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

A-570-028
Investigation
Public Document
E&C/Office II: MR

DATE: June 21, 2016

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

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China

Summary

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of hydrofluorocarbon blends and components thereof (HFCs) from the People's Republic of China (PRC). As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for T.T. International Co., Ltd. (TTI), one of the two mandatory respondents in this case. Moreover, after considering the facts on the record as well as the comments received, we find that Huantai Dongyue International Trade Co., Ltd. and Shandong Dongyue Chemical Co., Ltd. (collectively, Dongyue), the other respondent, is no longer eligible for a separate rate. Finally, we revised the scope of the investigation to include "semi-finished" HFC blends, HFC blends made in the PRC containing non-PRC components, and HFCs blended in third countries.

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

General Comments

1. Number of Classes or Kinds of Merchandise
2. Addition of the Word "Refrigerants"
3. Semi-Finished Blends
4. Third Country Blending
5. Patented Blends and Non-Named HFC Blends
6. Voluntary Respondents

7. Critical Circumstances

Separate Rates Comments

8. Companies Owned by a State-Owned Enterprise (SOE)
9. Authority to Base the PRC-Wide Rate on AFA
10. Rejection of Qingsong's Quantity and Value (Q&V) and Separate Rates Responses
11. Rate Assigned to Separate Rates Companies
12. Ministerial Errors in Certain Combination Rates

Company-Specific Comments

Dongyue

13. Verification Failure
14. The Margin Assigned to Dongyue
15. Moot Arguments

TTI

16. AFA
17. Whether TTI or its Supplier is the Respondent
18. Value Added Tax (VAT) Paid by the Suppliers
19. Movement Expenses Paid by the Suppliers
20. Selling Expenses Incurred by TT Hong Kong
21. Freight Expenses Paid to a Non-Market Economy (NME) Provider
22. Zip Codes Used in the Differential Pricing Analysis
23. Factors of Production (FOPs) Reported Based on the Accounting or Calendar-Month
24. FOP for Catalyst
25. Energy FOPs
26. Granting a By-Product Offset for HCL and HF
27. Whether the By-Product Adjustment Should be Based on Sales or Production Quantity
28. Surrogate Value for HCL
29. Surrogate Value for Anhydrous Hydrogen Fluoride (AHF)
30. Surrogate Financial Statements
31. Margin Calculation Errors

Background

On February 1, 2016, the Department of Commerce (the Department) published the Preliminary Determination in the LTFV investigation of HFCs from the PRC.[1] The period of investigation (POI) is October 1, 2014, through March 31, 2014. In February and March 2016, the

[1] See Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination, 81 FR 5098 (February 1, 2016) (Preliminary Determination), and accompanying Preliminary Decision Memorandum.

Department conducted sales and FOP verifications at the offices of the two mandatory respondents, Dongyue and TTI, in accordance with section 782(i) of the Tariff Act of 1930, as amended (Act).

We invited parties to comment on the Preliminary Determination. On April 15, 2016, the petitioners,[2] Dongyue, TTI and a number of exporters and importers of Chinese HFCs (including, among others, National Refrigerants, Inc. (National Refrigerants)) submitted case briefs. On April 25, 2016, the petitioners, Dongyue, TTI, and National Refrigerants submitted rebuttal briefs.

On May 3, 2016, we issued memoranda analyzing certain comments received on the scope of this investigation,[3] and we invited comments related to this analysis. On May 11, 2016, the petitioners and various interested parties submitted case briefs. On May 16, 2016, the petitioners also submitted a rebuttal brief. On June 2, 2016, the Department held a public hearing.

Based on our analysis of the comments received, as well as our findings at verification, we recalculated the weighted-average dumping margin for TTI from the Preliminary Determination. With respect to Dongyue, we find that this company is not eligible for a separate rate because it was unable to establish the integrity of its accounting system at verification, and, as a result, we were unable to verify all elements of its separate rate claim. Therefore, we find that Dongyue is part of the PRC-wide entity in this investigation.

Finally, after considering all comments received on the scope of the investigation, we modified the scope to include "semi-finished" HFC blends made in the PRC, as well as the PRC content of finished and semi-finished HFCs blends made in third countries.

Scope of the Investigation

The products subject to this investigation are HFCs and single HFC components of those blends thereof, whether or not imported for blending. HFC blends covered by the scope are R-404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R-407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R-407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R-410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R-507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R-507. The foregoing

[2] The petitioners in this case are The American HFC Coalition and its individual members and District Lodge 154 of the International Association of Machinists and Aerospace Workers.

[3] See the Memoranda to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Melissa Skinner, Director, Office II, entitled "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components (HFCs) from the People's Republic of China (PRC): Analysis of Scope Comments Made by Refrigerant Solutions Limited," dated May 3, 2016 (Refrigerant Solutions Scope Memorandum); and "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components (HFCs) from the People's Republic of China (PRC): Analysis of Certain Scope Comments," dated May 3, 2016 (Preliminary Scope Memorandum).

percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.[4]

The single component HFCs covered by the scope are R-32, R-125, and R-143a. R-32 or Difluoromethane has the chemical formula CH2F2, and is registered as CAS No. 75-10-5. It may also be known as HFC-32, FC-32, Freon-32, Methylene difluoride, Methylene fluoride, Carbon fluoride hydride, halocarbon R32, fluorocarbon R32, and UN 3252. R-125 or 1,1,1,2,2-Pentafluoroethane has the chemical formula CF3CHF2 and is registered as CAS No. 354-33-6. R-125 may also be known as R-125, HFC-125, Pentafluoroethane, Freon 125, and Fc-125, R-125. R-143a or 1,1,1-Trifluoroethane has the chemical formula CF3CH3 and is registered as CAS No. 420-46-2. R-143a may also be known as R-143a, HFC-143a, Methylfluoroform, 1,1,1-Trifluoroform, and UN2035.

Also included are semi-finished blends of Chinese HFC components. Except as described below, semi-finished blends are blends of two Chinese HFCs components (i.e., R-32, R-125, and R-143a), as well as blends of any one of these components with Chinese R-134a, that are used to produce the subject HFC blends that have not been blended to the specific proportions required to meet the definition of one of the subject HFC blends described above (R-404A, R-407A, R-407C, R-410A, and R-507A).

This investigation includes any Chinese HFC components (i.e., R-32, R-125, and R-143a), as well as Chinese R-134a,[5] that are blended in a third country to produce a subject HFC blend before being imported into the United States. Chinese R-134a is not subject to the scope of this investigation unless it is blended with another Chinese HFC component (i.e., R-32, R-125, and R-143a) into a subject blend or semi-finished blend before being imported into the United States.

Any blend or semi-finished blend that includes an HFC component other than R-32, R-125, R-143a, or R-134a is excluded from the scope of this investigation. Furthermore, semi-finished blends do not include any blends containing both HFCs R-32 and R-143a. Single-component HFCs and semi-finished HFC blends are not excluded from the scope of this investigation when blended with HFCs from non-subject countries.

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[4] R-404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R-407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R-407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R-410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ-20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R-507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ-50, and Suva®507. R-32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R-125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R-143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

[5] However, if the only Chinese content of such a third country blend is the R-134a portion, then such a third country blend is excluded from the scope of this investigation.

Excluded from this investigation are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from this investigation are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R-438A), MO79 (R-422A), MO59 (R-417A), MO49Plus™ (R-437A) and MO29™ (R-4 22D), Genetron® Performax™ LT (R-407F), Choice® R-421A, and Choice® R-421B.

HFC blends covered by the scope of this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Single component HFCs are currently classified at subheadings 2903.39.2035 and 2903.39.2045, HTSUS.[6] Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

Scope Comments

During the course of this investigation, the Department received numerous scope comments from the petitioners and other interested parties. In conjunction with the Preliminary Determination, the Department modified the language of the scope of the investigation to clarify that the patented blends Choice R-421A and Choice R-421B are excluded from the scope because this modification was consistent with the intent of the Petition and the petitioners had no objection to it.[7] We also revised the scope to incorporate updates to the HTSUS categories under which HFCs are imported.[8] No interested party commented on these modifications. Therefore, we made no changes to this scope language as stated in the Preliminary Determination.

Also in the Preliminary Determination, we declined to add the word "refrigerants" to the scope language (thereby limiting the scope's coverage to only HFC components and blends used for refrigeration) because such an end use limitation would be contrary to the intent of the Petition.[9] The Department did not address the remaining scope comments (i.e., the number of classes or kinds of merchandise, and whether to include in the scope semi-finished blends and blends made in third countries) due to the complexity of the issues raised. Instead, we indicated that we intended to issue our analysis of these issues at a later point in the investigation.

In February 2016, the Department received scope comments from ICOR International Co. Inc. (ICOR), a U.S. manufacturer of HFC blends, and Refrigerant Solutions Limited (Refrigerant Solutions), a producer and importer of HFC blends. In April 2016, we rejected these submissions because they contained untimely-filed new factual information.[10] Shortly thereafter,

[6] We note that HFC blends were classified at HTSUS subheading 3824.78.0000 and single component HFCs were classified at HTSUS subheading 2903.39.2030 in 2015.

[7] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 7.

[8] Id., at 8.

[9] Id.

[10] See the letter from Refrigerant Solutions to the Department, entitled "Anti-Dumping Duties on Imports of Hydrofluorocarbons (HFCs) from China," dated February 15, 2016; and the letter from ICOR to the Department,

Refrigerant Solutions requested permission to place its new factual information on the record of this case; we granted this request, and Refrigerant Solutions re-filed its original submission.[11]

In May 2016, we issued two preliminary decision memoranda addressing the pending scope issues. In the first memorandum, we analyzed the comments filed by Refrigerant Solutions, consisting of a request that the Department exclude from the scope a number of HFC blends which either are patented or have a patent pending, as well as HFC components used to make those blends after importation into the United States.[12] We preliminarily found that the scope language as written is sufficiently clear and any modifications undertaken to narrow the scope would be contrary to the intent of the Petition.[13] In the second memorandum, we analyzed the scope issues pending at the time of the Preliminary Determination.[14] We preliminarily found that HFC blends and components comprise a single class or kind of merchandise.[15] We also proposed language to include semi-finished blends and the PRC content of blends made in third countries in the scope.[16]

In case briefs filed in May 2016, we received comments on each of these issues, as well as on the decision to exclude the word "refrigerants" from the scope. After considering these comments, we continue to find that HFC blends and components comprise a single class or kind of merchandise, semi-finished and the PRC content of third country blends should be excluded from the scope (albeit with certain modifications to the proposed language), and the word "refrigerants" should not be added. For further discussion, see Comments 1 through 5, below.

Finally, in its scope rebuttal brief, the petitioners argued that the scope language in the Petition should be interpreted to cover all HFC blends, not just those specifically named in the scope. After reviewing the language in the Petition, we disagree that such an interpretation is warranted, and we did not adopt it. For further discussion, see Comment 5 below.

Use of Adverse Facts Available

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the

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entitled "Case No. A-570-028, Hydrofluorocarbon Blends and Components from the People's Republic of China: Comments on the Scope of the Investigation," dated February 18, 2016. See also the letter from the Department to Trade Law Defense PLLC, entitled "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components from the People's Republic of China: ICOR's Scope Comments," dated April 13, 2016: and the letter from the Department to Refrigerant Solutions Limited, entitled "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components from the People's Republic of China: Refrigerant Solutions Limited Scope Comments," dated April 18, 2016.

[11] See the letter from Refrigerant Solutions, entitled "Anti-Dumping Duties on Imports of Hydrofluorocarbons (HFCs) from China," dated April 19, 2016.

[12] See Refrigerant Solutions Scope Memorandum.

[13] Id., at 1 and 6.

[14] See Preliminary Scope Memorandum.

[15] Id., at 8-9.

[16] Id., at 11-14 and 18-21.

Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping duty (AD) statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

In the Preliminary Determination, we found that the PRC-wide entity did not respond to the Department's requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. We further determined that because non-responsive PRC companies had not demonstrated their eligibility for separate rate status, the Department considered them part of the PRC-wide entity. Finally, the Department preliminarily assigned a PRC-wide rate based on facts available, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, applying an adverse inference, pursuant to 776(b) of the Act.[17]

Specifically, in the Preliminary Determination the Department first examined whether the highest petition margin was less than or equal to the highest calculated margin in the Preliminary Determination, and determined that the highest Petition margin of 300.30 percent was the higher of the two.[18] In order to corroborate 300.30 percent as the potential PRC-wide rate, we compared it to the highest transaction-specific margin calculated for the mandatory respondents. We determined that the highest transaction-specific margin demonstrated that the Petition rate of 300.30 percent did not have probative value. Therefore, we determined that we were unable to corroborate the 300.30 percent rate and, instead, used the highest calculated transaction-specific margin of 210.46 percent as the PRC-wide rate. Because this rate was a calculated rate in this segment of the proceeding, there was no need to corroborate it (i.e., it is not secondary information).[19] Thus, for the Preliminary Determination, we assigned to the PRC-wide entity a dumping margin of 210.46 percent, which was the highest calculated rate.

We received comments from interested parties on the Department's authority to base the PRC-wide rate on AFA. See Comment 9, below. After considering these comments, we continue to find that the PRC wide entity failed to cooperate to the best of its ability in responding to the Department's requests for information. We revised our margin calculations for TTI in this final determination and, as a result, the highest calculated rate is no longer the 210.46 percent

[17] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 23-28.

[18] Id., and accompanying Preliminary Decision Memorandum at 27-28.

[19] See 19 CFR 351.308(c) and (d) and section 776(c) of the Act. See also Applicability Notice, 80 FR at 46794 ("Section 502 provides that, in making AD and CVD determinations on the basis of the facts available, the Department is not required to corroborate, in certain circumstances, the information employed, to make certain estimates or demonstrations concerning that information, or to address certain claims regarding the 'alleged commercial reality' of non-cooperating parties.").

calculated in the Preliminary Determination. Consequently, we are now applying as the AFA rate the highest calculated rate in this final determination, 216.37 percent.

Margin Calculations

We calculated export price (EP) and normal value (NV) for TTI using the same methodology stated in the Preliminary Determination,[20] except as follows:

- We revised our margin calculations for TTI to take into account our findings from the sales and FOP verifications.[21] See Comments 19, 21, 22, and 25 for further discussion of certain of these changes.

- We deducted irrecoverable VAT from TTI's U.S. prices. See Comment 18.

- We adjusted certain of the factors of production (FOPs) reported by one of TTI's suppliers to take into account observed differences these in FOPs when stated on an accounting-month and calendar-month basis. See Comment 23.

- We revised our calculations to correct certain ministerial errors. See Comment 31.

- We rounded to two decimal places the surrogate financial ratios determined using the financial statements of Mexichem S.A.B. de C.V. (Mexichem), a producer of refrigerant gases in Mexico. See Comment 30.

Discussion of the Issues

General Comments

Comment 1: *Number of Classes or Kinds of Merchandise*

Prior to the preliminary determination in this case, National Refrigerants, a U.S. manufacturer of HFC blends, requested that the Department find that HFC components and HFC blends constitute separate classes or kinds of merchandise. After analyzing the issue, we found that there is no clear dividing line between HFC components and HFC blends, and, therefore, we found these products to be the same class or kind.[22] This finding is consistent with the Department's longstanding practice in cases where a petition was filed on products and their

[20] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 10-16.

[21] See Memoranda to the File from Dennis McClure, Senior Analyst, and Manuel Rey, Analyst, regarding "Verification of the Responses of Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. in the Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated April 5, 2016 (Taicang FOP Verification Report), at 3 and 14; and "Verification of the Responses of T.T. International Co., Ltd. in the Antidumping Duty investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated April 6, 2016 (TTI Sales Verification Report), at 2 and 20.

[22] See Preliminary Scope Memorandum, at 8.

major components.[23] In those cases, the Department has treated the products and component parts as a single class or kind.[24]

We received comments on this decision from National Refrigerants as well as from Daikin America and Daikin Fluorochemicals (China) Co., Ltd. (collectively, Daikin), one of the companies which received a separate rate in this investigation. Both companies argue that the Department should revisit its analysis and find that HFC blends and components are separate classes or kinds of merchandise.

According to National Refrigerants, the Department's analysis rests largely on the fact that HFC blends are made up of components, and, as a result, they share their primary physical characteristics. However, National Refrigerants argues that physical differences alone – even where the two products share the same base characteristics -- cannot be the basis for such a finding. As support for this argument, National Refrigerants cites Magnesium from Canada,[25] where the Department found that, although pure and alloy magnesium share the same base chemical (magnesium), their physical differences warranted a finding of separate classes or kinds, and Sulfur Dyes from the UK,[26] where the Department stated physical differences alone could not "form the sole basis for determining that {products} fall within separate classes or kinds."

National Refrigerants characterizes the remainder of the Department's analysis as "cursory," and states that the Department overlooked the undeniable differences between HFC components and blends. National Refrigerants asserts that the products are not interchangeable, which leads to different end uses and customer expectations. National Refrigerants notes, for example, that blends are designed for use in particular refrigeration equipment, while the components may be used for completely different purposes (e.g., fire suppression, metal smelting, tattoo removal); thus, National Refrigerants disagrees with the Department that components are, for all practical purposes, dedicated for use in blends. Further, National Refrigerants asserts that customers will not purchase HFC components for use in applications that call for blends because their performance is different, and some components are flammable.

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[23] See, e.g., Notice of Initiation: Floor-Standing Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China, 68 FR 44040 (July 25, 2003) (Ironing Tables); Final Results of Changed Circumstances Review, Revocation of the Antidumping Duty Order, and Rescission of Administrative Reviews: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany, 67 FR at 53996 (April 22, 2002) (LNPP); Notice of Final Determinations of Sales at Less Than Fair Value: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and the Republic of South Africa, 65 FR 25907 (May 4, 2000), and accompanying Issues and Decision Memorandum at Comment 1; and Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Outboard Engines From Japan, 69 FR 49863, 49865-67 (August 12, 2004) (Outboard Engines Prelim), unchanged in Notice of Final Determination of Sales at Less Than Fair Value: Outboard Engines From Japan, 70 FR 326, 328 (January 4, 2005) (Outboard Engines Final).

[24] Id.

[25] See Pure and Alloy Magnesium from Canada: Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition, 57 FR 30939 (July 13, 1992) (Magnesium from Canada).

[26] See Final Determination of Sales at Less Than Fair Value: Sulfur Dyes, Including Sulfur Vat Dyes, from the United Kingdom, 58 FR 3253, 3254 (January 8, 1993) (Sulfur Dyes from the UK).

National Refrigerants agrees with the Department that HFC components and blends are sold in separate channels of trade. National Refrigerants contends that the Department should reconsider the remainder of its analysis and find in the final determination that HFC components and blends are separate classes or kinds of merchandise.

Daikin also disagrees with the Department's analysis, calling it "circular" and "conclusory." According to Daikin, the Department cannot find that components and blends are the same, while at the same time finding that components are also intermediate products. Similarly, Daikin contends that the Department cannot find that the ultimate consumer buys components in the form of blends, and, thus, the expectations for the two products are the same; Daikin argues that, instead, the ultimate consumer bases his expectations on the performance of the blends, not of the components (which are significantly different).

In any event, Daikin argues that, if the ultimate purchaser buys only blends and never buys components, this indicates that the physical differences and uses of the two products are so different that there is a bright line between them. Daikin notes that blends and components are classified under separate headings in the HTSUS, and, thus, the Department need only review the scope to come to a reasoned determination that components and blends are a different class or kind. Finally, Daikin claims that the Department provided no reasoning for its statement that blends and components share physical characteristics, nor did it explain how its analysis is not in conflict with the petitioners' statement that components and blends have different physical characteristics. Thus, Daikin argues that there is no basis to find that components and blends are the same class or kind.

The petitioners claim that National Refrigerants' and Daikin's arguments are based on a self-serving attempt to preserve their imports of dumped HFC components at unfairly traded prices. According to the petitioners, blending operations in the United States already exist, and the investment required to become a blender and the value added by blending are low. Thus, the petitioners contend that an antidumping duty order limited to HFC blends would encourage existing blenders to use imported components and would encourage new blenders, thereby undermining the order on blends.

With respect to the Department's analysis, the petitioners contend that this analysis was more robust than National Refrigerants and Daikin give it credit for, and, thus, it should be maintained in the final determination. The petitioners note that components and blends: 1) contain fluorine, carbon, and hydrogen; 2) share the same chemical formula; 3) are colorless, odorless gasses that are hydrophobic; and 4) are not ozone depleting. The petitioners assert that, as a result, blends share similar and overlapping physical properties, and all of the blends currently imported contain the component R-125 in at least 25 percent by weight.

