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April 12, 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 Final Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2013-2014

SUMMARY

The Department of Commerce ("Department") analyzed the case and rebuttal briefs of interested parties in the sixth administrative review of the antidumping duty ("AD") order on certain new pneumatic off-the-road tires ("OTR Tires") from the People's Republic of China ("PRC") for the period of review ("POR") September 1, 2013, through August 30, 2014. This review covers the following exporters of subject merchandise: Qingdao Qihang Tyre Co., Ltd. ("Qihang") and Xuzhou Xugong Tyres Co., Ltd. ("Xugong")[1] as mandatory respondents; Qingdao Free Trade Zone Full-World International Trading Co., Ltd. ("Full-World"), Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. ("TWS Xingtai") and Weihai Zhongwei Rubber Co., Ltd. ("Zhongwei"), who each filed separate rates certifications; and the separate rate applicant Tianjin Leviathan International Trade Co., Ltd. ("Leviathan"). Additionally, the review covers Zhongce Rubber Group Company Limited ("Zhongce") and Trelleborg Wheel Systems Hebei Co. ("TWS Hebei"), who filed no-shipment certifications. Finally, the review covers Qingdao Haojia

[1] We initiated a review of 12 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Review*, 79 FR 64565 (October 30, 2014) ("*Initiation Notice*"). We collapsed Xugong with Xuzhou Armour Rubber Company Ltd. ("Armour") and Xuzhou Hanbang Tyre Co., Ltd. ("Hanbang") as a single entity for the purposes of this review and refer to the collapsed entity as "Xugong," collectively, for the purposes of this memorandum. *See* the Department's memorandum, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affiliation and Collapsing Memorandum for Xuzhou Xugong Tyres Co., Ltd.," dated September 30, 2015 ("Preliminary Collapsing Memo"). No parties commented on this collapsing determination, and this determination remains unchanged for the final results. *See* the Department's unpublished *Federal Register* notice, Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014," dated concurrently with this memorandum.

(Xinhai) Tyre Co., who did not file a separate rate application and whom we determine is not eligible for a separate rate. We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum.

BACKGROUND

On October 30, 2014, the Department initiated the sixth administrative review of the antidumping duty order on OTR tires from the PRC.[2] On February 24, 2015, in response to timely submitted withdrawal requests, the Department rescinded the review with respect to Double Coin Holdings, Ltd., and Guizhou Tyre Co., Ltd. and its affiliate Guizhou Tyre Import and Export Co., Ltd. (collectively, "GTC").[3]

On October 30, 2014, TWS Xingtai timely filed a request to be a voluntary respondent in this administrative review.[4] On December 16, 2014, the Department determined, pursuant to section 777A(c)(2) of the Tariff Act of 1930, as amended (the "Act"), that it was not practicable to investigate each of the companies for whom the Department initiated an administrative review. In accordance with section 777A(c)(2)(B) of the Act, the Department selected Qihang and Xugong, the two companies accounting for the largest volume of exports during the POR, as mandatory respondents.[5] Between December 16, 2014, and September 16, 2015, the Department issued and respondents timely responded to the initial and subsequent supplemental questionnaires.

The Department conducted a verification of Xugong's questionnaire responses at Xugong's factory from July 20 through July 24, 2015, in Xuzhou, Jiangsu Province, PRC, and at its U.S. affiliate Armour Tires Inc. ("ATI"), on August 5 and August 6, 2015, in Ontario, California.[6]

[2] *See Initiation Notice*, 79 FR 64565.
[3] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 9695 (February 24, 2015).
[4] *See* Letter from TWS Xingtai entitled, "Request for Voluntary Respondent Status for Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: New Pneumatic Off-The-Road Tires from the People's Republic of China," dated November 20, 2014 ("TWS Xingtai Voluntary Respondent Request").
[5] *See* Memorandum to Melissa Skinner, Director, Office III, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Respondent Selection," dated December 16, 2014 ("First Respondent Selection Memo"). *See also*, Memorandum to Melissa Skinner, Director, Office III, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Selection of Second Respondent for Individual Review," dated December 19, 2014 ("Second Respondent Selection Memo"). The Department initially selected Xugong and GTC as the mandatory respondents, but as discussed above, GTC timely withdrew its request for review. As a result, the Department determined that although it could examine no more than two producers or exporters, selecting a new mandatory respondent would not inhibit the timely completion of this review. The Department accordingly selected the next largest exporter, Qihang.
[6] *See* Memorandum to the File, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Verification of the Sales and Factors Response of Xuzhou Xugong Tyre Co., Ltd. and Affiliates," dated September 30, 2015 ("Xugong's Verification Report").

The Department conducted a verification of Qihang's questionnaire responses at Qihang's offices in Qingdao, Shandong Province, PRC, on July 27 through July 31, 2015.[7]

On October 9, 2015, the Department published the *Preliminary Results* of this administrative review.[8] At that time, the Department invited interested parties to comment on the *Preliminary Results*.[9]

On December 11, 2015, the Department received timely filed case briefs from Qihang,[10] Xugong,[11] TWS Xingtai and Trelleborg Wheel Systems Americas, Inc. (collectively, "TWS Xingtai"),[12] and Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (collectively, "Petitioners").[13] On December 17, 2015, the Department extended the deadline for rebuttal briefs and requested that Qihang and Xugong submit redacted affirmative case briefs.[14] Qihang and Xugong submitted redacted case briefs on December 21, 2015.[15] On December 23, 2015, the Department received timely filed rebuttal briefs from Petitioners,[16] Qihang,[17] and Xugong.[18]

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[7] *See* Memorandum to the File, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Verification of the Sales and Factors Response of Qingdao Qihang Tyre Co., Ltd.," dated September 30, 2015 ("Qihang's Verification Report").

[8] *See 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) ("*Preliminary Results*") and accompanying memorandum to Paul Piquado, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2013-2014," dated September 30, 2015 ("PDM").

[9] *See Preliminary Results*, 80 FR at 61167.

[10] *See* Letter from Qihang, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Administrative Case Brief," dated December 11, 2015.

[11] *See* Letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Case Brief: Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated December 11, 2015.

[12] *See* Letter from TWS Xingtai, "Antidumping Duty Administrative Review of OTR Tires from the People's Republic of China: Case Brief of Trelleborg Wheel Systems (Xingtai) Co., Ltd. and Trelleborg Wheel System Americas, Inc.," dated December 11, 2015 ("TWS Xingtai's Case Brief").

[13] *See* Letter from Petitioners, "Case Brief of Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC," dated December 11, 2015 ("Petitioners' Case Brief").

[14] *See* Letters to Qihang and Xugong, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Request to Strike New Factual Information and Resubmit Case Brief," dated December 17, 2015.

[15] *See* Letter from Qihang, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Revised Administrative Case Brief," dated December 21, 2015 ("Qihang's Case Brief"). *See also* Letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong"): Resubmission of Xugong's Case Brief in the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated December 21, 2015 ("Xugong's Case Brief").

[16] *See* Letter from Petitioners, "Rebuttal Brief of Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC," dated December 23, 2015 ("Petitioners' Rebuttal Brief").

[17] *See* Letter from Qihang, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Administrative Case Rebuttal Brief," dated December 23, 2015 ("Qihang's Rebuttal Brief").

On January 12, 2016, in accordance with section 751(a)(3)(A) of the Act, the Department extended the period for issuing the final results of this review by sixty-days, to April 6, 2016.[19] Also, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its authority to toll all administrative deadlines due to the recent closure of the Federal Government.[20] All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results is now April 12, 2016. In accordance with timely requests from parties, the Department held a public hearing on March 17, 2016.[21]

SCOPE OF THE ORDER

The products covered by the order are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,[22] combine harvesters,[23] agricultural high clearance sprayers,[24] industrial tractors,[25] log-skidders,[26] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[27] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[28] front end loaders,[29] dozers,[30]

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[18] *See* Letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Rebuttal Brief: Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated December 23, 2014 ("Xugong's Rebuttal Brief").

[19] *See* Memorandum to Christian Marsh, "*Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Deadline for Final Results of 2013-2014 Antidumping Duty Administrative Review*," dated January 12, 2016.

[20] *See* Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement and Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure during Snowstorm Jonas," dated January 27, 2016.

[21] *See* Hearing Transcript, filed onto the record by Lisa Dennis Court Reporting on March 29, 2016.

[22] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[23] Combine harvesters are used to harvest crops such as corn or wheat.

[24] Agricultural sprayers are used to irrigate agricultural fields

[25] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[26] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[27] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[28] Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[29] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

lift trucks, straddle carriers,[31] graders,[32] mobile cranes,[33] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type[34] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

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

Prefix letter designations:

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

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[30] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform "rough grading" in road construction.

[31] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[32] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.

[33] *I.e.*, "on-site" mobile cranes designed for off-highway use.

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

Suffix letter designations:

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

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

LIST OF COMMENTS

Comment 1: Whether Application of Adverse Facts Available Is Warranted With Regard to Certain Xugong Sales
Comment 2: Whether to Grant Qihang a Double Remedies Adjustment and What Pass-Through Rate to Use
Comment 3: Whether to Adjust Xugong's U.S. Prices for Irrecoverable VAT
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Comment 6: Whether the Department Should Reject Certain Surrogate Values Submitted After the *Preliminary Results*
Comment 7: Surrogate Country
Comment 8: Financial Statements
Comment 9: Natural Rubber
Comment 10: Reclaimed Rubber
Comment 11: Inland Freight
Comment 12: Selection Surrogate Value for Carbon Black
Comment 13: Inadvertent Errors in Surrogate Value Selection
Comment 14: Selection of the Surrogate Values for #3 and #20 Compound Rubber, Activation Rubber Powder, Benzonic Acid, and Tire Cord Fabric

DISCUSSION OF THE ISSUES

Comment 1: Whether Application of Adverse Facts Available Is Warranted With Regard to Certain Xugong Sales

For the *Preliminary Results*, we determined to apply adverse facts available ("AFA"), pursuant to sections 776(a)(2)(B) and (D) and section 776(b) of the Act, to unreported shipments discovered at the verification of Xugong's ATI affiliate, which left the Xugong factory prior to the end of the POR but were not invoiced by ATI until after the POR.[35]

Xugong's Comments:[36]

- Xugong argues that it did not conceal its sales, but instead the Department erred by issuing supplemental requests that Xugong report sales information in addition to what it reported in the initial questionnaire response.
- Xugong further contends that the Department's supplemental questionnaires, which departed from a longstanding practice and directly contravened its initial questionnaire instructions, showed confusion by the Department with regards to what sales universe should be examined and created confusion for Xugong with regards to what sales it was being asked to report. Further, that the issue of how to define the "date of sale" is determinative only with respect to constructed export price ("CEP") sales made after importation.
- Xugong asserts that it clearly informed the Department of what sales it was reporting in its questionnaire responses, that it correctly reported its universe of sales in response to the Department's initial standard questionnaire, and that the Department's failure to ask Xugong any further questions indicated that the issues the Department had with the sales universe were resolved. If it were confused, Xugong contends the Department could have further examined Xugong's sales database on the record to confirm the lack of sales.
- Xugong avers that, when the respondent knows the date of importation, the Department's standard methodology is to use entry date, rather than shipment or invoice date, and that an inconsistent application of the universe of sale methodology could lead to double-counting or missed sales from one review to the next.[37] Xugong points to *Shrimp from Thailand* with a nearly identical fact pattern, where the Department reversed its preliminary decision to apply AFA to certain unreported sales because the instructions issued by the Department in its original questionnaire differed from those issued in the supplemental questionnaire; the Department's determination not to apply AFA was upheld by the CIT in *Ad Hoc Shrimp*.[38]

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[35] *See* PDM at 14-19.

[36] *See* Xugong's Case Brief, at 24-41.

[37] Xugong cites to numerous cases to support its contention; *e.g.*, *Solid Fertilizer Grade Ammonium Nitrate From the Russian Federation: Notice of Rescission of Antidumping Duty Administrative Review*, 77 FR 65532 (October 29, 2012) and accompanying decision memorandum at 11; *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review 2012-2013*, 80 FR 32937 (June 10, 2015) and accompanying Issues and Decision Memorandum at Comment 4; *Carbon and Certain Alloy Steel Wire Rod from Mexico: Final Results of Antidumping Duty Administrative Review 2010-2011*, 78 FR 28190 (May 14, 2013), and accompanying Issues and Decision Memorandum at Comment 2. Xugong also cites to the *Antidumping Procedures Manual* at Chapter 4, page 7.

[38] Xugong cites to *Certain Frozen Warmwater Shrimp from Thailand: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 12088 (March 6, 2008), unchanged in *Certain*

Petitioners' Rebuttal:[39]

- Petitioners assert that the Department's instructions to Xugong were clear and that Xugong's failure to report all such sales represented a failure to act to the best of its ability. Further, that the underlying facts of *Ad Hoc Shrimp*,[40] are distinguishable because in that case the Department admitted to issuing confusing instructions regarding sales reporting, and the Court agreed stating the respondent accordingly had not failed to act to the best of its ability by following the instructions as it understood them. Petitioners argue that Xugong only quotes part of the Department's further instructions, omitting the part relevant to this issue, and Petitioners assert that, together, the instructions are clear that Xugong was to have reported all U.S. sales that were entered, shipped, or invoiced during the POR. Petitioners argue that, here, the Department's instructions were clear and as such, the application of AFA to Xugong for the unreported sales was correct and should continue for the final results.
- Petitioners also argue that Xugong's responses implied that Xugong did not have further sales to report; that the Department could not, as Xugong asserted, have confirmed the lack of sales in the database; and that respondents have the responsibility to answer questions from the Department correctly the first time, not only on a second try.
- Moreover, Petitioners affirm, citing *Timken*, that it is the Department's role to decide what information needs to be reported, not respondents.[41]

Department's Position: We have continued to apply AFA to Xugong's unreported sales because Xugong failed to fully comply with the Department's questionnaire instructions and failed to report certain requested sales during the course of the review. This omission was acknowledged by company officials at verification.[42]

The Department's initial questionnaire instructed Xugong to:[43]

> Report each U.S. sale of merchandise entered for consumption during the POR, except: (1) for EP sales, if you do not know the entry dates, report each transaction involving

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Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 73 FR 50933 (August 29, 2008), ("*Shrimp from Thailand*") and accompanying Issues and Decision Memorandum at Comment 13. Xugong also cites to *Ad Hoc Shrimp Trade Action Committee v. United States*, 33 CIT 1906, 1912, 675 F. Supp. 2d 1287, 1295 (2011) ("*Ad Hoc Shrimp*").

[39] *See* Petitioners' Rebuttal Brief, at 35-40.

[40] Petitioners cite to, *Ad Hoc Shrimp*, 33 CIT at 1932-33, 675 F. Supp. 2d at 1311-12.

[41] Petitioners cite to *Timken Co. v. United States*, 10 CIT 86, 98, 630 F. Supp. 1327, 1338 (1986) ("*Timken*").

[42] *See* PDM, at 16-18. *See also* Xugong's Verification Report at 12 ("ATI's accountant noted that there were likely a small number of containers of direct-shipped CEP sales transactions which shipped from the Xugong factory prior to the end of the POR, but which were not invoiced until after the POR based on ATI's invoicing practice, and that these small number of sales would not have been reported in the U.S. sales database despite having a ship date prior to the end of the POR."). Notably, Xugong's brief takes no issue with the Department's characterization of the nature of the omission, the information omitted, or the discussion regarding these sales at verification, as discussed in the Xugong Verification Report.

[43] *See* Letter to Xugong, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Questionnaire," dated December 17, 2014 ("Xugong Initial Questionnaire"), at C-1.

> merchandise shipped during the POR; and (2) for CEP sales made after importation, report each transaction that has a date of sale within the POR.

In response to the Department's initial questionnaire, Xugong reported: (1) all export price ("EP") sales with a date of sale (*i.e.*, shipment date) falling within the POR; (2) all CEP sales sold from the U.S. warehouse with a date of sale during the POR; and (3) all direct-shipped CEP sales which entered during the POR.[44] In a subsequent supplemental questionnaire, the Department requested that Xugong report "all EP and CEP sales which were invoiced during the POR, regardless of when they shipped or when they entered the United States" and to also "include any sales (if any) which shipped prior to the end of the POR but were not invoiced until after the POR."[45] In its supplemental questionnaire, the Department explained its rationale for the additional requested information (based upon date of sale). Typically, in AD cases, the Department poses additional, supplemental questionnaires that are case-specific, company-specific, and fact-specific. The Department requested that Xugong continue to report the same universe of sales that it had previously reported, but also to add these additional sales to its U.S. sales database.[46] There is nothing unusual about the Department expanding its requests for information in response to parties' submissions on a particular case record to ensure it has the information needed to make a dumping determination.

In its subsequent supplemental questionnaire response, Xugong responded that it "added sales to the U.S. sales database… in accordance with the Department's new instructions."[47] Notably, Xugong's response to the supplemental questionnaire included no request for clarification regarding what it now states (in its case brief) is a perceived contradiction between the two questionnaires, and it also did not highlight in its response that it did not report all information requested as a result of disagreeing with the premise underlying the supplemental request as it now claims it did. Xugong, in its response, stated that for some sales (specifically a CEP sample sale) it reported the "date of the merchandise leaving the factory as shipment date in its U.S. sales database."[48] Xugong also stated, upon request from the Department to check the accuracy of its sales database, that it "added sales in the U.S. sales database that were invoiced within the POR regardless of entry date," though did not specifically state if it followed the other half of the Department's instructions to "include any sales (if any) which shipped prior to the end of the POR but were invoiced after the POR."[49] So, while Xugong did not specifically clarify that all

[44] *See* Letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Section C Questionnaire Response for the Administrative Review of New Pneumatic Off-The Road Tires from the People's Republic of China," dated February 27, 2015 ("Xugong's February 27, 2015, Initial Section C Response"), at 2.
[45] *See* Letter to Xugong, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Supplemental Section C and D Questionnaire," dated May 1, 2015 ("Xugong's First Supplemental C and D Questionnaire"), at 4.
[46] *See* Letter to Xugong, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Second Supplemental Sections A, C, and D Questionnaire," dated May 7, 2015 ("Xugong's Second Supplemental A, C, and D Questionnaire"), at 4.
[47] *See* Xugong's Questionnaire Response "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Supplemental A, C, and D Questionnaire Response the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated June 2, 2015 ("Xugong's June 2, 2015, Supplemental Response"), at 6 and Exhibit SQCD-3.
[48] *See* Xugong June 2, 2015 Questionnaire Response, at 5.
[49] *Id.*, at 6.

sales shipped or invoiced during the POR were included in the universe of sales presented to the Department, with the statement that a CEP sample sale was included based on shipment date, and the acknowledgement of the Department's request for Xugong to "check the dates in {its} sales database for accuracy," the Department reasonably presumed that the reporting had been updated consistent with the Department's request for information for all sales invoiced, shipped, or entered during the POR. Moreover, although Xugong has asserted that the Department could easily have ascertained that there were unreported sales, we note that it is nearly impossible for the Department to divine what sales may be missing from a sales database—especially when the respondent reports that they have made adjustments in conjunction with the Department's questionnaires. Additionally, we note that the impetus to correctly report its sales lies with the respondent; the Department cannot be expected to constantly second-guess respondents and re-request sales which, if the questionnaire was correctly answered, would have already been reported.

Unlike the requests for information relevant to *Shrimp from Thailand* (as affirmed by the Court in *Ad Hoc Shrimp*), the requests in the current case were not contradictory, but instead asked for additional information, in addition to, and in response to, the information reported by Xugong in its initial questionnaire. As reported by Xugong and explained in the "Date of Sale" section of the PDM, Xugong's terms of sale are set when a container is packed and ships out of the warehouse.[50] Because Xugong's terms of sale are set based on shipment date, in our supplemental Section C questionnaire, we requested Xugong report any sales which it shipped prior to the end of the POR, even if they were not invoiced until after the POR.[51] Contrary to Xugong's assertions, the Department's request was clear and unambiguous in this regard: *i.e.*, Xugong should report "any sales (if any) which shipped prior to the end of the POR but were not invoiced until after the POR."[52] Moreover, although the Department did clarify its request for Xugong's reporting of sales in a subsequent supplemental questionnaire, this clarification merely requested that Xugong continue to include all of the sales reported in its initial response, in addition to the sales requested in Xugong's First Supplemental C and D Questionnaire.[53] The Department believes that, on its face, this request was clear and unambiguous, and that no reasonable reading of the additional instructions could be interpreted to be in conflict with the prior instructions or to have excused Xugong from fully reporting the sales requested in Xugong's First Supplemental C and D Questionnaire.[54] Indeed, if Xugong interpreted the Department's request as being at all ambiguous, any such lack of clarity is absent from Xugong's direct response to the request for the sales information in question in the First Supplemental C and D Questionnaire in which it stated:[55]

[50] *See* PDM at 26, citing the Letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Section A Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated January 21, 2015 ("Xugong's Section A Questionnaire Response").
[51] *See* Xugong's First Supplemental C and D Questionnaire, at 4.
[52] *Id*.
[53] *See* Xugong's Second Supplemental A, C, and D Questionnaire at 4.
[54] *Id*.
[55] *See* Xugong's June 2, 2015, Supplemental Response, at 6 and Exhibit SQCD-3. Xugong's response in no way indicated confusion with the Department's instructions, and in fact, seemed to have indicated full compliance.

> According to the further instruction from Second Supplemental Questionnaire for Sections A, C, and D, Xugong has continued to report all sales reported in its initial questionnaire response. Additionally, Xugong has added sales to the U.S. sales database that were invoiced within the POR regardless of entry date, in accordance with the Department's new instructions. Please see Exhibit SQCD-3 for the revised file layout and sample printouts.

