly contemporaneous with the POI, it is not unusual for the Department to expand the time period covered by the data for valuation purposes when no better sources of valuation are available on the record.[158] The CIT has upheld the Department's

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domestic market, or even that it normally obtains any information about the Thai domestic market.

[153] See Xingyu's September 8, 2015 surrogate values submission at Exhibit SV-2.

[154] Id. The Department notes that FEIS did not interpret the PCI report data as requiring any such one month adjustment in its calculated PCI report PTA price average of $880.42 per metric ton. See FEIS Case Brief at 8 and Exhibit 2. This compares to the $750.20 per metric ton average calculated by Xingyu, the difference reflecting Xingyu's proposed one month adjustment factor. See Xingyu Case Brief at 1, 13, and Exhibit 1.

[155] See Xingyu's September 8, 2015 surrogate values submission at Exhibit SV-1.

[156] See FEIS's July 16, 2015 surrogate values submission at Attachment 23, Indorama Ventures financial report, at 80 (indicating PTA is produced from other terephthalic acid, and that one small niche use of PTA is to make a drug that may come in the form of a terephthalic salt). See also Exhibit SV-6 of Xingyu's July 27, 2015 surrogate values submission, which includes a Wikipedia article on "Terephthalic acid" (which states virtually all of the world's terephthalic acid is consumed in the production of PET products, and also refers to the use of a terephthalate salt as a drug).

[157] See Petitioners' Rebuttal Brief at 20-21 and Petitioners' September 18, 2015 surrogate values submission at Attachment 2.

[158] See, e.g., Fresh Garlic from the PRC.

authority to base the valuation of a material input on data outside of the POI.[159] Where applicable, the Department has often used input-specific price indices to index non-contemporary data to the period of investigation or review. For example, as noted by Petitioners, in Fresh Garlic from the PRC, an input-specific wholesale price index was applied. However, no such usable index of this sort is available on the record but, rather, simply an overall producer price index, which shows only a slight decline in prices between the first six months of 2014 and the latter six months of 2014 (i.e., the POI).[160]

Although FEIS cites the USITC's analysis of prevailing price trends from before the POI to and through the POI in an effort to show that reliance on non-contemporaneous data is distortive, the decline in PTA prices that FEIS cites from the USITC's analysis pertain to U.S. prices of PTA, not those prevailing in Thailand. Indeed, the USITC's discussion of PTA price trends in the United States even cites an example why such trends varied in the United States versus other markets.[161]

Regarding whether the Thai import data represent broad market averages, we acknowledge that a large portion of the 20.3 metric tons of calendar year 2014 Thai imports reflect imports from Taiwan in March 2014. However, the Department has noted the fact that imports are from a single country does not demonstrate that the resulting AUV does not represent a broad-market average.[162] Furthermore, the Thai AUV is based on imports from several countries in addition to Taiwan, even if the impact on the overall AUV of those volumes is limited given their volumes are small relative to that of Taiwan.[163] Finally, although Xingyu and FEIS make much of the fact that the volume of data reflected in the GTA report is small in comparison to alternative Thai sources, record evidence does not indicate upon what sales volume the prices referenced in the PCI or ICIS reports are based. The ICIS report does not appear to indicate the sales volume covered by its reported prices, and more fundamentally, there is no indication that the source data are limited to the primary surrogate country, Thailand, or to the countries on the list of countries at the same level of economic development as the PRC. The PCI report does indicate that the capacity of Thai PTA producers is 2,740,000 metric tons, but there is simply no indication of the specific sales volume represented by the reported prices, or if such sales volume represents all of the sales volume of the PTA producers referenced.

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[159] See Shandong Huarong Machinery Company v. United States, Slip Op. 03-00676, Court No. 03-00676 (CIT 2005) (finding "reasonable Commerce's determination that the type of merchandise being shipped, and the method by which it is shipped, provide a more accurate surrogate value than a more contemporaneous value for a dissimilar product that is not containerized").

[160] See Memorandum from Tyler Weinhold and Steve Bezirganian to Robert James, Program Manager, Office VI, "Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China Surrogate Values for the Preliminary Determination," October 6, 2016, (Preliminary Surrogate Value Memorandum) at 3 and Exhibit 4.

[161] See "Certain Polyethylene Terephthalate Resin from Canada, China, India, and Oman, USITC Pub. 4531, Inv. Nos. 701-TA-531-533 and 731-TA-1270-1273," (May 2015) (USITC Preliminary Report) at page 18 and page V-1.

[162] See Fish Fillets 2014 and accompanying Issues and Decision Memorandum at Comment V.A., citing, e.g., Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, (December 5, 2003) and accompanying Issues and Decision Memorandum at Comment 1

[163] See Petitioners' July 27, 2015 surrogate values submission at Attachment 1. It is not evident that the imports from all of the countries other than Taiwan were at aberrationally high AUVs, but even if the calendar year 2014 AUV was limited to just Taiwan imports, it would be $1.75 per kilogram, as opposed to the $1.89 per kilogram AUV for all imports.

With respect to Xingyu's argument that the quantity reflected in the Thai import data is not commercially or statistically significant, we disagree. The volume (20 tons) represented by the Thai data is approximately that of a shipping container,[164] a fact which Xingyu does not dispute.[165] Although Xingyu claims that this volume is small relative to its own consumption needs, and in relation to Thai domestic production capacity, the statute does not require the Department to match importation or production volumes for inputs in potential surrogate countries with the respondents' own consumption volumes, nor is it the Department's practice to undertake such a comparison in determining the best available information with which to value FOPs. The mere fact that respondents' (and overall Thai) consumption might exceed the Thai import volume does not necessarily render those import quantities unreliable or unreasonable. Ultimately, there is no evidence on the record demonstrating that the Thai import data does not reflect a commercial quantity.

Finally, it is not evident that the $1.89 per kilogram AUV for 2014 Thai imports is aberrationally high. The Department has previously indicated that to discern whether a particular value is aberrational, we typically compare the prices for an input from all countries found to be at the same level of economic development as the NME whose products are under review.[166] Concerning this analysis, the Department has previously indicated that it might find AUVs to be aberrational if they are many times higher than the import values from other countries and "not in line" with other prices on the record.[167] The Thai value is merely the highest value among the available surrogate values and benchmark data for PTA (only some of which are considered to be at the same level of economic development as the PRC) ranging on a fairly evenly-distributed spectrum from $0.84/kilogram to $1.89/kilogram. However, the Thai 2014 AUV is only 62 percent higher than the next highest AUV from a country on the list of countries at the same level of economic development, that of Romania POI imports ($1.17/kilogram); it is only 81 percent higher than the 2014 South Africa import AUV converted to a CIF basis ($1.05/kilogram); and it is only 125 percent higher than the lowest value placed on the record from a country at the same level of economic development, that of the PCI Thai data ($0.84/kilogram). However, we have already found that the PCI Thai data are unreliable, for reasons specified above. Based on this analysis, we find that it is not evident that the Thai AUV is many times higher than the alternative values on the record such that the Thai AUV would be considered aberrationally high.

With respect to the surrogate valuation sources on the record from countries other than Thailand, we do not find that it is evident that the AUVs for any of these countries would be more (or less) specific to the input, given that they also would be based upon data for an HTS number (2917.36) covering terephthalic acid (whether or not purified) and salts of terephthalic acid. No parties directly challenged in their briefs the use of Thailand as the primary surrogate country,

[164] See Xingyu's Case Brief at 7 (regarding the 20 metric ton amount), and Xingyu's July 16, 2015 surrogate value submission at Exhibit S-12 (identifying maximum ocean-going container weights of approximately 28 metric tons).
[165] See Xingyu Case Brief, citing Xingyu's July 16, 2015 surrogate value submission at Exhibits S-12 and S-13.
[166] See, e.g., Fish Fillets 2014 and accompanying Issues and Decision Memorandum at Comment V.
[167] See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Final Determination of Sales at Not Less Than Fair Value: Steel Wire Rope From Malaysia, 66 FR 12759 (February 28, 2001) at Comment 1, and Fish Fillets 2014 and accompanying Issues and Decision Memorandum at Comment V.

and while Petitioners have suggested two alternative surrogate countries in their case brief – Indonesia and Mexico – neither of those countries was on the Department's list of potential surrogate countries, and we do not consider the data from those countries to be as reliable for purposes of valuing respondents' factors of production.[168]

With regard to non-Thai data sources from countries on the Department's surrogate country list, the only sources identified by Petitioners are import AUVs for South Africa and Romania, which are both based on publicly available GTA import data that are equally tax exclusive. Regarding specificity, these sources are comparable to the Thailand import data, both being based on the same HTS number (2917.36). The record confirms that PTA is classified under HTS 2917.36: for example, as FEIS noted, Xingyu submitted Chinese tariff schedule documentation confirming the Chinese tariff number 2917.36.11 (which falls under the broader, internationally harmonized 2917.36 tariff number) is defined as "purified terephthalic acid."[169] With regard to contemporaneity, for South Africa, like for Thailand, there were virtually no usable imports during the POI (i.e., one kilogram). We note that, even if the time period were expanded to the calendar year 2014, yielding a higher South Africa volume, the valuation of the South Africa imports was on an FOB basis, rather than the preferred CIF basis; the "CIF" value identified by Petitioners was based on calculations involving estimates of ocean freight and marine insurance expenses that do not include one of the two major source countries for PTA imports into South Africa (i.e., Taiwan).[170] For Romania, in contrast, there was an import volume of 242 metric tons during the POI.