According to the petitioners, the Act provides that the subject merchandise be a "class or kind" (i.e., a broad category) not an individual product. The petitioners note that, in past cases, the Department has found classes or kinds to consist of: 1) a wide variety of products with non-

identical characteristics and similar end-uses[27]; and 2) finished products and their major components.[28] The petitioners note that, while HFC components and blends each have different physical properties, they comprise a family of products with overlapping characteristics and uses. The petitioners assert that these differences are ones of degree (e.g.. flammable vs. non-flammable), rather than a clear dividing line.

With respect to end use, the petitioners contend that National Refrigerants and Daikin misstate the legal standard and ignore record evidence. According to the petitioners, what is relevant is that all of the in-scope components are used primarily to make HFC blends. The petitioners note that National Refrigerants and Daikin do not dispute that the uses and applications of the blends overlap. Further, they state that the record shows that the physical characteristics of the HFC components combine to yield finished blends with overlapping characteristics.

Finally, the petitioners maintain that, because HFC components are almost entirely consumed to produce blends, they are ultimately sold to the same customers for the same end uses in the same channels of distribution. The petitioners contend that the only difference is that components are first sold to blenders. The petitioners state that this difference is merely one of level in the channels of distribution, rather than a difference for purposes of the analysis. Thus, the petitioners argue that the Department should continue to find that components and blends are the same class or kind of merchandise.

Department's Position:

Section 771(25) of the Act defines "subject merchandise" as the class or kind of merchandise within the scope of an investigation or other proceeding covered by the statute. Thus, the term "class or kind" is equated with the term "subject merchandise."

The Department bases its determination of whether the merchandise, as described in the scope of a proceeding, constitutes a single class or kind of merchandise on an evaluation of the criteria set forth by the Court of International Trade (CIT) in Diversified Products,[29] which look to differences in: (1) the general physical characteristics of the merchandise, (2) the expectations of the ultimate purchaser, (3) the ultimate use of the merchandise, (4) the channels of trade in which the merchandise moves, and (5) the manner in which the product is advertised or displayed. In the Preliminary Scope Memorandum, we analyzed this issue based on these criteria,[30] and we found that there were no clear dividing lines between HFC components and HFC blends which would place them in separate classes or kinds of merchandise.[31] Specifically, we found that:

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[27] See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order, 76 FR 30650 (May 26, 2011); and Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products from Canada, 67 FR 15539 (April 2, 2002) (Lumber), and accompanying Issues and Decision Memorandum at "Scope Issues."

[28] See Erasable Programmable Read Only Memories from Japan; Final Determination of Sales at Less Than Fair Value, 51 FR 39680, 39692 (October 30, 1986) (EPROMs).

[29] See Diversified Products v. United States, 572 F. Supp. 883, 889 (CIT 1983) (Diversified Products).

[30] See Preliminary Scope Memorandum, at 7 - 9.

[31] Id., at 8.

- The HFCs blends are made up, either exclusively or in large part, by the in-scope HFC components, and, thus, they share their primary physical characteristics. Generally, both the components and blends at issue contain fluorine, carbon, and hydrogen, and they are colorless, odorless gasses that are hydrophobic.[32] In deciding whether physical differences in merchandise rise to the level of a class or kind distinction, the Department looks for a clear dividing line between product groups, not merely the presence or absence of physical differences.[33] In this case, we found that a clear dividing line between in-scope HFC components and blends does not exist because their physical characteristics extend across a range of pressure and temperature points, such that both blends and components could share these characteristics.[34] Thus, any differences in physical characteristics between in-scope HFC components and HFC blends do not rise to the level of a difference in class or kind of merchandise.[35]

- Because there is no significant use for components other than as inputs in the manufacture of blends, we found that the components are ultimately used as refrigerants.[36] For this reason, we also found that the ultimate purchaser of the components buys these products in the form of blends, and the channel of trade for the two products is ultimately the same.[37]

- While we found that HFC components are not marketed, while HFC blends are, we did not find this fact relevant, given that components are an intermediate product, largely dedicated for use in the manufacture of blends, and ultimately sold as such.[38]

We noted that this finding is consistent with the Department's longstanding practice in cases where a petition was filed on products and their major components, where the Department has treated the products and component parts as a single class or kind.[39]

In addition, we note that the above analysis mirrors that analysis undertaken by the ITC when preliminarily determining whether blends and their components comprise the same domestic like product. We further note that both the Department and the ITC fundamentally reached the same

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[32] Id., at 7.

[33] Id.

[34] Id.

[35] Id.

[36] Id., at 8.

[37] Id.

[38] Id.

[39] Id., citing Ironing Tables, 68 FR at 44040; LNPP, 67 FR at 53996; and Outboard Engines Prelim, 69 FR 49865-67, unchanged in Outboard Engines Final.

conclusion: imported components and blends are the same class or kind of merchandise and domestically-produced components and blends comprise a single domestic like product.[40]

We disagree with National Refrigerants that our analysis was cursory, or that we overlooked undeniable differences between components and blends. In making this argument, National Refrigerants frames the Department's general scope analysis in terms of an "interchangeability" standard.[41] We disagree that the Department has such a standard, and we also disagree that a standard of this nature is appropriate. In general,[42] HFC components do not function as finished products.[43] Similarly, the Department has found that TRBs cups, cones, or rollers (all in-scope merchandise) cannot function independently as finished TRBs.[44] However, this difference in use – and the attendant lack of interchangeability – does not indicate that the Department can conclude these two products to be separate classes or kinds of merchandise.[45] To the contrary, the Department often finds that the parts and finished products are the same class or kind of merchandise, after considering the specific facts of each case.[46]

Similarly, the Department has also included intermediate and finished products in the same class or kind of merchandise. For example, the AD orders on narrow woven ribbon include both "greige" (i.e., undyed) ribbon and the final embellished product sold to the ultimate purchaser.[47]

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[40] See Hydrofluorocarbon Blends and Components from China; Investigation No. 7312-TA-1279 (Preliminary), August 2015 (ITC Report), at 7 and I-9 through I-17. See also ITC Report, at 7-8 (affirmatively finding that HFC components and blends are not separate domestic like products based on a semi-finished products analysis).

[41] We note that interchangeability is one of the factors examined by the ITC in making domestic like product findings. In this case, the ITC examined only the interchangeability of individual blends. See ITC Report, at I-12 and I-13.

[42] As noted in the Preliminary Scope Memorandum, at 7, there is virtually no market for the covered components outside of the realm of blending. Thus, while R-125 may have other applications, these alternative uses are entirely insignificant vis-à-vis its use in blends. Id., at 8.

[43] See Petitioners' Rebuttal Scope Comments, at 6. While two of the three HFC components have other uses, these alternative applications are so limited as to be immaterial. Specifically, the petitioners note that, while R-32 has been approved for use as a refrigerant in small charge air conditioners, this is a niche market for which manufacturers have not yet secured state or local approval. Id. Further, while R-125 is used, for example, in fire extinguishers, these types of stand-alone applications account for a very small percentage of the available supply of R-125. Id.

[44] See, e.g., TRBs PRC order; and LNPPs, 61 FR 46621. We note that we could cite any number of AD orders on finished goods and their component parts and reach the same conclusion.

[45] Id.

[46] We disagree with Daikin that this issue here is analogous to one involving a scope covering brakes and automobiles. See Daikin's May 11, 2016, scope case brief, at 2. Nonetheless, we note that the Department's precedent does not preclude the Department from finding that a scope covering automobiles could also cover major components of that merchandise. Such a finding would be case-specific and made within the context of the facts of that particular record.

[47] See, e.g., Narrow Woven Ribbons with Woven Selvedge from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 75 FR 7236, 7241-42 (February 18, 2010) (discussing greige ribbon and finding the producer of this product to be the manufacturer for purposes of the AD analysis because weaving imparts the essential characteristics); see also Narrow Woven Ribbons with Woven Selvedge from Taiwan and the People's Republic of China: Antidumping Duty Orders, 75 FR 53632 (September 1, 2010) (defining the scope of the AD orders as all narrow woven ribbon with widths of up to 12 centimeters and

Thus, we disagree with Daikin that it is circular to reference intermediate products and their finished versions in the same manner. We note that Daikin's argument focuses on terminology, while missing the central, substantive point: components (intermediate products) are largely purchased in the form of blends (final products) and then ultimately used by purchasers who expect to buy refrigerants with particular properties. It is not meaningful to confine the analysis to components and blends in isolation because they are not purchased or used in that way.

Daikin's and National Refrigerants' arguments, taken to their logical conclusion, would lead the Department to find that the individual blends, rather than the in-scope blends as a whole, are separate classes or kinds of merchandise. For example, the HFC blend R-404A is chemically different than the HFC blend R-407A, and presumably, purchasers of these blends cannot use them interchangeably. It would be unreasonable to undertake this level of analysis, however, because the lines that it would draw are both narrow and arbitrary, elevating small distinctions to the level of bright line differences.

We also disagree with National Refrigerants that the decisions made in Sulfur Dyes from the UK and Magnesium from Canada are relevant, or that those precedents have facts that are more analogous to the facts in this case. Neither Magnesium from Canada nor Sulfur Dyes from the UK involved intermediate products, unlike the case here. Rather, both cases involved two types of finished products (pure vs. alloy magnesium and sulfur dyes vs. sulfur vat dyes), one with distinct end uses and the other without. Moreover, as explained further above, in recent proceedings the Department has found that intermediate and finished products can be the same class or kind of merchandise, based on the specific facts of each case.[48]

Finally we disagree with Daikin that the fact that components and blends are classified under different HTSUS headings is determinative. As noted in the scope language itself, the written description of the scope in this case is dispositive, and, thus, it is the written language that controls product coverage. Further, while U.S. Customs and Border Protection (CBP) may classify components and blends in separate headings, it does so for its own, different purposes (tracking of entry information among other things), which is unrelated to the administration of an AD proceeding designed to remediate unfair trade practices.

Comment 2: *Addition of the Word "Refrigerants"*

New Era is a firm representing U.S. refrigerant manufacturers and other companies in the HFCs industry. Prior to the preliminary determination, New Era requested that the Department add the word "refrigerants" to the scope language, which would limit the scope's coverage to only HFC components and blends used for refrigeration.[49] After considering this request and receiving opposition to it from the petitioners, we declined to adopt the proposal because it would add an end-use limitation, contrary to the intent of the Petition.[50]

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made of man-made fibers, which "may" (but does not require) that the ribbons be dyed) (Ribbons from Taiwan Order).

[48] See, e.g., Ribbons from Taiwan Order.

[49] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 6-7.

[50] Id., at 7.

New Era again asks that the Department limit the scope to HFC "refrigerants." According to New Era, the petitioners consistently used this word to define the products that they intend the investigation to cover in statements made to both the Department and the ITC.[51] Further, New Era maintains that this change would be consistent with the description of the merchandise in HTS categories 2930.39.20 and 3824.78.00, and, thus, the change cannot be "ignored." New Era claims that the Department's reasons for rejecting its first request are unclear, and the Department's rejection constitutes a ministerial error.

New Era notes that limiting the scope to HFC refrigerants would remove from the scope two components currently covered under the existing language, R-125 and R-143a, because they are not refrigerants. New Era maintains that these components are not "truly like 'domestic like product'" and their inclusion in the scope would infringe on certain patents. New Era further claims that the petitioners "gerrymandered the petition to be as broad as possible."

According to New Era, the scope should also cover equipment containing refrigerants. New Era asserts that these machines can be the source of large amounts of HFC blend refrigerants. Finally, New Era cites section 739(a)(4) of the Act and requests that the Department "consider the longevity of these commodities." However, New Era makes no arguments about how the Department should alter the scope with respect to short life cycle merchandise.

New Era also makes arguments related to the "domestic like product," which are issues handled by the ITC as part of its injury determination and, accordingly, are not appropriate to address here.

The petitioners object to New Era's proposal to add the word "refrigerants" or otherwise limit the scope of the investigation to products with a particular end use. The petitioners note that they explicitly included components in the scope without reference to end use. According to the petitioners, such a modification would create a loophole whereby imported components certified for other uses could be diverted to blenders and ultimately included in HFC blends. Thus, the petitioners contend that the limitation sought by New Era would not be administrable.

Department's Position:

Prior to the Preliminary Determination, New Era requested that the Department amend the scope to add the word "refrigerants." At that time, we did not adopt the proposal because we found that such an end use limitation would be contrary to the intent of the Petition. After considering New Era's and the petitioners' arguments on this issue, we find no reason to reconsider this position.

[51] New Era cites, for example, the Final Scope Memo at 6, which states that, according to the petitioners, "all of the blends are . . . refrigerants," as well as certain scope exclusion language (repeated in the same document at 4) which relates to "blends of refrigerant chemicals." New Era also cites testimony at the ITC where the petitioners informed the ITC that it would "learn a little history about the refrigerant business." See New Era's May 11, 2016, case brief, at 5. New Era further asserts that the Petition uses the word "refrigerant" 56 times.

As we noted in the Preliminary Determination,[52] the Department has the authority to define or clarify the scope of an investigation; however, the Department must exercise this authority in a manner which reflects the intent of the Petition, and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the Petition.[53] Thus, absent an overarching reason to modify the scope in the Petition, the Department accepts the scope as it is currently written.[54]

We disagree with New Era that the petitioners' use of the word "refrigerants" was in any way intended to narrow the scope to finished blends or stand-alone components which are currently certified for use as refrigerants. Rather, the petitioners explicitly included in the scope the three components used to make the subject blends, irrespective of their ultimate end use. The petitioners made their intentions clear on this point throughout the course of this investigation,[55] and they again repeated their objections to an end use limitation in their rebuttal brief. Thus, we find no merit to the idea that the petitioners' characterization of in-scope merchandise as "refrigerants" provides a reason to introduce such a limitation.

Similarly, we disagree with New Era that a scope expansion to cover equipment containing refrigerants is appropriate. As noted above, the Department includes in the scope only those products for which the petitioners are requesting relief in their Petition. The petitioners did not intend to include such merchandise in this investigation, nor have they requested that the ITC include this equipment in its definition of the domestic like product. Therefore, consistent with the intent of the Petition, we find no basis for expanding the scope to include equipment containing refrigerants.

We also disagree with New Era that the tariff classification of the in-scope merchandise defines which merchandise is covered and which is not. As we noted in our scope description, the written description of the merchandise is controlling while the HTSUS categories are not. Specifically, the scope in this case states: "Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope is dispositive." Thus, we disagree that any alteration in the HTSUS categories included in the scope determines the boundaries of the scope.

Finally, we disagree that including components in the scope infringes on certain patents. Although the petitioners excluded patented blends from the scope at the outset of this investigation, they were under no obligation to do so. Further, it is unclear how the importation

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[52] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 8.

[53] See Lumber, 67 FR 15539, and accompanying Issues and Decision Memorandum under "Scope Issues" (after Comment 49).

[54] Id.; see also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 51788, 51789 (September 5, 2008), unchanged in Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 4913 (January 28, 2009); and Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 12; and Mitsubishi Heavy Industries, Ltd. v. United States, 986 F. Supp. 1428, 1433-34 (CIT 1997) (Mitsubishi).

[55] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 7.

of components subject to an AD order infringes on the patents granted on blends, and New Era does not explain this point.

Comment 3: *Semi-Finished Blends*

In the Petition, the petitioners requested that scope of the investigation cover "semi-finished" HFC blends in order to reduce the possibility of circumvention in this case. The Department did not adopt the Petition scope language related to semi-finished blends for the purposes of initiation because it presented "novel and complex issues with respect to administering any potential AD order."[56] Instead, we invited comments on the issue, which we received in August 2015. After analyzing these comments, we found it appropriate to include semi-finished blends in the scope, and we proposed the following language:[57]

> Also included are semi-finished blends of Chinese HFC components. Semi-finished blends are blends of two Chinese HFCs components (i.e., R-32, R-125,-and R-143a), as well as blends of these components with Chinese R-134a, that are used to produce the subject HFC blends that have not been blended to the specific proportions required to meet the definition of one of the subject HFC blends described above (R-404A, R-407A, R-407C, R-410A, and R-507A).

National Refrigerants argues that the Department's proposed language expands the scope beyond the petitioners' stated intent. National Refrigerants notes that the scope, as currently written, includes five specific HFC blends and three components; however, by adopting the proposed language, the Department will effectively impose duties on a wider array of imports. National Refrigerants argues that such an expansion is not only impermissible,[58] it is also unnecessary because it is infeasible to import semi-finished blends and re-blend them.

Specifically, National Refrigerants argues that: 1) it is unlikely that new/re-blending facilities will be established because new facilities require a significant investment; 2) existing reclaimers do not have the expertise or equipment to re-blend; 3) it is illegal to refill imported cylinders; and 4) small-scale reblending operations will re-blend in smaller lots and thus will increase the risk of contamination.

National Refrigerants requests that, if the Department continues include semi-finished blends in the scope, it address the following questions: 1) does an imported product with only one of the three subject HFC components and R-134a constitute a semi-finished blend?; 2) are semi-finished blends which include hydrofluoroolefins (HFOs), hydrocarbons, or other non-subject

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[56] See Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation, 80 FR 43387, 43388 (July 22, 2015) (Initiation Notice).

[57] See Preliminary Scope Memorandum, at 11-13.

[58] National Refrigerants argues that by including products in the scope that were not included in the petition, the Department risks undermining the factual basis of any determinations and raises concerns about the finality of its administrative actions. See, e.g., Allegheny Bradford Corp. v. United States, 28 CIT 830, 342 F.Supp. 2d 1172, 1187-1188 ("Commerce's discretion to define and clarify the scope of an investigation is limited in part by concerns for the finality of administrative action, which caution against including a product that was understood to be excluded at the time that the investigation began," citing Mitsubishi, 986 F.Supp., at 1433.

HFC components (e.g., R-152a) excluded from the scope?; and 3) would imported blends including both R-32 and R-143a be covered, even though none of the five in-scope finished blends contains both of these components?

In order to answer the above questions, National Refrigerants proposes the following revisions to the proposed scope language (changes underlined):

> Also included are semi-finished blends of Chinese HFC components. Except as described below, semi-finished blends are blends of two Chinese HFCs components (i.e., R-32, R-125, and R-143a), as well as blends of at least two of these three components with Chinese R-134a, that are used to produce the subject HFC blends that have not been blended to the specific proportions required to meet the definition of one of the subject HFC blends described above (R-404A, R-407A, R-407C, R-410A, and R-507A). Any blend that includes an HFC component other than R-32, R-125, R-143a, or R-134a, regardless of the source of that component, is excluded from the scope of this investigation. Furthermore, semi-finished blends do not include any blends containing both Chinese HFCs R-32 and R-143a.
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> Excluded from the scope of this investigation are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

National Refrigerants argues that the above language suffers from a critical defect in that it brings many HFC finished blends into the scope which are not currently covered. For further discussion of this argument, particularly as it relates to patented blends, see Comment 5, below.

The petitioners agree with the Department's proposed language, with one change. Specifically, the petitioners request that the Department add the phrase "any one of" before the phrase "these components with Chinese R-134a." The petitioners maintain that this addition is necessary in order to clarify that a semi-finished blend of any one of the Chinese components with Chinese R-134a would fall under the scope language.

With respect to National Refrigerants' arguments, the petitioners contend that the Department must continue to include semi-finished blends in the scope in order to prevent circumvention. The petitioners assert that not only can processors easily add a small amount of an HFC component to a semi-finished blend to bring it into a standard specification, but reclaimers are already doing this. The petitioners disagree with National Refrigerants that re-blenders would import cylinders, empty their contents into a blending tank, and then refill them once the blending is done. Rather, the petitioners state that re-blenders would receive reusable ISO tanks, empty them, and then fill unused cylinders. Finally, the petitioners note that semi-finished blends already include some or all of the "essential active components"[59] of the finished HFC blend, the blending does not involve significant investment, and the value added is not

[59] See EPROMs, 51 FR at 39692.

significant (see below for additional discussion of the latter two points). Thus, the petitioners contend that the Department should include semi-finished blends in the scope.

Department's Position:

As noted in Comment 2, above, the Department must exercise its authority to define or clarify the scope of an investigation in a manner which reflects the intent of the petition, and it generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested by the petitioners.