As discussed previously, at the CEP sales verification of ATI, Department officials discovered that, while Xugong reported all POR sales of both EP direct-shipped sales and inventory-CEP sales (*i.e.*, sales from the ATI warehouse to the downstream customer) with an in-POR date of shipment, invoice, or entry (as appropriate and as requested by the Department in the relevant supplemental questionnaires), the reporting for the third component of sales, *i.e.*, CEP direct-shipped sales, included only those sales which were invoiced or entered in the POR.[56] As such, because the invoicing for this subset of sales occurs after the sale is shipped, certain direct-shipped CEP sales were completed and shipped during the POR but not invoiced until after the end of the POR. The Department has previously declined to accept unreported sales information identified at verification and instead relined upon facts available or AFA, as appropriate.[57] In fact, in the previous OTR Tires review, the Department encountered a similar situation in which officials observed a small quantity of unreported sales at verification. Though the respondent similarly averred that the omission was unintentional in the prior review, the Department determined to apply AFA to the unreported sales.[58]

Because, at the CEP verification of its U.S. affiliate ATI, Xugong was unable to provide any further information on these sales (*i.e.*, quantity and value information),[59] for the purposes of applying an adverse inference in the *Preliminary Results*, the Department devised a "plug" to

[56] *See* Xugong's Verification Report, at 12.
[57] *See, e.g., Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710 (June 8, 1999) ("*Stainless Steel Sheet and Strip from Germany*") at Comment 10. The respondent argued that the Department's acceptance, at the verification of the U.S. sales affiliate (KHSP), "of the previously unreported U.S. sales was appropriate … {T}he new KHSP sales identified at verification were neither significant nor entirely new. … KHSP had simply misclassified four of the five previously unreported sales as non-subject merchandise and … only one was entirely new and previously unidentified." Furthermore, the respondent argued that "the sales at issue can hardly be considered significant given the number of U.S. transactions. … {A}s in *Pocket Lighters from the PRC*, the Department should accept the new sales presented at verification, as they represent a small percentage of total sales and were neither hidden nor misrepresented." Although the Department noted that KHSP identified the missing sales at the outset of verification and provided a complete packet containing copies of each of the relevant invoices which the Department included on the record as a verification exhibit, the Department noted "that KHSP had three opportunities spread over four months to provide the Department with a complete listing of its U.S. sales. In response to its failure to do so, as adverse facts available, we are applying the highest non-aberrational margin calculated based on {the respondent's} correctly reported CEP transactions to the unreported sales and have included these transactions in our calculation of the overall weighted-average margin." In making this decision, the Department also cited a number of other cases where it applied AFA to unreported sales.
[58] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 80 FR 20197 (April 15, 2015) ("*OTR Tires AR6 Final*"), and accompanying Issues and Decision Memorandum at Comment 5.
[59] *Id*.

approximate the quantity and value of the sales that were unreported and applied the highest CONNUM-specific direct-shipped CEP sale margin as AFA for these missing sales.[60]

Xugong asserts that it is the Department's preference to assess dumping duties based upon entries made during the POR, and cite to a number of decisions, as well as the Department's *Antidumping Procedures Manual*,[61] where the Department defined the universe of sales by entry date.[62] As discussed below, throughout this review, and in the LTFV investigation and past reviews of OTR Tires, the date of sale was determined to be the date of shipment.[63] Although section 751(a)(2)(A) of the Act states that the Department is to calculate margins based on entries of subject merchandise, as explained in the *Advance Notice of Proposed Rulemaking*, "by referring to 'entry,' the drafters of section 751 in the 1979 Act likely intended that in a review, unlike an investigation, the Department would examine every transaction; they did not mean necessarily that the Department would have to tie 'entries' to 'sales' in ordering assessment."[64] Moreover, the Department's regulations reflect flexibility on this point, directing that an administrative review "will cover, as appropriate, entries, exports, or sales of the subject merchandise during the 12 months immediately preceding the most recent anniversary month."[65] Thus, the Department's regulations and practice in this area allow the Department to review entries or export or sales, as is appropriate on a case-by-case basis.[66] In cases where the Department has been in the habit of reviewing sales, in order to avoid double-counting or missing sales, the Department has continued to review sales.[67] Such is the case with OTR Tires. As such, consistent with past reviews of OTR tires from the PRC,[68] and in accordance with the Department's discretion as affirmed by the court, we continue to review Xugong's sales shipped during the POR, and have not resorted to a hybrid of shipments plus entries dependent on the type of sale.[69]

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[60] *See* PDM, at 18. *See also* the memorandum to the file, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Xuzhou Xugong Tyres Co., Ltd.," dated September 30, 2015 ("Xugong's Preliminary Analysis Memorandum"). No party has challenged the Department's methodology in calculating the "plug" or the application of the highest CONNUM-specific margin thereto for the purposes of these final results.

[61] Xugong cites, *Antidumping Procedures Manual*, Chapter 4, at page 7.

[62] *See* Xugong's Case Brief, at 33-34, citing *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review 2012-2013*, 80 FR. 32,937 (June 10, 2015), and accompanying Issues and Decision Memorandum at Comment 4; *Carbon and Certain Alloy Steel Wire Rod From Mexico: Final Results of Antidumping Duty Administrative Review 2010-2011*, 78 FR 28,190 (May 14, 2013), and accompanying Issues and Decision Memorandum at Comment 2.

[63] *See e.g.* PDM at "Date of Sale" section.

[64] *See Advance Notice of Proposed Rulemaking*, 56 FR 63696 (December 5, 1991) ("*Advance Notice of Proposed Rulemaking*").

[65] *See* 19 CFR 351.213(e)(1)(i). *See also*, *Silicon Metal From the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 3084 (January 19, 2011) ("*Silicon Metal 2008-2009*"), and accompanying Issues and Decision Memorandum, at Comment 2.

[66] *Id*.

[67] *See, e.g., Silicon Metal 2008-2009*, and accompanying Issues and Decision Memorandum, at Comment 2.

[68] *See, e.g., Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 61291 (October 10, 2014) and accompanying Preliminary Decision Memorandum at 19, unchanged in *OTR Tires AR6 Final*.

[69] *See, e.g., Hynix Semiconductor, Inc. v. United States*, 424 F.3d 1363, 1368 -69 (CAFC 2005) ("*Hynix*"), where the CAFC allowed that the Department has significant discretion in selecting the correct universe of sales for review.

The Department's approach to Xugong's dates of sale is consistent with the Department's past practice. Xugong reported EP sales of all merchandise invoiced or shipped from its PRC factory during the POR, CEP warehouse sales invoiced or shipped from its U.S. warehouse during the POR, and CEP direct-shipped sales entered into the United States during the POR, all consistent with the Department's questionnaire instructions (with the exception of the unreported CEP direct-shipped sales which left the warehouse prior to the end of the POR but were not invoiced until after the POR).[70] Consequently, the universe of transactions reported by Xugong included several sales which were shipped/invoiced prior to the POR but which entered the United States during the POR.[71] For the *Preliminary Results*, the Department determined that the terms of sale are fixed at the time of shipment and that the Department's analysis of sales in this review, consistent across both respondents, would cover all shipments (EP and CEP) made during the POR.[72] As such, based upon the shipment dates reported by Xugong, the Department excluded from the margin calculation Xugong's reported transactions with shipment dates outside of the POR (*e.g.*, sales shipped prior to invoice at the beginning of the POI or sales invoiced before shipment at the end of the POI), which are subject for review in prior or subsequent segment of the case.[73] Indeed, by using shipment date to define the universe of sales, the Department is acting consistently with the most recently completed administrative review of OTR tires, where the Department determined date of sale to be the date of shipment when shipment date preceded the invoice date.[74]

Although Xugong asserts that the Department has a preference for entries, where available, over shipments, we note that Xugong did not argue in its case brief that the Department should use such a sales universe in this administrative review. Xugong argues only that: (1) it correctly reported its sales in accordance with the Department's initial questionnaire and (2) that, for assessment purposes, entries more closely match to the sales for which margins are calculated than do shipments.[75] While we do not disagree with the assertion that sales reporting based on entry date would more closely match the sales transactions actually assessed for antidumping duties, Xugong's case brief does not assert that the Department should change the sales universe examined for the *Preliminary Results*; only that the Department should find that AFA was not warranted for Xugong's unreported sales. Moreover, the Department requires a consistent methodology from one review to the next, so that we do not double-count or miss sales. Additionally, we note that Xugong was able to provide entry dates for only some of its sales. These facts, coupled with the date of sale analysis showing that the final quantity and value are set with the shipment of the container from the warehouse, continues to support the conclusion

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Specifically, in *Hynix*, the Court upheld the Department's determination not to apply a hybrid sales and entries methodology in setting the universe of sales, but rather to review only sales, even though the exporter knew some of the merchandise entry dates. Furthermore, the Court held that the statute does not mandate a specific methodology for computing dumping margins and that the Department's regulations allow for flexibility in selecting the sales universe.

[70] *See* Xugong's February 27, 2015, Initial Section C Response and Xugong's June 2, 2015, Supplemental Response.

[71] *Id*.

[72] *See* PDM, at 26.

[73] Indeed, we note that Xugong is a party to the next administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 69193 (November 9, 2015), at 69197.

[74] *See OTR Tires AR6 Final*.

[75] *See* Xugong's Case Brief, at 26-27.

that the shipment date provides the best, most uniform, easily distinguishable, and consistent measure with which to set the sales universe, from review-to-review, for OTR tires.

Thus, we have continued to calculate Xugong's margin based only upon sales which shipped during the POR for these final results. The Preamble to the Department's regulations provides flexibility to the Department in determining what universe of sales to examine, based upon case-specific circumstances:

> {T}he determination of whether to a {*sic*} review sales of merchandise entered during the period of review hinges on such case-specific factors as whether certain sales of subject merchandise may be missed because, for example, the preceding review covered sales made during that review period or sales may not have occurred in time to be captured by the review. Additionally, the Department must consider whether a respondent has been able to link sales and entries previously for prior review periods and whether it appears likely that the respondent will continue to be able to link sales and entries in future reviews.[76]

Indeed, the courts have upheld the Department's use of a sales-based methodology; specifically, in *Hynix*, the Court of Appeals for the Federal Circuit ("CAFC") stated that "Commerce need not adopt a hybrid methodology in place of its usual sales-based methodology."[77] Given the fact-specific nature of our date of sale determination in this case and in consideration of the Department's discretion in choosing the most appropriate sales universe, we find Xugong's citations to numerous cases where the Department chose to review entries rather than sales, with different facts from this case, to be unpersuasive.

Furthermore, we disagree with Xugong's assertion that the Department should never have requested such additional information with regards to its sales universe. The Courts have upheld the Department's position, as the administering authority, to determine the relevant information to be examined.[78] The Department clearly requested that Xugong report all sales with a shipment date occurring in the POR. We do not find this request to be inconsistent with standard practice with regards to requesting additional information in the course of a review. As such, despite the protestations with respect to the propriety of the Department's request forwarded for the first time in its case brief, at no point prior to its case brief did Xugong inform the Department on the record either that it was unable to respond in full to the Department's clear request or that it did not understand the plain meaning of the request for sales information for all merchandise shipped during the POR. Xugong's ability to provide such reporting and its understanding of the essential scope of the request at the time is supported by the fact that Xugong indeed did comply and report additional sales information for all but a small subset of what was requested.

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[76] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296 (May 19, 1997), at 27314.
[77] *See Hynix*, 424 F.3d at 1368.
[78] *See Timken*, 10 CIT at 98, 630 F. Supp. at 1338 ("It is of particular importance that the administering agency itself make the required determination… rather than delegating that responsibility to an interested party, considering that the issue may be a complex one on which reasonable minds could differ").

Unlike in the *Shrimp from Thailand* case cited by Xugong,[79] here the Department's questions were clear and unambiguous and the supplemental questionnaire—instead of asking for contravening information—asked for additional information that would expand on the information Xugong provided in its first questionnaire response. Xugong's failure to comply with a portion of the supplemental questionnaire was a material failure that prevented the Department from examining a portion of Xugong's sales. Moreover, unlike in *Shrimp from Thailand*, we continue to find that Xugong failed to act to the best of its ability in this review by not reporting the full universe of sales, as requested by the Department in its unambiguous questionnaires.

In this case, we find that the application of facts available is appropriate under section 776(a)(2)(B) and (D) of the Act.[80] As discussed above, the antidumping duty questionnaires issued in this review required that Xugong report all of its relevant U.S. sales during the POR. Xugong had multiple opportunities to provide its full universe of sales, given that the Department issued multiple supplemental questionnaires to Xugong regarding its sales, in accordance with section 782(d) of the Act,[81] and Xugong purported to make adjustments to reported sales in its responses to the supplemental questionnaires.[82] Thus, based on our findings at the CEP sales verification and Xugong's failure to report all of its U.S. sales in its questionnaire and supplemental questionnaire responses,[83] Xugong possessed the necessary records to provide a complete U.S. sales database but did not conduct a comprehensive investigation of all relevant records to identify the unreported sales in a timely manner. In addition, we find that Xugong's failure to report all of its U.S. sales of in-scope products during the POR, using the information over which it maintained control at all times, indicates that Xugong did not act to the best of its ability to comply with our requests for information within the applicable time limits, and failed to provide information that could be verified.

In accordance with Section 776(a)(2)(B) and (D) of the Act and 776(b) of the Act, because Xugong failed to provide requested information, Xugong did not act to the "best of its ability" by providing inadequate responses to the Department's questionnaire requests for information.[84] Moreover, section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by

[79] *See Shrimp from Thailand* and accompanying Issues and Decision Memorandum at Comment 13; upheld by the Court in *Ad Hoc Shrimp* 33 CIT 1906, 1912, 675 F. Supp. 2d 1287, 1295.
[80] *See* 782(i) of the Act.
[81] *See* Xugong's First Supplemental C and D Questionnaire; Xugong's Second Supplemental A, C, and D Questionnaire, and Letter to Xugong "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Third Supplemental Sections C and D Questionnaire," dated June 26, 2015.
[82] *See e.g.*, Xugong's June 2, 2015, Supplemental Response.
[83] Specifically, based on our discussion with company officials at verification, it is apparent that Xugong did not provide the Department with the complete universe of its POR sales of subject merchandise in its questionnaire or supplemental questionnaire responses. *See* Xugong's Verification Report, at 12.
[84] *See* PDM at 16-19 ("Application of Partial AFA for Xugong") for the Department's complete preliminary analysis with regards to the use of AFA for Xugong's unreported sales.

failing to cooperate than if it had cooperated fully."[85] In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit ("CAFC") noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "ones maximum effort."[86] The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the "best of its ability" standard does not require perfection, and does recognizes that mistakes sometimes occur, it requires a respondent to, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question." [87]

The Department has previously declined to accept unreported sales information identified at verification and instead relied upon facts available or AFA as appropriate.[88] Hence, considering the facts described above, we continue to find that the application of AFA is appropriate under section 776(b) of the Act for these unreported sales. As AFA, we have continued to assign the unreported U.S. sales the highest dumping margin calculated for any reported CEP direct-shipped U.S. sale made by Xugong during the POR.[89]

Comment 2: Whether to Grant Qihang a Double Remedies Adjustment and What Pass-Through Rate to Use

For the *Preliminary Results*, we determined that there was a cost-to-price linkage and made an adjustment in Qihang's margin program for domestic subsides for natural rubber and for synthetic rubber.[90] We used Bloomberg production and purchase price index data for the PRC manufacturing sector as a whole to calculate a pass-through rate, which we applied to both subsidies.[91]

Petitioners' Comments:[92]

- Petitioners assert that, because all of Qihang's natural rubber was purchased from market economy ("ME") sources and, thus, Qihang did not purchase any natural rubber that had

[85] *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) ("SAA"), at 870; *see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).
[86] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373 (CAFC 2003) ("*Nippon Steel*"), at 1382-83.
[87] *Id*., at 1382.
[88] *See, e.g., Stainless Steel Sheet and Strip from Germany*, at Comment 10. In making this decision, the Department also cited a number of other cases where it applied AFA to unreported sales.
[89] *See* Memorandum to the File, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Final Results Margin Calculation for Xuzhou Xugong Tyres Co., Ltd.," dated concurrently with this memorandum ("Xugong's Final Analysis Memo").
[90] *See* PDM at "Adjustment Under Section 777A(f) of the Act."
[91] *See* Memorandum to the File, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Double Remedies Information," dated November 2, 2015 ("Preliminary Double Remedies Memorandum").
[92] *See* Petitioners' Case Brief, at 2-3.

been subsidized by the PRC government under the countervailable less than adequate remuneration ("LTAR") program, any subsidization of natural rubber by the PRC government cannot have had an effect on Qihang's cost of manufacture or reduced the U.S. price of Qihang's merchandise.[93] As such, Petitioners aver that the requirements of Section 777A(f) of the Act are not met for this program and that the Department should not make a double remedies adjustment for Qihang's purchases of natural rubber.

- Petitioners further contend that, rather than the PRC-wide Bloomberg data, the Department should use data specific to Qihang to calculate the pass-through rate applied to any domestic subsidy offset. Petitioners explain that they placed the appropriate calculations on the record, based upon input purchase data provided by Qihang and Qihang's average U.S. selling price.

Qihang's Rebuttal:[94]

- Qihang contends that the Department correctly and accurately made an adjustment to Qihang's dumping margin under 777A(f) of the Act to account for the effect of any double remedies with respect to the countervailable provision of rubber for less than adequate remuneration ("LTAR"); specifically, because it purchases other forms of rubber, including reclaimed rubber, from sources within the PRC. Qihang has demonstrated that the LTAR programs for natural and synthetic rubber impact its cost for its rubber inputs sourced in China, and the Department verified that Qihang's selling price is impacted by its raw material costs.

Department's Position: Qihang has not met the statutory requirements for an adjustment pertaining to its natural rubber inputs. Specifically, because Qihang purchased all of its natural rubber inputs from market economy ("ME") sources (rather than within the PRC), record evidence does not establish that a countervailable subsidy resulted in a reduction in the average price on imports under section 777A(f)(1)(B) of the Act.

In applying section 777A(f) of the Act, the Department examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of normal value determined pursuant to section 773(c) of the Act, has increased the weighted average dumping margin for the class or kind of merchandise.[95] For a subsidy meeting these criteria, the statute requires the Department to reduce the antidumping duty by the estimated amount of the increase in the weighted average dumping margin subject to a specified cap.[96]

[93] Petitioners also cite to *See Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) ("*PVLT Investigation*"), and accompanying Issues and Decision Memorandum at Comment 6.
[94] *See* Qihang's Rebuttal Brief, at 1-2.
[95] *See* section 777A(f)(1)(A)-(C) of the Act.
[96] *See* section 777A(f)(1)-(2) of the Act.

In order to examine the effects of concurrent countervailable subsidies in calculating Qihang's antidumping margin in this review, the Department requested that Qihang submit information with respect to subsidies relevant to their eligibility for an adjustment to the calculated weighted-average dumping margin.[97] Qihang submitted the requested questionnaire and the Department preliminarily granted an adjustment to the calculation of the cash deposit rate for ADs for Qihang, pursuant to section 777A(f) of the Act.[98] In making these adjustments, the Department did not conclude that concurrent application of non-market economy ("NME") ADs and CVDs necessarily and automatically results in overlapping remedies.[99] Rather our preliminary finding that there was an overlap in remedies, and the resulting adjustment, was based on a preliminary, case-specific analysis of the facts on the record of this segment of the proceeding, as required by the statute.[100]

Qihang reported that the LTAR programs for natural and synthetic rubber impacted its cost of manufacture.[101] Thus, we preliminarily determined that Qihang's questionnaire responses indicated a subsidies-to-cost linkage for these two LTAR programs.[102] Qihang provided information indicating that the price at which it sells subject merchandise to its customers is impacted by the cost of raw materials and energy.[103] Thus, we preliminarily determined that Qihang's questionnaire responses indicated a cost-to-price linkage for the provision of natural and synthetic rubber for LTAR.[104] Based on the foregoing analysis, we made an adjustment to the Qihang's dumping margin under section 777A(f) of the Act for program-specific "all other" subsidy rates calculated in the CVD investigation for natural rubber and synthetic rubber.[105]

However, for these final results, we have reconsidered Qihang's eligibility for an adjustment to its dumping margin for natural rubber, under section 777A(f) of the Act. Specifically, because Qihang purchased 100 percent of its natural rubber from market economy sources during the POI,[106] we determine, for these final results, that Qihang did not meet the criteria under 777A(f)(1), such that it did not receive a subsidy from the PRC government for natural rubber that could have impacted Qihang's prices.

[97] *See* Letter to Qihang, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Questionnaire," dated December 19, 2014, at 2.
[98] *See See* Qihang's Questionnaire Response "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Section C and Double Remedies Questionnaire Responses," dated February 27, 2015 ("Qihang SCDRQR"), at Double Remedies Questionnaire Response at 5.
[99] *See* PDM, at 36-37.
[100] *Id.*
[101] *See* Qihang SCDRQR, at Double Remedies Questionnaire Response.
[102] *See* PDM, at 36-37, under heading "Adjustment Under Section 777A(f) of the Act."
[103] *Id.*
[104] *Id.*
[105] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) ("*Final CVD OTR Tires Determination*") and accompanying Issues and Decision Memorandum. *See also* Preliminary Double Remedies Memorandum.
[106] *See* Qihang's Verification Report, at 19.

For these final results, we have considered the Department's findings in the *Final CVD OTR Tires Determination*.[107] Since the all-others rate for the CVD companies is based upon the parallel CVD investigation, the Department's finding in that investigation is pertinent. In the *Final CVD OTR Tires Determination*, the Department calculated the subsidy rate for the natural rubber for LTAR program based only on purchases of natural rubber produced by state owned enterprises ("SOEs"). The Department further found that imports of "natural… rubber are not countervailable."[108] As aforementioned, the Department verified during the course of this investigation that Qihang imported 100 percent of its natural rubber during the POR and, therefore, had no POR purchases of natural rubber from Chinese SOEs.[109] As Qihang had no countervailable purchases of natural rubber, it cannot qualify for an adjustment to its dumping margin for natural rubber purchases.

Qihang contends that the LTAR program for natural rubber impacts its sourcing of rubber materials in the PRC, regardless of the origin of those materials. We note that there is no evidence on the record of this administrative review to support the premise that domestic market prices for natural rubber supplied by either domestic or imported sources are distorted due to GOC involvement. In fact, in the *Final CVD OTR Tires Determination* and the more recent *Final CVD PVLT Tires Determination*, the Department determined that the GOC did not control the rubber market in China. Furthermore, in the *Final CVD PVLT Tires Determination*, we found that imported natural rubber accounted for 67 percent of the market and utilized import prices as a tier-one benchmark to calculate subsidy rates for the natural rubber LTAR program.[110] Therefore, based on the aforementioned findings, although the cost of Qihang's natural and synthetic rubber inputs may affect the price set for its merchandise, record evidence does not support a finding that those input costs themselves are affected by the natural rubber for LTAR program because the first link in the subsidy-to-cost-to-price chain is broken. Thus, for Qihang's natural rubber input, 100% of which was purchased from market economy sources, we determined that there is no connection between the cost of the goods sold and LTAR program.

Thus, for these final results, while we have continued to grant Qihang an adjustment to their dumping margin for synthetic rubber, under section 777A(f) of the Act (because Qihang had purchases of synthetic rubber from domestic sources), we are not making an adjustment with respect to natural rubber for Qihang, under section 777A(f) of the Act, because Qihang has not met all the requisite criteria, as explained above.

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[107] *See Final CVD OTR Tires Determination* and accompanying Issues and Decision Memorandum at D.5.
[108] *Id*.
[109] *See* Qihang's Verification Report, at 19.
[110] *See* Qihang's Verification Report, at Comment D.6. *See also Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Affirmative Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 79 FR 71093 (December 1, 2014) and accompanying Preliminary Decision Memorandum at page 43, unchanged in the *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying Issues and Decision Memorandum at "6b. Provision of Natural Rubber for LTAR" At 27-28.

With regards to the subsidy pass-through rate for synthetic rubber, for these final results, we continue to use the Bloomberg data, consistent with the Department's past methodology as discussed in, *e.g.*, the *PVLT Investigation*, because the Bloomberg data provides a broad measure of variable costs.[111]

We find that Petitioners' proposed alternative provides a flawed comparison of PRC imported input prices to U.S. import prices of subject merchandise. Petitioners propose that we calculate pass-through on the basis of changes in Qihang's costs of specific market-economy inputs and the price of Qihang's U.S. sales of the subject merchandise.[112] Although the specific inputs are significant (*i.e.*, natural and synthetic rubber), collectively they do not constitute a broad measure of variable cost and are therefore not a meaningful basis for approximating pass-through.[113] The pass-through concept relates total variable cost to price and concerns how changes in the former affect the latter; it is not a concept that relates individual variable cost components to price.[114] That is not to say that changes in the cost of certain cost components do not affect total variable cost; only that the actual calculation of the pass-through rate must be based on (changes in) a total variable cost measure (or some reasonable proxy thereof).[115] The flaw of basing a pass-through calculation on partial or limited variable cost measures is evidenced in Petitioners' widely divergent results for pass-through calculations of changes in the prices of styrene rubber, butadiene rubber, and natural rubber.[116] These results do not and cannot reasonably approximate pass-through because they are not based on a proper measure of total variable cost, a requirement explained above. The Department also finds the Petitioner's proposed pass through rate in this instance troubling because we consider natural rubber and synthetic rubber complementary inputs for tire production.[117] These widely divergent results for two complementary inputs suggest other factors are affecting Petitioners' data.