In keeping with our regulatory preference of valuing inputs in a single country, we find that Thailand has usable data and, accordingly, best meets our criteria.[171] Also, as a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available surrogate value data, or (c) are not suitable for use based on other reasons. As such, the Department in certain other proceedings has valued an input using a surrogate value from a country that is not the primary surrogate country, but alternative AUVs in that case were judged to be based on aberrational data, which is not the case here, and the point was made that the input was "not such a significant input that it should be considered a determinative factor for purposes of selecting the primary surrogate country" given " two other inputs that account{ed} for over half of {the respondent's} raw material costs.[172] In this case, PTA is one of the two raw materials acknowledged by Petitioners and the two mandatory

[168] Furthermore, not only did Petitioners provide no additional argument in their case brief for changing primary surrogate countries to use a country not on the potential surrogate country list, but they actually argued to continue to use the Thai AUV. Like those of both mandatory respondents, Petitioners' arguments are based upon an assumption that the Department should continue to use Thailand as the primary surrogate country.
[169] See Xingyu's September 8, 2015 surrogate values submission at Exhibit SV-12.
[170] See Petitioners' September 8, 2015 Thailand surrogate values submission at Attachment Thai-3.
[171] See Clearon Corp. v. United States, 2014 Ct. Intl. Trade LEXIS 88 (CIT July 24, 2014).
[172] See, e.g., Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 4539 (January 28, 2015), and accompanying Issues and Decision Memorandum at Comments 1 and 2.A.

respondents to be the most important in the production process, accounting for substantial shares of the overall physical inputs and costs.[173]

In conclusion, for the foregoing reasons, we find that the Thai import-based data are the best available information on this record to value respondents' PTA inputs. Therefore, as noted, we are continuing to value PTA based on the Thai AUV for HTS number (2917.36) for calendar year 2014.

Comment 2: Brokerage and Handling Expenses Source of Valuation

Xingyu states that the Department erred in relying on a South Africa data source, the World Bank's Doing Business in South Africa report, for calculation of brokerage and handling expenses. Xingyu states that the Department should rely on Thai brokerage and handling expenses that Xingyu submitted on the record (Hapag-Lloyd brokerage expenses for Thailand and information from Thai exporters concerning the actual brokerage expenses of actual exporters).[174] Xingyu states that these sources are superior not only because they are from the primary surrogate country, Thailand, but also because they are superior to the more limited Doing Business source.[175] Xingyu claims that the Doing Business in South Africa brokerage and handling expenses are unreasonably high and distortive.[176] Xingyu argues that if the Department does not use one of the sources Xingyu has proposed, then it should supplement the record with the information from the page of the World Bank's Doing Business in Thailand report that is missing from the record that contains brokerage and handling expense information, and use that information to value brokerage and handling in the final determination.

Regarding its proposal to use Thai data rather than South African data, Xingyu states that the Department has a practice and strong regulatory preference to value all inputs from the primary surrogate country.[177] Xingyu states that a Thai producer would not have Durban, South Africa-based brokerage and handling expenses.[178] Xingyu also notes that the courts have acknowledged the reasonableness of the Department's policy rationale for attempting to base all surrogate values on data associated with a single surrogate country, because "deriving the surrogate data from one surrogate country limits the amount of distortion introduced into its calculations."[179] Xingyu states that the CAFC has also repeatedly confirmed that restricting surrogate value selection to a single surrogate country is reasonable.[180]

Xingyu also claims that the Thai brokerage and handling expenses it placed on the record are superior to Doing Business report expenses more generally.[181] Xingyu states that the Doing

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[173] See, e.g., Volume I of the Petitioners' March 10, 2015 petition, Xingyu's July 9, 2015 section D response at D-13, and FEIS's July 8, 2015 section D response at D-27.
[174] See Xingyu Case Brief at 18, citing Xingyu's July 16, 2015 surrogate values submission at Exhibits 13 and 11, respectively.
[175] Id.
[176] Id. at 19. See also below.
[177] Id. at 18, citing 19 CFR 351.408(c)(2).
[178] Id. at 19.
[179] Id., citing, e.g., Bristol Metals L.P. v. United States, 703 F. Supp. 2d 1370, 1374 (CIT 2010).
[180] Id. at 19-20, citing, e.g., Dorbest Ltd. v. United States, 604 F.3d 1363, 1367-68 (CAFC 2010).
[181] Id. at 21.

Business report data are based on a single city in each country.[182] From this, Xingyu argues there is no basis for concluding such data are representative of a broad-market average or reflective of country-wide averages.[183] Xingyu states that the Department acknowledged in its Preliminary Determination that the Doing Business report data applies only to an individual city.[184] Xingyu states that this recognition followed a recent court ruling finding a Doing Business report covered only one city, rather than the 17 claimed by the Department.[185] Xingyu notes further that the World Bank's own statements about the data in the reports indicates they are not representative and are hypothetical, including references to how the reports are not statistical surveys, limited to the economy's largest city, often focused on a specific business form, and may not represent the full set of issues a business encounters.[186] Xingyu also states that the reports indicate they measure business regulation and the protection of property rights.[187]

Xingyu exhorts the Department to revert to its former practice of calculating brokerage and handling expenses based on the actual experience of an exporter in the surrogate country (in this instance, Thailand). Xingyu states that it has calculated the average unit cost for three Thai exporters, based on publicly available data it had submitted on the record.[188] Xingyu states that those exporters' experience is far more similar to that of Xingyu because they are significant and experienced commercial entities whose brokerage and handling expenses would reflect significant commercial activity, rather than a hypothetical one-time shipment of one container indicated in Doing Business reports.[189] Xingyu states that the Department disfavors price quotes, and that someone reporting data used as a basis for an expense in a Doing Business report would want it to appear to the public as high as possible as a starting place for negotiations.[190]

Xingyu states that the Department's decision to rely on the Doing Business in South Africa report for brokerage and handling expenses is especially egregious, given that those costs are extremely and aberrantly high. Xingyu states those data indicate that it costs $980 to export a container from the port of Durban, South Africa.[191] In contrast, Xingyu notes, the Doing Business in Indonesia report indicates a cost of only $392 per container.[192] Xingyu states that the sources it provided for Thai brokerage and handling expenses – the data of the three Thai exporters from Department cases and information from Hapag-Lloyd yield brokerage and handling expenses of $152 per container and $168 per container, respectively.[193]

[182] See Xingyu Case Brief at 21, citing Xingyu's July 16, 2015 surrogate values submission at Exhibit SV-15.
[183] Id. at 21-23.
[184] See Xingyu Case Brief at 23, citing Preliminary Decision Memorandum at 27.
[185] Id. at 22-23, citing Since Hardware (Guangzhou) Co. v. United States, 977 F. Supp. 2d 1347, 1356 (CIT 2014).
[186] Id. at 23-24, citing Xingyu's July 16, 2015 surrogate value comments at Exhibit 17, pages 114-116.
[187] Id. at 23.
[188] Id. at 24, citing Exhibit 2 of Xingyu Case Brief, in turn based on information in Xingyu's July 16, 2015 surrogate values submission at Exhibit 11.
[189] Id.
[190] Id. at 24-25.
[191] Id. at 31, citing "Antidumping Duty Investigation of Certain Polyethylene Terephthalate Resin from the People's Republic of China – Surrogate Values for the Preliminary Determination," dated October 6, 2015 (Preliminary Surrogate Value Memorandum) at excel attachment.
[192] Id., citing Petitioners' September 8, 2015 Indonesia surrogate values submission at Exhibit 6.
[193] Id. at 31. Calculations related to these figures appear in Exhibit 2 of Xingyu Case Brief, which in turn cite Xingyu Prelim surrogate values at Exhibit 11 for the Thai exporter data, and Xingyu Prelim surrogate values at Exhibit 13 for the Hapag-Lloyd data. However, the page related to the Thai exporters' data does not include any

Xingyu states that if the Department persists in its use of Doing Business reports to value brokerage and handling expenses, it should place the missing page from the Doing Business in Thailand report on the record, as Xingyu requested even prior to the Department's verifications. Xingyu states that the Department's failure to do so was arbitrary. Xingyu notes it submitted the Doing Business in Thailand report on the record, and states it was not aware of any deficiency in its submission of this source until the issuance of the Preliminary Determination. Xingyu states that the Department clearly was aware of this deficiency earlier and should have issued Xingyu a deficiency questionnaire to supply the missing page.[194]

Xingyu cites recent cases in which the Department has supplemented the record itself after the deadline for new information regarding surrogate values.[195] Xingyu claims that the Department has even specifically self-submitted Doing Business reports to value movement expenses, and has provided complete source information when parties submitted partial information, which the Department could have done in this case.[196] Xingyu states that in countervailing duty cases, the Department routinely supplements the record at the preliminary results (and preliminary determinations) with new information.[197] Xingyu states that on occasion the Department has even self-provided complete records for a surrogate country when the information submitted by parties has been considered unsatisfactory.[198] Xingyu states that because the Department has had a consistent practice since approximately 2010 of relying on Doing Business reports to value movement expenses, such that it has relied on that source for valuing Thai movement expenses in almost every case in recent years, that the Department "cannot maintain that it was not familiar with – or that it lacked possession of – the missing page."[199]

Xingyu concludes that if the Department will not include the missing page on the record, then the Department's new factual information deadline regulations are "arbitrary, capricious and otherwise unreasonable," adding that it did not have the opportunity to notice the missing two pages and correct the deficiency after the Preliminary Determination, as it would have under the

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Thai baht/USD exchange rate, and all the data on that page are in Thai baht.

[194] See Xingyu Case Brief at 25-26.

[195] Id. at 27, citing Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2013-2014, 80 FR 55092 (September 14, 2015) (Fish Fillets 2015) and Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 61166 (October 9, 2015) (Tires) Xingyu specifically cites to surrogate value memoranda on the record of Fish Fillets 2015 and Tires, which are not on the record of this investigation.

[196] Id. at 28.

[197] Id. at 28, citing, e.g., Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin From the People's Republic of China: Preliminary Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 80 FR 48810 (August 14, 2015) (PET Resin CVD) and accompanying Decision Memorandum at 10 (placing banking interest information on the record to determine a benchmark for loans).

[198] Id. at 29, citing Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 32353 (June 8, 2015) (Citric Acid) and Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 25669 (May 5, 2015) (Activated Carbon). Xingyu specifically relies on information which is contained in a post-preliminary analysis memorandum on the record of Citric Acid, which is not on the record of this investigation.