In the Petition, the petitioners requested that the Department include in the scope of this proceeding "semi-finished" HFC blends in order to reduce the possibility of circumvention in this case, and they proposed specific language for the Department's consideration.[60] After soliciting and analyzing the comments on this language, and discussing it with CBP, we found it appropriate to include semi-finished blends in the scope.[61] However, we altered the petitioners' proposed language to incorporate CBP's suggestion that we define semi-finished blends without excluding the R-134a content. Thus, we proposed the following language, and we again solicited comments:[62]

> Also included are semi-finished blends of Chinese HFC components. Semi-finished blends are blends of two Chinese HFCs components (i.e., R-32, R-125, and R-143a), as well as blends of these components with Chinese R-134a, that are used to produce the subject HFC blends that have not been blended to the specific proportions required to meet the definition of one of the subject HFC blends described above (R-404A, R-407A, R-407C, R-410A, and R-507A).

After considering the comments received from the petitioners and National Refrigerants, we agree that the above language should be modified in certain respects. Therefore, we are adopting the petitioners' proposal to add the phrase "any one of" before the phrase "these components with Chinese 134a." We are also adopting most of the proposals of National Refrigerants which we find are not in conflict with the change proposed by the petitioners.[63]

The final language, which will become part of the scope of this investigation, is as follows (emphasis added here to highlight differences only):

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[60] See Initiation Notice, 80 FR at 43388.

[61] See Preliminary Scope Memorandum, at 11-13.

[62] Id.

[63] Specifically, we did not adopt National Refrigerants' proposal to exclude semi-finished blends of Chinese HFCs R-32 and R-143a. We find that any semi-finished blend containing both of these components, regardless of their country of origin, should be excluded, and, therefore, we did not accept this limitation. In addition, we did not adopt National Refrigerants' proposed phrase "regardless of the source of that component" when clarifying that any blend including an HFCs component other than R-32, R-125, R-143a, and R-134a is not covered merchandise because we find this additional language unnecessary.

> Also included are semi-finished blends of Chinese HFC components. Except as described below, semi-finished blends are blends of two Chinese HFCs components (i.e., R-32, R-125, and R-143a), as well as blends of any one of these components with Chinese R-134a, that are used to produce the subject HFC blends that have not been blended to the specific proportions required to meet the definition of one of the subject HFC blends described above (R-404A, R-407A, R-407C, R-410A, and R-507A).
>
> {third country blending paragraph}
>
> Any blend or semi-finished blend that includes an HFC component other than R-32, R-125, R-143a, or R-134a is excluded from the scope of this investigation. Furthermore, semi-finished blends do not include any blends containing both HFCs R-32 and R-143a. Single-component HFCs and semi-finished HFC blends are not excluded from the scope of this investigation when blended with HFCs from non-subject countries.
>
> Excluded from the scope of this investigation are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

We believe that the above modifications are consistent with the intent of the Petition because they: 1) incorporate the petitioners' clarifying language; 2) explicitly exclude blends that contain a non-covered component and/or are not HFCs; and 3) explicitly exclude semi-finished blends that cannot be converted into one of the covered HFC blends.

We disagree with National Refrigerants that the inclusion of semi-finished blends in the scope of this investigation constitutes an impermissible expansion of the scope. As noted above, the petitioners proposed largely the same language in the Petition, and they did not object to the Department's revisions proposed in the Preliminary Scope Memorandum to address administrability concerns. Rather than expanding the scope, we find that the language provides greater specificity to the scope as intended. Thus, we find that this language is consistent with the stated intent of the Petition, and as such it affords the petitioners the relief that they requested.

Further, we disagree with National Refrigerants that the above language is unnecessary. As noted in the Preliminary Scope Memorandum at 12, we contacted CBP to discuss the petitioners' proposed language on semi-finished blends.[64] According to CBP officials, revising the scope

[64] See the July 30, 2015, memorandum to the File from Elizabeth Eastwood, Senior Analyst, entitled "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components (HFCs) from the People's Republic of China: Conference Call with Officials from U.S. Customs and Border Protection (CBP)," dated July 30, 2015 (CBP Memorandum), which states that, because the current scope covers HFC blends comprised of components at specifically-defined percentages, importers could legally import HFC mixtures which are outside of the scope for re-blending in the United States, thereby negating the effect of the order.

would reduce the risk of circumvention, and, thus, it would make the scope more enforceable.[65] Further, the petitioners have also repeatedly expressed concerns regarding the potential for circumvention if the above language were not included. Because enforceability of any eventual AD order is a significant and relevant concern to the Department, we find that inclusion of the above language is both appropriate and warranted. Further, we note that including the R-134a content in semi-finished HFC blends is consistent with the Department's treatment of this component in finished HFC blends in this investigation.

With respect to National Refrigerants' argument that it is infeasible to import semi-finished blends and re-blend them, we find that the record of this investigation contains no evidence to support such a conclusion. As we noted in the Preliminary Scope Memorandum:[66]

> Finally, National Refrigerants has argued that it would be neither economical nor feasible to import semi-finished blends. We disagree with certain of the assumptions on which this argument is based. First, National Refrigerants assumes that reblending would be done by new entrants to the market, and these companies would incur substantial investment costs. While certain companies may enter the "reblending" market, it is by no means certain that all reblending would be done by new companies. National Refrigerants did not address why existing blenders, who would not incur these startup costs, could not also reblend semi-finished HFCs and HFC components.
>
> Further, National Refrigerants assumes that new blenders/ reclaimers will reblend semi-finished products inside their imported containers (i.e., cylinders or Isotanks). However, there is no evidence on the record to support this assumption, and we do not find it credible given that neither the petitioners nor the PRC respondents conduct their blending operations in this way. National Refrigerants did not address why existing blenders would not blend semi-finished products with HFC components using their existing blending equipment (with or without additional capital investment) and test the resulting mixtures using the same equipment that they now use to test blends made from single components. Nor did National Refrigerants address why there is the {sic} more potential for contamination in the reblending process than in a blending process using single components. In either scenario, the blender/reclaimer would move products from an Isotank to a blending tank, risking contamination at that stage.

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[65] See Preliminary Scope Memorandum at 12. We disagree with National Refrigerants that including the above language renders the scope less enforceable, or that it imposes unreasonable requirements on importers. As noted above, this language is designed to minimize the potential for circumvention of any eventual AD order, and thus it increases the effectiveness of that order. Further, we find no basis on the record to presume that CBP protests will increase; and, in any event, this consideration – as well as the fact that exporters may need to disclose the country of origin of blend components -- is more than outweighed by the mitigation of any significant potential for circumvention of the order.

[66] Id., at 13 (footnotes omitted).

This analysis is consistent with the ITC's separate conclusions, including that: HFC reclaimers can also blend the subject HFC blends in their facilities,[67] and blending requires significantly less capital investment and technical expertise than component production.[68]

Finally, we agree with National Refrigerants that the above language may cover a small number of finished out-of-scope blends, contrary to the intent of the Petition. However, according to prior comments made by the petitioners, most out-of-scope blends are covered by patents, and, thus, are explicitly excluded.[69] Further, the Petition also excludes blends in which HFC components are blended with HCFCs. We will address any concerns related to specific semi-finished blends in the context of scope inquiries requested by interested parties. For further discussion, see Comment 5, below.

Comment 4: *Third Country Blending*

In the Petition, the petitioners also requested that the scope of the investigation also cover HFC blends made in third countries from Chinese components, again citing circumvention concerns. The Department similarly did not adopt the Petition scope language related to third country blends for the purposes of initiation and, instead, invited comments on the issue.[70] After analyzing these comments, we found it appropriate to include blends made in third countries from Chinese components in the scope, and we proposed the following language:[71]

> This investigation includes any Chinese HFC components (i.e., R-32, R-125, and R-143a) that are blended in a third country to produce a subject HFC blend before being imported into the United States.
>
> {new paragraph} Also included are semi-finished blends of Chinese HFC components. . . . {definition of semi-finished blends follows} Single-component HFCs and semi-finished HFC blends are not excluded from the scope of this investigation when blended with HFCs from non-subject countries.

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[67] See ITC Report, at I-4 (FN), which states "HFC reclaimers (also known as recyclers) can also blend the subject HFC blends in their facilities. Three U.S. producers of HFC (Arkema, Honeywell, and National) are involved in the recycling and reclaiming of HFC."

[68] See ITC Report, at I-12, which states (footnotes omitted):

> Each HFC single component requires a separate production facility35 while various HFC blends can be manufactured using the same facility and employees. According to both petitioners and respondents, the capital investment required and the expertise of the personnel to blend the HFC components can be relatively minimal compared to the capital investment and expertise necessary for an HFC single component facility. While the investment required to produce the individual components can be hundreds of millions of dollars, a blending facility can be constructed for $1 million to $3 million.

[69] See Letter from the Petitioners, "Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Response to Scope Comments," dated August 17, 2015, at 19 and Exhibit A (Petitioners' Rebuttal Scope Comments).

[70] See Initiation Notice, 80 FR at 43388.

[71] See Preliminary Scope Memorandum, at 19.

National Refrigerants argues that the Department should reconsider including the above language in the final determination. According to National Refrigerants, the Department's analysis failed to correctly account for the significance of the blending process, both in terms of the extent of the processing and the value added by it. Further, National Refrigerants maintains that the proposed language unfairly expands the scope.

National Refrigerants contends that blending is so significant that it: 1) changes the class or kind of the merchandise (see Comment 1, above); and 2) results in a substantial transformation for country of origin purposes. According to National Refrigerants, the Department may find that the country of origin is where blending occurs, even after finding that the upstream and downstream products are in the same class or kind.[72]

National Refrigerants disagrees with CBP's characterization of the blending process as "easy," and "requir{ing} little equipment." According to National Refrigerants, the process is sophisticated and the equipment required is extensive. National Refrigerants cites its own investment in its blending operations, which is in the tens of millions of dollars, which it states contradicts the claims that blending does not require a significant investment in property, plant, or equipment. Further, National Refrigerants notes that blending requires the technical expertise necessary to perform expert laboratory analysis, operate a facility requiring safety training related to hazardous products, and comply with local and federal laws, and blenders must also develop sales and distribution channels of their own.

National Refrigerants also disagrees with the Department's dismissal of its analysis of the value added by blending, [73] arguing that the Department focused only on the labor and overhead costs and, as a result, the Department failed to consider any intangible value that purchasers attribute to the finished blended products. According to National Refrigerants, the market recognizes that competency at the blending stage in the value chain is critical, which is why and how the blending process creates significant value which cannot be measured by considering labor and overhead alone. Nonetheless, National Refrigerants contends that, even if the Department's analysis is correct, it considers the proportion of blending to total costs computed by the Department to be significant for country-of-origin purposes, and the Department has provided no explanation as to why this is not true.

National Refrigerants disagrees with the Department that a change in tariff classification is not determinative here. According to National Refrigerants, the Department should put great weight on the change in classification (i.e., from Chapter 29 to Chapter 38) because it demonstrates that

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[72] See Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 4 (Diamond Sawblades) (where the Department found the country of origin to be the country where the component steel cores and segments were welded together to make the finished product) and EPROMs, 51 FR at 39680 (where the Department found that, even though the upstream and downstream products remained within the same class or kind of merchandise, substantial transformation still occurred).

[73] National Refrigerants repeats largely the same analysis on pages 11 and 12 of its case brief. Because National Refrigerants claimed business proprietary treatment for the specifics of this analysis, we do not discuss it further here. For further discussion, see Preliminary Scope Memorandum, at 17.

the blending process creates a new and different article of commerce, with new and independent uses. National Refrigerants states that CBP has promulgated regulations confirming that the blending of any fluorinated hydrocarbon, including HFC components, into refrigerant blends constitutes substantial transformation.[74] National Refrigerants claims that the Department must explain why its substantial transformation analysis differs from CBP's.

Finally, National Refrigerants claims that the above language will not be easy for CBP to administer because it would leave the scope open-ended and would require CBP to determine for each entry of subject blends what the proportions are of the different single-component HFCs, what the country of origin is for each single-component HFC included within the blend, where the blending occurred, and whether HFC blends with different proportions should be covered. National Refrigerants also claims that CBP will face an uptick in the number of administrative protests, while suppliers would be required to divulge confidential information to their customers over the country of origin of the components in their blends. National Refrigerants contends that such consequences are unreasonable, and, as a result, it requests that the Department abandon its proposed scope amendment related to third country blends.

Daikin also disagrees with the Department's analysis, claiming that it is incomplete. Specifically, Daikin asserts that the Department failed to address in its third country/substantial transformation analysis the situation where some of the components are subject and others are not.[75] Further, Daikin maintains that the Department's analysis led it to develop a universal rule for all "substantial {sic} transformed" blends under the guise of a case-by-case determination.

Daikin disagrees that Bell Supply[76] applies here. According to Daikin, unlike in Bell Supply, HFC blends have a separate and distinct identity compared to blending (i.e., combining) the same single component HFC. Nonetheless, Daikin contends that, if the Department continues to find third country blending in scope, it should modify the proposed scope language by substituting the phrase "HFC blends made solely" for the word "any" in the first paragraph and striking the final sentence (beginning with "Single component") from the second paragraph. Thus, Daikin's proposed language reads:

> This investigation includes HFC blends made solely of Chinese HFC components (i.e., R-32, R-125, and R-143a) that are blended in a third country to produce a subject HFC blend before being imported into the United States.

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[74] See 19 CFR 102.20(e).

[75] Daikin notes that the precedent cited by the Department in support of its analysis does not address the factual situation where a subject component (in this case, a PRC component) is blended with a non-subject component (in this case, a component made elsewhere), and the resulting product changes tariff classification and creates a new and different article.

[76] See Bell Supply Company v. United States, Slip Op. 15-73 (Bell Supply), at 32, where the Court held, "When the scope language does not clearly include the merchandise in question, Commerce cannot require an interested party to provide additional evidence that the scope language was not meant to include the merchandise. Furthermore, Defendant's position would mean Petitioners could omit any reference to the third country processing during the investigation, and then after publication of the final order seek a scope ruling to add merchandise processed in third countries to the scope of an order based on Commerce's discretionary substantial transformation factors. Such a result would undermine the petition process."

{new paragraph} Also included are semi-finished blends of Chinese HFC components. . . . {definition of semi-finished blends follows}

Daikin argues that these changes are necessary to remove redundancy and to avoid an impermissible expansion of the scope.

The petitioners disagree with both parties. According to the petitioners, the degree of sophistication of the blending process is irrelevant to the question of substantial transformation; rather, the relevant question is whether the essential characteristics of the HFC components are changed by blending.[77] The petitioners maintain that, here, blending merely combines the desired characteristics of each component, rather than changing their physical characteristics. The petitioners assert that this fact, in conjunction with the fact that there is no other significant commercial use for the components, leads to the conclusion that substantial transformation does not occur.

Nonetheless, the petitioners also disagree that the blending process itself is sophisticated. The petitioners note that there are 53 HFC reclaimers in the United States which currently are capable of adding HFC components to "reclaimed" blends in order to make a finished product. Further, the petitioners maintain that blending represents only a fraction of the cost,[78] and requires less than one percent of the investment, to produce components. The petitioners contend that the investment figure bandied about by National Refrigerants is not detailed enough to be useful, because National Refrigerants neither explained the scope of this investment nor did it indicate whether the equipment could be used to blend non-subject products. Similarly, the petitioners dispute the validity of National Refrigerants' value added analysis, citing a substantial disparity with their own figures and noting that the analysis contains a number of assumptions which render it useless.[79]

Finally, the petitioners disagree that the change in tariff classification is relevant. According to the petitioners, the antidumping law is construed in a manner that is consistent with the remedial purpose of that law and not to serve the entirely different purposes of customs classification, duty-preference, or marking.[80] The petitioners note that this difference can be seen in the Department's scope language, which in virtually all cases states that tariff classification is not controlling.

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[77] See EPROMs, 51 FR at 39692; and National Hand Tool Corp. v. United States, 16 CIT 308 (1992), aff'd, 989 F.2d 1201 (CAFC 1993).

[78] See the petitioners' scope rebuttal brief at page 16 for non-public figures supporting this statement. The petitioners note that the blending-production investment as a percentage of component-production investment is nowhere near the level required to deem it substantial. See, e.g., Preliminary Negative Determination of Circumvention of the Antidumping Order on Polyethylene Terephthalate Film, Sheet, and Strip From the United Arab Emirates, 80 FR 26229 (May 7, 2015), and accompanying Preliminary Decision Memorandum at 6, where the Department found substantial an investment in a third country which was comparable to the investment in the home country.

[79] Because the petitioners have claimed business proprietary treatment for the specifics of their argument, we did not summarize it further here. See the petitioners' scope rebuttal brief at 17.

[80] See Smith Corona Corp. v. United States, 915 F.2d 683, 686-87 (CAFC 1990).

Department's Position:

As noted above, the Department generally strives to define the scope of an investigation in a manner which reflects the intent of the petition. In the Petition filed in this investigation, the petitioners requested that the Department include in the scope the PRC-content of HFC blends made in third countries in order to address same circumvention concerns expressed with respect to semi-finished blends.[81] After soliciting and analyzing the comments on the petitioners' request, we found it appropriate to include third country blends in the scope.[82] Thus, we proposed the following language:[83]

> This investigation includes any Chinese HFC components (i.e., R-32, R-125, and R-143a) that are blended in a third country to produce a subject HFC blend before being imported into the United States.
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> {new paragraph} Also included are semi-finished blends of Chinese HFC components. . . . {definition of semi-finished blends follows} Single-component HFCs and semi-finished HFC blends are not excluded from the scope of this investigation when blended with HFCs from non-subject countries.

After considering the comments received from interested parties, we find that it is appropriate to include the above language in the scope, with one modification. As noted above, the scope definition of semi-finished blends includes the content of R-134a, as long as this component is of PRC-origin content. However, we inadvertently failed to include this same language in the language related to third country blending. Therefore, we are also including R-134a in the PRC content of the covered blends, as long as this component is not the only component sourced from the PRC. We find that including the PRC content of HFC blends made in third countries is not only consistent with the intent of the petition, [84] but it also addresses CBP's concern that, as written, the scope will be ineffective.[85] Further, the evidence on the record does not support a finding that blending operations are so significant that, when they are undertaken, they change the country of origin of the finished product.[86] The final language, which will become part of the scope of this investigation, is as follows (emphasis added here to highlight differences only):

> This investigation includes any Chinese HFC components (i.e., R-32, R-125, and R-143a), as well as Chinese R-134a,[*] that are blended in a third country to

[81] See Initiation Notice, 80 FR at 43388.

[82] See Preliminary Scope Memorandum, at 18.

[83] Id., at 19.

[84] We are not adopting Daikin's proposal to modify the scope language by substituting the phrase "HFC blends made solely" for the word "any" in the first paragraph and striking the final sentence (beginning with "Single component") from the second paragraph. We note that this change would have the effect of narrowing the scope to blends made in third countries entirely from PRC components, contrary to the intent of the Petition.

[85] See CBP Memorandum, which states that, to CBP's knowledge, blends are easy to make and require little equipment.

[86] See Preliminary Scope Memorandum, at 19-20 for our analysis, which contains business proprietary information.

> produce a subject HFC blend before being imported into the United States. Chinese R-134a is not subject to the scope of this investigation unless it is blended with another Chinese HFC component (i.e., R-32, R-125, and R-143a) into a subject blend or semi-finished blend before being imported into the United States.
>
> * However, if the only Chinese content of such a third country blend is the R-134a portion, then such a third country blend is excluded from the scope of this investigation.

With respect to the comments received, we note that most are not new, and we previously addressed them in our Preliminary Scope Memorandum. Specifically, with respect to National Refrigerants' argument that the proposed language unfairly expands the scope, the Preliminary Scope Memorandum states:[87]

> We disagree with National Refrigerants that addressing third country processing at this stage of the investigation improperly expands the scope. As the CIT's recent ruling in Bell Supply makes clear, it is at the investigation stage of a proceeding when the Department must include language in the scope related to third country processing. Further, as noted in Issue II, above, this language was, in large part, included in the Petition; therefore, it defines the scope as intended, rather than expanding it.

With respect to National Refrigerants' argument that the Department's analysis failed correctly to account for the significance of the blending process, both in terms of the extent of the processing and the value added by it, the Preliminary Scope Memorandum states:[88]

> With regard to National Refrigerants argument that that the cost of blending is so significant that it changes the country of origin of the blended (or semi-finished) product, thus causing the product to be substantially transformed, the record does not support this conclusion. The Department determines whether a product has been substantially transformed on a case by case basis, considering several evidentiary factors, and the transformation must result in a new and different article. The petitioners have placed on the record information showing that blending accounts for approximately [****] percent of their costs. Further, while National Refrigerants provided competing figures of its own,{FN} it: 1) stated all of its analysis in terms of the component costs (rather than the blends); and 2) failed to explain what each of the cost categories in its analysis entailed and/or to discuss how costs in the category "Other Materials Costs" factor into this analysis. Thus, we find that National Refrigerants did not provide evidence to support its conclusion.