Conversely, the Bloomberg data was calculated as a ratio of changes in a production price index to changes in a purchasing price index of raw materials, fuels, and power (purchasing price index). The purchasing price index is a broad measure of variable cost, and the production price index measures changes in ex-factory prices, *i.e.*, prices that are not specific to any market, but common to all markets (foreign and domestic), and set by the producer before any market specific add-ons.[118] The broad cost measure that the purchasing price index represents and the "matched" or "paired" nature of the Bloomberg cost and price data—the same (surveyed) enterprises report both the cost and price data—are necessary features of any data that the Department would use for the pass-through calculation.[119] Although the Bloomberg data is

[111] *See PVLT Investigation* and accompanying Issues and Decision Memorandum, at Comment 7.
[112] *See* Letter from Petitioners "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners' Pre-Preliminary Determination Comments," dated September 4, 2015 ("Petitioners' Pre-Prelim Comments"), at 36-40 and Attachment 1.
[113] *See, e.g., PVLT Investigation* and accompanying Issues and Decision Memorandum at Comment 7.
[114] *See* Petitioners' Pre-Prelim Comments"), at 36-40 and Attachment 1.
[115] *See, e.g., PVLT Investigation* and accompanying Issues and Decision Memorandum at Comment 7.
[116] *See* Petitioners' Pre-Prelim Comments, at Attachment 1.
[117] *See, e.g., PVLT Investigation* and accompanying Issues and Decision Memorandum, at Comment 7.
[118] *Id*.
[119] *Id*.

aggregated, it exhibits these features. Thus, for the final results, we continue to use a pass-through ratio constructed from the Bloomberg data.

Comment 3: Whether to Adjust Xugong's U.S. Prices for Irrecoverable VAT

For the *Preliminary Results*, we removed from Xugong's U.S. price the difference between the standard VAT levy of 17 percent and the rebate rate for subject merchandise of nine percent (*i.e.*, eight percent), which is the irrecoverable VAT as defined under Chinese tax law and regulation.[120]

Xugong's Comments:[121]

- Xugong asserts that the Department's treatment of value-added tax ("VAT") in its U.S. net price calculation is contrary to the unambiguous statute, which, Xugong contends, pertains to export taxes, and not VAT An exporter of subject merchandise from the PRC, it claims, may incur a net cost for VAT, which it paid on purchases of raw materials used to produce subject merchandise but not from the exportation of the subject merchandise. Xugong further argues that the statute does not authorize the Department to adjust for unrebated VAT.[122]Xugong also argues that, if the Department continues to make any deduction for VAT, the Department should rely upon the actual non-refundable VAT incurred by Xugong on its purchase of material inputs, which Xugong reported to the Department.
- Xugong avers that the Department's VAT calculation (*i.e.*, input VAT of 17% minus the refund rate of 9%) does not accurately take into account the nature of a value added tax system because, in addition to the material inputs, the value-added portion of the tax also includes labor, energy, and technical expertise and it is the final good which for which the refund rate is calculated and rebated; thus, the resulting 8% un-refunded portion, as calculated by the Department, overstates the actual liability incurred by Xugong on exports and is a mathematical impossibility.

Petitioners' Rebuttal:[123]

- Petitioners counter that, on multiple occasions, the Department has rejected the claim that it lacks the authority to adjust for irrecoverable VAT imposed by an NME government.[124] In this instance, it argues, Xugong's difference in recovery rates withheld by the PRC

[120] *See* PDM, at 32.
[121] *See* Xugong's Case Brief, at 52-57.
[122] Xugong also cites to *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984) ("*Chevron*").
[123] *See* Petitioners' Rebuttal Brief, at 40-42.
[124] Petitioners cite, *OTR Tires AR6 Final* and accompanying Issues and Decision Memorandum at 27-29; *Helical Spring Lock Washers From the People's Republic of China*, 79 FR 66356 (November 7, 2014) and accompanying Issues and Decision Memorandum at 16-17; *Frontseating Service Valves From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014) ("*FSVs 2012-2013*") and accompanying Issues and Decisions Memorandum at Comment 5; *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014) ("*SDGE 2012-2013 Final*") and accompanying Issues and Decisions Memorandum at Comment 7.

government was an "other charge" that arose only because of the export decision, and so the Department must make an adjustment for it under Section 772(c)(2)(B).

- Additionally, Petitioners contend that the Department has established that its practice is to reject firm-wide allocations of VAT across all company sales, such as the firm-wide VAT calculation that Xugong provided in its questionnaire response.[125]

Department's Position: For the reasons explained below, we continue to make the adjustment to U.S. price for irrecoverable VAT that we used in the *Preliminary Results* tfor Xugong. Furthermore, we have made no changes to our application of VAT for Qihang, which we explained for the *Preliminary Results* and on which no party commented in their case briefs.[126]

In 2012, we announced a change of methodology with respect to the calculation of the EP or CEP to include an adjustment for irrecoverable VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[127] In this announcement, the Department stated that when a NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.[128]

In a typical VAT system, companies incur no VAT expense; they receive on export a full rebate of the VAT which they pay on purchases of inputs used in the production of exports ("input VAT"), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.[129] That stands in contrast to the PRC's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[130] Thus, this amounts to an export tax, duty, or other charge imposed on exported merchandise that is not imposed on domestic sales and we, accordingly, disagree with the respondents' assertions that irrecoverable

[125] Petitioners cite, *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) ("*Diamond Sawblades 11-12*"), and accompanying Issues and Decision Memorandum, at Comment 6*; Steel Wire Garment Hangers From the People's Republic of China*, 79 FR 65616 (November 5, 2014) ("*Steel Wire Garment Hangers*") and accompanying Issues and Decisions Memorandum at 22*; Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) ("*Prestressed Wire/PRC*") and accompanying Issues and Decisions Memorandum at 10.

[126] *See* PDM, at 31-32.

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

[128] *Id.*, 77 FR at 36483; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum, at Comment 5.

[129] *See, e.g.*, *Diamond Sawblades 11-12*, and accompanying Issues and Decision Memorandum, at Comment 6; *Section 772(c)(2)(B) Methodological Change*, 77 FR at 36483.

[130] *See* Xugong's February 27, 2015, Initial Section C Response, at 57-59 and Exhibit C-15; Xugong's June 2, 2015, Supplemental Response, at Exhibit SQCD-16; and Submission from Qihang, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Section C and Double Remedies Questionnaire Responses," dated February 27, 2015 ("Qihang's February 27, 2015, Initial Section C Response"), at 43-50 and Exhibit C-6. *See also Methodological Change*, 77 FR at 36483.

VAT should not be deducted from their U.S. prices. Where the irrecoverable VAT is a fixed percentage of U.S. prices, the Department has explained that the final step in arriving at a tax-neutral comparison of NV with EP or CEP is to reduce the U.S. price downward by this same percentage.[131]

Irrecoverable VAT is (1) the free-on-board value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods.[132] The first variable, export value, is unique to each respondent and sale while the rates in (2) and (3), as well as the formula for determining the amount of irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.[133] Xugong cites the "*Interim Regulations of the People's Republic of China on Value-Added Tax* (Rev. 2008)" for support that its tax rate should be zero. However, nowhere in the documents on the record does it say that exporters of OTR tires should not be liable for VAT upon export of the merchandise, and Xugong does not point to a specific exhibit number or page number where this information can be found on the record. To the contrary, the record makes clear that exporters of OTR tires will pay 17 percent VAT and be refunded only nine percent (*see* below).

Xugong's reliance on *Chevron* is misplaced. The United States Supreme Court in *Chevron* held that "{w}hen a court reviews an agency's construction of the statute which it administers, it is confronted with two questions."[134] The Supreme Court explained that the first question is "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter…the agency must give effect to the unambiguously expressed intent of Congress."[135] Xugong argues that Section 772(c)(2)(B) of the Act clearly does not intend to authorize the Department to deduct from EP or CEP amounts not "refunded" as VAT. We disagree with Xugong's claim that we do not have the statutory authority to adjust for irrecoverable VAT, or that our methodology unlawfully interprets section 772(c)(2)(B) of the Act. Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise.

Xugong misstates what is at issue: the issue is that the irrecoverable VAT, not VAT *per se*, amounts to an export tax. Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.[136] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[137] The statute does not define the terms "export tax, duty, or other charge imposed" on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a

[131] *See Section 772(c)(2)(B) Methodological Change* (June 19, 2012), 77 FR at 36483.
[132] *See Prestressed Wire/PRC* and accompanying Issues and Decision Memorandum, at Comment 1, n. 35.
[133] *Id.*, at Comment 1, n. 36.
[134] *See Chevron*, 467 U.S. 837, 842 (1984).
[135] *Id*., at 843.
[136] *See SDGE 2012-2013 Final* and accompanying Issues and Decision Memorandum, at Comment 7.
[137] *See, e.g., Diamond Sawblades 11-12* and accompanying Issues and Decision Memorandum at Comment 6 and *FSVs 2012-2013* and accompanying Issues and Decision Memorandum, at Comment 5.

cost imposed by the government that arises as a result of the exportation of the subject merchandise. The irrecoverable VAT is set forth in PRC law and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise.[138] Further, an adjustment for irrecoverable VAT achieves what is described under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax neutral net price received by the seller. This deduction applied to Xugong's U.S. prices is consistent with our longstanding policy, consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[139]

We disagree with Xugong that its proposed alternative calculation for the treatment of its VAT liability is more accurate because it reconciled its monthly input VAT and the monthly sales revenue.[140] This calculation is insufficient because we requested Xugong to reconcile its irrecoverable VAT reported to its VAT tax returns.[141] Our practice is that we will not consider allocations across all company sales or across sales of products with different VAT schedules but, rather, to use the difference between the VAT rate and the refund rate for the subject merchandise, consistent with PRC regulations, unless the company can show otherwise.[142] Xugong has not done so. Our irrecoverable VAT calculation methodology, as applied in this review, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Information placed on the record of this review by both Xugong and Qihang indicates that according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is nine percent.[143] For the purposes of these final results, therefore, we removed from U.S. price the difference between these rates (*i.e.*, eight percent), which is the irrecoverable VAT as defined under PRC tax law and regulation.[144]

In our questionnaire to Xugong we informed them that if the irrecoverable VAT amount reported is not directly derived as the difference between the standard VAT levy of 17 percent and the rebate rate for subject merchandise of nine percent, then they would need to: 1) explain in detail why and provide worksheets demonstrating how to calculate the irrecoverable VAT; 2) reconcile the worksheets to the translated VAT returns provided and provide a detailed narrative explanation that describes the calculations shown in the worksheets; and 3) for each reconciling item reported in the worksheets, provide documentation and a citation to the PRC laws and regulations to fully support the reason for the reconciling item.[145] However, Xugong did not provide this information, and the limited information they did provide would result in an

[138] *See, e.g., SDGE 2012-2013 Final* and accompanying Issues and Decision Memorandum, at Comment 7.
[139] *See* Article 5(3) of Circular 39 that states, "(3) Where the Tax Refund Rate is lower than the applicable tax rate, the amount of tax calculated according to the difference in rates shall be included in the costs of the Exported Goods and Services."; *See Section 772(c)(2)(B) Methodological Change* (June 19, 2012), 77 FR at 36483, and *Final Rule* (May 19, 1997) 62 FR at 27369 (citing the SAA).
[140] *See* Xugong's February 27, 2015, Initial Section C Response, at 57-59 and Exhibit C-15.
[141] *Id.*, at 58.
[142] *See, e.g., Diamond Sawblades 11-12* and accompanying Issues and Decision Memorandum, at Comment 6; *see also, Steel Wire Garment Hangers* and accompanying Issues and Decision Memorandum, at Comment 3.
[143] *See* Xugong's February 27, 2015, Initial Section C Response, at 57-59.
[144] *See, e.g., Prestressed Wire/PRC* (May 5, 2014) and accompanying Issues and Decision Memorandum, at Comment 1.
[145] *See* Xugong Initial Questionnaire, at C-33.

adjustment for irrecoverable VAT based on non-product specific data. For the calculation of irrecoverable VAT we will not consider allocations across all company sales or across sales of products with different VAT schedules.[146] Indeed, Xugong did not claim or offer any evidence that it was rebated VAT at more than the standard nine percent on their export sales of subject merchandise. With respect to Xugong's assertion that it provided the exact type of reconciliation to its VAT returns that the Department requested in its VAT questionnaire, we note that our request was for parties to reconcile the amount of irrecoverable VAT reported to its VAT tax returns, but Xugong only reconciled the input and output VAT to their tax returns and, as such, did not provide the reconciliation requested.[147]

Xugong's proposal to calculate a "net" or "effective" VAT position company-wide[148] significantly reduces the impact of the product-specific VAT by spreading it across products with potentially different VAT schedules and across domestic sales. The Department's deduction of product-specific irrecoverable VAT from the U.S. price of the subject merchandise is a more reasonable and accurate methodology because the export tax, duty, or other charge is a product-specific expense that is directly linked with the exportation of the subject merchandise.[149] Xugong's methodology, in contrast, effectively ignores this direct link and dilutes the product-specific VAT effect as previously explained. Additionally, Xugong's methodology is distorted by timing differences that occur between the amount of VAT-in, VAT-out, and the receipt of the VAT refund, as well as the varying rebate rates on subject and non-subject merchandise. Therefore, employing such a methodology would introduce distortion into the dumping margin calculation and obfuscate the true "apples-to-apples" comparison of U.S. price with normal value on a product-specific, tax-exclusive basis.[150]

We disagree with Xugong's mathematical argument, asserting that the Department's VAT calculation formula is not reflective of the actual amount of irrecoverable VAT on Xugong's exports of the subject merchandise. The PRC VAT regulations explicitly define how irrecoverable VAT is calculated, based on the FOB value of the exported good applied to the difference in the VAT levy and refund rates.[151] There is no reference in this formula to the purchase price or purchase value of inputs or raw materials used in production. Moreover, Xugong did not cite to any relevant provision under PRC tax law on this record that supports relying on a different formula or basis for determining irrecoverable VAT. In addition, we note that the calculation formula used for the *Preliminary Results* and in these final results properly calculates irrecoverable VAT based on an FOB export value because this FOB value is based on the net FOB U.S. price, exclusive of all expenses and adjustments incurred after the merchandise

[146] *See, e.g., Prestressed Wire/PRC* (May 5, 2014) and accompanying Issues and Decision Memorandum, at Comment 1.
[147] *See* Xugong's February 27, 2015 Initial Section C Response, at 57-59 and Exhibit C-15.
[148] *See, e.g.*, Xugong's February 27, 2015, Initial Section C Response, at 57-59 and Exhibit C-15; Xugong's June 2, 2015, Supplemental Response, at Exhibit SQCD-16; and Qihang's February 27, 2015, Initial Section C Response, at 43-50 and Exhibit C-6.
[149] *See, e.g., Prestressed Wire/PRC* (May 5, 2014) and accompanying Issues and Decision Memorandum, at Comment 1.
[150] *Id*.
[151] *See*, Xugong's June 2, 2015, Supplemental Response, at Exhibit SQCD-16.

left the port of exportation in the PRC.[152] Accordingly, we find no support for Xugong's argument that the Department improperly calculated irrecoverable VAT or that the Department's calculation is not reflective of the actual amount of irrecoverable VAT on Xugong's exports of the subject merchandise.

19 CFR 351.401(c) requires that the Department rely on price adjustments that are "reasonably attributable to the subject merchandise." The PRC's VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. Irrecoverable VAT is a product-specific export tax, duty, or other charge that is incurred on the exportation of subject merchandise. Thus, our analysis is consistent with our current irrecoverable VAT policy and our treatment of irrecoverable VAT in recently completed NME cases.[153] Therefore, we have not altered our irrecoverable VAT adjustment methodology for these final results.

Comment 4: Treatment of Xugong's Market Economy Purchases

As reported and confirmed at verification, Xugong purchased certain quantities of inputs from a market economy.[154] As these were less than 85 percent of the total purchases of inputs, for the *Preliminary Results* we weight-averaged the market economy purchase ("MEP") value actually paid with the selected surrogate value for the purposes of factor valuation, consistent with our standard practice.[155] Furthermore, we preliminarily used the World Bank's *Doing Business in the PRC* publication to adjust the price of these inputs to include the cost of customs clearance and inspections.

Petitioners' Comments:[156]

- Petitioners argue that the Department was unable to verify certain of Xugong's MEPs and should thus not rely upon them for the final results.
- Petitioners further assert that, if the Department does use certain of Xugong's MEPs, that the Department should change the manner in which it made an adjustment to the reported MEP price.

Xugong's Rebuttal:[157]

- Xugong rebuts that the Department did successfully verify Xugong's MEPs that it used for the *Preliminary Results*, and that the Department should reject Petitioners' arguments and continue to use the MEPs as reported.
- Xugong contends that there is no record indication that Xugong is responsible for "documents preparation" or for "ports and terminal handling" for its MEPs, and thus the Department should not include these in any adjustment to Xugong's MEP prices.

[152] *See* PDM at 31-32.
[153] *See, e.g., Certain Polyester Staple Fiber From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4542 (January 28, 2015) and Issues and Decision Memorandum, at Comment 6; *Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013* (January 28, 2015) and Issues and Decision Memorandum, at Comment 4.
[154] *See* Xugong's Verification Report at 21.
[155] *See* Xugong's Preliminary Analysis Memorandum at 7-9.
[156] *See* Petitioners' Case Brief, at 3-7.
[157] *See* Xugong's Rebuttal Brief, at 1-4.

Department's Position: We continue to value a portion of Xugong's MEPs using the reported MEP prices, because, contrary to Petitioners' assertions, we were able to completely verify the quantity and value and the country of origin of the material input.[158] Furthermore, we have added customs clearance and inspection costs to the price, using the World Bank's *Doing Business in Thailand 2015*.[159]

At verification, Department officials noted two small discrepancies between Xugong's reported MEP amounts and actual records at verification. First, we were not able tie the reported quantity of the MEP purchase of a certain input, as a percent of the total, precisely with Xugong's records (*i.e.*, the reported quantity, as a percent of the total, was approximately 0.3 percent *less* than the verifiers' calculation), but this appeared to be due to a clerical mathematical error on the part of Xugong. Further, the understated amounts as reported—which continue to be used for the margin calculations in these final results—ultimately work against Xugong's interest by marginally increasing the calculated rates (*i.e.*, when compared to those that would be calculated from the Department's calculations at verification)). Second, we noted that the *reported* tariff number of the input was not the same as the tariff number found on the purchase/import documentation for MEPs of that input.[160]

With regards to discrepancy in tariff numbers, as explained by company officials and detailed in the verification report, this is merely a case of the number provided (by Xugong's supplier) not fitting in exactly with the tariff category Xugong reported to the Department based on its opinion as to the most appropriate category to value the input.[161] Thus, although there may have been a discrepancy between the tariff number Xugong reported for this MEP in its MEP spreadsheet and how its foreign supplier chose to classify it for customs purposes, we do not agree with Petitioners that this represents a true discrepancy with respect to Xugong's reporting for AD purposes.[162] Indeed, as discussed at verification, Xugong's reporting the tariff category as it did for MEP purposes resulted from its desire to have the MEP purchase of the input match the tariff number suggested for surrogate valuation purposes of that input elsewhere in Xugong's reporting, and not to the tariff number on the customs declaration for the MEP over which Xugong has no control.[163] With regards to Petitioners' concern that some of the certificates of origin list the input with slightly different names, we agree with Xugong's analysis that this difference appears to be inconsequential because; (1) the actual invoice from the seller to Xugong states the name of the ingredient (which matches with the description of the input in Xugong's reporting), (2) the tariff number for both was identical, and (3) there is no other record

[158] *See* Xugong's Verification Report, at 21.
[159] *See* Xugong's Final Analysis Memo.
[160] *See* Xugong's Verification Report, at 21.
[161] *Id*. In fact, the description of the input given by Xugong appears to better match the customs declaration category. *See also* Xugong's Final Analysis Memo for further proprietary discussion of this input and the most appropriate tariff category.
[162] *See*, 19 CFR 351.408(c)(1): "where a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in market economy currency, the Secretary normally will use the price(s) paid to the market economy supplier(s)" or, if less than 85 percent of total volume , "the Secretary normally will weight-average the actual price(s) paid for the market economy portion and the surrogate value for the nonmarket economy portion by their respective quantities."
[163] *See* Xugong's Verification Report, at 21, and Xugong's Case Brief, at 47-51.

evidence indicating a consequential difference between these materials.[164] Moreover, this was not noted as an issue in the verification report and Xugong reported that it consumed this material for the same purpose, even if the certificates of origin described it in slightly different manners.[165]

With regards to adjustment to the MEP purchase price, we agree with Petitioners and Xugong that, pursuant to the Department's nonmarket economy methodology, the World Bank's *Doing Business in the PRC* is an inappropriate source from which to value import handling costs.[166] Accordingly, for these final results, we have relied on values reported in *Doing Business in Thailand 2015*.

In addition to inland freight, there are three other costs associated with importing merchandise in *Doing Business in Thailand 2015*; (1) customs clearance and inspections, (2) documents preparation, and (3) ports and terminal handling. Petitioners' proposed calculation of importation costs includes these three fees, whereas Xugong asserts that the inclusion of the latter two fees overstates the costs. We have reviewed Xugong's explanation of fees incurred, which clearly indicates that the seller necessarily covers some of the cost, and further reviewed the relevant supporting documentation, and agree that there is no record evidence that Xugong is responsible for either "documents preparation" or for "ports and terminal handling."[167] Moreover, Xugong's explanation of its importation procedures clearly indicates that the seller necessarily covers the cost of ports and terminal handling fees and documents preparation. Thus, for these final results, we have included an adjustment only for customs clearance and inspection from *Doing Business in Thailand 2015*.[168]

Comment 5: Whether the Department Should Apply the Separate Rate Calculated in this Review to TWS Xingtai

As discussed below, TWS Xingtai requested to be a mandatory respondent and, subsequent to respondent selection, repeatedly advocated for consideration as a voluntary respondent. TWS Xingtai timely filed complete voluntary questionnaire responses. In the *Preliminary Results*, the Department determined that it was unduly burdensome to review TWS Xingtai as an additional respondent.

[164] *Id.*, at 21 and EP Verification Exhibit 18. *See also* Xugong's Rebuttal Brief, at 2.
[165] *See* Xugong Verification Report, at 21.
[166] *See* PDM at 33 and 36.
[167] *See* Xugong's Rebuttal Brief, at 3-4. *See also* Xugong's June 2, 2015, Supplemental Response, at 23-24 and Letter from Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Third Supplemental C and D Questionnaire Response the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated July 9, 2015 ("Xugong's July 9, 2015, Supplemental Response"), at 7-8.
[168] *See* Xugong's Final Analysis Memo.

TWS Xingtai's Comments:[169]

- TWS Xingtai argues that the Department unlawfully refused to accept it as both a mandatory and voluntary respondent.
- TWS Xingtai asserts that the Trade Preferences Extension Act of 2015 ("TPEA") does not apply to the Department's respondent selection in this proceeding because it would be a retroactive application of the law, and the Department had determined it did not have the resources to examine more than two mandatory respondents in its *Preliminary Results* which were effective in December 2014.[170]
- TWS Xingtai argues that Xugong and Qihang are not representative of its own experience and, relying on the CIT's 2015 decision in *Husteel*, thus inappropriate proxies for the purposes of collecting antidumping duties. Specifically, because TWS Xingtai is entirely foreign-owned, unlike the mandatory respondents, the separate rate margin calculated using Xugong's and Qihang's data is not a fair representation of TWS Xingtai's actual dumping margin.[171]
- TWS Xingtai asserts that the Department should either base TWS Xingtai's margin on its own data and calculations (which are on the record) or should assign TWS Xingtai the zero margin that was calculated in their 2013 new shipper review.