[199] Id. at 29-30.

previous rule regarding new factual information deadlines.[200]

In its rebuttal brief, FEIS agrees with Xingyu in advocating that the Department rely on Thai brokerage and handling sources on the record to value respondents' brokerage and handling expenses, because the Department has a strong preference and policy to value all inputs in the primary surrogate country. FEIS also claims that the Thai exporters' costs are the "best available information" and are superior to any Doing Business source because the former represent actual costs and cover multiple transactions, while the latter represent hypothetical transactions with unknown underlying data.[201] Again agreeing with Xingyu, FEIS states that if the Department does not rely on Thai brokerage and handling sources on the record, it should rely on Doing Business in Thailand information rather than Doing Business in South Africa information, stating the latter are aberrationally high. FEIS, like Xingyu, states that the Department acted arbitrarily in not putting on the record the missing Doing Business in Thailand moving expense information.[202]

In their rebuttal brief, Petitioners argue that Xingyu overstates the Department's preference to rely on one surrogate country, noting the regulations only state the Department "normally" values each of the factors using a single surrogate country.[203] Petitioners state that the Department will "resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[204] Petitioners argue that the alternatives proposed by Xingyu are either not part of the record or are unreliable; therefore, Petitioners conclude, the Department should continue to rely on the Doing Business in South Africa information to value brokerage and handling.[205]

With regard to the Doing Business in Thailand information to which Xingyu refers, Petitioners note that information needed to rely upon that data source is not on the record, and that it is the responsibility of interested parties, not the Department, to build a record before the Department to value the factors of production.[206] Petitioners note that respondents had multiple opportunities to submit relevant Thai information on the record of the investigation, and argue that it is not the Department's policy to issue supplemental questionnaires regarding interested parties' submissions containing surrogate value information.[207]

Petitioners argue that the ranged public brokerage and handling data proposed by Xingyu should not be used to value brokerage and handling expenses for Xingyu and FEIS because those data are company-specific (not reflective of a national average), relevant to the movement of steel and

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[200] Id. at 30, narrative and footnote 8.
[201] See FEIS Rebuttal Brief at 3.
[202] Id.
[203] See Petitioners' Rebuttal Brief at 36, citing 19 CFR § 351.408(c)(2).
[204] Id. at 37, citing Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 61172 (October 9, 2015) (Activated Carbon) and accompanying Issues and Decision Memorandum at Comment 5, quoting Jiaxing Brother Fastener Co. v. United States, 11 F. Supp. 3d 1326, 1332-33 (CIT 2014).
[205] Id. at 37.
[206] Id. at 37-38, citing Ta Chen Stainless Steel Pipe, Inc. v. United States, 298 F.3d 1330, 1336 (CAFC 2002) and Longkou Haimeng Machinery Co., Ltd. v. United States, 617 F. Supp. 2d 1363 (CIT 2009).
[207] Id. at 38.

aquaculture products (not to that of a chemical product such as PET resin), publicly ranged from their actual values, and non-contemporaneous (as they correspond to expenses incurred in years prior to the POI).[208] Petitioners conclude that these factors render the data proposed by Xingyu neither reliable nor representative.[209]

Petitioners characterize as incorrect Xingyu's claims that in the Doing Business in South Africa report, brokerage expenses appear in a document whose purpose is to provide information on regulations and property rights, are not publicly available, and are not country-wide averages.[210] Petitioners also challenge Xingyu's assertion that the South African brokerage and handling expenses are aberrantly high.[211]

With regard to the purposes of the report, Petitioners note that the Doing Business report states that the publication's data gauge the time and cost to achieve specific goals, including the costs "to trade across borders."[212] Petitioners note that the report states the information presented reflects how easy or difficult it is to open or run a business while being compliant with national regulations and, therefore, the Petitioners conclude that the contents of the reports are relevant to businesses considering the costs and benefits of opening or expanding operations in the country, which is information of commercial relevance.[213] Petitioners state that Xingyu is incorrect to claim the reports each reflect one company's purely hypothetical, one-time shipment of hypothetical goods, as 82 percent of trading across business surveys reflect the costs and time to export and import of three to five, or five or more, local freight forwarders, shipping lines, customs brokers, port official and banks.[214] Petitioners note that the Department has found Doing Business data to be representative, publicly available, and a reliable source for valuing brokerage and handling expenses.[215]

With regard to Xingyu's claim the South African brokerage and handling charges are extremely and aberrantly high, Petitioners state this claim is based on self-selected and unpersuasive data. Petitioners characterize the ranged brokerage and handling expense values from certain respondents and the general quote from Hapag-Lloyd that were proposed by Xingyu as outdated.[216] Petitioners state that Xingyu compares the South Africa $980 per container export charge to the Indonesia per container export charge of $392. However, Petitioners point out that the charge for import into Indonesia is $500 per container, the charge for import into, and export from, Mexico is $890 per container and $710 per container, respectively. Petitioners note further that the average per container charge for brokerage and handling charges for all countries on the record of this case is $700 per container.[217] Petitioners state the fact that the South Africa charges are somewhat higher than other information on the record does not indicate an extreme

[208] Id. at 40, citing Xingyu's July 16, 2015 surrogate value submission at Exhibit SV-11.
[209] Id. at 40.
[210] See Petitioners' Rebuttal Brief at 40-41. These arguments made by Petitioners are applicable to the freight expenses valuation issue as well, see Comment 6, below.
[211] Id. at 40-41.
[212] Id. at 41, citing Xingyu's July 16, 2015 surrogate value submission at Exhibit SV-17, page 114.
[213] Id. at 42, citing Xingyu's July 16, 2015 surrogate value submission at Exhibit SV-17, page 4.
[214] Id. at 41-42, citing Xingyu's July 16, 2015 surrogate value submission at Exhibit SV-17, pages 115 and 135.
[215] Id. at 42-43, citing Activated Carbon and accompanying Issues and Decision Memorandum at Comment 12.
[216] Id. at 43, claiming the Hapag Lloyd data are for the period 2010 through 2012.
[217] Id. at 43.

or aberrant value, as such aberrations are identified by the Department.[218]

Department Position:

As noted, when selecting the best available surrogate values for use in an NME proceeding, the Department's practice is to use, where possible, prices that are net of taxes and import duties, contemporaneous with the POI, publicly available, representative of a broad market average of prices, and specific to the input in question.[219] Based on this analysis, the Department continues to find that the Doing Business in South Africa data are the best available information on the record for valuing brokerage and handling in this investigation.

Although, as explained above, the Department agrees with Xingyu that its preference is to value all surrogate values in a primary surrogate country, we note that no Doing Business in Thailand values are on the record of this investigation that represent specific expenses for brokerage and handling expenses; such values would be necessary to calculate a brokerage and handling surrogate value based upon those data.

Although Xingyu argues at length that the Department should have either supplemented the record with the missing pages on its own accord, or allowed Xingyu to do so, we disagree. With respect to the assertion that the Department should have added missing pages to the record, Xingyu disregards the well-established principle that it is the interested parties' responsibility to build a record before the Department to value the factors of production.[220] We disagree that the Department has established a "practice" contrary to this principle. While it is sometimes necessary for the Department to supplement the record in NME AD proceedings when there is no usable surrogate value information on the record for particular FOPs, the Department typically does not depart from this principle when usable surrogate value information is already available on the record. Here, the alternatives for freight expenses, including that used in the Preliminary Determination, were on the record, so the Department has the means by which to value inland freight without supplementing the record.[221] In the cases cited by Xingyu, there is no formation on the record of this investigation or in published determinations confirming or explaining why the Department may have determined it necessary to supplement the record in those instances.[222] For similar reasons, Xingyu's argument that it should have been able to

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[218] Id., citing Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 9 (where AUVs for an import category "differed between countries by at times over 10,000 percent").

[219] See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decision Memorandum at Comment 6. See also Policy Bulletin 04.1.

[220] See, e.g., QVD Food Co. v. United States, 658 F.3d 1318, 1324 (Fed. Cir. 2011) ("{A}lthough Commerce has authority to place documents in the administrative record that it deems relevant, 'the burden of creating an adequate record lies with {interested parties} and not with Commerce.'") (quoting Tianjin Mach. Imp. & Exp. Corp. v. United States, 806 F. Supp. 1008, 1015 (CIT 1992)).

[221] The proposed surrogate values for freight placed on the record by Xingyu are not usable, for reasons discussed below.

[222] Xingyu's argument relies, in large part, on memoranda from certain proceedings such as Fish Fillets 2015, Tires, Citric Acid, and Activated Carbon that are not published and not on the record of this investigation.

supplement the record on its own after the Preliminary Determination is unavailing. Xingyu's request came after the deadline for the submission of factual information in this investigation, and information was available on the record that could be used to value brokerage and handling. It is well-established that the Department has the authority to set and enforce its own deadlines;[223] therefore, contrary to Xingyu's assertions, it is not "arbitrary, capricious, and otherwise unreasonable" for the Department to do so.

With respect to the remaining two sources for Thailand brokerage and handling expenses identified by Xingyu, we find that these sources are unsuitable for valuing brokerage and handling. Initially, with respect to the Hapag-Lloyd source, we find that the prices contained therein are not contemporaneous with the POI. Also, the Hapag-Lloyd source is based on that company's website and we find that the data pertain to price quotes, rather than actual transaction information preferred by the Department.[224] Our general practice is not to use price quotes to value factors of production.[225] The Department often does not know the conditions under which price quotes were solicited and whether or not these were self-selected from a broader range of quotes.[226] Without access to all of the information on how the price quotes were obtained (including any negotiations or agreed-upon adjustments), it is impossible to confirm that quotes reflect a typical broad market average cost. As a general policy, the Department must be cautious in using selective price quotes.[227] A party could, for example, receive 10 quotes, and provide the Department with only the two it prefers. Further, a party could also potentially influence the quotes it receives from a company.