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[87] Id., at 20 (footnotes omitted).

[88] See Preliminary Scope Memorandum, at 19 (Public Version) (footnote omitted).

> In the alternative, we find it more appropriate to consider the costs of blending (which appear to be those costs included in the category labeled "Labor & Other Factory Costs") in relation to the sales value of those finished HFC blends (which we assume are included in the category labeled "Net Sales"). Using the information provided by National Refrigerants, we find that blending costs represent only [*******] percent of the company's sales value. Thus, we find that these blending costs do not reach the level of significance required to impact a country-of-origin determination.
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> FN: National Refrigerants implies that all costs that are not associated with components are applicable to blends. We would disagree with such a conclusion, were it explicitly stated.

Thus, we found that blending was not so significant that it results in a substantial transformation for country of origin purposes. While we agree with National Refrigerants that the Department may find that the country of origin differs for upstream and downstream products in the same class or kind,[89] we disagree that this fact is relevant here in light of the analysis presented above.

We also disagree with National Refrigerants that we dismissed its analysis of the value added by blending and, as a result, failed to consider any intangible value that purchasers attribute to the finished blended products. As noted above, we considered blending costs in relation to the sales value of the finished blends and found that the value added was not significant (i.e., most of National Refrigerants' costs are attributable to the components). That said, upon further consideration, we question the validity of undertaking such an analysis using National Refrigerants' data at all, given that National Refrigerants imports HFC components produced in the PRC and, the Department finds that the rates of dumping for in-scope merchandise can be well in excess of 100 percent. Were National Refrigerants to adjust its component costs to account for dumping, the company would not make a profit and, thus, the value added by blending would be zero (or, at best, the mitigation of a loss).

Regarding National Refrigerants' argument that the blending process is sophisticated and the equipment required is extensive, we do not doubt that this is, to an extent, true. However, the relevant question is not whether the blending process is sophisticated in isolation, but rather how it compares to the production process for components. The ITC examined this question directly, and the ITC Report states the following:[90]

> Each HFC single component requires a separate production facility while various HFC blends can be manufactured using the same facility and employees. According to both petitioners and respondents, the capital investment required and the expertise of the personnel to blend the HFC components can be relatively minimal compared to the capital investment and expertise necessary for an HFC single component facility. While the investment required to produce the

[89] See, e.g., Diamond Sawblades, at Comment 4.

[90] See ITC Report, at I-12 (footnotes omitted).

> individual components can be hundreds of millions of dollars, a blending facility can be constructed for $1 million to $3 million.

While National Refrigerants' own investment may be different, we disagree that this fact demonstrates that blending requires a significant investment in property, plant, or equipment. A company's total investment is dependent on a number of factors, including the scale of operations and the number of products produced. Thus, although National Refrigerants made a large investment in its blending facilities, it also has sizeable sales revenue. We find this consistent with operating on a large scale, and, thus, it does not definitively speak to the technological sophistication of the production process. Further, none of the items listed by National Refrigerants in support of its claim that blending requires technical expertise (safety training, qualified laboratory personnel, the ability to develop sales channels) is particularly unusual or uncommon. Thus, we disagree with National Refrigerants that the record supports a finding here that blending operations are so extensive that components undergoing them are substantially transformed.

Daikin has argued that the Department's analysis led it to develop a universal rule for all substantially transformed blends under the guise of a case-by-case determination. However, Daikin misunderstood the purpose of this analysis. The issue before the Department is one of whether the transformation of HFC components into HFC blends is so substantial that it would change the country of origin of the finished product, such that the component parts of the blends could not be covered by the scope. In this case, the scope covers only the PRC-content of blends made in third countries.[91] Therefore, it is irrelevant to this analysis whether some of the components are subject and others are not because the Department is not addressing whether specific, whole blends are substantially transformed from components, but rather whether blending in general creates substantial transformation.[92]

For similar reasons, we find that Daikin misunderstood the Department's reliance on Bell Supply. As noted above, the Department cited this case to support the proposition that the timing of the Department's action on this issue is crucial. Specifically, in Bell Supply, the court held that it is at the investigation stage of a proceeding when the Department must include language in the scope related to third country processing.[93]

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[91] As noted in the Preliminary Scope Memorandum, there is precedent both for the proposition that the Department may address third country processing in the scope of an investigation, as well as the proposition that the scope may cover only a portion of the imported product. See Preliminary Scope Memorandum, at 19, citing, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791, 63792-93 (October 12, 2012). See also Citric Acid and Certain Citrate Salts: Final Determination on Scope Inquiry for Blended Citric Acid from the People's Republic of China and Other Countries (May 2, 2011), upheld in Global Commodity Group LLC v. United States, 825 F. Supp. 2d 1328 (CIT 2012) (discussing the Department's inclusion of a sentence in the scope during the investigation clarifying the covered content of blended citric acid).

[92] In other words, the question we are addressing is whether PRC components when sold in the form of a blend are in-scope merchandise. The question is not whether the blend as a whole is covered (and deciding where the minimum content "tipping point" is that turns a PRC blend into (for example) a Malaysian blend).

[93] See Bell Supply, Slip Op. 15-73, at 32.

With regard to National Refrigerants' argument that the Department should find significant the change in tariff classification between components and blends, we disagree. The Preliminary Scope Memorandum states:[94]

> Finally, we disagree with National Refrigerants that a change in tariff classification is determinative in this case. CBP and the Department use different criteria in their country-of-origin analyses, and they make country-of-origin determinations for different purposes.[95] Therefore, we have put no weight on the change in tariff classification here, in light of the considerations stated above.

There is no dispute that HFC components are different articles of commerce than HFC blends based upon tariff classifications. However, as noted above, CBP and the Department have different mandates, and they operate under different laws. Thus, while CBP may classify HFC components and blends under separate headings, it does so for its own, different purposes (tracking of entry information among other things), which is unrelated to the administration of a potential AD order designed to remediate unfair trade practices. Thus, we disagree with National Refrigerants that the Department should accord any weight to CBP's substantial transformation analysis, or that we should find this analysis more valid than the Department's own.

Finally, with respect to National Refrigerants' claims that the additional language related to third country blends would make the scope hard for CBP to administer, we note that it is importers, not CBP itself, which must determine the country of origin of the imported products and the portion of those products which fall within the scope. While CBP verifies the information reported to it, we note that, in this case, CBP was concerned about the enforceability of the scope as it was published in the Initiation Notice, when we had not yet adopted the third country language.[96] We believe that the adoption of this language assuages concerns raised by CBP.

Further, we find National Refrigerants' statements on a potential increase in Customs protests because of this language to be speculative and unsupported. Finally, we disagree that it is unreasonable to require suppliers to disclose content information to their customers, or that this concern should outweigh other, valid concerns here (such as defining the scope consistent with the intent of the Petition and minimizing the possibility of circumvention). Thus, we continue to include in the scope the PRC content of third country HFC blends, modified as outlined above.

Comment 5: *Patented Blends and Non-Named HFC Blends*

The scope of the investigation includes five specific HFC blends and three of the components used to make them, and it excludes patented blends. ICOR International Inc. (ICOR), a U.S. manufacturer of HFC blends, notes that the Department expressed concern in its Preliminary Scope Memorandum that the proposed language on semi-finished blends may have the

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[94] See Preliminary Scope Memorandum, at 20.

[95] See, e.g., "Scope Request from Rodacciai S.p.A. – Final Scope Ruling Concerning the Stainless Steel Bar from Spain Order," at 27 (July 10, 2015).

[96] See CBP Memorandum.

unintended consequence of capturing a small number of finished HFC blends that have not received patent protection.[97] However, ICOR argues that the question before the Department is broader than the stated concern. According to ICOR, the real issue before the Department is whether the scope includes a small number of finished out-of-scope HFC blends that are imported and sold as such.

In particular, ICOR notes that it manufactures three proprietary HFC blends, R422b, R422c, and R-417c, which are sold under the trade names "NU-22b," "One Shot," and "Hot Shot 2," respectively, and which have not yet received patent protection. ICOR maintains that these blends are recognized as finished HFC blends according to the Air-Conditioning, Heating & Refrigeration Institute's (AHRI) 2015 Standard for Specifications for Refrigerants. According to ICOR, because these blends are finished but not one of the named blends, they fall outside of the scope. Further, ICOR argues that the petitioners' stated circumvention concerns do not apply to these blends because importers would purchase them as finished products, not semi-finished ones.

ICOR requests that the Department make clear in its final scope ruling and in any eventual dumping order that finished HFC blends sold as refrigerants without further modification are excluded from the scope, using the following language:

> Also excluded from this investigation are finished HFC blends imported and sold without further modification to in-scope HFC blends, including NU-22b (R422b), One Shot (R422c), and Hot Shot (R-417c).

According to ICOR, to the extent that the Department seeks to prevent circumvention, it must do so within the bounds of the law. ICOR maintains that, because the LTFV investigation did not cover out-of-scope blends, it is impermissible to impose dumping duties on these products in the future.

Similarly, National Refrigerants points out that the language on semi-finished blends brings many HFC finished blends into the scope which are not currently covered. For example, National Refrigerants notes that R-427A contains R-32, R-125, R-134a, and R-143a in proportions that are different from the covered finished blends, and it states that there are 33 other finished products which are either already on the market or have been recently approved for sale in the United States. Thus, National Refrigerants requests that the Department clarify that R-427A, whether or not patented, is not a semi-finished blend and is excluded from the scope.

National Refrigerants further argues that companies frequently introduce new products that contain different mixtures of HFC components, and the existing semi-finished blends language could lead to the imposition of duties on imports of legitimate new HFC blends. Therefore, National Refrigerants asks the Department to confirm that it will consider future requests to find that blends that have been approved for sale in the United States are not semi-finished blends.

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[97] See Preliminary Scope Memorandum, at 13.

Specifically, National Refrigerants requests that the Department indicate that it will amend the scope in the future to exclude new HFC blends receiving an AHRI designation.

Finally, National Refrigerants argues that the Department should clarify that patented blends will be excluded from the scope even after the expiration of the patent by including the following additional language (changes underlined):

> Also excluded from this investigation are patented HFC blends, <u>including, but not limited to</u>[98], ISCEON® blends, including MO99™ (R-438A), MO79 (R-422A), MO59 (R-417A), MO49Plus™ (R-437A) and MO29™ (R-422D), Genetron® Performax™ LT (R-407F), Choice® R-421A, and Choice® R-421B. <u>The patented blends will remain excluded from the scope of this investigation even after the expiration of the patents</u>.

The petitioners argue that ICOR and National Refrigerants would have the Department interpret the scope language opposite to the intent of the Petition, the plain language of the scope description, and the Act. According to the petitioners, the Department adopted the proposed scope language in the Petition, which: 1) established as a general rule that all HFC blends including two or more HFC components would be covered by the investigation; and 2) excluded certain patented blends produced by the domestic industry.

The petitioners contend that the scope covers "blended hydrofluorocarbons" and "single HFC components of those blends" without limitation. According to the petitioners, the language listing the specific blends and components was suggested by the Department and adopted by the petitioners with the caveat that the change was "not intended to narrow or circumscribe the scope of the investigation, such that HFC blends or single component HFCs would be more narrowly defined or excluded from the investigation."[99] Thus, the petitioners claim that, on its face, the scope language contradicts the argument that the investigation is limited to five blends, and the addition of language explicitly addressing the possibility of semi-finished blends makes this clear.

The petitioners claim that there are three major flaws in the argument that the scope is limited to only five HFC blends. Specifically, the petitioners claim that the proposed exclusions would: 1) invite circumvention by the importation of proprietary blends without patent protection, irrespective of whether those blends met the <u>Diversified Products</u> criteria; 2) permit the importation of blends that have never been produced, imported, or sold in the United States (thereby denying the petitioners the ability to clarify the scope with respect to later developed merchandise and minor modifications); and 3) logically exclude semi-finished products (potentially leading importers to seek patents on semi-finished blends simply to avoid the application of AD duties).

Further, the petitioners disagree that the Department should exclude patented (or other) blends not already named in the scope. Rather, the petitioners contend that interested parties should

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[98] This phrase replaces the phrase "such as."

[99] <u>See</u> Letter from the petitioners, "Hydrofluorocarbons Blends and Components Thereof from the People's Republic of China: Response to Supplemental Questionnaire," dated July 6, 2015 (Petition Supplement).

apply for a scope ruling on other patented blends and, and the Department should evaluate them using the criteria listed under 19 CFR 351.225. The petitioners assert that the Department cannot evaluate the physical characteristics and uses of products that have not been commercially produced or imported, and thus it is not possible or practical to determine whether one of the patented blends is interchangeable with the HFC blends explicitly covered by the scope language.

Finally, the petitioners contend that this "must request a scope ruling" rule applies equally to R-422b, R-422c, R-417c, and R-427a. The petitioners maintain that these blends meet the technical definition of the scope for the reasons set forth above. The petitioners note that ICOR did not request that the Department exclude these blends until well after the preliminary determination, and National Refrigerants did not raise the issue in a separate scope submission. Thus, the petitioners argue that the Department should withhold judgement on these blends until after an AD order is published and await the filing of a scope ruling request.

Department's Position:

The scope in the Petition defined the covered products, in relevant part, as follows:

> The products subject to this investigation are HFCs and single HFC components of those blends thereof, whether or not imported for blending. HFC blends covered by the scope are R-404A; . . . R-407A; . . . R-407C; . . . R-410A; . . . and R-507A, . . . also known as R-507.
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> Also excluded from this investigation are patented HFC blends, such as ISCEON® blends, including MO99™ (RR-438A), MO79 (R-422A), MO59 (R-417A), MO49Plus™ (R-437A) and MO29™ (R-422D), Genetron® Performax™ LT (R-407F), Choice® R-421A, and Choice® R-421B. [100]

It is clear from this language that the blend portion of the scope is limited to five named HFC blends (i.e., R-404A, R-407A, R-407-C, R410A, and R-507).[101] It is also clear that patented HFC blends, without limitation, are excluded.[102]

We disagree with the petitioners that they intended to include additional blends in the Petition, or that the intent of the Petition was altered in any way by the addition of language suggested by the Department. The petitioners agreed to change the "includes" language at the Department's suggestion prior to initiation, it stated that "{t}he Coalition understands that this change was not intended to narrow or circumscribe the scope of the investigation, such that HFC blends or single

[100] See Letter from the Petitioners, entitled "Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China; Antidumping Duty Petition," dated June 25, 2015 (Petition). See also Initiation Notice, 80 FR at 43392.

[101] The petitioners used the verb "are," instead of "include, but are not limited to."

[102] The petitioners used the phrase "such as," instead of "including, but not limited to" or "including, for example." We find these word choices to be meaningful.

component HFCs would be more narrowly defined or excluded from the investigation."[103] The Petition clearly sets forth the same blends and components listed above as an exhaustive list,[104] and all discussion of the physical characteristics and uses of HFC blends is framed in terms of these products.[105,106] While the original Petition does suggest scope language which "includes" the five blends,[107] we find that this language lacks the specificity found throughout the Petition, given that the Petition elsewhere defines the blend portion of the scope solely in terms of the five named blends.

Further, on several occasions during the course of this investigation, the Department interpreted the scope language as including only the five named blends and three components, and excluding all patented blends,[108] and the petitioners have not objected to these characterizations or offered any clarification. For example, in their case brief related to scope issues, the petitioners did not comment on the Department's statements, but merely requested that the Department alter one word to its proposed definition of "semi-finished blends." See Comment 2, above.

In fact, the petitioners themselves have affirmatively stated on at least one occasion that patented blends are out of the scope,[109] and on another objected to the exclusion from the scope of products which have patents pending but took no affirmative position on already-patented blends

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[103] See Petition Supplement, at 3.

[104] See Petition, at 11.

[105] Id., at 11-25. For example, the Petition at 12 states that "an antidumping order covering HFC blends should also cover the HFC components used in those blends, as well as semi-finished blends that, when imported, are not yet in the correct proportions for R-404A, R-407A, R-407C, R-410A or R-507A," and the Petition also states on the same page that "{t}he five HFC blends covered by this petition are the major commercial refrigerants …" (emphasis added in both places).

[106] The petitioners' intent to cover only the five named blends can also be seen in their proposed scope language related to semi-finished blends. Specifically, this language limits semi-finished blends to those blends of PRC components used to produce the subject blends . . .that have not been blended to the specific proportions required to meet the definition of one of the subject HFC blends described above (R-404A, R-407A, R-407C, R-410A, and R-507A)." See Initiation Notice, 80 FR at 43388.

[107] See Petition at 25, which states:

> The products subject to this investigation are blended hydroflurocarbons ("HFCs") and single HFC components of those blends thereof, whether or not imported for blending, including the following: R-404A . . .

[108] See, e.g., Refrigerant Solutions Scope Memorandum, at 2 (stating "In the Petition, the petitioners stated that they intended to cover five HFC blends (i.e., R-404A, R-407A, R-407C, R-410A, and R-507A) and three single HFC components of these blends (i.e., R-32, R-125, and R-143a). The petitioners also stated that they intended to exclude patented HFC blends, and they provided a short list of patented products as examples" (footnotes omitted and emphasis added)); and Preliminary Scope Memorandum, at 13(which states "According to the petitioners, most out-of-scope blends are covered by patents, and, thus, are explicitly excluded" (emphasis added).

[109] See Petitioners' Rebuttal Scope Comments, at 2 (FN2) where the petitioners stated:

> On July 31, 2015, Kivlan and Company, Inc., filed comments requesting that certain patented HFC blends, namely R-421A and R-421B, be excluded from the scope of this investigation. These patented blends are already excluded by the scope language. The HFC Coalition therefore does not object to the request. (emphasis added)

(beyond listing "various HFC blends" that were excluded from the scope).[110] Moreover, when the Department solicited comments on the appropriate product characteristics in this investigation, [111] the petitioners limited their comments to container type[112]; we find this significant because the Department's proposal was to define the specific products included in the investigation as an exhaustive list of the five blends and three components, with a catchall category for "other." [113]

Indeed, it was not until the rebuttal brief that the petitioners raised what is tantamount to a wholly new argument, that the scope is broader than its plain language and includes blends and components which were not specifically named in the Petition. According to this new argument, the scope has always covered components such as R-152a, and R-227ea, and blends such as R-422b, R-422c, and R-417c.[114] However, we note that this argument is not supported by the evidence on the record for the reasons noted above. Further, we note that this argument is contradicted by the petitioners themselves in their June 2, 2016, Excluded Products Letter, where the petitioners explicitly indicated that the scope of this investigation does not, in fact, include R-422b, R-422c, and R-417c.[115]

Similarly, as noted in Comment 1, above, the ITC has defined its domestic like product as the same three components, and the same five blends, noted in the Department's scope language. In addition, the ITC's preliminary injury report also indicates that R-422b, R-422c, R-417c, and R-427a (among others) are outside the scope. [116] Thus, both the ITC and the Department have consistently interpreted the scope of the investigation in the same manner.

Thus, we disagree that reading the scope more broadly (in the case of unpatented blends) or more narrowly (in the case of patented blends) than its plain language would be consistent with the original intent of the Petition, and we decline to do so here. We find that, not only is it too late to expand the scope at this stage of the proceeding,[117] but also the petitioners' insistence that the

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[110] See Letter from the Petitioners, "Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Submission of Factual Information in Response to Scope Exclusion Request" dated June 2, 2016 (Excluded Products Letter), at 2 and Attachment I. This letter is the same as a letter of the same name filed on April 19, 2016, except that the petitioners disclosed certain information for which they had initially requested business proprietary treatment.

[111] See Letter from the Petitioners, "Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Comments on Product Characteristics," dated August 17, 2015.

[112] See Letter from the Department to All Interested Parties, "Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated August 12, 2015.

[113] Id., at Attachment.

[114] See the petitioners' rebuttal brief, at 25-26.

[115] See Excluded Products Letter, at Attachment.

[116] See ITC Report, at, e.g., I-15 discussing the uses of the "three subject components" and the "five subject blends" and, at I-19 (listing R-422b, R-422c, R-417c, and R-427a as "Out-of-scope HFC blends."

[117] As noted above, the ITC limited its domestic like product definition, and its corresponding injury analysis, to the three subject components and five subject blends. Thus, were we to broaden the scope consistent with the petitioners' late-in-the-process new argument, we would be unable to cover these products in any eventual AD order because they would not be subject to a corresponding finding of injury.