Petitioners' Rebuttal:[172]

- Petitioners assert that the Department met all relevant statutory requirements in declining to select TWS Xingtai as either a mandatory or voluntary respondent and properly assigned TWS Xingtai the all-others rate as directed by statute, further the situation in this review is not like that in *Husteel*, because here there is no issue of a different category of subject merchandise, and TWS Xingtai points to no difference between it and the selected respondents that rises to the level present in *Husteel*.
- Petitioners assert that, in determining whether to accept if a voluntary respondent will be a burden in a proceeding, the Department must be able to reasonably judge what burden it faces in that proceeding.
- Petitioners further state that the Department's wait to determine TWS Xingtai's respondent status has brought this proceeding within the purview of the TPEA as its December 16, 2014 determination was solely for the selection of mandatory respondents, not the rejection of TWS Xingtai as a voluntary respondent – a later deadline for which TWS Xingtai made

[169] *See* TWS Xingtai's Case Brief, at 2-23; citing to *Husteel Co. v. United States*, 98 F. Supp. 3d 1315, (CIT 2015) ("*Husteel Co.*") (FN 7 -10, 12) (quoting *Mid Continent Nail Corp. v. United States*, 949 F. Supp. 2d 1247 (CIT 2013); *Grobest & I-Mei Industrial (Vietnam) Co. v. United States* 15 815 F. Supp. 2d 1342 (CIT 2012) ("*Grobest I*"); *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Review, 2012-2013*, 79 FR 57,047 (September 24, 2014), an accompanying Issues and Decision Memorandum, at 57 ("*Warmwater Shrimp from Vietnam*").

[170] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 802 F.3d 1339, 1349 (Fed. Cir. 2015) ("*Ad Hoc Shrimp*").

[171] TWS Xingtai cites to: *Husteel* (quoting *United States v. Eurodif S.A.*, 555 U.S. 305, 317-18 (2009)), at pages 17-23 and *Baroque Timber Indus; (Zhongshan) Co., Ltd. v. United States*, 971 F. Supp. 2d 1333, 1344 (CIT 2014) ("*Baroque Timber*"); *Navneet Pubs. Ltd. v. United States*, 999 F. Supp. 2d 1354, 1364 (CIT 2014) ("*Navneet Publications*"); and *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013) ("*Bestpak*").

[172] *See* Petitioners' Rebuttal Brief, at 42-52.

submissions and for which it did not decide until the *Preliminary Determination*.[173] Petitioners argue that the Department should apply the separate rate margin calculated in this review to TWS Xingtai and should not use the margins proposed by TWS Xingtai as TWS Xingtai fails to point to any meaningful differences between it and the mandatory respondents that were chosen, the Department's determination to select the two largest exporters as mandatory respondents was proper.

Department's Position: For the reasons discussed in our *Preliminary Results* and reiterated below,[174] we continue to assign TWS Xingtai the separate rate margin determined for the final results of this review (*i.e.*, the weighted-average margin of the two fully participating mandatory respondents, neither of whose margin is based entirely on facts available or AFA).

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the review. When the Department limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: (1) the information is submitted by the due date specified for the mandatory respondents and (2) the number of such companies subject to the review is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the review. Though Petitioners' reference to *Grobest I* and *Husteel* reference a higher standard for declining to accept a voluntary respondent, the Court explained this is "a requirement that Commerce rely on something other than its initial decision to limit the number of mandatory respondents when analyzing requests for voluntary respondents," when determining if reviewing a voluntary respondent would add an undue burden.[175] In fact, unlike *Warmwater Shrimp from Vietnam* where TWS Xingtai states the Department's "burden turned out to be less than expected,"[176] the Department's burden increased after TWS Xingtai submitted their questionnaire responses. The Department had to issue multiple supplemental questionnaires to both respondents, as well as review and verify information from two collapsed entities along with both EP and CEP sale for respondent Xugong.[177]

On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to section 782(a) of the

[173] Petitioners cite to: *Grobest I*, at 1364.
[174] *See* PDM, at 6-10, under the heading "Respondent Selection and Determination Not to Select TWS Xingtai as a Voluntary Respondent."
[175] *See Husteel*, at 1335. There the CIT stated the Department met this requirement when it "gave specific reasons for why examining any additional respondents "would be unduly burdensome and inhibit the timely completion of the investigation." *Id.* at 1336.
[176] *See* Xugong's Case Brief at 12, citing *Warmwater Shrimp from Vietnam*, at 57.
[177] *See* PDM, Xugong's Preliminary Analysis Memorandum, and Preliminary Collapsing Memo.

Act.[178] The amendments to the Act are applicable to all determinations made on or after August 6, 2015. In *Ad Hoc Shrmip* the Court supported this fact, stating that the TPEA's application was prospective.[179] Therefore, because the *Preliminary Results* were signed on September 30, 2015, the TPEA applies to this review.[180] TWS Xingtai is under the impression that the determination date is December 16, 2014; however, TWS Xingtai is mistaken. On that date, the Department only determined the number of mandatory respondents it would select.[181] Furthermore, nothing in the Department's statement suggests that it also rejected TWS Xingtai as a voluntary respondent, at that time.[182] It is clear that in its December 16, 2014 Respondent Selection Memorandum, the Department stated that it would make the decision on the acceptance of voluntary respondents at a later date, if such respondents met all applicable deadlines.[183] Moreover, TWS Xingtai relied on this statement, as evidenced by its submission of material after the December 16, 2014 date, which it now claims to be the date the Department made its determination not to select TWS Xingtai as a voluntary respondent.[184] Accordingly, because we have found that the TPEA applies in the instant case, the cases cited by TWS Xingtai in support of this argument are not applicable to this review.[185] We note that because we find the TPEA to apply to this review and the determination date to fall after August 6, 2015, in *Ad Hoc Shrimp* the Court both specified that it left open the question of whether a decision would have an "impermissible retroactive effect based upon events occurring prior to the effective date," and noted that Commerce had found it would not."[186]

We agree that nothing states the Department's "discretion to choose between the two methodologies specified in {777A(c)(1) of the Act} is wholly unfettered, or that 'representativeness' could never constrain Commerce's ability to rely on {777A(c)(2)(B) of the Act} or affect a determination as to whether a specific number of exporters and producers is 'reasonable' given the facts of a particular case,"[187] but, unlike in *Husteel*, the two respondents selected are representative of producers of OTR Tires, as TWS Xingtai does not produce a distinct type of tire or have a production process and, even though it is wholly-foreign owned,

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[178] *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 International Trade Commission. *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*").

[179] *See Ad Hoc Shrimp*, at 1349-1352.

[180] *Id*., 80 FR at 46794-95. The 2015 amendments may be found at https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl.

[181] Respondent Selection Memo at 6.

[182] *Id*. at 8.

[183] *Id*.

[184] TWS Xingtai's Case Brief at 13.

[185] TWS Xingtai cites to *Yangzhou Bestpak*, 716 F. 3d at 1378 (quoting *United States v. Eurodif S.A.*, 555 U.S. 305, 317-18 (2009); *Baroque Timber Indus. (Zhongshan) Co., Ltd. v. United States*, 971 F. Supp. 2d 1333, 1344 (CIT 2014); *Navneet Pubs. Ltd. v. United States*, 999 F. Supp. 2d 1354, 1364 (CIT 2014).

[186] *See Ad Hoc Shrimp*, at 1351, footnote 12, citing *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46794 (August 6, 2015).

[187] *See Husteel*, at 1332.

the pricing does not differ significantly from these selected respondents.[188] *Baroque Timber* also does not apply to this case, as there the Department was applying a total AFA rate based on non-cooperation to a cooperating, responsive company.[189] In this proceeding we are applying a rate calculated based on two cooperating companies who are "representative of the industry, and therefore of the separate rate respondents"; thus the rate is not "cherry-picked" from a "single data point" and, being drawn from a large universe of sales which are representative of off-the-road tire manufacturers' experiences, bears a relationship to TWS Xingtai's economic reality.[190] Additionally, the Court was also concerned in *Navneet Publications* that the all-others rate "reflects the economic reality of the all-others rate respondents," in a situation where a total AFA rate was applied, and a margin was calculated on a selected sale which "constituted but one sale out of many other non-dumped sales."[191] Again, the rate calculated in this proceeding is drawn from a large universe of sales which are representative of off-the-road tire manufacturers' experiences, and bears a relationship to TWS Xingtai's economic reality.

Under Section 782(a) of the Act as recently amended by the TPEA, in determining whether it would be unduly burdensome to examine a voluntary respondent, the Department may consider 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of these investigations and reviews.

On December 16, 2014, the Department determined, pursuant to section 777(c)(2) of the Act, that it was not practicable to fully investigate each of the companies for whom the Department initiated an administrative review. Thus, in accordance with section 777(c)(2)(B) of the Act, the Department selected as mandatory respondents the two companies accounting for the largest volume of exports during the POR for which reviews were requested, Xugong and GTC.[192] Subsequent to GTC's withdrawal from the instant administrative review, the Department reevaluated the information on the record and selected the remaining largest two exporters of the merchandise as mandatory respondents, Qihang and Xugong.[193] TWS Xingtai was not one of the two largest exporters of subject merchandise during the POR.[194]

[188] *Id.*, at footnote 12.
[189] *See Baroque Timber*, at 1343-1344.
[190] *Id.*
[191] *See Navneet Publications*, at 1361, and 1364.
[192] *See* First Respondent Selection Memo.
[193] *See* Second Respondent Selection Memo. A second memo was necessary as GTC, one of the original companies selected, withdrew from the review. Qihang, the third largest producer, was selected in its place. Although the Department selected Qihang as a mandatory respondent following GTC's withdrawal, we specified that there has been no change in circumstance that would warrant the Department to revisit its determination that it would not be practicable to individually examine all requested producers and exporters, and that the Department could examine no more than two producers or exporters of subject merchandise.
[194] For further detail with respect to TWS Xingtai's comments on respondent selection and the Department's decision to select the two largest exporters, and not TWS Xingtai, as mandatory respondents, *see* the First and Second Respondent Selection Memos.

The Department also noted that, if it received voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), it would evaluate the circumstances at that time in deciding whether to select an additional respondent for examination.[195] On October 30, 2014, the Department received a timely request from TWS Xingtai to be treated as a voluntary respondent.[196] Between January 8, 2015, and January 26, 2015, TWS submitted timely responses to the Department's initial questionnaire. Moreover, on September 11, 2015, TWS Xingtai submitted further comments requesting that the Department calculate an individual margin for TWS Xingtai for the *Preliminary Results*.[197]

Although TWS Xingtai timely submitted the information required by section 782(a)(1) of the Act, the Department concluded, for the *Preliminary Results*, that it would be unduly burdensome and inhibit timely completion of this review to select and review TWS Xingtai as a third respondent.[198] Specifically and as initially explained in the First and Second Respondent Selection Memos, we confirmed that we only had the resources to review two fully participating respondents.[199]

In the *Preliminary Results*, pursuant to section 782(a) of the Act, as amended by the TPEA, we determined that it would be unduly burdensome to examine TWS Xingtai as a voluntary respondent.[200] In coming to our determination, we considered the following factors: 1) the complexity of the issues or information presented in this review; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of these investigations and reviews.[201]

In denying TWS Xingtai's request for voluntary respondent status, we explained that the issues, and information presented in this review are complex. For example, analysis of both Xugong and Qihang was complicated due to Xugong's multiple subsidiaries and affiliates as well as both EP and CEP sales, and Qihang's use of tollers and wide variety of terms of sale.[202] Furthermore, this was the first time that we have reviewed Qihang as a mandatory respondent and, thus, the Department had to expend additional time gaining experience with Qihang's records and practices. Indeed, we have issued four supplemental questionnaires to Xugong and five supplemental questionnaires to Qihang in this review, which included numerous questions concerning the factors of production reporting methodologies, database issues, ownership issues, and general administrative issues.

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[195] *See* First Respondent Selection Memo, at 8.
[196] *See* TWS Xingtai Voluntary Respondent Request.
[197] *See* TWS Xingtai's submission entitled, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China, A-570-912: Pre-Preliminary Results Comments," dated September 11, 2015 ("Xingtai's Pre-Prelim Comments").
[198] *See* PDM, at 6-10, under the heading "Respondent Selection and Determination Not to Select TWS Xingtai as a Voluntary Respondent."
[199] *See* First Respondent Memo at 5; *see also* Second Respondent Memo at 2.
[200] *Id.*
[201] *Id.*
[202] *Id.*

Acceptance of TWS Xingtai as a voluntary respondent would necessarily have required a significant additional level of effort and resources, which the Department has determined would be unduly burdensome. Specifically, a sufficient review of TWS Xingtai would have required the assignment of an additional analyst to read multiple additional questionnaire responses and issue multiple additional supplemental questionnaires and would have further required that several analysts spend more than one week conducting verification at TWS Xingtai's factory in the PRC and sales office in the United States.

Based on our prior experience in previous reviews, a full review of TWS Xingtai would require writing a margin program specific to TWS Xingtai, evaluating and selecting surrogate values specific to TWS Xingtai, writing additional analysis memoranda and verification reports specific to TWS Xingtai, and performing a collapsing analysis with regards to TWS Xingtai and any possible affiliates.[203] Moreover, the uncertain nature of any review allows for the possibility that complex situations may arise, requiring yet more time for the analyst and case team to analyze, discuss, and address. Finally, we noted that the Department was conducting numerous investigations and reviews during the preliminary phase of this review.[204]

For the *Preliminary Results* and in its case brief, TWS Xingtai further argued that it should be selected as an additional mandatory respondent or voluntary respondent because it is a wholly-foreign owned by a company located in a market economy ("ME") country, and as such, the two mandatory respondents, which are not wholly-foreign owned, would not be "representative" of its behavior.[205] TWS Xingtai points to differences between it and the two mandatory respondents for raw materials used, market economy purchases, and average unit values of TWS Xingtai's finished tires, when compared with production processes and finished products of the two mandatory respondents.

In further support of this "representativeness" argument for the *Final Results*, TWS Xingtai cites to the CIT's recent decisions in *Husteel.* and *Bestpak.* As an initial matter, we note that in *Husteel* the CIT remanded the Department to consider whether the production of a specific type of subject merchandise should be considered in selecting a voluntary respondent, and did not hold that such a factor is determinative in respondent selection.[206] In this case, unlike in *Husteel*, no party has argued that there is any fundamental difference between the products produced and sold by Xugong and Qihang and those sold by TWS Xingtai. The differences claimed by TWS Xingtai are relatively inconsequential and do not amount to wholly different products or customer needs. TWS Xingtai points to some differences between it and Xugong in the proportions of rubber used in the respective company's tires as well as the types of products they

[203] *Id*. noting that, although TWS Xingtai did participate in a single previous new shipper review, the mere fact that it has participated in a previous review does not mean the effort required to review TWS Xingtai would be diminished.
[204] *Id.* citing to First Respondent Selection Memo, at 4 and noting that subsequent to respondent selection, in the preliminary phase of this proceeding, Office III was also assigned to the following investigations: AD/CVD Uncoated Paper from the PRC; AD Uncoated Paper from Australia; AD/CVD Cold-Rolled Steel Flat Products from the Russian Federation; and AD/CVD Certain Corrosion-Resistant Steel Products from Taiwan.
[205] *See* Xingtai's Pre-Prelim Comments, at 2-6.
[206] *See Husteel,* at 1333.

reported to have purchased from market economies,[207] which does not comport to the facts in *Husteel*, where the difference was that the mandatory respondents produced welded oil country tubular goods, which require a different manufacturing process, and because of the specialized nature of the product, have a much higher sales price than welded products. TWS Xingtai's product is not that distinctly different, and, even though it is wholly-foreign owned.

Also, the Court in *Bestpak*, stated, "it is possible for the application of a particular methodology to be unreasonable in a given case" and therefore unlawful.[208] The Federal Circuit explained in *Bestpak*, the question before it was whether the Department used 'reasonable methods' by taking the simple average of a *de minimis* rate and total AFA rate assigned to the two mandatory respondents.[209] In *Bestpak,* the Federal Circuit held the method used was not reasonable because the resultant average rate was far above the *de minimis* rate applied to the cooperative respondent to whom the plaintiff had been most similar.[210] In the instant case, the Department applied the normal calculation under 19 CFR § 351.106(b). As the general rule of the statute applied, the Department did not use its discretion to apply an alternative method to calculate TWS Xingtai's margin, as it did in *Bestpak*. The Department based its margin on two fully participating respondents, whom like TWS Xingtai have received separate rates, not based on a total AFA. Based on the reasons stated above the instant case is distinguishable from *Bestpak.*

In addition, unlike in *Husteel Co.*, in the instant case, the only party protesting the decision to select Qihang and Xugong as mandatory respondents is TWS Xingtai; in *Husteel Co.*, petitioners and the voluntary respondents agreed that the Department should have selected the voluntary respondent for review, due to the different classes of subject merchandise in that case. There is no issue of a different category of subject merchandise here. Furthermore, in this review, we have determined that the mandatory respondents, Qihang and Xugong, are entitled to separate rates because they have been able to demonstrate an absence of government control, both in law (*de jure)* and in fact (*de facto*), with respect to exports.[211] We also have determined that TWS Xingtai is entitled to a separate rate in this review.[212] As all three entities have been afforded separate rate treatment, and as there is only a single class of subject merchandise at question in this case we find TWS Xingtai's arguments without merit.

Finally, contrary to TWS Xingtai's arguments, in reaching its decision in *Husteel Co.*, the CIT expressly clarified that "{n}othing in {section 782(a) of the Tariff Act} suggests an extraordinary need to accommodate voluntary respondents in order to ensure that margins are representative beyond that required in mandatory respondent selection." It also stated that "{w}hen the Department of Commerce can show that the burden of reviewing a voluntary

[207] *See* TWS Xingtai's Case Brief at 20-21 and Exhibits 1 and 2. *See Husteel*, at 1329.
[208] *Bestpak*, at 1085
[209] *Id.*
[210] *Id.* at 1379.
[211] *See Preliminary Results* and PDM at 10-12, under the heading "Separate Rates." No party has challenged our preliminary decision to grant Xugong and Qihang separate rates; thus, we have continued to grant them separate rate status for the reasons set forth in the PDM.
[212] *See Preliminary Results* and PDM, at 10-12, under the heading "Separate Rates." No party has challenged our preliminary decision to grant TWS Xingtai a separate rate; thus, we have continued to grant it separate rate status for the reasons set forth in the PDM.

respondent would exceed that presented in the typical antidumping or countervailing duty review, the United States Court on International Trade will not second guess Commerce's decision on how to allocate its resources."[213]

In sum, we find that we are unable to calculate an individual dumping margin for a voluntary respondent in addition to the individual dumping margins for the two companies individually examined in this review. The additional workload of individually examining a voluntary respondent would be unduly burdensome, given the Department's current resource availability, and would inhibit timely completion of this review. Thus, consistent with section 782(a) of the Act as recently amended by the TPEA, the Department has not considered TWS Xingtai's unsolicited questionnaire responses.

TWS Xingtai's assertion that the Department should apply to TWS Xingtai either its own self-calculated margin or the margin from TWS Xingtai's new shipper review, instead of applying the weighted-average dumping margin calculated from actual, verified information submitted by two fully participating respondents, is without precedent and contrary to practice. As explained in the *Preliminary Results*, the statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act.[214] Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis*, or based entirely on facts available in calculating an all others rate. Accordingly, the Department's usual practice has been to average the weighted-average dumping margins for the companies selected for individual examination, excluding rates that are zero, *de minimis*, or based entirely on facts available.[215] In this review, we have calculated weighted-average dumping margins for both Qihang and Xugong that are above *de minimis* and not based entirely on facts available. As explained above, we believe that the pricing behavior and production practices of Qihang and Xugong provide reasonable proxies for the behavior of TWS Xingtai. All three respondents are primarily producers of new pneumatic off-the-road tires, with production facilities located in the PRC, with significant export sales, and all three qualify for a separate rate (*i.e.*, they show independence in control and pricing from the PRC government).

As explained in the *Preliminary Results*, the statute and the Department's regulations do not address the establishment of a rate to be applied to individual not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2)

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[213] *See Husteel.* at FN 15*; see also Longkou Haimeng Machinery Co. v. United States*, 581 F. Supp. 2d 1344, 1351 (CIT 2008) ("*Longkou Haimeng Machinery Co* ") (where the Court found that "It is clear from the language of the SAA and the {Act} itself that Congress has spoken on the matter. The authority to limit the number of respondents for examination rests 'exclusively' with Commerce. Therefore, the Court finds that Commerce's determination to limit its review to three mandatory respondents was within the bounds of its statutory authority.")

[214] *See* PDM, at 13, under the heading "Margin for the Separate Rate Companies Not Individually Examined."

[215] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 16.

of the Act.[216] Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis*, or based entirely on facts available in calculating an all others rate. Accordingly, the Department's usual practice has been to average the weighted-average dumping margins for the companies selected for individual examination, excluding rates that are zero, *de minimis*, or based entirely on facts available.[217] In this review, we have calculated weighted-average dumping margins for both Qihang and Xugong that are above *de minimis* and not based entirely on facts available. As explained above, we believe that the pricing behavior and production practices of Qihang and Xugong provide reasonable proxies for the behavior of TWS Xingtai. All three companies are primarily producers of new pneumatic off-the-road tires, with production facilities located in the PRC, with significant export sales, and all three qualify for a separate rate (*i.e.*, they show independence in control and pricing from the PRC government).

The data and calculations provided by TWS Xingtai to produce its own self-calculated margins have not been subject to any scrutiny by the Department or the Petitioners, nor have they been subjected to verification. Thus, the information submitted by TWS Xingtai is unreliable for purposes of determining a dumping margin specific to TWS Xingtai for this period of review. Additionally, concerning TWS Xingtai's suggestion that the Department use its zero-margin from the new shipper review, we note that (1) it was based upon a single sale; (2) it covered a different period; and (3) there has clearly been a change in TWS Xingtai's dumping margin since that review.[218] Additionally, "as a matter of law, each agency determination is *sui generis*, involving a unique combination and interaction of many variables, and therefore a prior administrative determination is not legally binding on other reviews…."[219] The Department's role is to make a reasonable determination based on the record before it in the particular proceeding.[220]

Furthermore, even TWS Xingtai's own reporting of the margins calculated from the information submitted (which, again, are not reviewed, scrutinized, or verified by the Department), demonstrate an increase in estimated antidumping duty margins during the interceding period,[221] further illustrating the need for the Department to view each case *sui generis*. As such, we do not necessarily agree with the presumption underlying TWS Xingtai's argument that a margin based on a single prior sale is more reflective of TWS's commercial experience and inherently more tethered to TWS Xingtai's economic reality during the POR simply because TWS Xingtai

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[216] *See* PDM, at 13, under the heading "Margin for the Separate Rate Companies Not Individually Examined."
[217] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum, at Comment 16.
[218] TWS Xingtai's Case Brief at 4.
[219] *U.S. Steel Corp. v. United States*, 33 CIT 984, 1003, 637 F. Supp. 2d 1199, 1218 (CIT 2009) *aff'd*, 621 F.3d 1351 (Fed. Cir. 2010).
[220] *See Trust Chem. Co. v. United States*, 791 F. Supp. 2d 1257, 1268 (CIT 2011) *(*"Commerce's job is to compare the data on the record and provide an explanation that considers the important aspects of the problem presented.")
[221] *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 2011-2012*, 78 FR. 33341 (June 4, 2013) ("*New Shipper Final Results*")*.*

derived it from TWS Xingtai's own data. Generally, that may be a reasonable presumption, in the instant case, however, the separate rate calculated from the margins of contemporaneous sales by mandatory respondents shipping substantial volumes of different models of OTR tires is, arguably, at least, if not more, specific to TWS Xingtai's export operations during the same period. As a result, TWS Xingtai's argument that a margin calculated based on a single sale, of a single type, of product by the firm several years prior, as being more representative of its current economic realities is erroneous.