Regarding the data from other companies in other antidumping proceedings, in addition to not being contemporaneous with the POI, those data are company-specific rather than reflective of a broad market averages. Moreover, the precise amounts and the basis upon which actual brokerage and handling expenses were incurred is unknown, since Xingyu only provided the ranged reported per-unit values from the respondents' U.S. sales data and excerpts from the respondents' original responses which include short descriptions of these expenses. Furthermore, there is no indication on the record of this investigation that the documentation provided by Xingyu from those other proceedings was complete or final.[228]

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[223] See PSC VSMPO-Avisma Corp. v. United States, 688 F.3d 751 (Fed. Cir. 2012) ("{A}bsent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties."); Grobest & I-Mei Industrial (Vietnam) Co., Ltd., v. United States, 815 F. Supp. 2d 1342, 1365 (CIT 2012).
[224] See Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2013-2014, 80 FR 69942 (November 12, 2015) (Steel Wire Hangers 2013/2014) and accompanying Issues and Decision Memorandum at Comment 5.
[225] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 74 FR 47191 (September 15, 2009) and accompanying Issues and Decision Memorandum at Comment 7B.
[226] Id.
[227] See also Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712 (May 9, 2014) and accompanying Issues and Decision Memorandum at Comment 4.
[228] See Xingyu's July 16, 2015 surrogate values submission at Exhibit SV-11, which contains information from initial U.S. sales responses from various respondents, but no indication that the information and data in question were not supplemented, revised, and/or corrected later in the proceedings in question.

By contrast, although not from the primary surrogate country in this investigation, the Doing Business in South Africa data are preferable to the two Thai sources advocated by Xingyu. We find that this report provides data from a country determined to be at the same level of economic development to the PRC, and represents a contemporaneous, publicly available, broad market average freight rate from a source that we have consistently relied upon as the best available information in prior cases. With regard to Xingyu's argument that the Doing Business in South Africa information includes brokerage and handling costs corresponding only to Durban, South Africa, rather than to various ports, and is, therefore, not representative of a broad market average, we disagree. Doing Business contains data "collected from local freight forwarders, shipping lines, customs brokers, port officials and banks."[229] Thus, although Doing Business provides freight costs solely for the distance between the main city and the port, it reflects the freight costs of multiple vendors and users (i.e., shipping lines, customs brokers, port officials and banks) and in that sense is a broad market average. Regarding Xingyu's argument related to the purpose for which World Bank publishes its Doing Business report, we do not disagree that one of the purposes of the report may include policy reform in a regulatory environment. However, we find (and consistently have found) that the data within the report are relevant and reliable information, regardless of the World Bank's target market for the report.

To summarize, we find that the Doing Business in South Africa information is the best information available on the record to value brokerage and handling. It is contemporaneous with the POI, relates to a country on the surrogate country list (and thus considered at the same level of economic development as the PRC), is based on broad market average experiences, and is from a "trusted source," the World Bank, whose Doing Business reports have been used in various proceedings.[230] Further, we do not find that the figure derived from the Doing Business in South Africa report is aberrational. The sources related to the valuation of brokerage and handling on the record are as follows:

South Africa:	\$730.00 (\$0.073/kilogram based on a 10,000 kilogram container) [231]
Indonesia:	\$392.50 (\$0.03925/kilogram based on a 10,000 kilogram container) [232]
Mexico:	\$710.00 (\$0.071/kilogram based on a 10,000 kilogram container) [233]
Thai German:	0.239728 bhat/kilogram[234]
SAHA Thai:	0.110327 bhat/kilogram[235]
Hapag-Lloyd:	\$0.00596 based on 28,200 kilogram container[236]
Hapag-Lloyd:	\$0.01679 based on 10,000 kilogram container[237]

[229] See Petitioners' July 16, 2015 surrogate values submission at Attachment 6 (at Doing Business in South Africa report at 69).
[230] See, e.g., Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013, 80 FR 13332 (March 13, 2015) (Steel Wire Hangers 2012/2013) and accompanying Issues and Decision Memorandum at Comment 4.
[231] See Petitioners' September 8, 2015 South Africa surrogate values submission at Attachment 6. Note Xingyu incorrectly identified the value related to exports as \$980 per metric ton .
[232] See Petitioners' September 8, 2015 Indonesia surrogate values submission at Attachment IND-6B.
[233] See Petitioners' September 8, 2015 Mexico surrogate values submission at Attachment MEX-6-A.
[234] See Xingyu Case Brief at Exhibit 2A (calculated by Xingyu in its case brief using data from Xingyu's July 16, 2015 surrogate values submission at Exhibit SV-11).
[235] Id.
[236] See Xingyu Case Brief at Exhibit 2B (calculated by Xingyu in its case brief using data from Xingyu's July 16, 2015 surrogate values submission at Exhibit SV-13).

As explained above, all the Thai sources on the record are either incomplete or unreliable for comparison purposes. Furthermore, we do not find comparison of the South African value to Indonesian and Mexico values to be especially probative, given that we have not found Indonesia or Mexico to be at the same level of economic development as the PRC; in any event, we do not find that South African data are many times higher than those figures.[238] Moreover, we note that Xingyu's bare observations that the Doing Business in South Africa data yield the highest rate on the record are not enough to establish that figure as aberrational.[239] Consequently, the Department continues to use that information to value brokerage and handling expenses for Xingyu and FEIS.

Comment 3: Brokerage and Handling Expense Denominator's Cargo Load Volume

Xingyu argues that if the Department uses Doing Business in Thailand or Doing Business in South Africa as its source of valuing brokerage and handling expenses per kilogram, it should use either the maximum cargo load or Xingyu's average cargo load in the denominator of the calculation, rather than 10,000 kilograms.[240] Xingyu claims that the 10,000 kilogram figure does not reflect commercial reality, and that the Department improperly characterized the 10,000 kilogram hypothetical weight in the Doing Business reports as "the maximum cargo weight by weight assumed in the Doing Business survey."[241] Xingyu argues that the World Bank, in those reports, does not state 10,000 kilograms is the maximum or even the standard cargo weight.[242]

Xingyu states that it has provided evidence from numerous freight forwarding companies and experts showing that brokerage and handling expenses are based on an entire container and not the weight.[243] Xingyu then states that one of those sources indicates that the brokerage and handling costs "are set per container, percentage, or per bill of lading," and not dependent on kilograms (weight) or cubic meters (volume) in the container.[244] Xingyu asserts that brokerage and handling expenses are not proportional to weight, and claims the CIT has confirmed this when commenting on the calculation of such expenses based on Doing Business reports or other sources. Xingyu states that in that case, the court recommended using either the average number of units reported in a respondent container (which Xingyu believes would be unprecedented) or the respondent's "actual container weight." Xingyu indicates that the court found the latter "would yield a per-kilogram value free of any unreasonable presumption regarding the relationship between the World Bank's estimated costs and container weight." Xingyu indicates

[237] Id.
[238] See Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012, 79 FR 19053 (April 7, 2014) and accompanying Issues and Decision Memorandum at Comment V.A ("Furthermore, in Steel Wire Rope, the Department stated that it would determine whether unit values are aberrational if they are many times higher than the import values from other countries.").
[239] Id. ("Under the Department's current practice, interested parties must provide specific evidence showing the value is aberrational.").
[240] See Xingyu Case Brief at 32.
[241] Id. at 32-33, citing Preliminary Surrogate Value Memorandum (i.e., Preliminary Surrogate Value Memorandum at Exhibit 9).
[242] Id. at 33.
[243] Id., citing Xingyu's July 16, 2015, surrogate values submission at Exhibit SV-10.
[244] Id. at 34, citing Xingyu's July 16, 2015 surrogate values submission at Exhibit SV-13.

that the CIT's findings in Since Hardware support a conclusion in this case that for a given container, the brokerage and handling expenses would be the same, regardless of the total weight or the maximum capacity of the container.[245] Xingyu states the CIT found that the Department cannot rest on the presumption that the per-container World Bank costs bear some relationship to the weight of the product inside.[246]

Xingyu concludes that the Department should use in the denominator of the calculation either the Maersk Line's 28,200 kilograms maximum weight of a 20 foot container, which Xingyu states it identified in surrogate value comments, or Xingyu's own average container load of 22,000 kilograms, which Xingyu states is derived from sample sales documents on the record.[247]

Petitioners reject Xingyu's claim that the Department erred in relying rely on a 10,000 kilogram denominator for the allocation of brokerage and handling costs.[248] Petitioners state that the World Bank directs the survey participants to respond to the questionnaire based on a standard measure of 10 metric tons (i.e., 10,000 kilograms) in order to provide a universal basis of measure. Petitioners state that survey respondent experiences may involve shipment quantities differing from 10,000 kilograms, but that the costs per kilogram reported by a respondent can thus be converted by the World Bank to the costs to that respondent to ship the standardized 10,000 kilogram quantity.[249] Petitioners state that because the World Bank has consistently relied on the 10 metric ton parameter in collecting, collating, and reporting brokerage costs, the Department has reasonably and properly relied on the same parameter in utilizing the data, citing a case in which the Department explained the use of the 10 metric ton figure and found a proposed 28,200 kilogram figure to "represent{ } the offering of a single vendor and thus is not a broad-market average."[250] Petitioners state that the Department has consistently relied on that analysis, citing another more recent case in which the Department analyzed the 10 metric ton figure in detail and addressed the misapplication in Since Hardware.[251]

Petitioners state that in its Preliminary Determination, the Department's calculations did not mix or convert between container sizes, and thus do not require calculations that relate costs in proportion to different weights. Petitioners reiterate that a universal measure must be used to

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[245] Id. at 34-6, citing Since Hardware (Guangzhou) Co. v. United States , 2014 CIT LEXIS 43, 34-36 and 48 (CIT 2014).
[246] Id. at 34-35.
[247] See Xingyu Case Brief at 36, citing Xingyu's July 16, 2015, surrogate values submission at Exhibit SV-12 (maerskline.com container information) and Xingyu's February 27, 2015 section A response at Exhibit A-9 (sample sales documents).
[248] See Petitioners Case Brief at 41 and 44. Petitioners rebuttal arguments regarding the weight denominator are not distinguished between brokerage and handling expenses and freight expenses (see below).
[249] Id. at 44.
[250] Id. at 45, citing Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011, 78 FR 16651 (March 18, 2013) and accompanying Issues and Decision Memorandum at Comment 3.r.
[251] Id. at 46, citing Activated Carbon and accompanying Issues and Decision Memorandum at Comment 12 ("In Since Hardware, using information from that record, the Department attempted to create a {brokerage and handling surrogate value} by blending information found in Doing Business and the respondent's own container weights….Unlike the facts in Since Hardware,…Carbon Activated has pointed to no information on this record demonstrating that the respondents accrued documentation preparation and customs clearance costs on a per-container basis or provided any information which demonstrates that {brokerage and handling} fees do not increase proportionally with the weight of the container….").