Department conduct numerous scope inquiries after an order is issued to determine whether existing blends and components are out of the scope is impractical. In this final determination, the Department has undertaken revisions to the scope language to exclude and include certain merchandise in accordance with the intent of the petition and in response to parties' arguments. Nonetheless, the Department is mindful of the petitioners' concern and will entertain future scope requests if they arise.

Finally, with respect to ICOR's and National Refrigerants' request that we amend the scope explicitly to exclude R-417c, R-422b, R-422c, and R-427a, we disagree that this change is necessary, given that they are not one of the five HFC blends named in the scope and the petitioners have already acknowledged that they are excluded. [118]

Regarding National Refrigerants' argument that the existing semi-finished blends language could lead to the imposition of duties on imports of already-existing, but out-of-scope, blends, or newly-developing blends, we agree that the potential for this exists. Thus, we agree that it is appropriate to entertain future requests to determine whether that blends that have been approved for sale in the United States are appropriately considered to be in-scope merchandise. We disagree, however, that amending the scope to exclude new HFC blends receiving an AHRI designation is warranted at this point in the proceeding, however, given that: 1) the administrative record in this case lacks detailed information regarding AHRI and its relationship to the HFCs industry producing subject merchandise; and 2) adopting such a provision could possibly preclude legitimate findings that later developed products are within the scope.

Finally, with respect to National Refrigerants' request that the Department clarify that patented blends will be excluded from the scope even after the expiration of the patent, we disagree that it would be appropriate to do so. The plain language of the scope only excludes patented blends. We find that extending the scope exclusion after the expiration of a patent would be an improper expansion of the exclusion and, thus, contrary to the intent of the Petition. As a result, once a patent expires, the formerly patented products would be covered by the scope, to the extent that they meet the definition of one of the finished HFC blends.

Comment 6: *Voluntary Respondents*

On July 30, 2015, Weitron requested treatment as a voluntary respondent in this investigation. On August 17, 2015, we selected the two largest exporters/producers of the subject merchandise by volume, Dongyue and TTI, for individual examination as mandatory respondents.[119] In the Respondent Selection Memo, we addressed Weitron's request to be a voluntary respondent, stating that if Weitron met the requirements of section 782(a) if the Act and 19 CFR 351.204(d), we would evaluate the circumstances during the course of the investigation to determine if we

[118] See Excluded Products Letter, at Attachment. In this Attachment, the basis for exclusion of R-427 is classified as business proprietary.

[119] See Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, from Melissa G. Skinner, Office Director, AD/CVD Operations, Office II, entitled "Respondent Selection for the Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated August 17, 2015 (Respondent Selection Memo).

could examine another respondent.[120] On January 21, 2016, we determined not to select Weitron as a voluntary respondent because doing so would be unduly burdensome and inhibit the timely completion of the investigation.[121]

Weitron argues that the Department should have selected it as a voluntary respondent. Weitron notes that it filed timely responses to the Department's questionnaire and submitted an SRA. Further, Weitron points out that it raised the possibility that TTI might not be the proper respondent in this investigation, and the Department should have granted Weitron voluntary respondent status at that time.

Weitron contends that the Department's review of Dongyue's and TTI's responses in this case was relatively simple. According to Weitron, adding it as a voluntary respondent would have been straightforward given that it: 1) sold only two CONNUMs to the United States (both of which it believes were also sold by TTI); and 2) used the same suppliers as TTI and Dongyue (so Weitron's FOPs would have also been reported by Dongyue or TTI). Thus, Weitron claims that the additional burden for the Department to examine Weitron as a voluntary respondent would have been minimal.

Weitron also takes issue with the Department's language in the Voluntary Respondent Memo, arguing that it is boilerplate and does not actually apply in this investigation (pointing to statements like the investigation involves complex issues, a product which has not previously been analyzed, and companies which have never been subject to the Department's examination).[122] Weitron notes that, not only was it selected as a mandatory respondent in the investigation of Tetrafluoroethane from the PRC,[123] but both Dongyue and TTI received separate rates in that investigation. Moreover, Weitron points out that TTI was also a mandatory respondent in the companion countervailing duty (CVD) investigation.[124] Therefore, Weitron claims that, because Dongyue and TTI fully understood the Department's practice and procedures, the Department issued fewer supplemental questionnaires in this investigation than it would have had the respondents never been subject to examination.

According to Weitron, the courts have held that, when deciding whether to select a voluntary respondent for individual examination, the Department cannot merely repeat the analysis used to

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[120] Id., at page 6.

[121] See Memorandum entitled "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof (HFCs) from the People's Republic of China (PRC): Selection of Voluntary Respondent" dated June 12, 2013 (Voluntary Respondent Memo).

[122] See Voluntary Respondent Memo, at page 4.

[123] See 1, 1, 1,2-Tetrafluroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 62597 (October 20, 2014) (Tetrafluoroethane from the PRC). Moreover, Weitron points out that it was successfully verified in that investigation.

[124] Id. See also Countervailing Duty Investigation of 1,1,1,2 Tetrafluoroethane From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 79 FR 62594 (October 20, 2014) (Tetrafluoroethane CVD Investigation). Weitron also notes that many of the companies requesting a separate rate in this investigation were also separate rate applicants in Tetrafluoroethane from the PRC. Thus, Weitron disagrees with the Department's statement in the Voluntary Respondent Memo that its analysis of SRAs in this investigation would be difficult or complex.

limit its selection of mandatory respondents in other investigations and administrative reviews.[125] Thus, Weitron claims that the burdens identified by the Department in examining a voluntary respondent cannot merely be the burdens that occur when examining any mandatory respondent. Moreover, Weitron also cites Grobest II, where the Court found instructive language from the Statement of Administrative Action (SAA) directing that the Department "will not discourage voluntary responses and will endeavor to investigate all firms that voluntarily provide timely responses in the form required . . ."[126] Thus, Weitron argues that, given the Court's rulings in Ad Hoc Shrimp and Grobest II, the Department's decision not to accept Weitron as a voluntary respondent was unsupported by substantial evidence and contrary to law.[127]

Weitron claims that, even at this late stage of the proceeding, it would be a relatively simple task for the Department to select Weitron as a voluntary respondent and calculate an individual margin for it in the final determination. Weitron notes that it has submitted all of the necessary sales and FOP data, and the Department has already conducted a verification of one of Weitron's unaffiliated suppliers.[128] Moreover, Weitron argues that it is not necessary to verify its sales because the stated purpose of verification is not to verify all of a respondent's data, but to test its submissions for accuracy.[129] According to Weitron, the Department's verification of Taicang's FOP data satisfies this requirement.[130]

The petitioners disagree, asserting that the Department correctly determined that it did not have the resources to individually investigate Weitron as a voluntary respondent. According to the petitioners, despite Weitron's contention to the contrary, this case is extraordinarily complex by every measure. As an initial matter, the petitioners assert that many of Weitron's arguments regarding Tetrafluoroethane from the PRC are misplaced given the complexity of that case (involving exporters supplied by numerous PRC producers, issues regarding the selection of the surrogate country, and numerous FOPs). The petitioners assert that those complexities are compounded here, given that the subject merchandise includes blends of HFCs, not just one

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[125] See Ad Hoc Shrimp Trade Action Comm. v. United States, 925 F. Supp. 2d 1367, 1371-1372 (CIT 2013) (Ad Hoc Shrimp).

[126] See also Grobest & 1-Mei Indus. Vietnam Co. v. United States, 853 F. Supp. 2d 1352, 1364-1365 (CIT 2012) (Grobest II).

[127] Weitron also likens the facts of this case to Wood Flooring from the PRC, where the Department selected a voluntary respondent which had participated in a previous segment as a mandatory respondent, noting that it did not anticipate that examination of this company's information would be unduly burdensome. See Multilayered Wood Flooring From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 70267 (November 25, 2013) (Wood Flooring from the PRC Prelim), and accompanying Preliminary Decision Memorandum at 5, unchanged in Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 26712 (May 9, 2014) (Wood Flooring from the PRC Final) (Wood Flooring from the PRC).

[128] See Taicang FOP Verification Report.

[129] See, e.g., Certain Polyethylene Terephthalate Resin from the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value, 81 FR 13336 (March 14, 2016), and accompanying Issues and Decision Memorandum at Comment 3.

[130] Finally, Weitron argues that, in the event the Department calculates an individual margin for it, it should exclude Weitron's margin from the separate rates calculation, pursuant to section 735(c)(5) of the Act and 19 CFR 351.204(d)(3).

single HFC component (R-134a). Furthermore, the petitioners point out that this case involves many more FOPs and each respondent obtained its HFCs from multiple PRC suppliers (Dongyue reporting using six, while TTI reported using seven). The petitioners also note that the Department issued thirteen supplemental questionnaires to Dongyue and TTI.

The petitioners also take issue with Weitron's argument that the Department previously examined Dongyue and TTI in prior cases, noting that Weitron ignored the context of the companies' previous involvement. The petitioners point out that the Department examined TTI as a mandatory respondent in a CVD investigation, where the Department examines different facts for different purposes; thus, TTI's participation in that case is irrelevant here. In addition, the petitioners assert that Dongyue's and TTI's status as separate rates respondents in Tetrafluoroethane from the PRC is similarly irrelevant because in that context the Department did not individually examine complex questionnaire responses from them. Furthermore, the petitioners note that Weitron's involvement as a mandatory respondent in Tetrafluoroethane from the PRC raised numerous complex issues (involving FOPs from multiple suppliers and whether Weitron was even qualified to be a respondent) and there would be no reason to think that these complexities would disappear if it were examined here in this investigation.

Finally, the petitioners note that Weitron misstated the legal standard for selecting a voluntary respondent. According to the petitioners, the Court in Tri Union recently clarified that the Department is only required to make an independent determination regarding voluntary respondents, and its decision is lawful as long it addresses the separate and distinct standard in section 782(a) of the Act.[131] The petitioners also point out that the Department has interpreted Grobest II to require only that the Department make its decision regarding voluntary respondents independently from the initial respondent selection determination.[132] Therefore, the petitioners maintain that, because the Department specifically addressed each of the relevant factors pursuant to section 782(a) of the Act in the Voluntary Respondent Memo, it has met this legal standard. Consequently, the petitioners maintain that the Department's decision not to select Weitron as a voluntary respondent in this case is supported by substantial evidence and consistent with the law.

Department's Position:

For the reasons discussed in the Voluntary Respondent Memo,[133] the Preliminary Determination,[134] and reiterated below, we continued to assign Weitron the separate rate margin determined for the final determination (i.e., the margin of the mandatory respondent, TTI).

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[131] See Tri Union Frozen Products, Inc., et al., v. United States, Slip Op. 16-33 (CIT 2016) at *36-47 (Tri Union). The petitioners also state that section 782(a) of the Act was recently amended by the Trade Preferences Extension Act (TPEA) so that, when 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; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted; and 4) such other factors relating to the timely completion of these cases. See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015)(TPEA).

[132] See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014, 81 FR 23272 (April 20, 2016), and accompanying Issues and Decision Memorandum at Comment 5 (Tires 2016).

[133] See Voluntary Respondent Memo, at 2-4.

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.

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 Act.[135] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and therefore, apply to this investigation.[136]

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 August 17, 2015, we determined, pursuant to section 777(c)(2) of the Act, that it was not practicable to examine more than two mandatory respondents in this investigation. Thus, in accordance with section 777(c)(2)(B) of the Act, we selected as mandatory respondents the two companies accounting for the largest volume of HFCs exported from the PRC during the POI (i.e., Dongyue and TTI) based on Q&V data.[137] We also noted that, if we received voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), we would

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[134] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 8-9.

[135] See 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 ITC. 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).

[136] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 8.

[137] Id., and accompanying Preliminary Decision Memorandum at 9.

evaluate the circumstances in deciding whether to select an additional respondent for examination.[138]

We received a timely request from Weitron for treatment as a voluntary respondent in this investigation, and in September and October 2015, Weitron submitted timely responses to the Department's initial questionnaire. Although Weitron timely submitted the information required by section 782(a)(1) of the Act, we concluded in the Voluntary Respondent Memo that, pursuant to section 782(a) of the Act, as amended by the TPEA, it would be unduly burdensome and inhibit timely completion of this investigation to select and examine Weitron as a voluntary respondent.[139] In coming to our determination, we considered the following factors, as established in the TPEA: 1) the complexity of the issues or information presented in this investigation; 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.[140]

In denying Weitron's request for voluntary respondent status, we explained that the issues and information presented in this investigation are complex. For example, analysis of both Dongyue and TTI was complicated by the fact that both respondents reported using multiple unaffiliated suppliers, which required the Department to analyze multiple section D questionnaire responses and FOP databases.[141] Furthermore, this was the first time that we reviewed Dongyue and TTI as mandatory respondents and, thus, we had to expend additional resources gaining experience with these companies' records and practices.[142] Indeed, we issued thirteen supplemental questionnaires to Dongyue and TTI in this investigation, which included numerous questions concerning their FOP reporting methodologies and claimed by-product offsets, database issues, ownership issues, and general administrative issues. In addition, we encountered numerous issues during the verifications conducted for these respondents, giving rise to a large number of comments which must be addressed in this final determination.

Equally significantly, this case involves numerous issues related to the scope of the investigation, some of which are novel and highly complex and others which arose late in the process (i.e., after the preliminary determination). Indeed, due to the complexity of these issues and the necessity of seeking significant input from interested parties, we were unable to make a preliminary finding with respect to these scope issues until May 2016, only eight weeks prior to the final determination. For this reason, and for the reasons stated above, we find that this case is extraordinarily complex and would prohibit the examination of an additional respondent.

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[138] See Respondent Selection Memo, at 6.

[139] See Voluntary Respondent Memo, at 4.

[140] Id., at 2-3.

[141] Id., at 3.

[142] We note that, while TTI had participated as a mandatory respondent in Tetrafluoroethane CVD Investigation, the Department examines different facts for different purposes in CVD proceedings. Therefore, we find that our examination of TTI as a CVD respondent did not lessen our burden in examining this company in the context of an AD proceeding. Further, while both Dongyue and TTI applied for separate rates in Tetrafluoroethane from the PRC, our examination of these companies as separate rate applicants was limited (and did not include the submission of full questionnaire responses, or U.S. sales and FOP data).

Acceptance of Weitron as a voluntary respondent would necessarily have required a significant additional level of effort and resources, which we determined would have been unduly burdensome. Specifically, a proper examination of Weitron would have required the assignment of an additional analyst to review and analyze its questionnaire response and issue multiple additional supplemental questionnaires, and would have further required that several analysts conduct verification both at Weitron's factory in the PRC and sales office in the United States.[143]

Based on our prior experience, a full examination of Weitron would require writing a margin program specific to Weitron, evaluating and selecting surrogate values specific to Weitron,[144] and writing additional analysis memoranda and verification reports specific to Weitron.[145] Moreover, the uncertain nature of any investigation allows for the possibility that complex situations may arise, requiring yet more time for the analyst and case team to analyze, discuss, and address. It is of no moment that the Department examined Weitron in another AD investigation of a different product, because HFCs is a distinct product, with distinct considerations. Finally, we noted that the Department was conducting numerous investigations

[143] With respect to this latter point, we disagree that the verification of a common supplier is sufficient to consider Weitron's data verified. While the Department may not visit every location at which production or sales information is stored, it is the Department, not respondents, who selects the verification sites. Further, the Department generally requires respondents to support the major elements of their responses, including, significantly, U.S. price, when conducting verification.

[144] Even if Weitron used the same suppliers, thereby potentially obviating the need to collect additional FOP and surrogate value data for NV, the Department still would have had to evaluate Weitron's interaction with those suppliers and evaluate whether the process was the same in all respects, as well as analyze Weitron's U.S. sales process and evaluate and select surrogate value information related to expenses incurred in the PRC. In addition, in Tetrafluoroethane from the PRC, Weitron packed bulk R-134a into cans or cylinders for sale to the United States. See Tetrafluoroethane from the PRC, at Comment 2. Thus, it is by no means a foregone conclusion that the FOPs currently on the record in this investigation for Weitron are complete. Further, we note that, unlike Dongyue and TTI, Weitron made CEP sales during the POI, which would have required additional analysis.

[145] See, e.g., Tetrafluoroethane from the PRC, 79 FR 62597. While Weitron did participate as a mandatory respondent in that investigation, the mere fact of its previous participation does not mean that the effort required to examine Weitron would be diminished here. We note that in Tetrafluoroethane from the PRC, the Department ultimately determined that Weitron was ineligible to be a respondent. See Tetrafluoroethane from the PRC, at Comment 2. Therefore, Weitron's previous involvement, rather than making its examination as a voluntary respondent here less complicated, as Weitron argues, would have in fact created even more complication in this investigation.

and reviews during the preliminary phase of this investigation,[146] and the Department's workload has only increased since then.[147]

Thus, we disagree with Weitron that it would have been a simple matter for the Department to select it as a voluntary respondent and determine an individual margin for it.

We disagree with Weitron that either Ad Hoc Shrimp or Grobest II apply here. Section 782 of the Act was recently amended and these cases were decided under a different legal provision. In any event, the CIT has explained that these cases can be understood as 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.[148] In issuing the Voluntary Respondent Memo, we considered Weitron's voluntary respondent request based on the current statutory standard for voluntary respondents. Thus, we have not relied on our initial decision to limit the number of voluntary respondents in deciding not to select Weitron as a voluntary respondent.

Finally, we disagree with Weitron that the facts of this case are analogous to Wood Flooring from the PRC. In that case, the Department determined that it was appropriate to select a voluntary respondent "because the additional workload would not be unduly burdensome or inhibit the timely completion of this review."[149] Thus, at a minimum, this fact pattern differs from that of the instant case, where it would be unduly burdensome to select Weitron as a voluntary respondent in light of the Department's current, prohibitive workload. Moreover, in the voluntary respondent memorandum issued in that case, the Department stated, "…since initially selecting respondents for individual examination, a number of cases within AD/CVD Operations Office 4 have been finalized, providing resources that can be applied to Layo Wood's examination."[150] This differs from the situation in Office II since the time of respondent selection in this investigation, where the office workload (and Enforcement & Compliance's workload overall) has only increased.

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[146] See Voluntary Respondent Memo, at 3-4, noting that in the preliminary phase of this investigation, Office II was also assigned to the following investigations and reviews: Circular Welded Pipe from the United Arab Emirates and the Sultanate of Oman; Off-the-Road Tires from Sri Lanka; Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea, Mexico, and the Republic of Turkey; Certain Magnesia Carbon Bricks from Mexico; Certain Preserved Mushrooms from India; Seamless Refined Copper Pipe and Tube from Mexico; Prestressed Concrete Steel Rail Tie Wire from Mexico; Citric Acid and Citrate Salts from Canada; Frozen Warmwater Shrimp from India and Thailand; Ammonium Nitrate from Russia; Tapered Roller Bearings and Parts Thereof from the PRC; Large Residential Washers from Mexico, the Republic of Korea, and the People's Republic of China; Drawn Stainless Steel Sinks from the PRC; and Narrow Woven Ribbons from Taiwan.

[147] Since the date of the Preliminary Determination, the Department has initiated AD and CVD investigations on at least 15 different products covering numerous countries. See http://enforcement.trade.gov/ia-highlights-and-news.html.

[148] See Husteel Co. v. United States, 98 F. Supp. 3d 1315 (CIT 2015) (Husteel).

[149] See Wood Flooring from the PRC Prelim, and accompanying Preliminary Decision Memorandum at 5, unchanged in Wood Flooring from the PRC Final, 79 FR 26712.

[150] See Memorandum to Abdelali Elouaradia, Director, Office 4, from James Martinelli, Analyst, entitled, "Administrative Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China: Selection of a Voluntary Respondent," dated June 12, 2013.

Therefore, 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 investigation. 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 investigation. Thus, consistent with section 782(a) of the Act as recently amended by the TPEA, the Department did not consider Weitron's unsolicited questionnaire responses. Consequently, in accordance with the Department's practice regarding entities which are eligible for a separate rate, but are not selected to be an individually reviewed respondent, we assigned Weitron the same rate as the other separate rate companies in this investigation.

Comment 7: *Critical Circumstances*

In the Preliminary Determination, we based our critical circumstances analysis for: 1) Dongyue and TTI on each company's reported shipment data; and 2) the separate rate companies on Global Trade Atlas (GTA) import statistics specific to HFCs less Dongyue's and TTI's shipment data. As a result of this analysis, we determined that massive imports did not exist with respect to Dongyue and the separate rate companies, but did exist with respect to TTI.