Thus, in accordance with the Department's practice in regards to entities who are eligible for a separate rate, but are not selected to be an individually reviewed respondent, we are assigning TWS the same rate as the other separate rate companies in the review.

Comment 6: Whether the Department Should Reject Certain Surrogate Values Submitted After the *Preliminary Results*

Petitioners' Comments:[222]

- Citing to 351.301(c)(3)(iv), Petitioners assert that the Department's regulations are clear that "Information submitted to rebut, clarify, or correct factual information submitted pursuant to § 351.408(c) will not be used to value factors under § 351.408(c)."[223] As such, the Department should reject and not consider information submitted by respondents in rebuttal to information placed on the record by the Department subsequent to the *Preliminary Results* for the purposes of SV selection.
- Petitioners aver they were prevented any opportunity to submit rebuttal information that would show whether the respondents' proposed tariff categories are appropriate to the inputs.

Qihang's and Xugong's Rebuttal:[224]

- Qihang and Xugong rebut that Petitioners have referenced the wrong Department regulation. They assert that the applicable regulation, as cited by the Department, is 19 CFR 351.301(c)(4), which contains no such limitation on the type of information that may be submitted in rebuttal, and all factual information submitted was in direct rebuttal to new information to the information placed on the record by the Department.
- Xugong also argues that, given Xugong's prior support for using Peru as the primary surrogate country, Petitioners were aware of the likelihood of Peruvian data being added to the record and could have submitted comments regarding the appropriateness of publicly-available Peruvian data for the new Department tariff categories.

Department's Position: Concurrent with the release of the *Preliminary Results*, the Department placed on the record new factual information for the purpose of correcting lapses in the existing record with respect to information necessary for complete valuation of reported factors of production in the calculation of normal value (*i.e.*, factor valuation information considered under

[222] *See* Petitioners' Case Brief, at 7-9.
[223] Petitioners also cite to, *Multilayered Wood Flooring from the People's Republic of China*, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at Comment 3.
[224] *See* Xugong's Rebuttal Case Brief, at 4-7 and Qihang's Rebuttal Brief, at 2-3.

19 CFR 351.408(c) of the Department's regulations).[225] The Department, in its letter to parties providing an opportunity to comment, cited 351.301(c)(4), which speaks to the specific issue of the Department placing information onto the record.[226] In accordance with 19 CFR 351.301(c)(4), we allowed parties one opportunity to submit information to rebut, clarify, or correct the information placed on the record by the Department.[227]

19 CFR 351.301(c)(4) allows that the Department "may place factual information on the record of the proceeding at any time" and that interested parties are "permitted one opportunity to submit factual information to rebut, clarify, or correct factual information placed on the record of the proceeding by the Department." 19 CFR 351.301(c)(3)(iv), which Petitioners cite for support of their arguments on this issue, is indeed specific to factor valuation information defined under 19 CFR 351.408(c) and 19 CFR 351.301(c)(3)(iv) explicitly states that rebuttal, clarification, or correction information thereto "will not be used to value factors under 19 CFR 351.408(c)." However, 19 CFR 351.301(c)(3)(iv) *only* speaks to information submitted by *other interested parties* (and rebuttal, clarification, or correction information thereto), and does not address information submitted by the Department. As explained above, new factual information placed on the record by the Department is instead governed by 351.301(c)(4): a provision which the Department clearly recognized in its letter to parties, in requesting rebuttal factual comments for information it placed on the record. Furthermore, unlike information submitted by interested parties pursuant to 351.301(c)(3)(iv), section 351.301(c)(4) does not explicitly limit the use of the rebuttal factual information placed onto the record by parties in response to the information placed on the record by the Department, as long as the parties' information is being used to "rebut, clarify or correct {the Department's} factual information."

The Courts have held that information placed on the record *sua sponte* by the Department is not, technically, submitted.[228] Submitted information denotes that which has been presented or proposed to another for review, consideration, or decision, which is how information from an interested party makes its way to the record. By contrast, the Department places on the record information that it has "obtained" and that it is required to "include" in the official and public records, as governed by 351.301(c)(4). [229] Because 351.301(c)(3) applies only to information submitted by interested parties and does not pertain to information included on the record by the Department, the strictures of 351.301(c)(3)(iv) with respect to the use of rebuttal information submitted thereto is not controlling with respect to similar types of rebuttal information submitted solicited by the Department pursuant to 351.301(c)(4).[230]

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[225] *See* Preliminary SV Memo, at Attachments VI and VII, dated September 30, 2015.
[226] *Id*.
[227] See Letter to All Interested Parties, "Deadline to Provide Rebuttal Factual Information and Extension of Time for Case Briefs and Rebuttal Briefs," dated October 22, 2015.
[228] *Wuhu Fenglian Co. v. United States*, 836 F. Supp. 2d 1398, 1403 (CIT 2012).
[229] *Id.*, at 1403.
[230] *See e.g., Apex Frozen Foods Private Ltd. v. United States*, No. 14-00226, 2016 WL 471948 at FN 30 (CIT, February 2, 2016) (In which, the court recognizes Commerce regulations provide interested parties a single opportunity "to submit factual information to rebut, clarify, or correct factual information placed on the record of the proceeding by the Department by a date specified by the Secretary{,}" under 19 CFR 351.301(c)(4) (2015) in proceedings initiated on or after May 10, 2013).

In support of its argument Petitioner's cite to *Multilayered Wood,*[231] which held that, generally, "an interested party may only submit factual information to rebut, clarify, or correct factual information to value factors, as long as that information is submitted solely for rebuttal and not for purposes of establishing new surrogate values."[232] However, *Multilayered Wood* is distinguishable as it concerned the submission of rebuttal surrogate value information for the purpose of valuing the input in question in the alternative to the initial submission provided by an interested party (*i.e.*, the information in rebuttal information in question was expressly covered by 19 CFR 351.301(c)(1) at the time, analogous to 351.301(c)(3)(iv) pursuant to the recent update to the regulatory language) and not information provided to the record by the Department and governed by 351.301(c)(4) (or its equivalent at the time).

Therefore, because the Department requested this information under 19 CFR 351.301(c)(4), and because: 1) neither that section of the Department's regulations nor the instructions accompanying Department's specific request for comment on said factual information pursuant to 19 CFR 351.301(c)(4) explicitly limited how this rebuttal information may be used for the purposes of calculating a margin; and 2) the information otherwise complied with the limitations specified by the Department in its request for comment, we have no basis to reject or refuse to consider the rebuttal information in question, for surrogate valuation purposes or otherwise.[233]

Nevertheless, we note that, though we have left the information on the record for consideration, as demonstrated by our findings with respect to individual surrogate value issues, below, we have continued to use Thailand as the primary surrogate country and, thus, we have not utilized any of the newly submitted information to value factors.

Comment 7: Surrogate Country

Qihang's Comments:[234]

- Qihang submits Peru and Thailand are economically comparable to the PRC, and both are significant producers of the subject merchandise. It states that the Peruvian data is superior to the Thai values for reclaimed rubber and inland freight, specifically, that the Thai values

[231] *Multilayered Wood Flooring from the People's Republic of China*, 76 FR 64318 (October 18, 2011) ("*Multilayered Wood"*) (final LTFV determination), accompanying Issues and Decision Memorandum at Comment 3

[232] *Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 Fed. Reg. 21246, 21248 (Dep't Commerce April 10, 2013) (final rule) (emphasis added). *See also, e.g.*, *Multilayered Wood Flooring from the People's Republic of China*, 76 Fed. Reg. 64318 (Dep't Commerce Oct. 18, 2011) (final LTFV determ.), accompanying Issues and Decision Memorandum at Comment 3 ("…offering of a different surrogate value for a FOP does not 'rebut, clarify, or correct factual information' submitted by another party, as required…. new untimely filed surrogate value information {} is not permitted to be filed with other rebuttal information after the deadline for surrogate value submissions.")

[233] Please note that our finding on this specific matter should not be construed as an indication that that the Department believes that its discretion is limited in the information it permits to be submitted to the record, and that it *could not* have foreclosed on the information in parties' rebuttal submissions in question being used for factor valuation purposes). Consistent with the purpose of 19 CFR 351.301(c)(4), the Department maintains broad discretion in establishing and limiting the administrative record, including the scope of rebuttal, clarification, and/or correction information and the manner in which any such information may be used.

[234] *See* Qihang's Case Brief, at 1-16.

for reclaimed rubber are distortive and not consistent with commercial reality, and inland freight values are arbitrary, unreasonable, and inconsistent with record data. Further, that the two Peruvian financial statements on the record, despite the Department's statements otherwise, are usable.

- Qihang argues that the data superiority of information for two, out of over 30, input factors cited by the Department in support of selecting Thailand over Peru do not outweigh the issues with Thai data, and thus the Department should select Peru as the surrogate country for the final results.[235]

Xugong's Comments:[236]

- Xugong contends that the Department should select Peru as the quality of the Peruvian data is high and, indeed, relatively superior to the Thai data with respect to rubber prices and financial statements. [237]

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[235] Qihang cites to: *PDM*, Import Administration, Policy Bulletin 04.1, Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("*Policy Bulletin*"); *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) ("*PET Film from the PRC 2015*"),and accompanying Issues and Decision Memorandum; *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 6204 (October 15, 2015) ("*PET Resin from the PRC*"),and accompanying Issues and Decision Memorandum; *Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China, Final Results of Administrative Reviews*, 63 FR 16758 (April 6, 1998) ("*Hand Tools from the PRC*"); *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) ("*Saccharin form the PRC*"), and accompanying Issues and Decision Memorandum; *Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006) ("*Pencils from the PRC*"), and accompanying Issues and Decision Memorandum; *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the People's Republic of China*, 67 FR 71137 (November 29, 2002) ("*Ferrovanadium from the PRC*"), and accompanying Issues and Decision Memorandum; *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From Belarus*, 66 FR 33528 (June 22, 2001) ("*Steel Bars from Belarus*"), and accompanying Issues and Decision Memorandum; and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the People's Republic of China*, 66 FR 33522 (June 22, 2001) ("*Steel Bars from the PRC*"), and accompanying Issues and Decision Memorandum. Qihang also cites to: *Jacobi Carbons AB v. United States*, 992 F. Supp 2d. 1360 (CIT 2014) ("*Jacobi Carbons*"); *Blue Field (Sichuan) Food Indus. Co., Ltd v. United States*, 949 F.Supp.2d 1311 (CIT 2013) ("*Blue Field*"); *Nation Ford Chem. Co. v. United States*, 166 F.3d. 1373 (Fed. Cir, 1999*)* ("*Nation Ford Chem*"*); Final Results of Redetermination Pursuant to the Remand Order from the U.S. Court of International Trade (Court) in Sichuan Changhong Elec. Co. v. United States*, Consol. Court No. 04-00265, Slip Op. 06-141 (CIT September 14,2006) ("*Blue Field Remand*").

[236] *See* Xugong's Case Brief, at 1-13.

[237] Xugong cites to: *PVLT Investigation*; *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (Dec. 15, 1997) ("*Sebacic Acid from the PRC*"); *Certain Steel Nails from the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review 2010-2011*, 78 FR 16651 (March 18, 2013) ("*Steel Nails from the PRC*"), and accompanying Issues and Decision Memorandum; *Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32366 (June 8, 2010) ("*Certain Steel Grating from the PRC*"), and accompanying Issues and Decision Memorandum; *Pencils from the PRC*; and *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review 2011-2012*,78 FR 78,333 (December 26, 2013) and accompanying Issues and Decision Memorandum ("*PET Film fro the PRC 2013*"). Xugong also cites *Yantai Xinke Steel Structure Co. v. United States, Final Results of Redetermination Pursuant to Court Remand*, ECF No. 83 at 18-23 ("*Yantai Xinke*").

- Specifically, it claims, that the Peruvian rubber data consists of the Department's preferred import prices, the Thai data includes domestic taxes and/or other charges, and the Thai reclaimed rubber value – an import input - is deficient while the Peruvian data is robust.
- Xugong states that one of the Thai financial statements is not for identical merchandise. Further, that the Peruvian financial statements on the record are useable and publicly available, and the Department can remedy any issue with the lack of separate breakout for energy costs with a simple alteration of the calculation in the cost of sales denominator. As such, the statements should not be a barrier preventing the Department's selection of Peru as the surrogate country.

Petitioners' Rebuttal Comments:[238]

- Petitioners argue that the Department should select Thailand, because it meets all the Department's requirements – being economically comparable to the PRC, a significant producer of comparable merchandise, and has superior record information for all surrogate values needed as well as publicly available financial statements from producers of identical merchandise with full breakouts of cost data.
- Further it argues, that Peru is not a significant producer of comparable merchandise because the Department defines a "significant producer" by comparing that producer's production to world production and trade in comparable merchandise, and Peru's share is less than 0.1%. Additionally, unlike Thailand, Peru was not a net exporter of merchandise that fell under the six HTS categories listed in the scope.[239]

Department's Position: In the *Preliminary Results*, we selected Thailand as the surrogate country. As detailed below, we continue to find that Thailand is the appropriate surrogate country in this review.

In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of factors of production ("FOPs") in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[240] Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department's practice to select an appropriate surrogate country or countries based on the availability and reliability of data.[241] The Department determined that Ukraine, Thailand, Ecuador, South Africa, Bulgaria, and Romania

[238] *See* Petitioners' Rebuttal Case Brief, at 3-6, 32-33.
[239] Petitioners cite to: *Fresh Garlic Producers Ass'n v. United States*, No. 14-00180, 2015 WL 7748613 (CIT Nov. 30, 2015) ("*Fresh Garlic*"); and *Camau Frozen Seafood Processing Import Export Corporation v. United States*, 929 F. Supp. 2d 1352 (CIT 2013)("*Camau*").
[240] *See Policy Bulletin*.
[241] *Id*.

are countries whose per capita gross national incomes ("GNI") are comparable to the PRC in terms of economic development.[242]

Prior to the *Preliminary Results*, Petitioners requested that the Department select Thailand as the primary surrogate country, noting that Thailand is a significant producer of comparable merchandise at a level of economic development similar to the PRC.[243] At that same time, respondents Xugong and Qihang proposed the Department instead select Indonesia, and Xugong also proposed the Department select Peru as the primary surrogate country, stating they are significant producers of comparable merchandise, and there is reliable data available to value all FOPs from each.[244] The Department did not consider Indonesia, which was not identified in the Surrogate Country List and has a reported GNI below that of the lowest country identified on said list, as an appropriate surrogate country, given the viability of other potential surrogate countries.[245] In the *Preliminary Results*, the Department found the data availability of Thailand superior to that of Peru.[246] Specifically, we found that Thailand had superior financial statement information from which to calculate financial ratios derived from multiple producers of identical and comparable merchandise, and provided superior information to value one of the main FOPs (*i.e.*, natural rubber) from a domestic source.[247]

As an initial matter, we disagree with Petitioners assertion that Peru is not a significant producer of subject merchandise due to its level of exports relative to other producers and the fact that trade data indicates that it imports a higher quantity of subject merchandise than it exports. The antidumping statute and the Department's regulations are silent in defining a "significant producer."[248] Given the absence of any definition in the statute or regulations, the Department looks to other guidance, such as Policy Bulletin 04.1, on defining comparable merchandise. Policy Bulletin 04.1 states that "the meaning of 'significant producer' can differ significantly from case to case," and that "fixed standards such as 'one of the top five producers' have not been adopted" in the Department's surrogate country selection process.[249] The antidumping

[242] *See* the Department's Letter to All Interested Parties, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated January 26, 2015 ("Surrogate Country Memo"), which contained the Memorandum from Carole Showers, Director, Office of Policy, Enforcement and Compliance, to Erin Begnal, Program Manager, Office 3, Enforcement and Compliance, entitled, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Pneumatic Off-the-Road Tires ("OTR") from the People's Republic of China ("China")," dated January 20, 2015 ("Surrogate Country List").
[243] *See* Letter from Petitioners, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Comments on Surrogate Country Selection," dated March 4, 2015 ("Petitioners' Surrogate Country Comments").
[244] *See* Letter from Xugong, "New Pneumatic Off-the-Road Tires from the PRC: Comments on Surrogate Country Selection of Xuzhou Xugong Tyres Co. Ltd.," dated March 4, 2015 ("Xuzhou Surrogate Country Comments"); *see also* Letter from Qihang, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Comments on Surrogate Country Selection," dated March 4, 2015 ("Qihang's Surrogate Country Comments").
[245] *See* Surrogate Country List, and PDM, at 21.
[246] *See* PDM, at 20-21.
[247] *Id.*
[248] *See Policy Bulletin*, 19 U.S.C. § 1677b(c)(4), and 773(c)(4) of the Act.
[249] *See PDM, at 20-21.*

statute grants the Department discretion to look at various data sources for determining the best available information.[250] Certain legislative history suggests that the Department may consider a country to qualify as a "significant producer" if, among other things, it is a "net exporter" of identical or comparable merchandise.[251] Although, the legislative history provides that the "term 'significant producer' includes any country that is a significant net exporter," that text does not, however, define the phrase "net exporter" or explain whether a potential surrogate country must constitute a net exporter in terms of quantity, value, or both to fit the example provided in the legislative history.[252] This ambiguous provision of the Act also does not preclude the Department's reliance on additional or alternative metrics based on record evidence to determine which countries might be included as significant producers.[253]

When selecting a surrogate country the Department considers whether all of the potential surrogate countries identified in the Surrogate Country Memorandum have significant exports of comparable merchandise, as defined by the HTS subheadings listed in the scope of the antidumping order,[254] and we do not look into levels of significance in comparison with other countries.[255] As discussed in the PDM, this analysis demonstrated that both Thailand and Peru have significant exports of comparable merchandise, as defined by the HTS subheadings listed in the scope of the investigation.[256] While Peru may not export the same amount of comparable merchandise or have as many producers as Thailand or other potential surrogate countries, as stated above,[257] we do not look into levels of comparative significance. So long as a country produces a commercially viable amount of exports, we consider them a significant producer.[258] Accordingly, based on the information available and in consideration of the Department's standard practice discussed above, Petitioners have not provided a sufficient basis to compel the Department to revisit the preliminary finding with respect to Peru's production of subject merchandise, and we continue to consider Peru as a significant producer of OTR tires.

If potential surrogate countries have not been definitively disqualified at this point in the Department's analysis (by either failing to demonstrate economic comparability or significant production of comparable merchandise), then the Department next looks to the availability of SV

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[250] *See* section 773(c)(1)(B) of the Act; *see also Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 39708 (July 2, 2013), and accompanying IDM at comment I(B) ("*Frozen Fish Fillets from Vietnam*").
[251] *See* Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988) ("*Conference Report*").
[252] *Id*.
[253] *Id.*; *see also Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006).
[254] *See, e.g., Aluminum Extrusions From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 78784 (December 31, 2014) and accompanying IDM at Comment 1 ("*Aluminum Extrusions from the PRC 12-13*").
[255] *See* Policy Bulletin 04.1 at 3. *See also, 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) ("*Hardwood and Decorative Plywood from the PRC*"), and accompanying IDM at Comment 7.
[256] *See* PDM at 23-24.
[257] The total value of exports of OTR Tires from GNI comparable countries: China with 9,110,598,611, Romania with 310,957,238, Bulgaria with 13,369,841, South Africa with 224,637,283, Ecuador with 30,027,544, Thailand with 1,249,171,742, Ukraine with 55,019,186, and Peru with 441,892,623. *See* Petitioner's March 4 Surrogate Country Selection Comments, at Attachment 1.
[258] *See* the Department's finding in the PDM, at 21-24.

data on the record to determine the most appropriate surrogate country.[259] In the instant case, Peru and Thailand afforded the best overall data availability and the Department preliminarily determined that Thailand affords better quality financial statements and rubber SV information for use in calculation of surrogate financial ratios over those available from Peru, and thus selected Thailand as the most appropriate surrogate country.[260]

The Department disagrees with respondents' arguments that the Thailand sources do not provide better data on than the surrogate value sources cited by the respondents, as that the Thai sources have significant issues, and that Peru accordingly is the better surrogate country for use in the final results.[261] Instead, we find that the data availability issues continue to favor Thailand. As a result, discussed in detail below, we continue to find that Thailand provides the best available information on record with respect to useable financial statements, which are provided from three identical producers of subject merchandise (*see* Comment 8), natural rubber SVs (*see* Comment 9), the best available domestic inland freight data on the record (*see* Comment 11), and provides POR-contemporaneous labor data.[262] Though Peru has useable Global Trade Atlas ("GTA") data for valuing most raw material inputs, we note that it provides only one useable financial statement from a producer of comparable merchandise which does not break out energy costs (*see* Comment 8), and non-contemporaneous labor data from 2008.[263] Furthermore, as discussed in full in Comment 10 and contrary to respondent's claims we do not find the Thai data we used to in the *Preliminary Results* value reclaimed rubber inputs to be aberrational, and are not compelled by respondent's arguments that the alternative Peruvian information represents superior quality data and such non-aberrational price differences SV data for a single input are otherwise insufficient justification to reconsider selection of the primary surrogate country.

Accordingly, we continue to find Thailand to be at a comparable level of economic development as the PRC and a significant producer of merchandise comparable to OTR tires and note that Thailand provides the best SVs in terms of specificity, contemporaneity, and quality of the data that is publicly available to value respondents' FOPs and financial ratios.[264] As such, we find no basis to reconsider our preliminary finding with respect to surrogate country selection and

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[259] *See, e.g., 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 2015*").

[260] *See* PDM at 24-26; *see* Comments 8-11, below, for a discussion of data availability issues raised in case briefs.

[261] *See* Qihang's Case Brief, at 2, and Xugong's Case Brief, at 13-14. The specifics of these arguments are discussed below in Comments 8-11.

[262] *See also* the Department's memorandum "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results Surrogate Value Memorandum," dated September 30, 2015 ("Prelim SV Memo"), at 4-5 and 7-8. Because arguments with respect to the usability of financial statements from Thailand and Peru and the surrogate used to value natural rubber inputs were raised by respondents in the context of both overall surrogate country selection and individual surrogate value selection, we address parties' specific arguments on these surrogates, in full, below.

[263] *See* Letter from Xugong "New Pneumatic Off-the-Road Tires from the PRC: Provision of Initial Surrogate Values by Xuzhou Xugong Tyres Co. Ltd.," dated March 19, 2015 ("Xugong March 19 SV Submission"), at Exhibit 10. *See* Comment 8 for a full analysis of proposed surrogate financial ratios.

[264] *See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) ("*Diamond Sawblades from the PRC 2006*"), and accompanying Issue and Decision Memorandum, at Comment 1.

continue to consider Thailand the primary surrogate country for the purposes of this final determination.