establish equivalent conditions among all survey participants and all forms of commodities in transit. Petitioners state that the Maersk Line document relied upon by Xingyu to establish the maximum content of 28,200 kilograms also indicates the maximum content by volume in the 20 foot container is 33 cubic meters.[252] Consequently, the maximum weight of a product that can be loaded in such a container will vary greatly for products of different densities, and that is why both a maximum weight and a maximum volume are provided by Maersk. Petitioners argue that the 10 metric ton quantity used in the Doing Business surveys represents a mid-point between the smallest and greatest weight of merchandise that can be held in a 20 foot container, providing the survey respondents a reasonable and universal reporting parameter irrespective of commodity.[253]

Department Position:

We disagree that a change is needed to the denominator of the Department's brokerage and handling calculations. The Department has previously determined that 10,000 kilograms is the appropriate quantity for deriving per-unit values from World Bank Doing Business data, as it forms the basis for the values reported in the reports.[254] As noted in Citric Acid from the PRC, "{i}f the Department were to use an alternate weight, it would be using a weight not related to the costs reported in the Doing Business survey which would, in turn, result in a distortive per-unit cost," and it is appropriate "to continue to use 10,000 kilogram to calculate the {brokerage and handling} surrogate value because this is the weight upon which participants in the Doing Business survey reported {brokerage and handling} costs."[256] Therefore, the Department has determined that continuing to use 10,000 kilograms to calculate the surrogate value for brokerage and handling maintains the internal consistency of the calculation (i.e., the numerator and the denominator of the calculation are dependent upon one another and are from the same source).

Regarding the various rates that Xingyu submitted in this investigation in an effort to show that brokerage & handling expenses do not vary based upon weight, we find this information is not relevant to the World Bank study as those rates have no relationship to the rate in the World Bank study. Additionally, unlike in Since Hardware, we have no reason in this investigation to question the 10,000 kilogram weight used as the basis for the fee in the World Bank study or to find that the weight and fee in the World Bank study are independent of one another such that the fee is not based on the 10,000 kilogram weight.

Accordingly, we will continue to use 10,000 kilograms, the quantity upon which the Doing Business in South Africa data are based, in conjunction with the per container expense identified

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[252] Id. at 47, citing Xingyu's July 16, 2015 surrogate value submission at Exhibit 12.
[253] See Petitioners Case Brief at 47.
[254] See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 77323 (December 14, 2015) (Citric Acid from the PRC), and accompanying Issues and Decision Memorandum at Comment 6. See also, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014, 81 FR 1396 (January 12, 2016) (TRBs from the PRC 2016) and accompanying Issues and Decision Memorandum at Comment 3, and 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 2015) and accompanying Issues and Decision Memorandum at Comment 1.
[256] Id.

in Doing Business in South Africa, to calculate the appropriate per unit brokerage and handling expense for export sales.

Comment 4: Brokerage and Handling Expense Letter of Credit Cost

Xingyu argues that, if the Department relies on a Doing Business report for the calculation of brokerage and handling expenses, for Xingyu, it must deduct export letter of credit fees embedded in the brokerage fees reported in those reports.[257] Xingyu states that it provided proof from the World Bank that the expenses identified in the reports include the cost of the time and expense for procuring an export letter of credit embedded in the brokerage and handling fees.[258] Xingyu states that the Department's practice is to deduct such fees when a party has demonstrated that the World Bank source includes this cost.[259]

Xingyu states that while the record does not specifically contain the cost of a letter of credit embedded in the Doing Business in South Africa report, such information is available from the 2014 and 2015 Doing Business reports for Thailand, the Philippines, and Indonesia.[260] Xingyu states that the Department made a deduction from the total brokerage and handling expense in a similar situation, where the information regarding the letter of credit expense portion was on the record for some of the Doing Business reports (in that case, Thailand, the Philippines, and Indonesia), but not for that of the primary surrogate country (in that case, Bulgaria). Xingyu states in that case, the Department's deduction was based on the average of the letter of credit expense for the countries whose reports were on the record.[261] Xingyu argues that the Department should make such a deduction (i.e., $53.33) from the brokerage and handling expense numerator of the per kilogram brokerage and handling expense value calculation if it uses Doing Business reports for its calculation of that expense.[262]

Neither FEIS nor Petitioners submitted rebuttal comments on this issue.

Department Position:

We agree with Xingyu that a downward adjustment to brokerage and handling expenses, to remove an amount for export letter of credit fees, is appropriate. The Department has previously granted such an adjustment where there is no record evidence that respondents incurred such expenses, and where the record reflects that the specific Doing Business report used for valuation

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[257] See Xingyu Case Brief at 36.
[258] See Xingyu Case Brief at 36-37, citing Xingyu's July 16, 2015 surrogate values submission at Exhibits SV-13, SV-17, and SV-18.
[259] Id. at 37, citing Certain Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 18816 (April 8, 2015) and accompanying Issues and Decision Memorandum at Comment 22.
[260] Id. at 37-38, citing the letter of credit expense for each of those countries as follows from Exhibit SV-16 of Xingyu's July 16, 2015 surrogate values submission at Exhibit SV-16: Philippines ($50), Indonesia ($50), and Thailand ($60), for an average of $53.33.
[261] Id. at 38, citing Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 58273 (September 23, 2013) (HDP from the PRC) and accompanying Issues and Decision Memorandum at Comment 10.
[262] Id. Xingyu here reiterates that it has proposed alternative sources to value brokerage and handling expenses: the costs reported by a major freight forwarder, or the costs reported by Thai respondents in other antidumping cases.

purposes includes such an expense.[263] There is no record evidence that Xingyu incurred such expenses, and Xingyu claims that it has not. Furthermore, Xingyu provided evidence that letter of credit expenses are included in the World Bank's Doing Business reports.[264]

The record does not contain a specific figure for the export letter of credit costs included in the Doing Business in South Africa report. The record does, however, contain such figures for the Thailand, Philippines, and Indonesia reports on the record.[265] In HDP from the PRC, when faced with similar facts, we adjusted brokerage and handling values contained in the Doing Business in Bulgaria report downward by the average of the Doing Business costs reflected on the record for a letter of credit.[266] In this investigation, it would not be appropriate to take the average of the Doing Business costs on the record, as we do not find the Philippines or Indonesia to be at the same level of economic development as the PRC. Accordingly, consistent with HDP from the PRC, we are making a downward adjustment of $60 based on the brokerage expenses reflected in the 2014 and 2015 Doing Business reports for Thailand.[267]

Comment 5: Addition of Brokerage and Handling Expenses to FOP Surrogate Values

Xingyu states that the Department's inclusion of import brokerage and handling expenses in its calculation of movement expenses for domestically-sourced inputs is contrary to the Department's practice of not including such expenses because they would not be incurred for inputs that are sourced domestically.[268]

Neither FEIS nor Petitioners submitted rebuttal comments on this issue.

Department's Position:

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[263] See, e.g., HDP from the PRC and accompanying Issues and Decision Memorandum at Comment 10 ("Mandatory Respondents provided extensive evidence from the World Bank that a letter of credit is included in the reported costs of 'documents preparation' included in Doing Business in Bulgaria" and "{a}dditionally, we agree that there is no evidence on the record that they obtained a letter of credit in the process of exporting the merchandise under consideration."); Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712 (May 9, 2014) and accompanying Issues and Decision Memorandum at Comment 4. Cf. Monosodium Glutamate from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 58326 (September 29, 2014) and accompanying Issues and Decision Memorandum at Comment VII.2 (continuing to include letter of credit costs because record evidence was not linked to the specific report of the B&H source data).

[264] See Xingyu's July 16, 2015 surrogate values submission at Exhibit SV-16. See also Petitioners' July 16, 2015 surrogate values submission at Attachment 6. FEIS did not claim it did not incur letter of credit expenses, nor did it request such an adjustment to brokerage and handling expenses calculated from Doing Business reports. Furthermore, the record indicates FEIS may have incurred such expenses. See FEIS sales verification Exhibits 7, 8, 9, and 10 in FEIS December 4, 2015 sales verification exhibit submission.

[265] Id. at 37-38, citing the letter of credit expense for the Thailand from Doing Business in Thailand reports for 2014 and 2015 from Xingyu's July 16, 2015 surrogate values submission at Exhibit SV-16.

[266] See HDP from the PRC and accompanying Issues and Decision Memorandum at Comment 10.

[267] See Xingyu's July 16, 2015 surrogate values submission at 37-38, citing the letter of credit expense for the Thailand from Doing Business in Thailand reports for 2014 and 2015 from Xingyu's July 16, 2015 surrogate values submission at Exhibit SV-16.

[268] See Xingyu Case Brief at 41-43, citing, e.g., Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order, Goldlink Industries v. U.S., 431 F. Supp 2d 1323 (CIT 2006), Court No. 05-00060 (October 16, 2006) at 11-12; aff'd. CIT Order and Judgment (December 8, 2006) (Goldlink).

We agree with Xingyu that we should not have included such expenses because they would not be incurred for inputs that are sourced domestically. The Department does not add brokerage and handling to FOP surrogate values, which is in accordance with a ruling by the CIT.[269] Accordingly, we are not adding brokerage and handling expenses in the calculation of FOP surrogate values for either Xingyu or FEIS in our final margin programming.