The separate rate applicants[151] argue that, in the final determination, the Department should base its determination on whether their imports are massive on their own company-specific shipment data, which they note they submitted in a timely manner. According to these parties, the reported data support a finding that their shipments did not give rise to massive imports. Thus, the separate rate applicants contend that the Department cannot reject this data now.

Additionally the separate rate applicants contend that the record evidence supports the conclusion that TTI was solely responsible for the import surge, stating that all other exports declined from the base period to the comparison period. As a result, Dongyue and the separate rate applicants argue that, for the same reason that the Department cannot apply an AFA rate to the PRC-wide entity (see Comment 9, below), the Department cannot find that massive imports exist for the separate rate applicants when faced with the impossibility that imports for these companies were massive. Finally, Dongyue and the separate rate applicants argue that it would be punitive to find that critical circumstances exists for them when they behaved in a commercially responsible manner after the petition was filed by limiting their shipments to the United States.

Dongyue and National Refrigerants argue that the Department should continue to base Dongyue's critical circumstances analysis for Dongyue on its reported shipment data, even if it decides to base its margin on facts available or AFA. According to Dongyue, there was no discrepancy with the quantities it reported on its VAT and commercial invoices and the

[151] The separate rate applicants which filed a joint case brief are: Jinhua Yonghe Fluorochemical Co., Ltd. (Jinhua Yonghe); Lianzhou; Quhua; Shandong Huaan New Material Co., Ltd. (Huaan); Zhejiang Sanmei Chemical Ind. Co., Ltd. (Sanmei); and Zhejiang Yonghe Refrigerant Co., Ltd. (Zhejiang Yonghe) (collectively, the separate rate applicants).

Department could have easily verified Dongyue's reported shipment data.[152,153] National Refrigerants states that nothing on the record of this case (including the Department's verification report) indicates that Dongyue's monthly shipment data is incomplete, inaccurate, or otherwise unreliable for the limited purpose of making a critical circumstances determination. Alternatively, National Refrigerants argues that, because Dongyue still qualifies for a separate rate,[154] the Department can include Dongyue as part of its critical circumstances analysis for the separate rates companies. National Refrigerants states that, under either scenario, the Department should find that critical circumstances do not exist for Dongyue in the final determination.

The petitioners maintain that the separate rate applicants that did not receive a separate rate should continue to receive the critical circumstances determination of the PRC-wide entity. According to the petitioners, because the separate rate applicants that did not receive a separate rate cannot be distinguished from the PRC-wide entity, there is no basis to find that they did not contribute to the import surge on which the finding of critical circumstances is based.

Department's Position:

In the final determination, we continue to find that critical circumstances do not exist for the companies which received a separate rate.[155] However, we disagree with the separate rate applicants that we should base our critical circumstances analysis on their reported shipment data because it is not the Department's practice to do so. As we noted in Thermal Transfer Ribbons from Japan:[156]

> it is the Department's normal practice to conduct its critical circumstances analysis of companies in the "all others" group based on the experience of the investigated

[152] Dongyue contends that the Department could have used third party sources, such as CBP data and Dongyue's customers, to conduct this verification, if necessary. According to National Refrigerants, these sources can be used to "corroborate" Dongyue's reported shipment data.

[153] National Refrigerants cites Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico, 68 FR 68350, 68351 (December 8, 2003) (Steel Wire Strand), and accompanying Issues and Decision Memorandum at Comment 8, where the Department based the respondent's margin on AFA but relied on the company's reported shipment data for its critical circumstances analysis.

[154] See Dongyue Verification Report, at 3.

[155] See Memorandum to the File from Manuel Rey, Analyst, entitled "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Critical Circumstances Analysis," dated June 21, 2016 (Final Critical Circumstances Memo), at Attachment 1. We based our analysis for the separate rate respondents on GTA data less only TTI's shipment data (because we are no longer assigning Dongyue a separate margin). We also revised TTI's reported shipment data based on corrections made at verification. Id.

[156] See Notice of Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances: Wax and Wax/Resin Thermal Transfer Ribbons From Japan, 68 FR 71072, 71077 (December 22, 2003) (Thermal Transfer Ribbons from Japan). See also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 3.

> companies. . .However, the Department does not automatically extend an affirmative critical circumstances determination to companies covered by the "all others" rate. . . Instead, the Department considers the traditional critical circumstances criteria with respect to the companies covered by the "all others" rate.

Finally, we are continuing to treat the companies which did not receive a separate rate as part of the PRC-wide entity and, therefore, we continue to find as AFA that there are massive imports for the PRC-wide entity.[157]

We disagree with Dongyue and National Refrigerants that it would be appropriate to base a determination as to whether Dongyue's imports are massive on its reported shipment data. As noted in Comment 14, below, we find that Dongyue was unable to support its separate rates claim at verification. Specifically, the Department finds that information contained in a company's accounting system (e.g., disposition of profits,[158] retention of foreign exchange earnings, etc.) is integral to the proper evaluation of its separate rates eligibility. Because Dongyue was unable to establish the integrity of its accounting system at verification, we find that all of the information derived from it is suspect, and, thus, we find that this information is unusable. As a result, we find Dongyue to be part of the PRC-wide entity, and as such it would be inappropriate to treat it separately from this entity for purposes of any critical circumstances determination.

Separate Rates Comments

Comment 8: *Companies Owned by an SOE*

In the Preliminary Determination, we determined that Zhejiang Quhua Fluor-Chemistry Co., Ltd.'s (Quhua) and Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd. (Lianzhou) were not eligible to receive a separate rate.[159] The separate rate applicants contend that the Department's determination was unsupported by record evidence and is contrary to law. According to the separate rate applicants, Quhua and Lianzhou have in fact demonstrated an absence of de facto government control. Specifically, the separate rate applicants argue that the Department did not apply its traditional four prong Sparklers test[160] to determine whether Quhua and Lianzhou were subject to de facto PRC government control.

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[157] 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), and accompanying Issues and Decision Memorandum at "Critical Circumstances."

[158] In particular, we noted that Dongyue's accounting system did not accurately reflect the profit or loss made on U.S. sales, because Dongyue did not accurately record its sales revenue (an integral component of profit) in this system. See Dongyue Verification Report, at 2.

[159] See Preliminary Determination and accompanying Preliminary Decision Memorandum at 23.

[160] See Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588, 20589 (May 6, 1991) (Sparklers).

The separate rate applicants argue that the Department incorrectly focused on the fact that the majority owner of the parent company of Quhua and Lianzhou is an SOE, and the participation of this majority owner in the day-to-day operations of Quhua and Lianzhou.[161,162] According to the separate rate applicants, an analysis of the four Sparklers criteria for Quhua and Lianzhou shows that: 1) their export prices are not set by or subject to the approval of a PRC government agency; 2) they have the authority to negotiate and sign contracts and other agreements; 3) they select management and their executive directors are selected by their parent company, which is traded on the Shanghai Stock Exchange; and 4) both companies retain the proceeds from their export sales and they make independent decisions regarding the disposition of their profits (either themselves (in the case of Lianzhou) or via their publicly-traded parent company (in the case of Quhua)).[163]

According to the separate rate applicants, since its adoption of the Sparklers test in the 1990s, the Department applied its separate rate analysis to SOEs in the same manner to all other PRC exporters. However, the separate rate applicants note that, as a result of the Court's decision in ATM,[164] where the Court of Appeals for the Federal Circuit (CAFC) held that that the Sparklers test should not control the Department's separate rate analysis, the Department changed its practice.[165] The separate rate applicants claim that the CAFC's decision in ATM was incorrect and, thus, the Department should not abandon its longstanding Sparklers test in favor of an ATM analysis. According to the separate rates applicants, the Department cannot apply a new standard without following formal Administrative Procedures Act (APA) procedures, including public notice and the opportunity to comment. Therefore, the separate rate applicants argue that the Department's reliance on the ATM standard in this case is contrary to law and its failure to apply the Sparklers test renders its determination unsupported by substantial evidence.

In any event, the separate rate applicants claim that even if the Department continues to apply the ATM standard in the final determination, the Department should determine that Quhua and

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[161] See Memorandum to The File from Dennis McClure and Manuel Rey, Analysts, AD/CVD Operations, Office II, entitled, "Preliminary Separate Rates Analysis for Zhejiang Quhua Fluor-Chemistry Co., Ltd. (Quhua), Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd. (Lianzhou), Zhejiang Lantian Environmental Protection Fluoro Material Co., Ltd. (Lantian Fluoro), Sinochem Lantian Trade Co., Ltd. (Sinochem Lantian), and Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. (Taicang) in the Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated January 21, 2016, at page 2 (Preliminary Separate Rates Analysis Memo).

[162] The separate rate applicants state that this determination runs counter to the CIT's recognition that "{i}t is now well established that 'government ownership is not dispositive' of government control . . . . Firms that are wholly owned by the PRC government are not barred, per se, from a separate rate." See Advanced Tech. & Materials Co. v. United States, Slip Op. 11-122, at 14-15 (CIT 2011) (quoting Qingdao Taifa Group Co. v. United States, 637 F. Supp. 2d 1231, 1244 (CIT 2009)).

[163] See Letters from Quhua and Lianzhou to the Department, entitled, "Quhua Separate Rate Application" and "Lianzhou Separate Rate Application," dated September 4, 2015 (Quhua SRA and Lianzhou SRA).

[164] See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in Advanced Technology & Materials Co., Ltd., et al. v. United States, 885 F. Supp. 2d 1343 (CIT 2012) (Advanced Technology II), affirmed in Advanced Technology & Materials Co., Ltd., et al. v. United States, 938 F. Supp. 2d 1342 (CIT 2013), aff'd Case No. 2014-1154 (CAFC 2014) (ATM).

[165] See, e.g., Preliminary Determination, 81 FR at 5098.

Lianzhou qualify for a separate rate. Specifically, the separate rate applicants contend that the Department's analysis should not depend on the potential for PRC government de facto control of the exporting entity, but rather on whether this potential is exercised. The separate rate applicants claim that record evidence demonstrates that the PRC government did not exercise any control over the export activities of Quhua and Lianzhou.

The separate rate applicants also take issue with the Department's analysis of de facto PRC government control in the Preliminary Determination. Specifically, the separate rate applicants argue that the Department did not point to any record evidence (other than a general reference to the articles of association) supporting its claim that members of board of directors and management of Quhua's and Lianzhou's ultimate parent company actively participate in the companies' day-to-day operations as executive directors. The separate rate applicants also note that Quhua's and Lianzhou's executive directors are appointed by their publicly-traded parent company. According to the separate rate applicants, record evidence confirms that all decisions with respect to Quhua's export activities were based upon market conditions. In addition, the separate rate applicants argue that the Department failed to acknowledge that Quhua's and Lianzhou's parent company is a publicly traded company on the Shanghai Stock Exchange and the parent company's articles of association expressly protect and guarantee Quhua's and Lianzhou's independence in business operations. Further, the separate rate applicants maintain that Quhua's and Lianzhou's parent company is subject to the rules of Corporate Governance regulated by China Security Regulatory Commission, which explicitly state that the controlling shareholders of a listed company cannot use their positions to exert improper influence over the listed company's business operations.[166] The separate rate applicants claim that, if Quhua's and Lianzhou's owner is protected by these provisions from interference by its controlling shareholder, then the Department has no basis to presume that this same controlling shareholder could exercise control over Quhua or Lianzhou. Moreover, the separate rate applicants state that under articles 3, 5, 20, and 21 of the Company Law of the PRC, the ultimate parent of Quhua and Lianzhou is prohibited from taking any action which would be contrary to the business interests of the public shareholders of the companies' parent company (and the parent company is required by its articles of associate to operate as if it were owned 100 percent by the public). The separate rate applicants also point out that their parent company's board of directors is selected by its shareholders, not the PRC Government, and public shareholders participated in the selection of its board of directors. Finally, the separate rate applicants argue that the ultimate parent company is not the sole shareholder of Quhua's and Lianzhou's parent company and the profit distribution of their parent company is decided at the shareholders' meeting, in which minority shareholders participate. Therefore, the separate rate applicants argue that, because of the evidence that the PRC government did not exercise any control over the export activities of these companies, the Department must conclude that Quhua and Lianzhou qualify for a separate rate in the final determination.

The petitioners disagree that Quhua and Lianzhou qualify for a separate rate, noting that Quhua and Lianzhou's ultimate parent company is owned in part by an SOE. Thus, the petitioners assert that Quhua and Lianzhou cannot demonstrate that they are sufficiently autonomous from the PRC-wide entity. The petitioners maintain that the Department's practice with respect to this

[166] See Quhua SRA and Lianzhou SRA, at 15-18.

issue is clear. Specifically, the petitioners point out that the Department looks for evidence of government control as exercised through the appointment of board members and selection of management. According to the petitioners, government ownership allowing the exercise of such control is evidence that a company cannot rebut the presumption of government control. In any event, the petitioners note that the arguments of the separate rates applicants improperly discount the Department's recent practice and the precedent established in ATM.[167]

The petitioners maintain that, while the separate rate applicants argue that complete government ownership does not preclude eligibility for a separate rate, it does not counter the rebuttable presumption of government control. Further, the petitioners counter the separate rate applicants' contention that the Department must find evidence of the exercise of government control by noting that the Department found the board members and directors of Quhua's and Lianzhou's ultimate parent company actively participate in the day-to-day operations of the companies as executive directors and are involved in business decisions.[168] According to the petitioners, while the separate rate applicants question this finding, they fail to offer a rebuttal to the logical conclusion that a company's directors and managers influence its activities. Moreover, the petitioners maintain that, although Quhua's and Lianzhou's executive directors are appointed by their publicly-traded parent company, they fail to show how this overcomes the ultimate parent company's SOE status. Finally, the petitioners find unpersuasive the arguments regarding Quhua and Lianzhou's governing corporate documents and the business laws of the PRC because the Department has already addressed them in previous cases.[169]

Department's Position:

As we stated in the Preliminary Results, in proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, de jure and de facto, with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in Sparklers,[170] as further developed in Silicon Carbide.[171]

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[167] See ATM, 938 F. Supp. 2d 1342.

[168] See Separate Rates Analysis Memo, at page 2.

[169] See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014, 80 FR 55328 (September 15, 2015), and accompanying Issues and Decision Memorandum at Comment 11.

[170] See Sparklers, 56 FR at 20589.

[171] See Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585, 22586-89 (May 2, 1994) (Silicon Carbide).

In accordance with this separate rates test, the Department assigns separate rates to respondents in NME proceedings if respondents demonstrate the absence of both de jure and de facto government control over their export activities.[172]

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the Diamond Sawblades 2014 AD proceeding, and the Department's determinations therein.[173] In particular, we note that in litigation involving the Diamond Sawblades 2014 proceeding, the CIT found the Department's existing separate rates analysis deficient in the specific circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[174] Following the court's reasoning, as affirmed by the CAFC, in recent proceedings, we concluded that where a government entity holds a majority ownership share, either directly or indirectly,[175] in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[176] This may include control over, for

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[172] See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China, 72 FR 52355, 52356 (September 13, 2007); Brake Rotors From the People's Republic of China; Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review, 66 FR 1303, 1306 (January 8, 2001), unchanged in Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review, 66 FR 27063 (May 16, 2001); and Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China, 64 FR 71104 (December 20, 1999).

[173] See ATM, 938 F. Supp. 2d 1342. See also Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012, 78 FR 77098 (December 20, 2013), and accompanying Preliminary Decision Memo at 7, unchanged in Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment l (Diamond Sawblades 2014).

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

[175] Quhua and Lianzhou appear to argue that *indirect* ownership is materially different from *direct* ownership for purposes of our analysis. See Separate Rate Applicants case brief, at 6 (arguing that "ATM was incorrectly decided"). We note, however, that in ATM, the majority-SASAC ownership was indirect. See Dispute Settlement Body (DSB) Remand, at 8 (noting that SASAC owned 100% of CISRI, and CISRI in turn held a majority share in AT&M). Moreover, as explained below, in our Preliminary Results, we identified evidence showing an unbroken line of control between SASAC and Quhua and Lianzhou.

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

example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.

We found in the Preliminary Determination that Quhua and Lianzhou demonstrated a lack of de jure control, and we continue to reach that conclusion in this final determination. With respect to de facto control, as we stated in the Preliminary Determination, the Department considers four factors in evaluating whether a respondent is subject to de facto government control of its export functions: 1) whether the export prices are set by, or are subject to the approval of, a government agency; 2) whether the respondent has authority to negotiate and sign contracts and other agreements; 3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and, 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[177]

As noted above, the CAFC has held that the Department may require an exporter to establish an absence of government control in an NME proceeding.[178] For the reasons explained below, the Department continues to find, based on consideration of the totality of the record evidence, that Quhua and Lianzhou have not demonstrated an absence of de facto government control, and are therefore not entitled to a separate rate.

In the Preliminary Determination, we determined, and record evidence supports, that Quhua and Lianzhou are indirectly majority-owned by an SOE. As noted above, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.[179] In the Preliminary Determination, we identified additional record evidence that we found (and continue to find) supports that expectation in this investigation.[180]

Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part, 79 FR 68860 (November 19, 2014) (Steel Wire Rod Final).

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

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

[179] See, e.g., Steel Wire Rod Prelim, and accompanying Preliminary Decision Memorandum at 5-9, unchanged in Steel Wire Rod Final.

[180] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 24. See also Memorandum to the File from Dennis McClure, Senior Analyst, entitled "Preliminary Separate Rates Analysis for Zhejiang Quhua Fluor Chemistry Co., Ltd. (Quhua), Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd. (Lianzhou), Zhejiang Lantian Environmental Protection Fluoro Material Co., Ltd. (Lantian Fluoro), Sinochem Lantian Trade Co., Ltd. (Sinochem Lantian), and Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. (Taicang) in the Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated January 21, 2016 (Separate Rates Memo).

Specifically, we found that Quhua and Lianzhou are both 100 percent owned by their parent company (company B), a company which is majority owned by an SOE (company A), as reflected in Quhua's and Lianzhou's SRA.[181] Furthermore, the business license of company A states that it is an SOE.[182] Evidence also shows that company B actively participates in the day-to-day operations of Quhua and Lianzhou.[183] Moreover, company B's Articles of Association describes various responsibilities that company A, the SOE, has in the operations of company B which is the only and controlling shareholder in Quhua and Lianzhou.[184] Accordingly, based on the record evidence examined, we found that Quhua and Lianzhou did not demonstrate an absence of de facto government control because they do not maintain autonomy in making decisions regarding the selection of management.[185] In this regard, we note that Quhua and Lianzhou argue that the Department's de facto analysis should not depend on a potential for PRC-government control but, instead, the Department should determine whether the government actually exercises control over the company. The Department's separate rates analysis is not limited to evidence of actual government control. Instead, the analysis includes a consideration of whether the potential exists for the government to control the company.[186]

Moreover, we disagree with the separate rate applicants' claim that their governing corporate documents and the business laws of the PRC (i.e., the Code of Corporate Governance and the Company Law of the PRC Government) demonstrate that they are not controlled by the PRC government. The Department addressed the business laws of the PRC in its Diamond Sawblades Redetermination.[187] Specifically, the Department said:

> With regard to the Company Law, the Court held that the "Company Law appears neutral," and that it was unclear how a company's corporate form could demonstrate the absence of government control because the government could control the company through traditional corporate control. The Court held that "'government control' in the context of the separate rate test appears to be a fuzzy concept at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along

[181] See Quhua SRA and Lianzhou SRA, at 12-13.

[182] Id., at Exhibit 6.

[183] Id., at Exhibit 10, Articles of Association.

[184] Id., at Exhibit 7A, Articles of Association.

[185] See Separate Rates Memo, at 2.

[186] See Advanced Tech & Materials Co. v. United States, 33 Int'l Trade Rep. (BNA) 2111 (Oct. 12, 2011) ("Commerce, thus, determines the potential for government control or manipulation of NME firms via the de jure and de facto test set forth in Silicon Carbide from the People's Republic of China . . ") (emphasis added).

[187] See Diamond Sawblades and Parts Thereof From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Determination of Sales at Less Than Fair Value and Notice of Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Decision, 78 FR 65289 (October 31, 2013), after remand redetermination (Advanced Technology & Materials Co., Ltd., Beijing Gang Yan Diamond Products Company, and Gang Yan Diamond Products, Inc. with Bosun Tools Group Co. Ltd. v. United States and Diamond Sawblades Manufacturers Coalition, Weihai Xiangguang Mechanical Industrial Co., Ltd., and Qingdao Shinhan Diamond Industrial Co., Ltd., Consol. Court No. 09-00511: Final Results of Redetermination Pursuant to Remand, dated May 6, 2013) (Diamond Sawblades Redetermination.