Comment 8: Financial Statements

Qihang's Comments: [265]

- Qihang asserts the financial statements for Compania Goodyear del Peru S.A. ("Goodyear Peru") and Lima Caucho S.A. ("Lima Caucho") are useable, contemporaneous, and provide a sufficient break out of energy costs. It claims that energy costs can be determined as a part of third-party services or fabrication costs or in the event that the Department does not agree with this categorization of energy costs, asks that the Department to use the Peruvian financial statements and calculate the financial ratios based on a denominator excluding energy costs.[266]

Xugong's Comments:[267]

- Xugong states the Department prefers to use publicly available published prices, and if the information is not publicly available the Department has rejected the use of that information.[268] It claims there is no record indication that the Thai financial statements of S.R. Tyres Co., Ltd. ("S.R. Tyres") or Hihero Tyres Co., Ltd. ("Hihero"), used in the *Preliminary Results*, are generally available to the public and published.[269] They claim that that these are non-public companies and Petitioners provided no evidence whatsoever (*e.g.*, company websites, Thai stock exchange references) that these companies make their financial statements available to anyone other than their shareholders. Xugong notes that though the financial statements of these very same companies were used in the *PVLT Investigation*, it does not appear that any interested party raised the issue of the public availability of the financial statement information in that proceeding.[270]
- Also, Xugong asserts there is no indication anywhere in the financial statements that Hwa Fong Rubber (Thailand) Public Company Limited ("Hwa Fong") produces merchandise that is identical to the subject merchandise. Further, that the Department did not use Hwa Fong's financial statements in the *PVLT Investigation* because record evidence indicated it did not

[265] *See* Qihang's Case Brief, at 14-16.
[266] Qihang cites to: *PET Resin form the PRC*.
[267] *See* Xugong's Case Brief, at 6-13.
[268] Xugong cites to Certain Steel Nails from the People's Republic of China: Final Results of Third Antidumping Duty Administrative Review 20 I 0-20 II (Dep't Commerce Mar. 18, 2013), Unpublished Issues & Decision Memorandum (Mar. 5, 2013), at 14-15 and Pursuant to Court Remand, ECF No. 83 at 18-23 (hereinafter "Steel Grating Remand Results"); see also Certain Steel Grating from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32,366 (Dep't Commerce June 8, 2010).
[269] Xugong cites to; *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674 (December 15, 1997) ("*Sebacic Acid from the PRC*").
[270] Xugong Cites to *PVLT Investigation Memorandum from Lingjun Wang to the File: Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Surrogate Value Memorandum* (January 20, 2015).

produce identical merchandise and the Department has a preference of using financial statements from a producer of identical merchandise over one of comparable merchandise.[271]

- Xugong submits that the financial statements for Goodyear Peru and Lima Caucho are useable; energy costs can be determined as a part of third-party services or fabrication costs. Even assuming, *arguendo*, that energy costs were not itemized; Xugong states this should not prevent the Department from making its financial ratio calculations based on the financial statements. They state the Department's factory overhead ratio is the ratio of factory overhead costs divided by the sum of materials, energy, and labor. Together, these items comprise a company's cost of sales.

Petitioners' Rebuttal Comments:[272]

- Petitioners contend the Department's "practice is to reject those financial statements that are not sufficiently detailed, and specifically, that do not contain a breakout for energy costs, when there are alternative financial statements on the record that contain a line item for energy costs". It argues in this instance there is no indication in the Peruvian financial statements that the fabrication costs are limited to energy costs or that energy costs even constitute a majority of them, and the Department will not "go behind" a surrogate financial statement to make adjustments.[273]
- It states the Department correctly determined that the Peruvian financial statements on the record are from producers of comparable rather than identical merchandise and do not provide all of the information needed by the Department including a break out of energy costs, while the multiple Thai financial statements are from producers of identical merchandise and provide all necessary data and break out the costs of energy.
  Further, it argues that the SR Tyres and Hihero statements are publically available as evidenced by their cover letter which indicates they were submitted to a public regulator, pointing out that Xugong does not point to any evidence that the financial statements of "nonpublically accountable entities" in Thailand are not publically available, and that financial statements from these two companies have been accepted by the Department as publically available in prior proceedings. The Peruvian statements, like the Thai statements, it claims would also be rejected under respondents reasoning. [274]

Department's Position: Parties' arguments, and our analysis with respect to the deficiencies of the Peruvian financial statements, remain unchanged from *Preliminary Results*.[275] With respect

[271] Xugong cites to: *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 79 FR 42292 (July 21, 2014) ("*PVLT Investigation* Initiation"), *PVLT Investigation*, *Pencils from the PRC*; and *PET Film from the PRC*.
[272] *See* Petitioners' Rebuttal Case Brief, at 6-16.
[273] Petitioners cite to: *Helical Spring Lock Washers from the PRC*; *PVLT Investigation*.
[274] Petitioners cite to: *Kitchen Appliance Shelving and Racks from the PRC*; *Steel Nails from the PRC*; *Wooden Bedroom Furniture from the PRC*; *Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China*, 79 FR 42992 (July 21, 2014) ("*PVLT Final*"); and *New Pneumatic Off-the-Road Tires from the People's Republic of China*, 77 FR 61397 (October 9, 2012), and accompanying Issues and Decision Memorandum, unchanged in final, 78 FR 22513 (April 16, 2013) ("*OTR Tires from the PRC Final 11-12*"). Petitioners also cite to: *Yantai Xinke*; and *Since Hardware (Guangzhou) Co. v. United States*, 977 F. Supp. 2d 1347 (Ct. Int'l Trade 2014), order vacated in part by *Since Hardware (Guangzhou) Co. v. United States*, 37 F. Supp. 3d 1354 (Ct. Int'l Trade 2014) ("*Since Hardware*").
[275] *See* PDM, at 25.

to respondents' argument that energy costs can be broken out of the financial statements on the record for Peruvian companies, the Department prefers not to "go behind" the numbers reported in financial statements to determine the appropriateness of including or excluding income and expense items in the financial ratio calculations.[276] As such, we decline to rely on supposition in extrapolating energy costs, particularly in consideration of the fact that all three Thai financial statements on the record breakout all the costs necessary for the calculating surrogate financial ratios pursuant to the Department's standard methodology.[277] We also disagree with Qihang's claim that even if the Department declines to calculate energy costs based on breakouts, we should still use the Peruvian financial statements and calculate the financial ratios based on a denominator excluding energy costs.[278] In *PET Resin from the PRC*, both of the financial statements used did not breakout energy or labor expenses. In that case there were no other usable financial statements available which did breakout those costs, thus requiring the Department to rely on those financial statements.[279] Here, we have three useable financial statements from Thailand which breakout the necessary costs and therefore do not need to change our calculation methodology.

Furthermore, we disagree with Xugong's claim that the financial statements for SR Tyres and Hihero are not publicly available. Both financial statements include cover pages that show they were submitted to the Thai government.[280] Additionally, the Department found the financial statements from these two companies to be publicly available in the recent *PVLT Investigation*.[281] We agree with Petitioners' contention that the public availability decisions applied in *Sebacic Acid*, *Steel* Nails, and in *Steel Grating* are not applicable in this case.[282] In *Sebacic Acid* the rejected information was found to be from an unpublished, internal marketing reporter, unlike in this case where there is evidence on the record that the statements were submitted to the Thai government.[283] Further, that the information was publicly available was not a contested issue in that case; instead it was argued that the data was more commercially comparable than the source selected by the Department. In *Steel Nails*, evidence on the record

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[276] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015) ("*Steel Threaded Rod 2015*"), citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013) and accompanying Issues and Decision Memorandum at Comment 16 ("*Diamond Sawblades 2013*"). *See also, e.g.*, *PRC Hangers 2015*, citing *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and IDM at Comment 18B.

[277] *See* Xugong's March 19 SV Submission, at Exhibits 14 and 15.

[278] *See* Qihang's Case Brief, at 15.

[279] *See PET Resin from the PRC*, at the Preliminary Determination Memo at 27.

[280] *See* Letter from Petitioners "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' First Surrogate Value Submission," dated March 19, 2015 ("Petitioners' March 19 SV Submission") at Attachment 11, and *see* Letter from Petitioner "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Second Surrogate Value Submission," date August 31, 2015 ("Petitioners' August 31 SV Submission"), at Attachment 9.

[281] *See PVLT Investigation*, at Comment 9.

[282] *See* Petitioners' Rebuttal Case Brief, at 10-12, citing *Steel Nails from the PRC*; and *see Certain Steel Grating from the PRC* and *Yantai Xinke*, *see also* Xugong's Case Brief, at 7, citing *Sebacic Acid from the PRC*.

[283] *See Sebacic Acid from the PRC*, at 65677-65678.

showed both that the financial statement was only available to shareholders, and, more importantly, that the company forbade public use of the statements.[284] As outlined above, the record in this case has no such similar information. Finally, the Department determined the financial statement in *Steel Grating* was not publicly available when the submitting party could not specify how the statement may be public and, in fact, the specific source of the statement on the record was private.[285] Therefore, as the financial statements for SR Tyres and Hihero were submitted to public authorities, and in the absence of record evidence stating they were for shareholder or private use only, we find them to be publicly available, and usable in determining surrogate values.

Additionally, we disagree with Xugong's argument that Hwa Fong is not a producer of identical merchandise based on the decision in the *PVLT Investigation.*[286] The *PVLT Investigation* addressed different subject merchandise, determining that Hwa Fong did not make passenger vehicle and light truck tires, and made no mention or analysis of off-the-road tires, the subject merchandise in the instant review.[287] We agree with Petitioners that the Hwa Fong financial statements and the 2013 Tire Business Global Tire Report which states that Hwa Fong is a producer of agricultural, motorcycle, and industrial tires. Two categories of tires– agricultural and industrial - which Hwa Fong produces typically include off-the-road tires covered by the scope of the order.[288] Both the financial statement and the 2013 Tire Business Global Tire Report support the contention that Hwa Fong makes identical merchandise in the instant review.[289] Therefore, the Department will continue to consider Hwa Fong a producer of identical merchandise in the final results. Further, for the purposes of assessing data comparability in surrogate country selection, we note that, even if we were to agree that Hwa Fong is a producer of comparable and not identical merchandise, Thailand would continue to offer financial statements with energy costs broken out for two identical producers and one comparable producer and, thus, represents superior data availability compared with the two Peruvian statements from comparable producers which do not break out energy costs.

Accordingly, respondents' fail to provide sufficient reasoning to compel the Department to reconsider three sources of surrogate financial information from producers of identical merchandise in the primary surrogate country which break out energy costs, in favor of two sources of information from comparable producers in a country not selected as the primary surrogate and which do not break out such costs. As such, we continue to utilize the Thai financial statements used in the *Preliminary Results*.

[284] *See Steel Nails from the PRC*, at 14-15.
[285] *See Certain Steel Grating from the PRC*, at Comment 12.
[286] *See* Xugong's Case Brief, at 10.
[287] *See* Petitioners' Case Brief, at 15.
[288] *See* Qihang March 4 Surrogate Country Submission, at Exhibit 2.
[289] *Id*.

Comment 9: Natural Rubber

Qihang's Comments: [290]

- Qihang claims selection of the domestic Rubber Research Institute of Thailand ("RRIT") data to value natural rubber is inconsistent with the Department's explicitly-stated preference for import data over domestic data. They state the evidence placed on the record by Petitioners in this case, and subsequently relied upon by the Department, appears to strongly indicate that this domestic Thai data used to value natural rubber includes domestic taxes. They state there is an absence of evidence from which the Department could reasonably conclude that the domestic RRIT prices are tax-exclusive.[291]
- Qihang states that the Peruvian natural rubber data is: (a) equally contemporaneous with the POR as Thai data; (b) a non-export value from the Department's preferred source, GTA import data, which represents a broad market average; (c) specific to Qihang's own verified inputs; and (d) tax exclusive. Therefore the Thai data is not superior to Peru, and is not a reason to select Thailand over Peru as the surrogate country.

Xugong's Comments:[292]

- Xugong argues there is no indication that the natural rubber values from the RRIT are exclusive of taxes or other charges, and other pricing data in the same document suggests that the Thai rubber pricing data includes taxes and other charges. Specifically, Xugong points to footnote 4 to the data submitted by Petitioners which indicates, with respect to the Indian rubber prices provided by the Rubber Board of India (which is a member of the same international group as RRIT), that the Indian data "does not include taxes or other charges." They argue that, as no such qualification accompanies the Thai (or other countries') data, this indicates that the pricing data from those sources (including Thailand) does include domestic taxes and/or other charges. [293]
- Additionally, Xugong contends that the natural rubber inputs in the production of OTR tires is not a significant enough input such that the data superiority considerations thereof should be a primary reason to select Thailand as the surrogate country over Peru.

Petitioners' Rebuttal Comments:[294]

- Petitioners assert Thailand's RRIT data on natural rubber is tax-exclusive; the need for the clarifying footnote on the Indian price is to distinguish it from other sources of Indian prices that may contain taxes. They state that respondents' point to no other evidence that RRIT reports its prices including taxes; therefore, they assert the Department's selection of the RRIT daily prices is consistent with use of this source in other proceedings.[295]

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[290] *See* Qihang's Case Brief, at 19-22.
[291] Qihang cites to: *Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 FR 67304 (November 17, 2004), and accompanying Issues and Decision Memorandum ("*Carbazole Viloet Pigment from the PRC*"); and *Wooden Bedroom Furniture from the PRC*. Qihang also cites to: *Yangzhou Bestpak*; *Shakeproof*; and *Lasko*.
[292] *See* Xugong's Case Brief, at 3-6.
[293] Xugong cites to: *Carbazole Violet Pigment from the PRC*; *Wooden Bedroom Furniture from the PRC*; and *PVLT Investigation*.
[294] *See* Petitioners' Rebuttal Case Brief, at 23-25.
[295] Petitioners cite to: *PVLT Investigation*.

Department's Position: The CIT has held that "{w}hile it may be the case that Commerce has a preference for domestic data, the Department, as has been noted, also prefers, whenever possible, to use data that (1) represents a broad market average of prices for the input, and (2) is exclusive of taxes and duties," [296] though the Department has said that a preference for using import data to value inputs; this is because they are known to generally comport with the Department's aforementioned preferences (*e.g.*, they are publicly available and not inclusive of domestic taxes and subsides, and generally represent broad-market averages).[297] When selecting SVs for use in an NME proceeding, the Department's preference is to use, where possible, a range of publicly available, non-export, tax-exclusive, and product-specific prices for the POR, with each of these factors applied non- hierarchically to the case-specific facts and with preference to data from a single surrogate country.[298]

Respondents assert that the RRIT data used to value natural rubber in the *Preliminary Results* is inconsistent with the Department's preference for import data, and that the non-import domestic RRIT data includes domestic taxes.[299] We note that respondents' assertions regarding the Department's preference for import data to value inputs cites the *Antidumping Duty Procedures Manual*; however, the preference for using import data is only one of several above mentioned preferences we evaluate when selecting surrogate values. [300] As previously mentioned, these preferences are to be applied non-hierarchically and our desire to use when possible import data should not be interpreted as a requirement to use import data above other types of data which otherwise fulfill our other stated preferences and represent overall better available record information. In *Jacobi Carbons*, which respondents cite as an application of the purported preference for import data, the Department did not have domestic data which otherwise met all of these stated criteria on the record and the import data accordingly was the best available information on the record under our preferences.[301] In the instant case, the RRIT domestic prices are tax-exclusive (or at minimum, that there is no affirmative evidence that they contain taxes, *see* the discussion below), and no party contested the preliminary finding that they are publicly available, non-export, and product-specific prices for the POR. Further, the use of the RRIT data is consistent with its use in other proceedings to value natural rubber inputs.[302] Moreover, no party has alleged that the RRIT prices are unrepresentative of commercial reality or otherwise aberrational.[303] Therefore, as the data meets our preferences, considering the discussion of tax exclusivity below, we continue to find that RRIT data represents the best available information on the record to value natural rubber.

[296] *Jacobi Carbons*, Slip Op. 14-70 at 16.
[297] *See* Xugong's Case Brief, at 4, citing the *Antidumping Duty Procedures Manual*, chapter 10, at 14.
[298] *See* the Department's *Antidumping Duty Procedures Manual*, chapter 10, at 14, citing *Carbazole Violet Pigment from the PRC*, at Comment 3.
[299] *See* Qihang's Case Brief, at 19-21, and Xugong's Case Brief, at 3-5. They state that the Department prefers import data over domestic data, which is contravened by the CIT in *Jacobi Carbons*.
[300] *See* Xugong's Case Brief, at 4, citing the *Antidumping Duty Procedures Manual*, chapter 10, at 14.
[301] *See Jacobi Carbons*, at 1370.
[302] *Id.*, citing the *PVLT Investigation*, at 3; and *see OTR Tires from the PRC 2010-2011*, at 17.
[303] *Id.*; *see also Antidumping Duty Procedures Manual*, chapter 10, at 14.

With respect to respondents' assertions that the RRIT data may not be exclusive of taxes, we disagree that footnote in question indicates the Thai data is inclusive of taxes. The footnote cited by respondents is included on an Association of Natural Rubber Producing Countries ("ANRPC") report (of which the RRIT is a reporting member) which offers prices for comparison from Thailand, India, Malaysia, Singapore, and Sri Lanka.[304] This report includes a footnote noting specifics on each prices and source reported.[305] The footnote on the Indian prices states, "{a}verage price reported by Rubber Board of India (Relate to local market. Does not include taxes or other charges)."[306] Respondents argue that, as Thai data on the same report makes no mention of tax or charge exclusivity, it must include taxes.[307] We disagree with this presumption and agree with Petitioners that the footnote is necessary on the Indian data because it refers to local market data and, as such, there is likely a need to distinguish it from other local sources in the report that may contain taxes.[308] We also agree that it would be illogical to present comparative prices for different markets by providing one price without the distortion of taxes but by providing the other comparative prices with taxes included.[309] As such, we believe that is reasonable to conclude that the RRIT prices are likely presented without taxes and, at the very least, we note that there is no information on the record to support a conclusion that the prices were definitively subsidized. Thus, they are fully usable; the footnotes on the report cited by respondents states that the Thai data is the "FOB physical price," which is the identical terms of sale standard reported in by GTA import data which respondents request the Department use in the alternative.[310]

Because the Department finds that: 1) the RRIT data are sourced from the primary surrogate and comports with its SV selection criteria of publicly available, non-export, tax-exclusive, and product-specific data; 2) no party has argued that the data are non-specific, inaccurate, aberrational, inappropriate, or that case specific factors otherwise disqualify their use; and, 3) because the Department has a preference to value all surrogate values within the same surrogate country, we continue to use the RRIT data in the *Final Results*.[311] The relative arguments for the Peruvian import data presented by the parties do not outweigh the superiority of the Thai RRIT data and our preference to value natural rubber using that superior data from the primary surrogate country. Insofar as it is relevant for surrogate country data availability arguments, we

[304] *See* Petitioners' March 19 SV Submission, at Attachment 3.
[305] *Id*.
[306] *Id*.
[307] *Id*.
[308] *See* Petitioners' Rebuttal Case Brief, at 24.
[309] *Id*.
[310] *See* Petitioners' Case Brief, at 24-25. The Department has before presumed tax-exclusivity, even when other data in the same report states whether it is tax-inclusive or tax-exclusive. *See Certain Preserved Mushrooms from the People's Republic of China: Final Results of Third New Shipper Review and Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 67 FR 46173, July 12, 2002, and accompanying Issues and Decision Memorandum, at Comment 1.
[311] "It is our practice to rely on data from a single country to value inputs in order to minimize distortion, unless the specific data for an input is not available or unreliable in that surrogate country." *See Final Results of Redetermination Pursuant to Court Demand Elkay Mfg. Co. v. United States*, Ct. No. 13-00176; Slip Op. 14-150 (CIT 2014) (April 22, 2015); see also, e.g., *Clearon Corp. v. Un ited States*, 2013 CIT LEXIS 27, Slip Op. 13-22, Ct. No. 08-00364 (February 20,2013) at 12 (upholding the Department's preference for valuing SVs from a single surrogate country); see 19 CFR 351A08(c)(2).

disagree with respondent's claim that the Peruvian data on the record is superior to the Thai data used in the *Preliminary Results*.[312] As outlined above, both sources are tax and duty exclusive and both are publically available. Concerning specificity, the RRIT prices are tracked daily and based on the two specific types of natural rubber used by respondents in production, whereas Peruvian import data from GTA is only a monthly value for imports under an HTS heading for natural rubber generally, indicating that RRIT prices are at least as specific and accurate as import prices.[313] While both sources are also contemporaneous with the POR, the Thai RRIT data is at least as specific and likely more due to the daily price tracking, and meets all of the criteria for use as a surrogate value. Accordingly, we made no changes to the valuation of natural rubber from the *Preliminary Results* and find that a comparison of the Thai RRIT data to the Peruvian import data continues to support the Department's selection of Thailand as the primary surrogate. Further, Xugong's assertion as to the relative importance of natural rubber in the calculation of normal value, as compared to the other types of rubber is not compelling, as data considerations in the aggregate – including, but not limited to, natural rubber price availability – each favor the selection of Thailand as the primary surrogate and the Thai value as the surrogate value for natural rubber.

Comment 10: Reclaimed Rubber

Qihang's Comments: [314]

- Qihang argues the Department should use Peruvian data for valuing Reclaimed Rubber. Qihang points out that reclaimed rubber is one-third of the total quantity of all raw material inputs consumed in the subject merchandise, and claims that the Thai value for this input is unrepresentative and distortive. They note that the Thai GTA per-unit import value is based on a very small quantity of imports (205,384 kg) relative to the country's total imports (9,338,747 kg). They assert that the Thai GTA reclaimed rubber average unit value ("AUV") of $2.49/kg for that small quantity of imports is substantially different from the per unit values of larger import quantities from other economically comparable countries. Qihang says the Thai data is accordingly aberrational, and state the Department has rejected the use of such aberrational data in other cases.[315]
- Qihang argues that tire producers use reclaimed rubber because it is significantly less expensive than natural rubber. Over a 30-year period (including the POR), natural rubber prices have exceeded those of reclaimed rubber and, since 2003, natural rubber prices have been at least double those of reclaimed rubber. Thus, Qihang contends, it is unreasonable and contrary to record evidence for the Department to continue to rely on the $2.49/kg Thai GTA AUV for reclaimed rubber that it used in the *Preliminary Results* when it is priced higher than the $2.01/kg and $2.28/kg RRIT data for natural rubber relied upon by the Department in its *Preliminary Results*.

[312] *See* Qihang's Case Brief, at 21, and Xugong's Case Brief at 5.
[313] *See* Prelim SV Memo, at 5.
[314] *See* Qihang's Case Brief, at 2-13, 18-19.
[315] Qihang cites to: J*acobi Carbons ; Hand Tools from the PRC*; *Final Results of Redetermination Pursuant to the Remand Order from the U.S. Court of International Trade (Court) in Sichuan Changhong Elec. Co. v. United States*, Consol. Court No. 04-00265, Slip Op. 06-141 (CIT September 14, 2006) ("*Sichuan Changhong Elec*"); *Saccharin from the PRC*; *Pencils from the PRC*; *Ferrovanadium from the PRC*; *Steel Bars from Belarus*; *Steel Bars from the PRC*; and *PET Film from the PRC 2015*.

- Qihang submits that the Department's preference for relying upon a single surrogate country cannot take priority over its paramount objective to select the most accurate surrogate values, when the Thai value in this instance not representative and is distortive. Therefore the Department should choose another, less distortive, value on the record, such as Peru.[316]

Xugong's Comments:[317]

- Xugong argues for using Peruvian values, and states that the Thai reclaimed rubber values are unusable as Thailand has only 205,384 kg of usable data, and, at $2.49/kg, it is 85.82 percent higher than the next highest country value, 179.78 percent higher than the simple average value of the other countries, and 369.81 percent higher than the lowest country value.
- Xugong argues that the aberrationality of the Thai reclaimed rubber data is also evidenced through the relative value of reclaimed rubber as compared to natural rubber. They state one of the inherent qualities of reclaimed rubber, as it is considered for use by producers, is the fact that it is cheaper than natural rubber. The value of $2.49/kg compares with Thai values for technically specified (Thai) natural rubber (STR20) of $2.01/kg, and for ribbed smoked sheets (RSS3) of $2.28/kg, showing reclaimed rubber as more expensive than natural rubber, which is not comparable with commercial reality.
- Xugong asserts that the Peruvian data would be much more representative. The quantities used to determine the surrogate values that are associated with the technically specified natural rubber and reclaimed rubber (namely, 5,228,993 kg and 1,102,938 kg, respectively) are significant, and the Peruvian value is only 56 cents below the simple average of economically comparable countries, and 81 cents below the highest non-aberrational value, South Africa.[318]

Petitioners' Rebuttal Comments:[319]

- Petitioners argues that the Thai data is useable, stating that even if reclaimed rubber prices are generally below those of natural rubber, it does not mean they will be so in every period. They state price levels for reclaimed rubber, as with any product, will fluctuate based on the cost to produce it as well as in response to prices for competitive products and overall demand. In the instant POR, prices for natural rubber, it points out, dropped by over 30%.
- Petitioners argue the Department's practice is to not to reject import values (such as those for reclaimed rubber) simply because they may be in small quantities and where there is no evidence on the record showing that the imports are unrepresentative of normal commercial activity, or that they are not statistically and commercially significant. Respondents, they claim, point to no record evidence that shows the level of Thai imports during the POR was not commercially viable or statistically significant.