Comment 6: Inland Freight Expenses Source of Valuation

Similar to its arguments in Comment 2, Xingyu states that the Department erred in relying on a South African data source, Doing Business in South Africa, for the calculation of inland freight expenses. Xingyu states that the Department should instead rely on Thai movement expenses that FEIS submitted on the record (Thai trucking costs from the Thai Ministry of Finance).[270] Xingyu states that this source is superior not only because it comes from the primary surrogate country, Thailand, but also because they are superior to the more limited Doing Business report source.[271]

Xingyu states that the Department has a practice and strong regulatory preference to value all inputs from the primary surrogate country, which is grounded in the goal of constructing a hypothetical market value for the merchandise when produced in a surrogate country.[272] Xingyu states that a Thai producer would not have Durban, South Africa-based trucking costs.[273]

Alternatively, raising the same arguments summarized in Comment 2, Xingyu argues that if the Department does not use the source FEIS has proposed, then the Department should supplement the record with the information from the page of the Doing Business in Thailand report that contains freight expense information and use that information, rather than the South African data.[274]

In their rebuttal brief, Petitioners' arguments largely track those made with regard to brokerage and handling expenses, and with respect to the ability of the Department not to rely on one surrogate country for all values and their criticism of the proposed alternative source of valuation as not part of the record (see Comment 2, above).[275]

Petitioners characterize as incorrect Xingyu's claims that the Doing Business in South Africa report freight expenses appear in a document whose purpose is to provide information on

[269] See Goldlink.
[270] See Xingyu Case Brief at 18, citing FEIS's July 16, 2015, surrogate values submission at Attachment 21.
[271] Id.
[272] Id. at 18, citing 19 CFR 351.408(c)(2).
[273] Id. at 19.
[274] Id. at 18, citing Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 61166 (October 9, 2015) and Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2013-2014, 80 FR 55092 (September 14, 2015).
[275] Petitioners do not address the Thai freight expense data that FEIS placed on the record, but which the Department rejected in its Preliminary Determination (see below).

regulations and property rights, are not publicly available, are not country-wide averages.[276] For discussion of Petitioners' arguments with regard to these points, see Comment 2, above.

Finally, Petitioners note that ambiguities regarding the appropriate Thai distance that would be used for freight valuation favors the Department's continued reliance on Doing Business in South Africa for valuing freight expenses.[277]

Department's Position:

As noted, when selecting the best available surrogate values for use in an NME proceeding, the Department's practice is to use, where possible, prices that are net of taxes and import duties, contemporaneous with the POI, publicly available, representative of a broad market average of prices, and specific to the input in question.[278] In addition, the Department has a preference for using prices from a single primary surrogate country whenever possible.[279] Based on this analysis, the Department continues to find that the Doing Business in South Africa data are the best available information for valuing inland freight in this investigation.

Though, as explained above, the Department agrees with Xingyu that its preference is to value all surrogate values in a primary surrogate country, we note that no usable Doing Business in Thailand figures are on the record of this investigation that represent specific expenses for inland freight, which are necessary to calculate a surrogate value based upon that data.
Although Xingyu argues at length that the Department should have either supplemented the record with the missing pages on its own accord, or allowed Xingyu to do so, we disagree. With respect to the assertion that the Department should have added missing pages to the record, Xingyu disregards the well-established principle that it is the interested parties' responsibility to build a record before the Department to value the factors of production.[280] We disagree that the Department has established a "practice" contrary to this principle.[281] While it is sometimes necessary for the Department to supplement the record in NME AD proceedings when there is no usable surrogate value information on the record for particular FOPs, the Department typically does not depart from this principle when usable surrogate value information is already available on the record. Here, the alternatives for freight expenses, including that used in the Preliminary Determination, were on the record, so the Department has the means by which to value inland freight without supplementing the record.[282] In the cases cited by Xingyu, there is

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[276] See Petitioners' Rebuttal Brief at 40-41. These arguments made by Petitioners are applicable to the brokerage and handling expenses valuation issue as well, see Comment 2, above.
[277] See Comment 8, below.
[278] See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 3987 (January 22, 2009) and accompanying Issues and Decision Memorandum at Comment 6. See also Policy Bulletin 04.1.
[279] See 19 CFR 351.408(c)(2).
[280] See, e.g., QVD Food Co. v. United States, 658 F.3d 1318, 1324 (Fed. Cir. 2011) ("{A}lthough Commerce has authority to place documents in the administrative record that it deems relevant, 'the burden of creating an adequate record lies with {interested parties} and not with Commerce.'") (quoting Tianjin Mach. Imp. & Exp. Corp. v. United States, 806 F. Supp. 1008, 1015 (CIT 1992)).
[281] The Department further notes that Xingyu's contrary argument relies, in part, on surrogate value memoranda that are not on the record of this investigation.
[282] In its July 16, 2015 surrogate values submission, Xingyu stated at 2 that "Exhibits 10-21 contains {sic} information on the valuation of moving expenses." The only values in those exhibits that are identified as inland

no information on the record of this investigation or in published determinations confirming or explaining why the Department may have determined it necessary to supplement the record in those instances.[283] For similar reasons, Xingyu's argument that it should have been able to supplement the record on its own after the Preliminary Determination is unavailing. Xingyu's request came after the deadline for the submission of factual information in this investigation. It is well-established that the Department has the authority to set and enforce its own deadlines;[284] therefore, contrary to Xingyu's assertions, it is not "arbitrary, capricious, and otherwise unreasonable" for the Department to do so.

Regarding the other source for Thai freight expenses identified by Xingyu, those submitted on the record by FEIS, the Department noted in its Preliminary Determination that this source "is not usable because the source document on the record contains an incomplete English translation."[285] It is the Department's practice to reject documents that are not completely translated.[286] Therefore, we continue to determine that this flaw disqualifies that information as a potential source of valuing freight expenses.

As noted above and described in more detail in Comment 2, the Doing Business in South Africa information is the best available information on the record of this investigation. We find that this report provides data from a country determined to be at the same level of economic development as the PRC, and represents a contemporaneous, publicly available, broad market average freight rate from a "trusted source" that we have consistently relied upon as the best available information in prior cases.[287] As in the case of brokerage and handling expenses, Petitioners placed inland freight expense information on the record from various Doing Business reports, but the only Doing Business report provided for a country on the surrogate country list is the Doing Business in South Africa report. Consequently, the Department continues to use that information to value inland freight expenses for Xingyu and FEIS.

Comment 7: Inland Freight Expenses Denominator's Cargo Load Volume

Xingyu argues that if the Department uses Doing Business in Thailand or Doing Business in

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freight values are in Exhibit SV-11 of that response (data fields for some respondents in other antidumping proceedings). Xingyu has not asked that those data be considered for valuation of inland freight expenses in this antidumping investigation, no narrative is on the record describing those expenses, and such expenses would be subject to the same flaws as those of the brokerage and handling expenses referenced in Comment 2 above. FEIS' proposed surrogate value for freight is also not usable, for reasons discussed below.

[283] Xingyu's argument relies, in large part, on memoranda from certain proceedings such as Fish Fillets 2015, Tires, Citric Acid, and Activated Carbon that are not published and not on the record of this investigation.

[284] See PSC VSMPO-Avisma Corp. v. United States, 688 F.3d 751 (Fed. Cir. 2012) ("{A}bsent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties."); Grobest & I-Mei Industrial (Vietnam) Co., Ltd., v. United States, 815 F. Supp. 2d 1342, 1365 (CIT 2012)

[285] See Preliminary Decision Memorandum at 14.

[286] See, e.g., Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 81 FR 1167 (January 11, 2016) and accompanying Issues and Decision Memorandum at Comment 4. See also Certain Steel Nails From Taiwan: Final Determination of Sales at Less Than Fair Value, 80 FR 28959 (May 20, 2015) and accompanying Issues and Decision Memorandum at Comment 1.

[287] See, e.g., Steel Wire Garment Hangers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013, 80 FR 13332 (March 13, 2015) (Steel Wire Hangers 2012/2013) and accompanying Issues and Decision Memorandum at Comment 4.

South Africa as its source for valuing foreign inland freight expenses per kilogram per kilometer, it should, as it should for brokerage and handling expenses, use either the maximum cargo load or Xingyu's average cargo load in the denominator of the calculation, rather than 10,000 kilograms.[288] Xingyu concedes that freight charges increase with weight, but alleges they do not double if one uses a 40 foot container instead of a 20 foot container.[289] For the calculation of the foreign inland freight expense per kilogram per kilometer, Xingyu proposes using either the 28,200 kilogram maximum 20 foot container weight or the Xingyu average 22,000 kilograms weight in the denominator of the expense calculation referenced above, rather than the 10,000 kilogram figure used in the Preliminary Determination.[290]

Petitioners characterize as incorrect Xingyu's claim that the Department was incorrect to rely on a 10,000 kilogram denominator for the allocation of freight costs.[291] Petitioners' arguments with respect to the weight denominator are the same for freight expenses as they are for brokerage and handling expenses, which are discussed in Comment 3, above.

Department's Position:

As noted for brokerage and handling expenses in the "Department Position" for Comment 3, above, the Department has determined that the standard 10,000 kilogram container load referenced in Doing Business reports is appropriate to use in conjunction with freight expense data in those reports. That figure is consistent with the methodology employed by the World Bank in its determination of the overall container expenses.[292] Regarding Xingyu's arguments relating to the extent to which freight charges are correlated with container weights or lengths, those arguments are not relevant, given the per container freight costs (i.e., $1,100 for South Africa) and the container weight (10,000 kilogram) information were collected and calculated by the World Bank on a consistent basis.[293] Consequently, we are continuing to use this 10,000 kilogram figure in our calculation of the valuation of inland freight for the final determination, in conjunction with the $1,100 container expense and the appropriate freight distance between Johannesburg and Durban, South Africa (568 kilometers).[294]

Comment 8: Inland Freight Expenses Denominator's Distance

Xingyu argues that if the Department relies on the Doing Business in Thailand report to value foreign inland freight per kilogram per kilometer, then the distance used in the denominator