> the chain to 'day-to-day decisions of export operations.'" The Court concluded: "To summarize: given that the separate rate test factors are not facially restricted to obvious 'direct' control of export pricing . . . the court, as mentioned, continues to be mystified as to why Commerce reflexively interprets the Company Law to preclude the PRC Government, de jure, from lawful control, de facto, through ownership of a company including its export operations.'"
>
> With regard to the Code of Corporate Governance, the Court held that the relevant provisions "reveal little to an inquiry into 'governmental control' in the running of a company including its export operations," and that it could not "understand how Commerce interprets these provisions to curtail in any manner a controlling shareholder's de jure control of a company."[188]

Furthermore, though the separate rate applicants make arguments related to what they perceive as the absence of certain record evidence showing control, we note that the standard for determining separate rate status is that an NME exporter is presumed to be under government control until such a presumption is sufficiently rebutted. As such, the separate rate applicants' citation to the purported absence of evidence of control or other demonstrable action on behalf of the PRC government does not rebut this presumption.[189]

Based on the foregoing, and consistent with our view that a majority government ownership holding in and of itself means that the government exercises, or has the potential to exercise, de facto control over a company's operations generally, we conclude that Quhua and Lianzhou do not satisfy the criteria demonstrating an absence of de facto government control over export activities. As a result, the Department continues to find that Quhua and Lianzhou have not demonstrated that they are free from de facto government control. Therefore, Quhua and Lianzhou remain ineligible for a separate rate for this final determination.[190]

Comment 9: *Authority to Base the PRC-Wide Rate on AFA*

In the Preliminary Determination, we did not receive responses to the Q&V questionnaire from numerous PRC exporters and/or producers of merchandise under consideration that were named in the Petition and to whom we issued the Q&V questionnaire. Because these non-responsive PRC companies did not demonstrate that they are eligible for separate rate status, we considered them part of the PRC-wide entity. We also preliminarily assigned the PRC-wide entity a rate based on AFA because we determined that it failed to cooperate to the best of its ability and provide requested information.[191]

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[188] See Diamond Sawblades Redetermination, at 4-5.

[189] See e.g., 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), and accompanying Issues and Decision Memorandum at Comment 1 (Tires).

[190] Due the proprietary nature of this issue, see the Separate Rates Memo, at 2 for a discussion of the ownership of Quhua and Lianzhou and the role of Quhua's and Lianzhou's board of directors and management.

[191] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 25.

The separate rate applicants argue that there is no basis for a PRC-wide entity rate in the Act. According to the separate rate applicants, the Act only permits the Department to calculate two rates: 1) an individually investigated company rate; or 2) an "all others" rate for companies not individually investigated.[192] The separate rate applicants point out that 19 CFR 351.107(d) states that "In an antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers." However, the separate rate applicants contend that the Department's regulations do not make clear whether this rate will be a single dumping margin or an "all others" rate. Therefore, the separate rate applicants contend that the Department exceeded its authority by assigning the PRC-wide entity a rate based on AFA.[193]

The separate rate applicants argue that, even if the Department has statutory authority to apply a PRC-wide antidumping rate to Quhua and Lianzhou, it would be based on an invalid presumption that there is a single entity in China that consists of all Chinese exporters under the central control of the Chinese government. According to the separate rate applicants, this presumption is no longer valid and any presumption must be based on reality.[194] In particular, the separate rate applicants contend that the circumstances in China no longer are the same as they were in the late 1980s.[195] As support for this assertion, the separate rate applicants cite Jiangsu Changbao, where the Court noted, "As a practical matter, the reasonableness of presuming, without any affirmative evidence, that all modern Chinese companies are wholly controlled by the Chinese government, such that any inquiry into their individual pricing behavior is completely meaningless, appears open to questions."[196] Moreover, the separate rate applicants argue that, in Qingdao Taifa, the Court noted that Commerce's reliance on a presumption of government control, without evidence, is incompatible with the agency's duty to support its decision with substantial evidence.[197] Furthermore, the separate rate applicants contend that the Department itself has acknowledged the need to evaluate the changing conditions in NME countries on a case by case basis.[198]

The separate rate applicants also argue that it is improper to apply an adverse inference to the NME-wide rate without any basis. The separate rate applicants contend that the Department

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[192] See section 735(c) of the Act. The separate rate applicants note that the Act provides for three possible rates only in CVD investigations. See sections 705(1)(A)(i) and (ii) of the Act.

[193] The separate rate applicants also cite United States – Antidumping Measures on Certain Shrimp from Vietnam (DS 429) (November 2014)(in which the World Trade Organization (WTO) found that the collapsing of all entities with state ownership into a single entity does not permit the application of a rate higher than the "all others" rate). See also United States – Antidumping Measures on Certain Shrimp from Vietnam (DS 404) (September 2011).

[194] See Wash. Int'l Ins. Co. v. United States, 33 CIT 1023, 1030 (CIT 2009) (citing British Steel plc v. United States, 929 F. Supp. 426, 454 (CIT 1996), which quotes NLRB v. Baptist Hosp., Inc., 442 U.S. 773, 787 (1979)), holding that "Although an administrative agency has the power to create a presumption, the presumption 'must rest on a sound factual connection between the proved and inferred facts.'"

[195] See Jiangsu Jiasheng Photovoltaic Technology v. United States, 28 F. Supp. 3d. 1317, n. 107 (CIT 2014) (Jiangsu Jiasheng).

[196] See Jiangsu Changbao v. United States, 884 F.Supp.2d. 1295, n.21 (CIT 2012) (Jiangsu Changbao).

[197] See Qingdao Taifa Grp. Co. v. United States, 760 F. Supp. 2d. 1379, 1385 (CIT 2010) (Qingdao Taifa).

[198] See Peer Bearing Co. v. United States, 587 F. Supp. 2d. 1319, 1326 (CIT 2008).

never sought any information about the PRC-wide entity. According to the separate rate applicants, the Department justified its application of AFA to the PRC-wide entity by stating that it did not receive Q&V responses from numerous PRC producers/exporters to whom it issued the Q&V questionnaire and, thus, it considered these non-responsive companies part of the PRC-wide entity. However, the separate rate applicants assert that the record contains no affirmative evidence that any company, other than from the companies which filed Q&V responses and SRAs, shipped subject merchandise to the United States during the POI.

Furthermore, the separate rate applicants argue that, regarding Quhua and Lianzhou, there was no justification for imposing a 210.46 percent rate on them based on adverse inferences. The separate rate applicants contend that Quhua and Lianzhou did not meet any of the prerequisites for applying adverse facts available, pursuant to sections 776(a) and (b) of the Act. Additionally, the separate rate applicants argue that Quhua and Lianzhou did not fail to provide information within the applicable deadlines. Therefore, the separate rate applicants claim that the facts of this case do not permit the application of an AFA rate to either company.

Finally, the separate rate applicants argue that the Department never sought to obtain information from other PRC entities, which prevents the Department from applying AFA to the PRC-wide entity.[199] According to the separate rate applicants, the CIT has held that the Department may not apply AFA for failure to provide information that was never requested.[200] In any event, the separate rate applicants contend that the AFA rate is many times higher than a rate required to deter any alleged non-compliance.[201]

The petitioners disagree, stating that the separate rate applicants provide no justification or support under the law for departing from the Department's normal practice of assigning a rate to the PRC-wide entity. The petitioners assert that, while the separate rate applicants cite a number of determinations and WTO decisions, they are irrelevant to the issue being considered in this case. Moreover, the petitioners maintain that the absence of responses from potential respondents means that the Department cannot determine which of these companies may be part of the PRC-wide entity. Finally, the petitioners assert that Quhua and Lianzhou should not receive a different rate from the PRC-wide entity rate simply because they cooperated in the Department's investigation, noting that the Department has previously considered and rejected similar arguments. The petitioners state that, because not all members of the PRC-wide entity cooperated in the Department's investigation, it is appropriate to determine the rate for the PRC-wide entity using AFA. As a result, the petitioners assert that the individual behavior of Quhua and Lianzhou cannot compensate for the larger failure of the PRC-wide entity.

Department's Position:

The Department considers the PRC to be an NME country under section 771(18) of the Act. In antidumping proceedings involving NME countries, such as the PRC, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to

[199] See Section 776(b) of the Act.

[200] See Peer Bearing Co.-Changshan v. United States, 853 F. Supp. 2d 1365, 1378 (CIT 2012).

[201] See Yangzhou Bestpak Gifts & Crafts Co. v. United States, 716 F.3d 1370 (CAFC 2013).

government control and influence.[202] Therefore, in PRC cases, the Department uses a rate established for the PRC-wide entity, which it applies to all imports from an exporter that has not established its eligibility for a separate rate. Section 351.107(d) of the Department's regulations provides that "in an antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers."[203] However, in recognition that parts of the PRC's economy are transitioning away from the state-controlled economy, the Department developed the separate rates test. In an economy comprised of a single, monolithic state entity, it would be impossible to identify separate firms, let alone rebut government control.

In its decision to uphold the Department's practice of assigning a PRC-wide rate, the CAFC in Sigma stated that, based on a presumption of state control in the NME, the Department may require an exporter to establish an absence of central government control.[204] The CAFC recognized a close correlation between an NME economy and government control of prices, output decisions, and allocation of resources under sections 771(18)(B)(iv)-(v) of the Act and found the Department's presumption of government control to be reasonable.[205] The CAFC also affirmed in Transcom the Department's application of a PRC-wide rate to all parties ineligible for a separate rate.[206] The CAFC in Transcom also found that an AFA rate is not punitive.[207]

Moreover, we disagree with the separate rate applicants' argument that there is no evidence on the record of the existence of any companies other than those which provided Q&V responses and SRAs to consider as part of the PRC-wide entity.[208] We note that, because Qingsong failed

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[202] See, e.g., Sigma, 117 F.3d, at 1405-06.

[203] See Tetrafluoroethane from the PRC, at Comment 1 (explaining the Department's practice with respect to separate rates, as upheld by the CAFC in Sigma, 117 F.3d, at 1405-06, and describing the Department's practice with respect to the rate assigned to the PRC-wide entity).

[204] Id., at 1405-06.

[205] Id.

[205] Id., at 1406.

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

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

[208] As noted in the Preliminary Determination, we did not receive responses to the Q&V questionnaire from numerous PRC exporters and/or producers of merchandise under consideration that were named in the Petition and to whom we issued the Q&V questionnaire. See Memorandum to the File from Patrick Georgi, International Trade Compliance Intern, entitled "Hydrofluorocarbon Blends and Components Thereof from the People's Republic of

to file a timely response to the Department's Q&V questionnaire, we consider it part of the PRC-wide entity. In addition, because of issues with Dongyue's accounting system found at verification, we also now consider Dongyue part of the PRC-wide entity (see Comment 14). Thus, we find affirmative evidence of the existence of the PRC-wide entity present in this investigation.

We also disagree with the separate rate respondents that the Court's decisions in Jiangsu Jiagsheng, Jiangsu Changbao, or Qingdao Taifa apply to this case. Specifically, we note that the separate rate respondents' cite to Jiangsu Jiasheng is limited to a footnote where the court addressed both Jiangsu Changbao and Qingdao Taifa. Regarding the former case, the Court interpreted it as "opining that, although Commerce's NME presumptions were upheld by the decision in Sigma in 1997, the issue may be worth revisiting."[209] Thus, Jiangsu Changbao did not overturn the Department's rebuttable presumption of government control. Regarding the latter case, the Court interpreted it as "holding that Commerce's reliance on a presumption of government control, without evidence, is incompatible with the agency's duty to support its decision with substantial evidence."[210] Therefore, we find that Qingdao Taifa does not apply here because our decisions regarding the PRC-wide entity are supported by substantial evidence.

Furthermore, regarding the WTO Panel reports on Shrimp from Vietnam cited by the separate rate respondents,[211] we note that the CAFC has held that WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).[212] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department's discretion in applying the statute.[213] Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports and we have not employed this procedure in response to the reports in Shrimp from Vietnam on this issue.[214]

Finally, we disagree with the separate rate applicants' claim that there was no basis for the Department to apply AFA to separate rate applicants Quhua and Lianzhou. In ATM, the CIT addressed and rejected a similar argument, stating:

> Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide rate. These are two distinct legal concepts: a separate AFA rate

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China: Delivery of Quantity and Value (Q&V) Questionnaires," dated August 11, 2015. See also Preliminary Determination, and accompanying Preliminary Decision Memorandum at 25.

[209] See Jiangsu Jiasheng, 28 F. Supp. 3d., at 1317, n. 107.

[210] Id.

[211] See DS404 and DS429.

[212] See Corus Staal BV v. United States, 395 F.3d 1343, 1347-49 (CAFC 2005); accord Corus Staal BV v. United States, 502 F.3d 1370, 1375 (CAFC 2007); and NSK Ltd. v. United States, 510 F.3d 1375, 1379-80 (CAFC 2007).

[213] See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).

[214] See 19 USC 3533(g).

> applies to a respondent who has received a separate rate but has otherwise failed to cooperate to the best of its ability whereas the PRC-wide rate applies to a respondent who has not received a separate rate.[215]

As in ATM, the Department in this investigation is not applying AFA to Quhua and Lianzhou individually, but rather finds that Quhua and Lianzhou failed to rebut the presumption of de facto government control (see Comment 7, above). As a result, because we find that Quhua and Lianzhou are not eligible for separate rate status, we continue to consider them part of the PRC-wide entity, which is the entity that has failed to cooperate and to which we are applying adverse inferences.

Comment 10: *Rejection of Qingsong's Q&V and Separate Rates Responses*

In July 2015, the Department issued Q&V questionnaires to each known producer/exporter of HFCs for which we had a complete address or phone number.[216] We also posted this Q&V questionnaire on the Department's official website, with instructions for additional producers/exporters to follow when submitting Q&V data and a deadline for those submissions.

On July 31, 2015, Qingsong, a PRC company not contacted directly by the Department, submitted a response to the Q&V questionnaire. Because 1) this submission was made after the deadline established by the Department; and 2) Qingsong had not requested an extension of that deadline, we found that the submission was untimely, and we rejected it.[217] On August 21, 2015, Qingsong submitted a separate rate application (SRA); however, because of Qingsong's failure to submit a timely Q&V response, pursuant to the Department's regulations and practice as explained in the Initiation Notice and SRA, we also removed this submission from the record, in accordance with 19 CFR 351.302(d).[218]

Qingsong argues that the Department erred by rejecting both its Q&V response and its timely-filed SRA. Qingsong notes that it did not receive a physical copy of the Q&V questionnaire, and, thus, it did not anticipate that it would be in the pool of companies used to determine the mandatory respondents in this case.[219] Further, Qingsong states that the Department should

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

[216] See Letter from the Department to Interested Parties, "Quantity and Value Questionnaire," dated July 16, 2015 (Q&V questionnaire).

[217] See Letter from the Department to DeKieffer & Horgan, "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components from the People's Republic of China," dated August 3, 2015.

[218] See, e.g., Sinks from the PRC, at Comment 14.

[219] Specifically, Qingsong asserts that the Initiation Notice stated that the Department would consider only the 39 companies receiving physical copies of the questionnaire as "potential respondents." Thus, because the Department did not send Qingsong a physical copy of questionnaire, it would not have used Qingsong's Q&V response even had

consider its response to be timely because: 1) companies receiving a physical copy of the questionnaire were given 12 days to respond (assuming that the questionnaire was delivered the day after it was sent); 2) Qingsong's response period began on the date that the Initiation Notice published (i.e., when Qingsong became aware that the questionnaire existed); and 3) Qingsong submitted its Q&V response nine days after that date.

While Qingsong acknowledges that the Q&V questionnaire had a response deadline of July 29, 2015, it argues that this date did not apply to it because: 1) it was only seven days after the publication of the Initiation Notice; 2) it was entitled to a minimum of 12 days to respond, consistent with the response period granted to other HFC exporters/producers; and 3) the deadline was for "participating" exporters, and Qingsong did not qualify as such until it entered its appearance on the record of this investigation on July 31.[220]

Qingsong contends that it did not gain anything by submitting its Q&V response after the Department's established deadline because its level of exports was much smaller than the two exporters selected as mandatory respondents. In any event, Qingsong claims that the instructions in the SRA simply state that the exporter must file a Q&V response, not that this response must be submitted by the original deadline. According to Qingsong, the courts have held that submitting an untimely Q&V response is an insufficient reason to penalize a respondent.[221]

Qingsong argues that the Department can only remove a document from the administrative record when it is untimely submitted, and both its Q&V response and SRA were timely under the timeframe noted above. Further, Qingsong contends that the Department's SRA rejection was procedurally deficient under 19 CFR 351.302 because the Department failed to explain how this rejection complied with that regulation.[222] Qingsong insists that there is neither precedent nor language in the Act, the Department's regulations, or the SAA to justify removing one document from the record (the SRA) due to perceived errors in a prior document (the Q&V response).[223] Qingsong argues that, even assuming arguendo that the Department fairly rejected its Q&V response, a two-day delay (which effectively translates to an eight-hour period when Qingsong's Q&V data was not available to the Department) did not delay the proceeding or prejudice any

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the Department accepted it. Qingsong argues that this fact makes it even more egregious that the Department disallowed both the Q&V response and the SRA.

[220] According to Qingsong, parties who received the Q&V questionnaire after the established deadline were given an additional five days to contact the Department for a revised deadline. Thus, Qingsong argues that the Department should have added five days to the 12-day deadline given to the other parties receiving the Q&V questionnaire. However, Qingsong notes that, once it became a participating respondent, the Department did not grant it even a single day to file its Q&V response.

[221] See Artisan Mfg. Corp. v. United States, 978 F. Supp. 2d 1334, 1348 (CIT 2014) (Artisan Mfg. Corp.). According to Qingsong, in Artisan Mfg. Corp. a respondent's attorney failed to file a Q&V response by the established deadline and the Department rejected the submission. Qingsong asserts that the Court held that the attorney's filing error was "[i]nconsequential to the Department's [c]onducting of the Investigation" and "could not have delayed the investigation in any meaningful way," facts which are similar to those here.

[222] See 19 CFR 351.302(a), which states that "certain untimely material will be returned to the submitter together with an explanation of the reasons for the return of the material." Qingsong argues that its SRA was both timely and solicited.

[223] Id., 978 F. Supp. 2d, at 1348.

party. According to Qingsong, the Department has taken this into consideration in prior cases and has been upheld by the Courts.[224]

Furthermore, Qingsong argues that the Department must make two requests for information before applying AFA to a respondent.[225] Qingsong notes that it did not fail to answer any of the Department's questions in this investigation and that the Department did not even send it the Q&V questionnaire. According to Qingsong, pursuant to section 782(e) of the Act, the Department cannot use AFA unless the data is so insufficient that it finds that it must substitute AFA for the requested data. Moreover, Qingsong argues that the courts have held that an investigation is an interactive process where a party must be given a reasonable opportunity to respond.[226] In this case, Qingsong alleges that the Department has not explained how it has failed to cooperate to the best of its ability and cannot punish it unless the Department demonstrates that Qingsong's failure impeded the investigation.[227]

Finally, Qingsong argues that the Department did not treat it in the same manner as it did the other 39 exporters who received the Q&V questionnaire. Thus, according to Qingsong, the Department acted arbitrarily and capriciously by failing to distinguish the circumstances between those exporters and Qingsong.[228] In addition, Qingsong contends that the Department failed to explain whether: 1) Qingsong willfully decided not to comply with the Department's request; or 2) Qingsong's behavior fell below the standard for a reasonable respondent.[229] Here, Qingsong claims that the Court would determine that the Department abused its discretion in its treatment of Qingsong because the Department's decision to apply AFA does not agree with the facts.[230] Therefore, Qingsong contends that the Department's decision to reject its Q&V response and SRA is without merit and the Department should now accept them. Consequently, Qingsong argues that the Department should grant it a separate rate in the final determination.

The petitioners disagree, noting that Qingsong failed to submit its Q&V response by the Department's established deadline. The petitioners assert that Qingsong had adequate

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[224] See e.g., Jiangsu Jiasheng, 28 F. Supp.3d, at 1317 (where the Department allowed respondents that filed deficient Q&V responses to both remedy their deficiencies and qualify for a separate rate).

[225] See 782(d) of the Act.