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[316] Qihang cites to: *Longkou Raiment Mach. Co. v, United States*, 33. CIT 603, 612-13 (2009) ("*Longkou*"); and *Blue Field*.

[317] *See* Xugong Case Brief, at 14-24.

[318] Xugong cites to: *Certain Oil Country Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 7 4644 (December 17, 2012) ("*Tubular Goods from the PRC 2012*"), and Issues and Decision Memorandum. Xugong also cites to: *Baroque Timer Industries (Zhongshan) Company, Limited v. United States*, 925 F.Supp.2d 1332 (CIT 2013) ("*Baroque Timer Industries*"); and *Blue Field*.

[319] *See* Petitioners' Rebuttal Case Brief, at 16-23.

- Petitioners state the Department has found that the existence of higher prices alone does not necessarily indicate that the price data is distorted or misrepresentative, and thus is not a sufficient basis upon which to exclude a particular SV. A price's position on one end of the continuum of normal price variation does not provide grounds to treat the price as aberrational, and in the instant case the price for reclaimed rubber falls on the continuum of prices from economically comparable countries. Petitioners point out the CIT has rejected arguments that a surrogate labor rate from Bangladesh was aberrational as it was lower than other prices.[320]

Department's Position: When determining whether data are aberrational, the Department has found that evidence of a high or low average unit value ("AUV") does not necessarily establish that GTA data for the suspect countries are unreliable, distorted or misrepresentative.[321] Rather, interested parties must provide specific evidence showing whether the value is aberrational.[322] We agree that the Department seeks to calculate dumping margins as accurately as possible, and in analyzing whether a given value is aberrational or distortive, the Department typically compares the prices for an input from all countries found to be at a level of economic development comparable to the NME whose products are under review for the POI and prior years.[323]

First, with respect to a comparison of the Thai value to prices from other countries found to be at a level of economic development comparable to the PRC, though the Thai value is the highest of the potential surrogates listed by the Office of Policy, it falls within the reasonable continuum values when benchmarked against the AUVs for all countries within the range of bookends set by the highest and lowest GNI countries listed by the Office of Policy.[324] Qihang provides a chart of all data on the record which shows the continuum of prices, excluding outliers, from Peru at $.53/kg to Thailand at $2.49/kg.[325] While we recognize that the Thai import price of $2.49 per kg is approximately two-and-a-half times the median value from most of the other potential surrogates on the list, we do not find this price difference to be so substantial as to call

[320] Petitioners cite to: *1,1,1,2-Tetrafluoroethane from the PRC*; *Multilayered Wood Flooring from the PRC*; *PRC Hangers 2015*; and *Activated Carbon from the PRC*. Petitioners also cite to: *Camau*; and *Thai Shrimp*.
[321] *See Multilayered Wood Flooring from the People's Republic of China: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2012*, 80 FR 41007 (July 14, 2015) ("*Multilayered Wood Flooring CVD 2015*") and IDM at Comment 7. *See also Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2012-2013*, 80 FR 13332 (March 13 2015) and IDM at Comment 5; *Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Administrative Review; 2011-2012*, 78 FR 15696 (March 12, 2013), unchanged in *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review; 2011-2012*, 78 FR 56209 (September 12, 2013) ("*PRC Shrimp AR7*").
[322] *See Multilayered Wood Flooring 2015* and IDM at Comment 11.D; *See also 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) ("*PRC Hangers 2015*") and IDM at Comment 4.
[323] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71743 (December 3, 2014) ("*Steel Threaded Rod 2014*") and IDM at Comment 2, *see also Longkou Haimeng Machinery Co*, at 612-613, and *PET Film from the PRC 2015*, at 33241.
[324] *See* the discussion of the Surrogate Country List in Comment 7, and Petitioners' August 31 SV Submission, at Attachment 6.
[325] *See* Qihang's Case Brief at 8-9. *See* Petitioners' Rebuttal Case Brief, at 19.

into question the validity of the Thai value or constitute evidence of aberrationality.[326] Therefore we continue to find that the reclaimed rubber data is not aberrational based on a comparison with the other economically comparable countries' reclaimed rubber values.[327]

Further, when determining if a value is aberrational or unusable, the Department will also compare that value to values from prior periods.[328] Even though the price for reclaimed rubber is a higher value than natural rubber, first the price of natural rubber has dropped by 32-33 percent over the POR itself, and more so over the years before. Second, the value of reclaimed rubber, in comparison, has risen over the past years, 138 percent since 2009,[329] and this rise has been at a generally steady increase.[330] With such a significant decrease in price for natural rubber in the POR, that natural rubber may fall below the cost of the consistently steadily increasing reclaimed rubber does not signal that the reclaimed rubber value is aberrational or unusual. Therefore, we continue to find that the reclaimed rubber values are not aberrational based on a comparison with the reclaimed rubber values from prior periods.[331]

We find that the proceedings cited by Qihang in support a reclaimed rubber aberrational finding are distinguishable from the current review. In *Saccharin from the PRC*, the Department had multiple import sources from the same country on the record, and while it did reject specific price quote observations, but not the entire data set as aberrational where aberrationality was found on two points- that the import volume was extremely low in comparison to import volumes of the same input, and where the value associated with those low import volumes also appeared to break significantly from the other recorded prices for that input.[332] In *Certain Cased Pencils from the PRC*, the data was found to be aberrational in comparison to other economically comparable countries on the record, where in this review, as discussed above, the data is not aberrational in comparison.[333] Finally, in *Steel Concrete Reinforcing Bars from Belarus* and *Steel Concrete Reinforcing Bars form the PRC*, the rejected data reflected imports from a single country, were of a very low volume, and were at prices exceptionally higher than other prices on the record, which is not the case in this proceeding, where the data represents imports from multiple countries, represents a commercially viable quantity, and we have determined that the price is not exceptionally higher than others on the record.[334]

Additionally, the quantity of imports represented by the Thai reclaimed rubber value is well within the Department's understanding of a commercially viable quantity which is not distortive.[335] In *Heavy Forged Hand Tools*, cited by Qihang, while the Department recognized that the data in that case reflected small-quantity pricing, the Department also recognized that the

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[326] *See 1,1,1,2-Tetrafluoroethane from the PRC*, at Comment 10, and *Multilayered Wood Flooring from the PRC*, at 11.D.
[327] *See* Petitioners' August 31 SV Submission, at Attachment 6. For the Department's full discussion, please see the Final SV Memo.
[328] *See Steel Nails from the PRC*, at 14-15, *Blue Field*, at 1317, and *PET Film from the PRC 2015*, at 33241.
[329] *See* Petitioners' August 31 SV Submission, at Attachment 5.
[330] *Id.*
[331] *See Id.*, at Attachment 6. For the Department's full discussion, please see the Final SV Memo.
[332] *See Saccharine from the PRC*, at Comment 1.
[333] *See Pencils from the PRC*, at Comment 3;
[334] *See Steel Bars form Belarus*, at Comment 1; and *Steel Bars From the PRC*, at Comment 5.
[335] *See, e.g., PRC Hanger 2015*, at Comment 4; *Frozen Fish Fillets from Vietnam*, at Comment 4;

data is only disregarded "when the per-unit value is substantially different from the per-unit values of the larger quantity imports of that product from other countries," which, as discussed, is not at issue in this case.[336] More recent cases have found much smaller quantities of imports to be commercially viable.[337] Specifically, in *PRC Shrimp*, the Department found a mere four metric tons was not a small enough quantity to be distortive, and was thus commercially viable.[338] In *Ferrovanadium from the PRC*, the data represented less than one unit of the valued input (specifically .45 metric tons), where in comparison, in the instant case, the Thai reclaimed rubber data is representative of 205,384 units of the valued input.[339] Therefore, we find the 205,384 kilograms represented by the reclaimed rubber imports the surrogate value to be commercially viable and therefore usable.[340]

Though the reclaimed rubber surrogate value for Peru is based on a larger quantity than the Thai data, both the Peruvian and Thai data represent commercially viable quantities and the Department finds that there is nothing to suggest that the merchandise represented by the Peruvian data is any more specific to the input in question than that represented by the Thai data. Further, the values of each fall along a reasonable range of values among economically comparable countries.[341] Therefore, the Department continues to use the Thai data of $2.49 per kilogram to value reclaimed rubber in the final results and does not find that a comparison of the Peruvian data to the Thai data compels a reconsideration of the selection of primary surrogate country.

Comment 11: Inland Freight

Qihang's Comments:[342]

- Qihang claims that there is no support for the distance of 13.87 kilometer ("km") the Department used in the Preliminary Results, and the distance is directly contradicted by record evidence of the actual inland freight distances applicable to producers of subject merchandise, while the freight costs from Peru do not pose the problems that the Thai data does.
- Qihang argues that, there is no information on distance provided in *Doing Business in Thailand 2015*, and .as a result of the varied case-by-case estimates of the distance used across the Department's recent cases to calculate domestic inland freight, the use of *Doing Business in Thailand 2015* has generated divergent results. However, despite these divergent results, in almost all recent cases the distances Commerce has used to calculate the per km freight rate when using *Doing Business in Thailand 2015* were substantially higher than the

[336] *See Hand Tools from the PRC*, at Comment 4.
[337] *See* Xugong's Case Brief, at 10.
[338] *See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results of Administrative Review; 2011–2012*, 78 FR 15696 (March 12, 2013) ("*PRC Shrimp AR7*"), and accompanying Issues and Decision Memorandum, at Comment 4, unchanged in *Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review; 2011–2012*, 78 FR 56209 (September 12, 2013).
[339] *See Ferrovanadium from the PRC*, at Comment 5.
[340] *See* Prelim SV Memo, at 5-6.
[341] *See* Petitioners' Rebuttal Case Brief, at 19 graphing the reclaimed rubber values for the economically comparable countries on the record.
[342] *See* Qihang's Case Brief, at 13-14 and 22-30.

distance the Department used in the *Preliminary Results* of this review. As a result, domestic inland freight, which is typically a relatively insignificant factor accounted for over 30 percentage points of their margin.[343]

- Qihang also argues, in the *Preliminary Results*, the Department used a distance calculated to only the port of Bangkok, where other cases using the same source found that Laem Chabang is the main seaport.[344]
- Additionally, Qihang claims that the Petitioners based its distance used in the *Preliminary Results* on information that Petitioners from a Wikipedia article listing 50 districts located in Bangkok, and are therefore unreliable and unusable. In support of its position, Qihang points to Department determinations in past proceedings that Wikipedia is not a valid or reliable source for surrogate value purposes.[345]
- Qihang contends that the Department does not need to rely on *Doing Business in Thailand 2015* to value domestic inland freight; that the Department itself has stated that Thailand has producers of identical merchandise and information about the location of those Thai producers, all located in Bangkok, is readily available on the record. They state the average distance between the three Thai producers (S.R. Tyres, Hihero, and Hwa Fong) and the Bangkok port is approximately 59 km.[346]

Xugong's Comments:[347]

- Xugong states that the absurdly low distance used by the Department in the *Preliminary Results* has led to inflated dumping margins. Xugong asserts that as *Doing Business in Thailand 2015* does not gather information concerning the distance to transport products, there has been considerable uncertainty regarding the proper calculation of a truck freight rate using *Doing Business in Thailand 2015*. They note that the Department has recently relied on a distance to the "Port of Bangkok" from the *Doing Business in Thailand 2014*, that was 44.13km, and the distance has not changed. They state the Department's approach to distance should not be about what specific, subjective information happens to be on the record of a particular case. Instead, Xugong contends that the Department's presumed expertise, especially where confronting the same issue based on the same source across

[343] Qihang cites to: *Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results 0/Antidumping Duty Administrative Review: 2013-2014*, 80 FR 39,060 (July 8, 2015) (*Chlorinated Isocyanurates from the PRC*"), and accompanying Issues and Decision Memorandum.
[344] Qihang cites to: *Prestressed Concrete Steel Wire Strand from the People's Republic of China*, 75 FR 28560 (May 14, 2010) ("*Prestressed Concrete Steel Wire from the PRC*"), and accompanying Issues and Decision Memorandum; *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review: 2012-2013*, 80 FR 32087 (June 5, 2015) ("*Seamless Copper Pipe and Tube from the PRC*"), and accompanying Issues and Decision Memorandum.
[345] Qihang cites to: *Prestressed Concrete Steel Wire Strand from the People's Republic of China*, 75 FR 28560 (May 14, 2010) ("*Prestressed Concrete Steel Wire from the PRC*"), and accompanying Issues and Decision Memorandum.
[346] Qihang cites to: *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) ("*Prestressed Concrete Steel Rail Tie Wire from the PRC*"), and accompanying Issues and Decision Memorandum; *Drawn Stainless Steel Sinks Preliminary Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 26227 (May 7, 2015) ("*Drawn Stainless Steel Sinks from the PRC 2015*"), and accompanying Issues and Decision Memorandum; and *Pencils from the PRC*. Qihang also cites: *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333, 1341 (Fed. Cir. 2011) ("*Zhejiang DunAn Hetian Metal Co*"); and *Shakeproof*.
[347] *See* Xugong's Case Brief, at 42-47.

numerous cases, demands that the Department, as an investigative agency, make an across-the-board determination regarding what the appropriate truck freight rate should be when based on *Doing Business in Thailand 2015*.[348]

- Xugong notes that average distance of 13.87 km, calculated by Petitioners and used by the Department in the *Preliminary Results*, is made up of 26 districts. They claim that there is no support for Petitioners' assertion that those 26 districts are in fact "industrial districts" as they are labeled in Petitioners' chart provided therein. Xugong points out the supporting material provided by Petitioners, "Area zoning: 12 clusters in Bangkok" identifies only one "cluster" that is categorized to include "industrial," and that is the Sanam Chai cluster. They state that this way of determining distance would be most logical if the World Bank still used the "periurban" language in *Doing Business in Thailand 2015*, though it does not.[349]
- Additionally, Xugong asserts that when using *Doing Business in Thailand 2015*, the Department has already concluded in other cases that it was appropriate to rely on the distances between a series of industrial areas and the port of Laem Chabang. Therefore only using the river port of Bangkok was inappropriate in this case.[350]

Petitioner's Rebuttal Comments:[351]

- Petitioners contend the *Doing Business in Thailand 2015* distance is supported by record evidence and is a publically available, broad market average freight rate consistently found to provide the best available information on the record in prior cases.[352]
- The Department, it argues, cannot prefer unknown information that is not on the record and which the parties to this review have not been allowed to review or rebut over the specific information on this record that all parties have had full opportunity to respond to. They state the Department's determinations of relevant facts in other proceedings should not control the Department's determination on the record of this review. "{A}s a matter of law, each agency determination is *sui generis*, involving a unique combination and interaction of many variables, and therefore a prior administrative determination is not legally binding on other reviews…." The Department's role is to make a reasonable determination based on the record before it in the particular proceeding.[353]
- Petitioners argue the *Doing Business in Thailand 2015* cost is reported as an average cost of transportation in Thailand, not the specific cost of a certain producer. It would be inconsistent to divide an average freight cost by the distance from specific producers. Further, that the *Doing Business in Thailand 2014* report distance considers the periurban area, while the 2015 report does not.[354]
- Finally, Petitioners claim the Wikipedia article was only one of two sources that Petitioners

[348] Xugong cites to: *Drawn Stainless Steel Sinks from the PRC 2015; Multilayered Wood Flooring from the PRC*; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review 2013-2014*, 80 FR 38665 (July 7, 2015) ("*Tapered Roller Bearings from the PRC*"); and *PVLT Investigation*.
[349] Xugong cites to: *Crystalline Silicon Photovoltaic Cells.*
[350] Xugong cites to: *Diamond Sawblades from the PRC 2015*; *PRC Hangers 2015*; *Activated Carbon from the PRC*;
[351] *See* Petitioners' Rebuttal Case Brief, at 25-32.
[352] Petitioners cite to: *Diamond Sawblades from the PRC 2015* and *PVLT Investigation*.
[353] U.*S. Steel Corp. v. United States*, 33 CIT 984, 1003, 637 F. Supp. 2d 1199, 1218 (2009) aff'd, 621 F.3d 1351 (Fed. Cir. 2010) ("*U.S. Steel Corp.*").
[354] Petitioners cite to *PVLT Investigation*. and *Trust Chem.*

used to identify relevant districts in Bangkok, and both sources supported each other on which districts were relevant.

Department's Position: We have continued to use the distance of 13.87 km applied in the *Preliminary Results* to calculate a value for domestic inland freight. We acknowledge that the *Doing Business in Thailand 2015* report does not include the distance used to calculate the freight costs reported, and as such, in utilizing this source over various proceedings, the Department has utilized various distance figures pursuant to the information present on each individual underlying record.[355] Indeed, because each proceeding must stand alone, and participants are responsible for developing a record to adequately support selection of appropriate surrogate values,[356] there is variance between the distances applied in each case.

Respondents' had every opportunity to supplement the record with supporting contemporaneous distance information, or propose alternative Thai SV information to the *Doing Business in Thailand 2015* data, but did not avail themselves of this opportunity within the deadlines set by the Department. Accordingly, we are only able to consider what is on the record of this case to determine a value for the final results, and do not accept respondents' *post hoc* requests that the Department value a movement expense using information not submitted to the underlying record because they do not agree that the results provided by the information on the record – to which they had every opportunity to rebut, clarify, and correct – are reasonable.

Qihang argues that the Department could determine a distance for the domestic inland freight value calculation using information on the record regarding the location and distance to port with respect to the Thai producers of identical merchandise identified by the surrogate financial statements.[357] While the financial statements for those three producers include an address, the record continues to lack supporting documentation (including maps) showing the distance from each producer to the port of Bangkok. Similarly, the record does not include distances calculated to the port of Laem Chabang, and does not include the specified determinations with any supporting documentation (including maps) for parties to have commented on or rebutted.[358] Lacking underlying supporting documentation for the distances in these calculations, the Department cannot consider distances calculated from the financial statements, as requested by Qihang.

With respect to the alternative distance figures suggested for use by respondents, Xugong cites to the 85.5 km distance as calculated in the *Crystalline Silicon Photovoltaic Cells* SV memo.[359]

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[355] *See* Qihang's Case Brief, at 13 and 22, Xugong's Case Brief, at 42, Petitioners' Rebuttal Case Brief, at 26. Cases cited include: *Drawn Stainless Steel Sinks from the PRC 2015*, at Comment 13, *Multilayered Wood Flooring from the PRC*, at Comment 9; *Diamond Sawblades from the PRC 2015*, at comment 19, and *PRC Hangers 2015*, at 9.
[356] *See U.S. Steel Corp.*, at 1218, and *Trust Chem*, at 1268.
[357] *See* Qihang's Case Brief, at 26-27.
[358] Xugong points out that *Multilayered Wood Flooring from the PRC*, at Comment 9, calculated the distance used taking an average of the Port of Bangkok and Laem Chabang Port, and Qihang further cites to *Chlorinated Isocyanurates from the PRC*, at 18-19, which also averaged the distance from the Port of Bangkok and Laem Chabang Port. *See* Xugong's Case Brief, at 47-48, and Qihang's Case Brief, at 24.
[359] *See* Letter from Xugong "New Pneumatic Off-the-Road Tired form the PRC: Provision of Rebuttal Surrogate Values by Xuzhou Xugong Tyres Co. Ltd.," dated March 30, 2015 ("Xugong March 30 SV Submission"), at Exhibit 4.

However, only the distance and brief discussion from the SV memo were placed on the instant record and, as such, the record continues to lack information regarding how the distance itself was determined in *Crystalline Silicon Photovoltaic Cells*.[360] Moreover, that distance was calculated in regard to the 2014 version of *Doing Business in Thailand*, which used a different survey/methodology from the 2015 version.[361] We find that it would be inappropriate to use a distance that coordinates with a report that is not contemporaneous with the POR when distances that fill that surrogate value requirement of contemporaneity are available on the record.

While we recognize that the distance used to value domestic inland freight may have a greater effect on the margin calculated than in other reviews, but that is not a consideration of the Department's surrogate value selection methodology and the Department must select values based on the record before them. Parties did not provide significant comments or rebuttal distance information during the period of time made available for surrogate value information. Thus, there are three usable distances on the record of this review for Thailand:

1. 8.3 km, based on the *PVLT Investigation*, using *Doing Business in Thailand 2015* and a distance from downtown Bangkok to the port of Bangkok;[362]
2. 9.51 km, using from a list of the distances to the Port of Bangkok from all Thai companies that provided information for *Doing Business in Thailand 2015* for which the World Bank provided an address;[363]
3. 13.87 km, using average distances from commercial districts in Bangkok to the port of Bangkok (which we used for the *Preliminary Results*).[364]

For the final results, we find that the 13.87 km distance was properly supported on the record with a variety of sources.[365] Petitioners also submitted the distances from all the commercial districts (*i.e.*, non-residential and non-agricultural districts) in Bangkok to the port.[366] They included maps showing the distance used, as well as the sources used to determine which districts were composed of commercial or industrial activity.[367] The average distance from the Bangkok commercial districts is 13.87 km.[368] Respondents argue that there is no support for Petitioners' selection of the districts used to calculate the 13.87 km distance.[369] Xugong

[360] *Id.*
[361] *Id.*
[362] *See* Letter from Petitioners "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Second Surrogate Value Submission," dated August 31 2015 ("Petitioners' 8/31/2016 Surrogate Value Submission"), at Attachment 5.
[363] *Id.*, at Attachment 7.
[364] *Id.*, at Attachment 8; and *see* Prelim SV Memo, at 8 and Attachment XI. The data placed on the record was selected from sources that were up to date in 2015.
[365] *See* Petitioners' August 31 SV Submission, at Attachment 8. While the Department has found that Wikipedia alone is not a sufficient source, in this case it was used in combination with other sources to determine the average distance to the port. Petitioners used a Bangkok Post report on area zoning in addition to a Wikipedia article on the different districts in Bangkok.
[366] *See* Petitioners' August 31 SV Submission, at Attachment 8, using a Bangkok Post report describing clusters in the city.
[367] *Id.*
[368] *Id.*
[369] *See* Xugong's Case Brief, at 42, and Qihang's Case Brief, at 23.

specifically claims that the method Petitioners used is only logical if the *Doing Business in Thailand 2015* report "gathers information concerning the distance and cost to transport products in a 20-foot container from the periurban area (*i.e.*, Bangkok's Industrial Park Area)"[370] to determine the costs reported, but that is no longer the methodological language supplied by the World Bank.[371] They also assert that the districts chosen were not, in fact, all industrial districts.[372] We disagree with that assertion, as an article provided by Petitioners identifies the districts as industrial and commercial clusters, and it is reasonable to conclude that the producers surveyed to determine the costs in *Doing Business in Thailand 2015* would be shipping from any of those areas.[373] Qihang specifically argues that as Petitioners cited Wikipedia as a source to calculate the 13.87 km distance, as such the foundation of the distance calculated is unreliable and therefore the distance itself is unreliable.[374] In *Prestressed Concrete Steel Wire from the PRC*, Wikipedia was not used to determine a distance, and we explained that we could not rely on the definition provided by Wikipedia because that was the only source provided, and was a source that can be revised by the public at any time, meaning that it could not be considered authoritative standing alone..[375] Here, however, the selection of the industrial districts used to calculate the 13.87 km distance was supported by the Wikipedia article and the Bangkok Post report, which gives detailed descriptions of the city clusters.[376] The articles both provided the same supporting information regarding which districts around Bangkok could be reasonably assumed to have companies shipping from them.[377]

Therefore, given the paucity of information on the record supporting distances higher than 13.87 km, the Department has determined to use the same distance from the *Preliminary Results* in the final results in its calculation of inland freight for these final results.