[288] See Xingyu Case Brief at 32.
[289] Id. at 34.
[290] Note that some of the arguments made by Xingyu with regard to the brokerage and handling expenses calculation, including the court ruling noted above, were not made with regard to the foreign inland freight expenses calculation, and therefore are not referenced here.
[291] See Petitioners Case Brief at 41 and 44.
[292] See Citric Acid from the PRC, and accompanying Issues and Decision Memorandum at Comment 6. See also, e.g., TRBs from the PRC 2016 and accompanying Issues and Decision Memorandum at Comment 3 and TRBs from the PRC 2015 and accompanying Issues and Decision Memorandum at Comment 1.
[293] See Petitioners' September 8, 2015 South Africa surrogate values submission at Attachment 1-C, Petitioners' July 16, 2015 surrogate values submission at Attachment 6, and Petitioners' March 18, 2015 submission entitled "Petitioners' Response to the Supplemental Questionnaire" at AD Exhibit PRC-S3.
[294] See, e.g., Petitioners' March 18, 2015 submission entitled "Petitioners' Response to the Supplemental Questionnaire" at AD Exhibit PRC-S7.

should be the distance from the covered city (Bangkok, Thailand) to the main commercial port near Bangkok (the port of Laem Chabang).[295] Xingyu states that the Doing Business in Thailand report specifically delineates that the costs are based on that distance (i.e., a distance to the most commonly used import/export sea port).[296] Xingyu states that the Department has previously determined that distance was 133 kilometers.[297]

Petitioners counter that while the Department may have relied on the 133 kilometer distance in some segments of proceedings conducted between 2012 and 2014, after the issue was briefed and addressed in another case, the Department has concluded the proper distance is either 44.33 kilometers (to Port of Bangkok) or 110 kilometers (to Port of Laem Chabang) or the average of those two distances, depending on which, if any port(s) are referenced in the Doing Business in Thailand report.[298] Petitioners state that the absence of information on the record identifying the Thai port or ports in the Doing Business in Thailand report is further reason for the Department to rely on Doing Business in South Africa for freight distance information.[299]

Department's Position:

Because we are continuing to use Doing Business in South Africa to value inland freight, we find that this issue is moot.

Comment 9: Thai Labor Values

Xingyu states that the Department properly disregarded the energy and labor inputs of the respondents in the calculation of normal value to avoid double-counting those costs captured in the surrogate financial ratios. Xingyu argues that should the Department calculate a labor rate for any reason, it should use the 2011 labor data published in the 2012 Census of the Thai NSO rather than the overall Thai manufacturing labor rate the Department calculated (but did not use) in the Preliminary Determination. Xingyu states that the data it proposes are more specific to the PET resin industry than the overall data identified by the Department, and Xingyu provides a proposed calculation.[300] Xingyu notes that the Department has used the labor source Xingyu proposes in a recent case.[301]

Neither FEIS nor Petitioners submitted rebuttal comments on this issue.

Department's Position:

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[295] See Xingyu Case Brief at 38.
[296] Id., citing Xingyu July 16, 2015, surrogate values submission at Exhibits SV-19 and SV-21.
[297] Id. at 39, citing, e.g., Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 43391(July 25, 2014) and accompanying Decision Memorandum at 19, and Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33350 (June 4, 2013) and accompanying Decision Memo at 38.
[298] Petitioners' Case Brief at 38-39, citing PC Steel Rail Tie Wire and accompanying Issues and Decision Memorandum at Comment 4.
[299] Id. at 39-40.
[300] See Xingyu Case Brief at 43-44.
[301] Id. at 45, citing Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2014, 80 FR 69644 (November 10, 2015) and accompanying Issues and Decision Memorandum at Comment 12.

Because the Department continues to rely on the surrogate financial ratio to account for labor costs, this issue is moot.

Comment 10: Irrecoverable VAT

Xingyu argues that the Department erred in the Preliminary Determination when it deducted from the reported export prices a flat four percentage points, based on the difference between the standard VAT levy of 17 percent on input purchases and the rebate rate for merchandise under consideration of 13 percent.[302] Xingyu argues that the Department failed to consider whether the record contained evidence that the respondent was in some manner exempted from the requirement to pay the relevant tax, duty, or charge, as the Department's own policy statement on this issue required.[303]

Xingyu states that from the outset of the investigation, it indicated a simple calculation based on the difference between the 17 and 13 percent rates would not be appropriate for Xingyu, given the majority of its materials consumed in the production of the subject merchandise for export are imported and exempted from VAT.[304] Xingyu states that most of the materials consumed in the production of subject merchandise for export are imported under an "inward processing trade" designation, as described in its questionnaire responses, and as supported by the Department's verification.[305] Xingyu states that it provided the Department detailed balance sheet information showing major inputs purchases segregated into "inward processing" versus normal purchases, and raw material subledger information showing Xingyu tracked purchases of inputs under inward processing trade in its accounting system under the accounts "inward processing."[306]

Xingyu indicates that it provided detailed support in its questionnaire responses for a calculation of the actual unrefunded VAT for Xingyu and its collapsed affiliate that also had U.S. sales of subject merchandise, Xingye. Xingyu states this should not be the export price times four percent times but, rather, the export price times four percent times the small proportion of material (9.07 percent) not purchased under inward processing trade designation.[307] Xingyu argues that the Department's use of the flat four percent factor in its Preliminary Determination is not consistent with Department practice, noting that in a recent case the Department explained that it did not make an unrefunded VAT adjustment for a respondent because the respondent paid no VAT for the imported direct materials under comparable circumstances as in this case.[308]

[302] See Xingyu Case Brief at 45-46.
[303] See Xingyu Case Brief at 46, citing Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings, 77 FR 36481, 36482 (June 19, 2012).
[304] Id. at 46-47.
[305] Id. at 47 and 50-52.
[306] Id. at 50-51. See also Xingyu's Verification Exhibit 14 at 15 to 27 and 31a and Xingyu's Verification Exhibit 19 at 57 to 66.
[307] Id. at 47-48.
[308] Id. at 50, citing Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments and Partial Rescission of Review; 2012-2013, 79 FR 72166 (December 5, 2014) (PET film from the PRC) and accompanying Preliminary Decision Memorandum (November 28, 2014) at 18-20.

Xingyu notes that the Department chose not to inquire further regarding Xingyu's reporting methodology for this adjustment, and therefore is obliged to consider it accurate and verified.[309]

Xingyu concludes that the Department should either make no adjustment to Xingyu's export price for unrefunded VAT, or that such an adjustment should be based on the values Xingyu reported in its U.S. sales database, in accordance with Xingyu's stated reporting methodology, its normal business operations, and the Department's practice.[310]

Petitioners states that the Department was correct to make its deduction from U.S. price based on the difference between the VAT levy and refund rates, based on the definition of irrecoverable VAT in PRC regulations. Such a deduction, Petitioners maintain, is consistent with Department practice and policy.[311] Petitioners state this methodology involves the reduction of the reported U.S. price by the amount of the tax that is charged on inputs, applied to export value, less the amount rebated, as a percentage of export value.[312]

Petitioners challenge Xingyu's assertion that only 9.07 percent of its imported raw materials incurred VAT as a result of the majority of materials consumed in the production of subject merchandise for export having been imported under the inward processing scheme. Petitioners state that Xingyu's questionnaire responses did not show 90.93 percent of it PET resin costs relate to imports exempt from VAT. Petitioners state that Xingyu's July 9, 2015, section D response indicates the maximum percentage share of inputs for Xingyu and its collapsed affiliates that were potentially exempt under the inward processing scheme (maximum possible exempt percentage) was lower than 90.93 percent.[313] Petitioners state that "the factors of production reported, the market-economy purchases analyzed and relied on, and the application of surrogate values to the non-market economy factors are all predicated on <u>total input consumption irrespective of intended market</u>."[314] Petitioners state that the maximum possible exempt percentage of inputs consumed could not plausibly account for the total overall share of Xingyu sales of PET resin accounted for by exports, a proprietary percentage which Petitioners derive from the Department's verification report. Petitioners conclude that if the Department incorrectly adjusts the irrecoverable VAT adjustment factor to account for allegedly VAT exempt inputs, it should do so only by this maximum possible exempt percentage, not by the 90.93 percent factor proposed by Xingyu.[315]

Department's Position:

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[309] <u>Id.</u> at 52, citing 19 U.S.C. § 1677m(d) regarding deficient submissions, which Xingyu claims requires the Department to advise a party of deficiencies in its response and give that party an opportunity to correct such deficiencies.
[310] <u>Id.</u> at 52.
[311] <u>See</u> Petitioners' Rebuttal Brief at 48, citing <u>Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China</u> and accompanying Issues and Decision Memorandum at Comment 1, and <u>Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings</u>, 77 FR 36481 (June 19, 2012).
[312] <u>Id.</u>
[313] <u>Id.</u> at 49.
[314] <u>Id.</u> at 50. Emphasis in original.
[315] <u>Id.</u> at 50-51.

The Department normally calculates irrecoverable VAT based on the difference between the VAT tax rate (in this instance, 17 percent) and the VAT refund rate on exports (in this instance, 13 percent), as applied by Chinese regulations to the value of exported goods (i.e., four percent of the FOB value of U.S. sales).[316] Under certain limited circumstances, the Department has allowed an exception for certain U.S. sales which were manufactured using inputs imported VAT-free where record evidence supported making such an allowance.[317]

Xingyu reported irrecoverable VAT calculated as a percentage of FOB value. The percentage used by Xingyu was a modification of the Department's standard formula, reduced by a factor representing VAT-exempt inputs purchased under an "inward processing trade" program. The factors used were calculated on a monthly basis. As an example, Xingyu provided the irrecoverable VAT calculation for October 2015, which reduced irrecoverable VAT by 90.93 percent (Xingyu's reported irrecoverable VAT was thus 9.07 percent of that calculated using the normal formula).

We find that Xingyu failed to provide sufficient evidence to warrant departing from the Department's past practice of calculating irrecoverable VAT. Xingyu purported to show, using October 2015 as an example, that 90.93 percent of the value of U.S. exports were accounted for by inputs imported VAT-exempt under the "inward processing trade" scheme, and thus that 9.07 of U.S. sales were not exempt. Xingyu provided its VAT declaration for October 2015 and a table showing the irrecoverable VAT calculations for October 2015 on a transaction-specific basis.[318] However, Xingyu failed to explain or provide evidence confirming the calculation of this 90.93 percent figure (or the proportion of U.S. sales exempted from VAT for other months). Despite the information provided, Xingyu never explained the calculation or identified the underlying source of the asserted 90.93 percent figure. Furthermore, although Xingyu stated in its submissions that that its calculations relate directly to specific figures on the October 2015 VAT declaration, Xingyu never explained how the calculations or indeed any of the other information provided comports with figures on the VAT declaration provided.[319] Thus, we are unable to derive the value of inputs imported under the inward processing trade scheme and attributable to U.S. sales from record evidence or to confirm Xingyu's allocation.