Comment 12: Selection of the Surrogate Value for Carbon Black

Qihang's Brief: [378]

- Qihang notes that it reported, and the Department verified, that it uses carbon black in producing subject tires and that an SV specific to carbon black, not acetylene black. In the *Preliminary Results*, the Department derived the surrogate value for carbon black from import statistics under HTS number 28030020000, ("Carbon black, made from incomplete combustion of coal tar") which is described as acetylene black. They state that both Qihang and Petitioners proposed a surrogate value for carbon black based on imports under HTS number 280300, ("Carbon, Nesoi (Including Carbon Black))" which Qihang notes was used in prior Department determinations in both *OTR Tires* and the *PVLT Investigation*.[379]

[370] *See* Xugong's Case Brief, at 42
[371] *Id.*, *see, e.g.* Prelim SV Memo, at Attachment IX, and Petitioners' March 19 SV Submission, at Attachment 9.
[372] *Id.*
[373] *See* Petitioners' March 30 SV Submission, at Attachment 8.
[374] *See* Qihang's Case Brief at 25, citing *Prestressed Concrete Steel Wire from the PRC*.
[375] *See Prestressed Concrete Steel Wire from the PRC*, at the Issues and Decision Memorandum at 30.
[376] *See* Petitioners' August 31 SV Submission, at Attachment 8.
[377] *See* Petitioners' March 30 SV Submission, at Attachment 8.
[378] *See* Qihang's Case Brief at 30-33.
[379] Qihang cites to: *Pencils from the PRC*; *PVLY Investigation*; and *OTR Tires from the PRC 2015*, and accompanying Surrogate Value Memorandum. Qihang also cites: *Jacobi*.

Xugong's Brief:[380]

- Xugong argues the Department assigned surrogate values based on incorrect Thai HTS numbers. They state that rather than rely on the company's expertise in terms of the appropriate classification of each material input by HTS number, the Department has assigned many wrong HTS numbers to these material inputs.[381]
- Xugong states that the Department wrongly valued carbon black using acetylene black, when Xugong's carbon black is either furnace black or, even more fundamentally, mildly further-processed bituminous coal, and not carbon black derived from acetylene gas.[382]

Petitioners' Rebuttal Brief: [383]

Though Petitioners did not specifically rebut any of the surrogate value changes requested by respondents regarding the carbon black inputs discussed in this comment or any of the surrogate value comments discussed in the remainder of this document, they provide the following general comments in rebuttal to the requested changes:

- Petitioners argue that respondents rely on language from the CIT's decision in *Jacobi Carbons AB v. United States* that "the factors of production actually used by a respondent are important, if not controlling, when determining normal value." Petitioners argue the Court did not state, however, that the respondent's opinion as to what surrogate value is most appropriate to value the actual input is controlling. They state that the Court there rejected the foreign exporters' arguments that the Department was required to use the surrogate value chosen by the exporters and upheld the Department's selection of an alternate surrogate.[384]
- Petitioners encourage the Department to select surrogate values not because the source was proposed by the respondent being reviewed, but because the Department determines that source is the best available information to value that input. They state the Department should make changes to its preliminary surrogate values only where the record, and not only the respondent's proposals, supports such a change so that the best available information is used.

Department's Position: Both Qihang and Xugong assert that the Department used import data under the incorrect HTS number to value various carbon black inputs, applying the value for acetelyene black instead of carbon black. The deviation from the general carbon black HTS category suggested by parties to value carbon black inputs by instead using import data in an HTS category specific to acetelyene black in *Preliminary Results* was not intentional. HTS 2803.00 was suggested as the most specific category by all parties,[385] it explicitly names the input in question in its description, and no party has contested that this is the most appropriate category, generally, to value carbon black inputs. As such, the Department has changed the

[380] *See* Xugong's Case Brief at 47-51.
[381] Xugong also cites: *Jacobi Carbons*.
[382] Xugong cites to *PVLT Investigation*.
[383] *See* Petitioners' Rebuttal Case Brief at 33-35.
[384] Petitioners cite to *Jacobi Carbons AB.*, and *Timken*.
[385] *See* Qihang's March 19 SV Submission, at Exhibit SV-3, Xugong's March 19 SV Submission, at Exhibit 1, Petitioners' March 19 SV Submission, at Exhibit 1.

applicable HTS number used to value all carbon black inputs with Thai data for imports under HTS 2803.00 for the final results, as it is the best available information on the record.[386]

However, in agreeing with parties that this represents the most specific and best available information on record to value carbon black, we have applied this correction to *all* carbon black FOPs in the calculation of normal value for each respondent. As such, we disagree with Xugong's assertion that the Department should value two of its carbon black inputs, Carbon MC and Carbon 701, using HTS number 270112, "Bituminous Coal, Whether or Not Pulverized, but not agglomerated," as initially reported in its initial SV submission.[387]

In choosing not to value these two carbon black inputs differently, we note that the record lacks any description, discussion, or support to distinguish these two carbon black inputs from its other carbon black inputs and no explanation as to why these FOPs should be valued using a price for bituminous coal. Xugong originally provided descriptions for its carbon black inputs in their June 2, 2015, supplemental response.[388] All of the full, technical, names of these inputs are similar and general descriptions identical to each other across the five types of carbon black used by Xugong,[389] and when a more detailed description of each material was requested by the Department in its third supplemental questionnaire,[390] Xugong provided the two slightly different descriptions included in their case brief:[391]

> "Carbon black is one kind of agraphitic carbon and light, soft and extremely fined black powder. It has a high surface-area-to-volume ratio. It is produced by the incomplete combustion or degradation by heat of heavy petroleum… It is mainly used as reinforcing agent, reinforcing filler to increase the hardness and mechanical strength of rubber,"[392] and
>
> "With the main materials of raw coal, the rubber reinforcing agent is produced by shattering and screening process. The main element contains Carbon, SiO2, Al2O3 etc. Brown gray, black powder. It is mainly used as filling agent"[393]

[386] *See* Memorandum to the file, "Final Results of the 2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic off-The-Road Tires from the People's Republic of China: Surrogate Value Memorandum," published concurrently with this memorandum ("Final Results SV Memo").
[387] *See* Xugong's Case Brief, at Exhibit 1.
[388] *See* Xugong's Final Results Analysis Memo for a discussion of business proprietary information related to classification of the carbon black inputs.
[389] *See* Xugong's Case Brief, at Exhibit 1.
[390] *See* letter from the Department, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Third Supplemental Sections C and D Questionnaire," dated June 26, 2015, at 5.
[391] *See* Xugong's Case Brief, at Attachment 3.
[392] For Carbon N660, Carbon TST-103, Carbon N220, and Carbon N330. *See* Letter from Xugong "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Third Supplemental C and D Questionnaire Response the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated July 9, 2015 ("Xugong's Third Supplemental Response"), at Exhibit SQ3-16.
[393] For Carbon MC and Carbon 701. *See* Letter from Xugong "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Third Supplemental C and D Questionnaire Response the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated July 9, 2015 ("Xugong's Third Supplemental Response"), at Exhibit SQ3-16.

The latter description for Carbon MC and Carbon 701 inputs makes it clear that Xugong was not purchasing raw coal, but rather was purchasing a "rubber reinforcing agent" which was created by a careful "screening process" of "raw coal," in order to produce a "brown gray, black powder" to be used as a "filling agent" in its tires.[394] This description is very similar to that which Xugong gives for its other carbon blacks, which Xugong described as coming from "incomplete combustion… of heavy petroleum" to produce a "black powder" that is a "reinforcing filler" in its tires.[395] While the fossil fuel feedstock may be different between and each type of carbon black used by the respondent, and different carbon blacks may have slightly different chemistry, this does not obscure the fundamental fact that they are all inputs of a carbon black product. Just as Xugong did not request that its other carbon black inputs be valued using an HTS category specific to petroleum, we do not believe it appropriate to value the two in carbon blacks in question using a bituminous coal value, absent compelling information and argument as to why a SV specific only to the input of the FOP is appropriate to value the FOP in the alternative to one that explicitly specifies the material in question.

Further, we note that Qihang also uses five different types of carbon black and state that "import statistics do not distinguish between the various types of carbon black and that it is appropriate to use the same surrogate value for all types of carbon black."[396] Also, coal has not been used to value carbon black as an input in tire production in any prior proceeding of with respect to the relevant industry.[397] As is clear from even the plain language of the inputs provided by Xugong, carbon black is a more processed, refined material than just raw bituminous coal, and is ready for immediate use in a tire. Accordingly, the Department finds that HTS 28030020000 including carbon black is a more appropriate HTS category to value carbon black inputs than a bituminous coal value, based on the information on the record.

Though Xugong argues that we verified the Carbon MC input, the Department only verified Xugong's "reported per-unit consumption" (including that of Carbon MC), by reviewing source documentation and accounting records with respect to the consumption of these materials (including raw material sub-ledgers and stock-out forms), we did not examine the actual quality or grade or specifications of all relevant input materials.[398] Rather, we confirmed the amounts consumed, to make sure they were reported correctly to the Department and tied to Xugong's records.[399] The Department's notation of the absence of discrepancy or that information reviewed comported with the record in a verification report is not an indication that the Department verified every statement of fact on behalf of a respondent on the underlying record to be wholly and unambiguously accurate. To the extent that the Department's verification is relevant to this specific issue, our review of Xugong's raw material inventories did not contradict the descriptions of the materials provided to the record which, in the instant case, were reported to be carbon black and not bituminous coal. Therefore, the Department has valued all of

[394] *Id*.
[395] *Id*.
[396] *See* Qihang's March 19 SV Submission, at 4.
[397] *See*, *e.g.*, *PVLT Investigation*, *OTR Tires AR3*.
[398] *See* Xugong's Verification Report, at 20 and Exhibits EP-VE 22 and 23.
[399] *Id*.

Xugong's carbon black inputs using HTS number 280300, as this is the most accurate and best available HTS number on the record.

Comment 13: Inadvertent Errors in Surrogate Value Selection

Xugong's Brief:[400]

- Xugong argues the Department has assigned surrogate values based on incorrect Thai HTS numbers. They state that rather than rely on the company's expertise in terms of the appropriate classification of each material input by HTS number, the Department has assigned many wrong HTS numbers to these material inputs.[401]

Qihang's Brief: [402]

- Qihang states that they reported, and the Department verified, that Qihang uses a nylon cord thread as its cord thread input. The surrogate value proposed by Qihang was based on imports under HTS number 400700, which is the category for nylon cord thread, instead of HTS number 590210, which is for vulcanized rubber thread and cord.[403]

Department's Position: We find that Qihang's description of the cord thread inputs are more correctly valued by import data from the HTS category requested, as submitted in their surrogate value submissions.[404] Accordingly, we corrected this error by valuing the cord thread input with import data categorized under the HTS 400700 number suggested in their original submission and case brief for these final results.[405]

Xugong asserts the Department used the incorrect HTS number in selecting a surrogate value a number of inputs,[406] and we agree that the SV selected by the Department for the *Preliminary Results* was in error with regard to those inputs.[407] We find that, based on Xugong's descriptions of the inputs, these FOPs are more correctly valued by import data from the HTS category requested.[408] Accordingly, we corrected this error and have utilized import data for the HTS

[400] *See* Xugong's Case Brief, at 47-51.
[401] Xugong cites to *PVLT Investigation*. Xugong also cites: *Jacobi Carbons*.
[402] *See* Qihang's Case Brief, at 30-33.
[403] Qihang cites to: *Pencils from the PRC*; *PVLT Investigation*; *OTR Tires from the PRC 2015*, and accompanying Surrogate Value Memorandum. Qihang also cites: *Jacobi Carbons*.
[404] *Id.*, and *see* Letter from Qihang "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Section D Questionnaire Response," dated March 6, 2015 ("Qihang's Section D Questionnaire Response"), at Exhibits D5 and D8.
[405] *Id.*, and *see* Letter from Qihang "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Initial Surrogate Value Submission," date March 19, 2015 ("Qihang's March 19 SV Submission"), at 5. *See also* Final Results SV Memo.
[406] Specifically rubber clay, homogenizing-dispersing agent, homogenizing-dispersing agent JF10, homogenizing-dispersing agent A78, adhesion reinforcing agent, adhesive resin, fabric 1500D/2E74, fabric 1500D/2E100, Fabric 2000D/2E74, stearic acid, and the agent for preventing tyre shoulder separation.
[407] *See* Xugong's Case Brief, at 47-51 and Attachment 3.
[408] *Id.*, and *see* Xugong's March 30 SV Submission, at Exhibit 1, and *see* Xugong's First Supplemental Response, at Exhibit SQCD-24.

numbers suggested in their original submission with respect to these inputs for the final results.[409]

Comment 14: Selection of the Surrogate Values for #3 and #20 Compound Rubber, Activation Rubber Powder, Benzonic Acid, and Tire Cord Fabric

Xugong's Brief:[410]

- Generally, Xugong argues the Department has assigned surrogate values based on incorrect Thai HTS numbers. They state that rather than rely on the company's expertise in terms of the appropriate classification of each material input by HTS number, the Department has assigned many wrong HTS numbers to these material inputs.[411]

Department's Position: Xugong states that the Department incorrectly valued several of its inputs. While we agree that the respondent's experience is important,[412] 776(c)(1)(B) of the Act requires Commerce to choose data that is the "best available information" on the record.[413] The Court has said:

> "Commerce is granted broad discretion to determine whether information is the best available because the statute does not define the term. In determining the valuation of the factors of production, "the critical question is whether the methodology used by Commerce is based on the best available information and establishes the antidumping margins as accurately as possible." This court's duty is "not to evaluate whether the information Commerce used was the best available, but rather whether a reasonable mind could conclude that Commerce chose the best available information."[414]

Therefore, based on the information on the record, for the specific FOPs and reasons listed below, the Department has determined to use a surrogate value different than the one proposed by Xugong or used in other determinations.

#3 and #20 Compound Rubber

Xugong's Brief:[415]

- Xugong argues the Department has valued #3 and #20 compound rubber based on incorrect Thai HTS numbers. Xugong asserts the appropriate HTS classification is 4002809000 ("Mixtures of Natural Rubber or Similar Natural Gums With Synthetic Rubber and Factice

[409] *Id.*, and Final Results SV Memo.
[410] *See* Xugong's Case Brief, at 47-51.
[411] Xugong cites to *PVLT Investigation*. Xugong also cites: *Jacobi Carbons*.
[412] *See Jacobi Carbons*, citing *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333 (Fed. Cir. 2011) ("*Zhejiang Dunan Heitan Metal Co.*").
[413] *Zhejiang Dunan Hetian Metal Co.*, at 1341.
[414] *Id.*, citing *Taian Ziyang Food Co. v. United States*, 637 F. Supp. 2d 1093, 1125 (CIT 2009) (citing *Rhodia, Inc. v. United States*, 185 F. Supp. 2d 1343, 1351, 25 Ct. Int'l Trade 1278 (CIT 2001)), *Shakeproof*, at 1382, and *Goldlink Indus. Co. v. United States*, 431 F. Supp. 2d 1323, 1327, 30 Ct. Int'l Trade 616 (CIT 2006).
[415] *See* Xugong's Case Brief, at 47-51.

Derived From Oils, in Primary Rubber, Forms or in Plates, Sheets or Strip; Other"), because these materials are a mixture of natural rubber ("smoked rubber" and "SIR," respectively) and synthetic rubber ("SBR"). The appropriate classification of any mixture of natural and synthetic rubber is under heading 400280, and not 400591 ("Rubber, Unvulcanized, In Plates, Sheets Etc, Nesoi"), as used by the Department in the *Preliminary Results* and which applies to material that is only natural rubber. [416]

Department's Position: We disagree with Xugong's requested classification of the #3 and #20 compound rubber inputs under HTS 4002809000. First, Xugong reported and we verified information supporting the use of HTS number 400591 ("Rubber, Unvulcanized, In Plates, Sheets Etc, Nesoi").[417] Also, HTS section 4005 is described as "Compounded rubber, unvulcanized, in primary forms or in plates, sheets or strip," a HTS section which is not for natural rubber, as asserted by Xugong, but instead for a mixture of rubbers. HTS section 4002 in comparison is described as, "Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4002 with any product of this heading, in primary forms or in plates, sheets or strip," and thus covers imports made of only synthetic rubber. Xugong's own description of these two inputs, "{t}he raw material is composed by 97 % of #3 smoked rubber, 2.5% of SBR and 0.5% of Stearic Acid," for #3 compound rubber, and "{i}t is composed by 97% of SIR 20, 2.5% of SBR and, 0.5% of Stearic Acid," for #20 compound rubber, demonstrates that these two inputs are primarily mixtures of natural rubbers (*i.e.*, both consist of 97 percent natural rubber), and as such, we determine that import data under HTS number 400591 represent the most specific and best available information on record from which to value #3 and #20 compound rubber inputs.[418] Therefore, we have declined to change this value for the final results.

Activation Rubber Powder

Xugong's Brief:[419]

- Xugong contends the Department mis-categorized activation rubber powder under HTS 381210 ("prepared rubber accelerators") and that it should instead be valued under HTS number 250700, ("kaolin and other kaolinic clays (whether or not calcined)").[420]

Department's Position: While we agree with Xugong that the Department improperly valued the input activation rubber powder using import data under HTS 381210 pertaining to rubber accelerators in the *Preliminary Results*, we disagree that the most-specific information on record to value this input is HTS 250700. Xugong provided the following description for the input: "{t}he smashed powder of recycled rubber, which is to substitute part the main materials of raw rubber of tyre products."[421] Accordingly, nothing in the description of this input indicates that it

[416] Xugong cites to *PVLT Investigation*. Xugong also cites: *Jacobi Carbons*.
[417] *See* Xugong's Final Results Analysis Memo for a discussion of business proprietary information related to classification of the #3 and #20 compound rubber.
[418] *See* Xugong's Third Supplemental Response, at Exhibit SQ3-16.
[419] *See* Xugong's Case Brief, at 47-51.
[420] Xugong cites to *PVLT Investigation*. Xugong also cites: *Jacobi Carbons*.
[421] *See* Third Supplemental Response, at SQ3-16. For a discussion of further business proprietary information related to classification of the activation rubber powder, s*ee* Xugong's Final Results Analysis Memo.

is either a rubber accelerator or is comprised of kaolin or kaolinic clays under HTS 250700. Rather, we find that the best available information on record for this input, based on the description provided by the respondent, is the HTS number for reclaimed rubber, 400300. Therefore, the Department has changed the surrogate used to value activation rubber powder for the final results to import data under HTS 400300 ("Reclaim Rub In Primary Form/plates, Sheets/strip").

Benzonic Acid

Xugong's Brief:[422]

- Xugong contends the Department had no basis to depart from the specific category initially requested, *i.e.*, HTS number 291631 ("Benzonic acid, its salts and esters"),[423] in valuing the input under HTS 29163100101 ("Benzonic Acid") which was not suggested by Xugong as the appropriate category.

Department's Position: Xugong describes the input as "{b}enzoic acid, molecular formula C6H5COOH, is scaly or acerose crystal with benzene or formaldehyde smell,"[424] and noted that this input is best valued with the six-digit HTS number 291631. We do not disagree that this appears to be the most specific information for the input at the six digit level, which plainly includes the input as reported *and its salts and esters*. However, at the eight-digit level, upon which information is available on the record, this category is further broken out into a sub-classification that includes only the input in question, *i.e.*, benzonic acid, and this more specific sub-classification which does not mention salts or esters, unlike the six digit level, is presumably exclusive these substances. As such, HTS 29163100101 remains the most-specific information on record to value "Benzonic Acid", and we are unpersuaded by Xugong's assertion that the submission of the six-digit value represents a choice born out of company's expertise in evaluating its inputs to which the Department should provide deference, given the existence of a plainly more-specific and better available value on the record. Therefore the Department declined to change this value for the final results.

Tire Cord Fabric

Xugong's Brief:[425]

- Xugong argues the Department selected the incorrect HTS number to value tire cord.[426] The Department's assignment of HTS number 590210910000 ("Of Nylon-6 Yarn") for tire cord fabric also contravenes its own decision with respect to many of the same materials in the *PVLT Investigation*, where the Department applied Xugong's proposed 590210 ("Of Nylon-6 Yarn") to the same materials.[427]

[422] *See* Xugong's Case Brief, at 47-51.
[423] Xugong cites to *PVLT Investigation*. Xugong also cites: *Jacobi Carbons*.
[424] *See* Xugong Third Supplemental Response, at Exhibit SQ3-16.
[425] *See* Xugong's Case Brief, at 47-51.
[426] This covers the inputs Fabric 1680D/2V1, Fabric 1680D/2V2, Fabric 1260D/2V1, Fabric 1260D/2V2, Fabric 260D/2V3, Fabric 1260D/3V1, Fabric 1260D/3V2, Fabric 840D/2V2, Fabric 840D/2V3, Fabric 2.
[427] Xugong cites to *PVLT Investigations*. Xugong also cites: *Jacobi Carbons*.

Department's Position: The Department disagrees with Xugong's claim that the HTS number 590210 is the correct category for its various tire cord inputs.[428] Xugong's own description of these inputs as:

> "{n}ylon, also called Polyamide (short for PA), is general name of thermoplastic resin, of which its molecule main chain contains reduplicate amido--[NHCO]. The two mainly items are PA6,(C6H11NO)n and PA66,[-NH（CH2）6－NHCO(CH2)4CO]n. Xugong uses PA6. The main function is used as frame of tyre materials and increases the strength and limits the deformation,"

Thus, whereas the category suggested by Petitioners appropriately covers nylon tire cord fabric, the information used by the Department in the *Preliminary Results* further limits the scope of import price information to nylon 6 tire cord fabric, which is precisely the sub-type of tire cord fabric indicated in Xugong's description of its input.[429] Accordingly, as with benzonic acid above, while the category suggested by Xugong appears accurate and appropriate at the six-digit level, their own description of the input along with the existence of information on the instant record at the eight-digit level, more accurately aligns with the more specific HTS number 590210910000 used in the *Preliminary Results* to the nylon tire cord fabric input.[430] As above, we are unpersuaded by Xugong's assertion that the submission of the six-digit value (and its use in similar segments in valuing the same input) represents a choice born out of company's expertise in evaluating its own inputs to which the Department should provide deference, given the existence of a plainly more-specific and better available value on the record. Therefore the Department declines to change this value for the final results.

[428] This covers the inputs Fabric 1680D/2V1, Fabric 1680D/2V2, Fabric 1260D/2V1, Fabric 1260D/2V2, Fabric 260D/2V3, Fabric 1260D/3V1, Fabric 1260D/3V2, Fabric 840D/2V2, Fabric 840D/2V3, Fabric 2.
[429] *See* Prelim SV Memo, at Attachment 1.
[430] *See* Xugong Third Supplemental Response, at Exhibit SQ3-16.

RECOMMENDATION

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

Agree ✓ Disagree _____

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

12 APRIL 2016
Date