In addition, the record evidence also does not explain whether the value of such input purchases, if allocated indirectly, were allocated to all exports or only to U.S. exports. Xingyu provided certain documents from normal company books and records showing that inward processing purchases were accounted for separately from other purchases.[320] However, there is nothing in these documents that ties U.S. sales, let alone export sales generally, to purchases made under the inward processing trade program, either on a transaction-specific basis or otherwise. Thus, there is insufficient record evidence upon which the Department might base an adequate analysis of Xingyu's claim.

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[316] See, e.g., Xingyu's July 6, 2015, Section C Response at C-31 and Exhibit C-7.
[317] See Certain Uncoated Paper From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 80 FR 51768 (August 26, 2015), and Preliminary Decision Memorandum at 26, unchanged at Certain Uncoated Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 81 FR 3112 (January 20, 2016).
[318] See Xingyu's July 6, 2015, Section C Response at C-30 to C-33 and Exhibits C-8, C-9, and C-10.
[319] Id. at Exhibits C-8, C-9, and C-10.
[320] See Xingyu Case Brief at 50-51. See also Xingyu's Verification Exhibit 14 at 15 to 27 and 31a and Xingyu's

Regarding Xingyu's reliance on PET film from the PRC, the record evidence presented in that case is easily distinguished from the evidence provided by Xingyu. There, the Department explained:

> Green Packing provided documentation to support its claim that it produced the subject merchandise sold in the United States using only the imported direct materials from its "processing trade" production. Green Packing's chart of accounts reflected that the company had separate accounts for the bonded "processing trade,", and the non-bonded "normal trade" direct materials. Green Packing identified raw material withdrawals during the POR for "processing trade" and "normal trade" in its raw material subledger. Green Packing identified finished products produced during the POR for "processing trade" and "normal trade" in its finished goods subledger. Green Packing identified export goods sold during the POR for "processing trade" and "normal trade" in its export sales subledger. The documentation supported Green Packing's claim it paid no VAT on the direct materials comprising the vast majority of the cost of producing the subject merchandise sold in the United States, and so we made no adjustment to Green Packing's U.S. price for VAT for the preliminary results.[321]

As explained above, in this investigation, the documentation provided by Xingyu, and Xingyu's explanation thereof, do not approach this level of completeness.

For these reasons, we have continued to following our normal practice and calculate irrecoverable VAT according to the Department's usual practice (i.e. four percent of FOB value, in accordance with Chinese VAT regulations).

Comment 11: FEIS Verification Minor Corrections

FEIS requests that the Department adjust its margin programming to account for the minor corrections that FEIS identified at the outset of verification.[322]

Neither Xingyu nor Petitioners submitted rebuttal comments on this issue.

Department's Position:

We agree that adjustments are required to account for errors FEIS identified at the outset of the verification, including the following: recalculation of the U.S. brokerage and handling expense

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Verification Exhibit 19 at 57 to 66.

[321] See PET film from the PRC and accompanying Preliminary Decision Memorandum at 18-20 (citations omitted), unchanged in Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Administrative Review and Final Determination of No Shipments; 2012-2013, 80 FR 33241 (June 11, 2015).

[322] See FEIS Case Brief at 14 and 15, citing FEIS Verification Report at 2 and VE-1.

field; recalculation of a certain U.S. tax expense; and recalculation of packing labor expenses.[323] Another item FEIS identified as a minor correction had already been revised in one of its submissions.[324] The final minor correction, involving freight distances for crude oil and coal water slurry, is moot, given the Department continues to rely on the surrogate financial ratio to account for energy costs.

Comment 12: FEIS Chilled Water

FEIS states that the Department made various statements in its verification report about consumption of "chilling water." FEIS states that one of its cost centers did not need to use chilling water generated by the company's utility section, and claims the electricity used to chill the water used by that cost center was captured by one of the electricity consumption fields FEIS reported. FEIS concludes that there was no underreporting of electricity for chilling water at the cost center in question.[325]

Neither Xingyu nor Petitioners submitted rebuttal comments on this issue.

Department Position: The Department continues to use surrogate financial ratios to calculate all energy expenses including "chilling water." Accordingly, this issue is moot and we have made no changes to our calculations in this final determination with regard to this issue.

Comment 13: FEIS Freight Distance for Factors of Production

FEIS states that the identification of FEIS's plant location, on a map used to calculate the distance between that plant and a supplier of crude oil, as a farm should be ignored, as this was simply the result of "an un-updated map on the internet." FEIS states the location in question is the site of FEIS's plant.[326]

Petitioners argue in their case brief that FEIS was not only unable to properly document the FEIS plant of receipt, but it also was unable to properly document the supplier identity or location.[327] Petitioners argue that for purposes of the final determination, all input distance factors should be set to the highest distance reported, to be used if a distance is not Sigma-capped to the port distance.[328]

In its rebuttal brief, FEIS states that not all companies have websites, and that documentation on the record indicates that the supplier's address is located in the same district as the FEIS factory, even if that address is not the address of the crude oil storage facility. FEIS argues it undertook its best efforts to report the most accurate distance information.[329]

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[323] See FEIS Verification Report at 2. We note that further clarification of packing labor was identified during verification of packing, as referenced at pages 2 and 27-28 of that report.
[324] Id.
[325] See FEIS Case Brief at 15.
[326] Id.
[327] See Petitioners' Case Brief at 4, citing FEIS Verification Report at 28.
[328] Id.; see Sigma Corp. v. United States, 117 F.3d 1401, 1407-08 (Fed. Cir. 1997).
[329] See FEIS Rebuttal Brief at 2-3.

Department Position: FEIS was able to identify properly the locations and distance for another tested input (PTA) for one supplier.[330] Consequently, the Department rejects Petitioners' request to apply the highest distance reported to all input distance factors. Data for the input for which FEIS was unable to provide satisfactory substantiation for the sample requested, crude oil, are not being used in the Department's final margin calculations, because the Department continues to rely upon financial ratios to account for energy costs. Therefore, we determine there is no need to revise crude oil or other energy costs for the final determination.

Comment 14: FEIS International Freight Expense

Petitioners argue that the VAT paid by FEIS for international freight, which was a 6 percent rate for two months (July 2014 and August 2014) of the POI, should be included international freight expense deducted from U.S. price. Petitioners state that including the VAT as part of the deduction would be consistent with the Department treatment of irrecoverable VAT.[331]

FEIS states that the VAT paid on international freight is not irrecoverable. FEIS states that the PRC VAT regulations indicate the VAT is credited against the output tax when the input tax is indicated on the VAT invoices from the sellers.[332] FEIS notes that the six percent VAT input tax amounts were clearly indicated on the VAT invoices, so the six percent VAT input tax FEIS paid for international freight is credited against the output tax, and, therefore, should not be included as part of the international freight expense the Department deducts in the calculation of net U.S. price.[333]

Department Position: The Department has previously excluded VAT from the calculation of freight expenses when those freight expenses are inclusive of VAT. For purposes of our antidumping duty calculations and price comparisons, we value FOPs in a tax neutral manner, where possible.[334] Therefore, for this final determination, we are not including the identified VAT expense in the calculation of the international freight expenses in question.

Comment 15: FEIS U.S. Inland Freight Expense

Petitioners note that at verification, FEIS identified a correction to a reported U.S. inland freight expense for one sale. Petitioners argue that as facts available, the Department should apply the same per-unit inland freight expense to other U.S. sales that have inland freight expenses below the corrected value for the sale identified.[335]

Neither FEIS nor Xingyu submitted rebuttal comments on this issue.

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[330] See FEIS Verification Report at 28.
[331] See Petitioners' Case Brief at 3.
[332] See FEIS Rebuttal Brief at 2, citing FEIS September 1, 2015 section C response at Exhibit 2SE-38 (Copies of VAT Laws) at 3.
[333] Id.
[334] See, e.g., Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part, 66 FR 40980, 40984 (August 6, 2001), unchanged at Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review, 67 FR 6488 (February 12, 2002)
[335] See Petitioners' Case Brief at 3-4.

Department Position: We disagree with Petitioners. No other errors were identified for the expense in question at verification, and there is no indication that the correct value of the expense for the sale referenced above applies to other sales transactions with lower reported values. Consequently, for our final calculations, we have only adjusted this expense for the sale observation in question, sequence number 2.

Comment 16: Xingyu Indirect Labor

Petitioners state that the Department should use the corrected labor hour information identified by Xingyu at verification, if the Department requires use of labor information in its final margin calculations.[336]

Neither FEIS nor Xingyu submitted rebuttal comments on this issue.

Department Position: Because the Department continues to rely on the surrogate financial ratio to account for labor costs, this issue is moot.

Comment 17: Xingyu IPA Consumption

Petitioners note that the Department identified inconsistencies in Xingyu's reported consumption of isophthalic acid (IPA) for certain CONNUMs versus statements made by Xingyu at verification regarding consumption of that input. Petitioners argue that the Department should set the IPA factor of consumption for the CONNUMs in question equal to the highest reported consumption level across other CONNUMs.[337]

Neither FEIS nor Xingyu submitted rebuttal comments on this issue.

Department Position: The Department agrees that the reported IPA consumption reported for certain CONNUMs in Xingyu's questionnaire responses was inconsistent with statements made at verification. Accordingly, we find that the information provided by Xingyu related to IPA consumption could not be verified within the meaning of subsection 776(a)(2)(D) of the Act, and we are relying upon facts otherwise available. Consequently, on the basis of facts available, the Department is recalculating the IPA consumption (and the related freight distances for that input) for the CONNUMs in question. For more details regarding the Department's analysis, please see Xingyu Final Analysis Memorandum.

[336] See Petitioners' Case Brief at 2.
[337] Id.

Recommendation:

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

✓

Agree   Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

4 MARCH 2016
(Date)