[226] See Bowe-Passat v. United States, 17 CIT 335, 1993 Ct. Intl. LEXIS 78 at * 10-11; section 782(d) of the Act; and Ferro Union, Inc. v. United States, CIT 178, 44 F. Supp. 2d 1310, 1328.

[227] See CITRIC Trading Co. v. United States, 27 CIT 356, 2003 Ct. Intl. Trade LEXIS 33, (CIT 2003). See also Bomont Indus. V. United States, 13 CIT 455, 550, 718 F. Supp. 958, 961 (1989).

[228] See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29, 48-49, 103 S. Ct. 2856, 77 L. Ed. 2d 443 (1983). Similarly, Qingsong states that the Department's decision to apply AFA to Qingsong was arbitrary and capricious because it failed to provide a reasoned explanation supported by the facts. See Nippon Steel Corp. v. United States, 118 F. Supp. 2d 1366, 1378-79. (CIT 2000) (Nippon I).

[229] See Nippon I, 118 F. Supp. 2d, at 1378-79.

[230] See, e.g., Dongtai Peak Honey Indus. Co. v. United States, 971 F. Supp. 2d 1234, 1239 (CIT 2014). See also SKF USA Inc. v. United States, 2623 F.3d 1369, 1382 (CAFC 2001). See also Artisan Mfg. Corp. (introducing the idea that a respondent must gain an unfair advantage in order to reject a Q&V response and finding the difference between granting a separate rate and subjecting a respondent to a "consequential result" of a country-wide rate based on AFA is itself unfair).

notification that the Department required separate rate applicants to file both a timely Q&V response and a SRA in order to be eligible to receive a separate rate. Therefore, the petitioners maintain that the Department correctly treated Qingsong as part of the PRC-wide entity in the Preliminary Determination.

According to the petitioners, Qingsong admits that it had access to the Q&V questionnaire at least seven days before the deadline.[231] As a result, the petitioners contend that, if Qingsong required more time to respond, it could have requested an extension of time from the Department. Moreover, the petitioners argue that Qingsong's late entry of appearance is not an excuse for missing the deadline for filing a Q&V response. The petitioners point out that, if the Department tolled all of its deadlines based on the timing of a party's entry of appearance, then its deadlines, which are critical to the efficient administration of antidumping cases,[232,233] would be meaningless. The petitioners also find Qingsong's claim that it should be allowed to submit a Q&V response pursuant to section 782 of the Act to be without merit. Specifically, the petitioners note that this portion of the Act relates to timely-filed responses, which Qingsong's Q&V response was not.

Finally, the petitioners maintain that the facts in this case are distinguishable from those in Artisan Mfg. Corp., which Qingsong cites in support of its position. Specifically, the petitioners note that in Artisan Mfg. Corp., the Court found that the respondent's Q&V response was only filed a few hours late, while in the instant case Qingsong filed its response several days late without contacting the Department for an extension.

Additionally, the petitioners state that the facts in Solar Cells from the PRC are analogous to this case, the case underlying Jiangsu Jiansheng.[234] Specifically, the petitioners assert that in Jiangsu Jiansheng the CIT acknowledged the need for the Department to retain the discretion to set procedures necessary to perform and enforce its regulatory role, including enforcing deadlines and rejecting untimely-filed submissions.[235] Thus, the petitioners disagree with Qingsong that Jiangsu Jiansheng supports its position that the Department erred in rejecting its untimely-filed Q&V response. Consequently, the petitioners assert that the Department should continue to treat Qingsong as part of the PRC-wide entity in the final determination.

Department's Position:

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[231] Further, the petitioners point out that all producers/exporters received constructive notice of the Q&V questionnaire on July 16, 2015, when the Department posted it on its website.

[232] See, e.g., Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part, 75 FR 10207 (March 5, 2010), and accompanying Issues and Decision Memorandum at Comment 1.

[233] See Yantai Timken Co. v. United States, 521 F. Supp. 2d 1356, 1370 (CIT 2007).

[234] See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012), and accompanying Issues and Decision Memorandum at Comment 45 (Solar Cells from the PRC). The petitioners note that the CIT affirmed the Department's determination in Solar Cells from the PRC in Jiangsu Jiansheng.

[235] See Jiangsu Jiansheng, 28 F. Supp.3d, at 1329.

We continue to find that Qingsong's Q&V response was untimely filed and, as a result, we did not reconsider our decision to remove both that submission and Qingsong's SRA from the record, in accordance with 19 CFR 351.302(d).[236] In the Initiation Notice, we notified interested parties of the requirements necessary to obtain separate rate status, stating:

> In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate-rate application. The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's website at http://enforcement.trade.gov/nme/nme-sep-rate.html. The separate-rate application will be due 30 days after publication of this initiation notice. Exporters and producers who submit a separate-rate application and have been selected as mandatory respondents will be eligible for consideration for separate-rate status only if they respond to all parts of the Department's AD questionnaire as mandatory respondents. The Department requires that respondents from the PRC submit a response to both the Q&V questionnaire and the separate-rate application by 5:00 p.m. ET on their respective deadlines in order to receive consideration for separate-rate status.[237]

It is clear from the above language that the Department required both timely-filed Q&V responses and SRAs prior to considering a company's separate rate claim.[238]

In addition, we not only informed interested parties of the need to respond to the Q&V questionnaire in the Initiation Notice (which published on July 22, 2015), but also on July 16, 2015, we posted this questionnaire on the Department's website. The Q&V questionnaire set forth the response deadline response as follows:

> Your response is due to the Department no later than the close of business, **July 29, 2015**. *Please note that, due to time constraints in this investigation, the Department will be limited in its ability to extend the deadline for the response to the attached Quantity and Value Questionnaire.*[239]

This deadline, July 29, 2015, is unambiguous. The Q&V questionnaire went on to state:

> In the unlikely event that you have received this questionnaire after the deadline to respond, you MUST contact the Department official identified in the questionnaire within

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[236] We disagree with Qingsong that the Department's rejection of its SRA application was inconsistent with 19 CFR 351.302. Because the Department requires a company to timely submit both a Q&V response and an SRA in order to meet the threshold required for consideration, and Qingsong failed to submit a Q&V response in a timely manner, we find that the SRA was unsolicited information and thus properly rejected.

[237] See Initiation Notice, 80 FR at 43391 (footnotes omitted and emphasis added).

[238] Thus, we note that Qingsong misinterprets the instructions in the SRA when it argues that the SRA merely requires a Q&V response, irrespective of whether this response is timely-submitted.

[239] See Q&V questionnaire, at 1.

> 5 days of receipt of the questionnaire to receive further instructions and a revised deadline for submission of the required information.[240]

This questionnaire was posted on the Department's website in order to provide all producers and exporters of HFC the opportunity, announced in the Initiation Notice, to provide the requisite Q&V information. This posting, similar to the publication of a Department notice in the Federal Register, provided constructive notice to all interested parties of the filing requirements and deadlines for these responses.

Thus, even companies such as Qingsong, which did not receive a physical copy of the Q&V questionnaire, had ample notice of its existence, the need to respond to it, and the deadline for that response. Significantly, Qingsong admits it was aware of the Q&V questionnaire at least seven days before the July 29, 2015, deadline to respond.[241] Despite this fact, Qingsong did not request that the Department extend this deadline, but instead simply submitted its Q&V response late. Thus, we rejected Qingsong's untimely-filed Q&V response and removed it from the record, consistent with the Department's practice in other recent cases with similar facts.[242]

Qingsong's Q&V response was untimely filed pursuant to the deadlines specified by the Department as well as 19 CFR 351.301 of the Department's regulations, which specifies a timeline for the submission of questionnaire responses. The CIT and CAFC have held that the Department has the discretion to set and enforce deadlines. [243] The Department's regulations also require parties to timely request an extension under 19 CFR 351.302, and that untimely extension requests will only be considered in the event of an extraordinary circumstance as defined under 19 CFR 351.302(c)(2). As explained in the Initiation Notice, the Department would have considered any extension request, if it had been timely filed by Qingsong, or untimely filed due to extraordinary circumstances. Qingsong failed to request an extension at all, despite being aware of the Q&V's existence well before the deadline to respond, as noted above.

We disagree with Qingsong that the July 29 deadline was moveable, and that the starting point of the response period was the day after physical copies of the Q&V questionnaire were mailed. As noted above, the questionnaire itself established a specific response date, not a deadline dependent upon receipt of the questionnaire. Moreover, even if this were true (and it is not), there is no basis for Qingsong to conclude that the questionnaires would have been delivered to

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[240] Id.

[241] See Qingsong's case brief, at 7. Because Qingsong became aware of the requirement to respond to the Q&V questionnaire prior to July 29, 2015, and it also located this questionnaire on the Department's website, the 5-day extension exception does not apply. Qingsong had sufficient time to contact the Department to request an extension of the response deadline, as required by 19 CFR 351.302(c).

[242] See, e.g., Solar Cells from the PRC, at Comment 45; and Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 14 (Sinks from the PRC). Thus, we disagree with Qingsong that the Department's rejection of its SRA in this case was arbitrary or capricious.

[243] See, e.g., Grobest & I-Mei Indus. (Vietnam) v. United States, 815 F. Supp. 2d 1342, 1365 (CIT 2012); see also Dongtai Peak v. United States, 777 F. Supp. 2d 1343, 1353 (CAFC 2015).

companies in the PRC with 24 hours. Indeed, the Department's regulations presume that the delivery time is seven days.[244]

We further disagree with Qingsong's contention that it did not become a participating respondent until it entered its appearance in this investigation and, as a result, the Department's established deadline for its Q&V response did not apply. As a threshold matter, the "participating exporter" language on which Qingsong relies contained is in the SRA, not in the Q&V questionnaire; thus, it has no bearing on the deadline for the Q&V response, which was separately established. Further, accepting Qingsong's argument would render the Department's deadlines meaningless, allowing interested parties to game the system by timing their entries of appearance to grant themselves extensions; this would impede the completion of the proceeding, thereby thwarting the Department's mandate to complete investigations within strict statutory deadlines.

Further, Qingsong's contention that the Q&V deadline applied only to the companies mailed a physical copy of the questionnaire also fails because, as noted above, the Department notified all interested parties in this case (irrespective of whether those parties were affirmatively participating) via its Initiation Notice that it was requiring timely-filed Q&V responses as precondition for separate rate eligibility. The Department then made the Q&V questionnaire – which it addressed to all "Interested Parties," not only to those receiving a mailed copy of it – available on its website.

Similarly, we disagree with Qingsong that its Q&V response was unnecessary to the Department's respondent selection analysis, nor that the Department would have disregarded its response in selecting respondent even had we received it in a timely manner. At the time of our respondent selection decision, the Department was required to designate which companies received the full questionnaire. By Qingsong's failure to provide data on its U.S. shipment volume, the Department was forced to make this crucial decision based on imperfect information. It is incidental that the information may not have altered the Department's decision. Indeed, other than Qingsong's assertion that its export volume was not significant vis-à-vis the shipments of other PRC exporters, there is no indication on the record of this case that Qingsong should not have been selected as a mandatory respondent. Moreover, absent a properly-filed response from Qingsong which is subject to verification, the Department has no way to confirm this statement.

Regarding Qingsong's argument that sections 782(d) or (e) of the Act apply here, we find that these portions of the Act relate to deficient, but timely-filed, responses. Because Qingsong did not submit its Q&V response by the established deadline, we find that these sections of the Act are inapposite. Accordingly, we disagree with Qingsong that our decision to deny Qingsong a separate rate is unsupported under Section 776 of the Act. As explained above in Comment 9, with reference to ATM, the facts here demonstrate that Qingsong, by not submitting its Q&V response by the established deadline, did not demonstrate its entitlement to a separate rate, not that it received a separate AFA rate.[245]

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[244] See 19 CFR 351.301(c)(1)(i).

[245] See ATM, 938 F. Supp. at 1351 ("Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide rate. These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has

Moreover, we find Qingsong's reliance on Artisan Mfg. Corp. misplaced. Specifically, in that case, the respondent filed its Q&V response on the day it was due, but after the 5:00 pm deadline. This fact pattern contrasts with that of the instant investigation, where Qingsong submitted its Q&V response two days after the Department's deadline (and not a mere 8 hours as Qingsong suggests). In addition, in Artisan Mfg. Corp., parties were not on notice regarding the Department's new extension of time limits regulation (19 CFR 351.301(d)), which clearly specifies the parameters for timely and untimely extensions. We disagree with Qingsong's argument that, according to Artisan Mfg. Corp., the Department may only reject a respondent's untimely-filed Q&V response in situations where it would gain an unfair advantage because of its untimely submission. The Court in Jiangsu Jiansheng addressed Artisan Mfg. Corp., stating:

> Nor is this case analogous to the facts in Artisan, where Commerce abused its discretion by rejecting a response filed via IA ACCESS after 5:00pm on the day of the deadline but before 9:00am on the following day.[52] Here, rather than properly submitting its response via IA ACCESS before the start of business on the day after the deadline, Jiasheng emailed its late response, despite clear instructions not to do so, and made no IA ACCESS filings until two weeks after the deadline.[246]

The Court in Jiangsu Jiansheng also upheld the Department's procedure for requiring a respondent to timely file a Q&V response in order to receive a separate rate, stating:

> But as Commerce explained, the agency unambiguously and consistently requires respondents to properly and timely file Q&V responses as a precondition for separate-rate eligibility, because doing so prevents respondents from circumventing the mandatory respondent selection process and benefitting from the all-others separate rate without the risk or burden of individual investigation. Because Commerce has broad discretion to set the procedures it needs in order to adequately perform and enforce its regulatory role, and because the agency's basis for this particular procedure is reasonable, Commerce's policy of requiring timely Q&V responses as a precondition of separate-rate eligibility is not a prima facie abuse of the agency's discretion.[247]

Finally, we disagree with Qingsong that the Department improperly rejected and removed this document from the record under 19 CFR 351.301(d). As explained in the Department's rejection letter[248] and in the Initiation Notice, the Department required separate rate applicants to submit timely Q&Vs *as well as* timely separate rate applications in order to be considered for separate rate status. Qingsong failed to submit its Q&V by the established deadline, which rendered its

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otherwise failed to cooperate to the best of its ability whereas the PRC-wide rate applies to a respondent who has not received a separate rate.").

[246] See Jiangsu Jiansheng, 28 F. Supp.3d, at 1330 (footnote omitted).

[247] Id., 28 F. Supp.3d, at 1328-29,

[248] See Letter from the Department to DeKieffer & Horgan, "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components from the People's Republic of China," dated September 15, 2015.

separate rate application untimely for the consideration of its separate rate status. Accordingly, and pursuant to its practice, the Department properly removed these untimely submissions from the record under 19 CFR 351.301(d).[249]

Therefore, we find that, contrary to Qingsong's assertions, the Court's ruling in Jiangsu Jiansheng supports our rejection of Qingsong's Q&V response in this case. Consequently, we continued to treat Qingsong as part of the PRC-wide entity for purposes of the final determination because of its failure to submit its Q&V response by the established deadline, which rendered its SRA untimely for the consideration of its separate rate status.

Comment 11: *Rate Assigned to Separate Rate Companies*

The separate rate applicants argue that, if the Department decides not to use the individually calculated rates for both mandatory respondents, then it should base their margin on a reasonable method, based on economic reality, and supported by substantial evidence.[250]

The petitioners argue that the Department should use its established approach to calculate the all others rate in this proceeding, including an adverse rate if that is the only rate available.

Department's Position:

As explained in the "Separate Rates" section of our final determination Federal Register notice, we assigned the separate rate companies the calculated dumping margin for TTI, which is in accordance with the statute and our practice.[251]

Comment 12: *Ministerial Errors in Certain Combination Rates*

Daikin, TTI and the separate rate applicants argue that the Department incorrectly listed the names of certain exporter/producer combinations in the Preliminary Determination. Specifically, TTI asserts that the Department incorrectly listed one of its producer's names as Zheijiang Lantian Environmental Protection Flourine Materials Co. Ltd., when it is Zhejiang Lantian Environmental Protection Fluoro Material Co. Ltd. Similarly, the separate rate applicants point out that the Department incorrectly spelled the name of one of Dongyue's producers as Jiangsu Melian Chemical Co., Ltd., when it is Jiangsu Meilan Chemical Co., Ltd. Further, the separate rate applicants assert that the Department should correct Sanmei's name to list both its full and short form names (i.e., Zhejiang Sanmei Chemical Ind. Co., Ltd. (Zhejiang Sanmei Chemical Industry Co., Ltd.)).

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[249] See, e.g., Solar Cells from the PRC, at Comment 45; and Sinks from the PRC, at Comment 14.

[250] See, e.g., Yangzhou Bestpak Gifts & Crafts Co. v. United States, 716 F.3d 1370, 1379 (CAFC 2013); Albemarle Corp. v. United States, 27 F. Supp. 3d 1336, 1342 (CIT 2014); Navneet Publ'ns (India) Ltd. v. United States, 999 F. Supp. 2d 1354, 1362 (CIT 2014); and Baroque Timber Indus. (Zhongshan) Co. v. United States, 971 F. Supp. 2d 1333, 1345 (CIT 2014).

[251] See, e.g., Certain Iron Mechanical Transfer Drive Components From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 81 FR 36876, 36878 (June 8, 2016).

Finally, Daikin notes that the Department assigned a combination rate for subject merchandise produced and exported by Daikin. However, according to Daikin, it should be listed as the exporter and its affiliate, Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd. (Arkema Daikin), should be listed as the producer.[252]

The petitioners did not comment on these issues.

Department's Position:

We agree in part, and we made most of the requested changes to the exporter/producer combinations in the accompanying Federal Register notice. With respect to Dongyue, however, as noted above, we find that this company is not eligible for a separate rate. Therefore, this comment is moot with respect to Dongyue.

Company- Specific Comments

Dongyue

Comment 13: *Verification Failure*

At verification, Dongyue informed the Department that it had inadvertently misreported the sales prices for all sales to one of the company's main U.S. customers because it had used the prices reflected on its "VAT" invoices, instead of the commercial invoices issued to the customer.[253] Dongyue further stated that the values in the commercial invoices were not, in fact, recorded in the revenue accounts in its accounting system, and the VAT invoices which were recorded there contained prices set by its accounting staff to implement management priorities.[254] Further, Dongyue indicated that the company does not reconcile the VAT- and commercial-invoice revenue differences in the ordinary course of business.[255] After discussing the matter with Dongyue's auditor, the Department verifiers concluded that it would not be possible to validate the integrity of Dongyue's accounting system and, thus, that they could not use the accounting system to establish the accuracy of Dongyue's reported sales and FOP information.[256] Consequently, the Department terminated the verification process.[257]

According to Dongyue, the Department's decision to terminate verification after only three days constituted an abuse of discretion on the part of the verifiers, given the facts outlined below. To

[252] See Daikin's SRA submission dated September 4, 2015.

[253] See Memorandum to the File from Manuel Rey, Analyst, entitled "Verification of the Responses of Huantai Dongyue International Trade Co., Ltd. and Shandong Dongyue Chemical Co., Ltd. in the Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated March 25, 2016 (Dongyue Verification Report), at 2.

[254] Id., at 4.

[255] Id., at 5 (stating that "Dongyue does not inform the customer of the difference, nor does it ever balance the accounts.").

[256] Id., at 2.

[257] Id.

remedy this, Dongyue requests that the Department complete its verification in either the PRC or Washington, D.C., thereby permitting the Department to rely on verified data to calculate Dongyue's dumping margin for purposes of the final determination.

As an initial matter, Dongyue argues that the Department's decision to walk out of verification violated section 782(d) of the Act, which requires the Department to notify respondents promptly of any perceived defect in their responses and to provide them an opportunity to remedy them.[258] According to Dongyue, it notified the Department in its September 22, 2015, and October 13, 2015, questionnaire responses, respectively, that: 1) it issued three types of invoices with respect to export sales (i.e., an official commercial invoice, a "pro forma" invoice, and a VAT reconciliation invoice); 2) the revenue reported in its financial statements reflected the prices recorded on its VAT invoices, and 3) for certain sales these prices differed from the prices paid by Dongyue's customers.[259] Dongyue also states that it provided an invoice-by-invoice reconciliation of these differences demonstrating that they were de minimis (affecting 38 percent of the U.S. sales database), and it reconciled the total sales values into its audited accounts receivables, which reflected the actual payments received from U.S. customers.[260, 261] Dongyue points out that the Department issued no supplemental questionnaires addressing this issue, thereby foreclosing any opportunity for Dongyue to explain further or to propose alternative avenues to satisfy any of the Department's concerns. Regarding this latter point, Dongyue contends that, had the Department provided notice of its deficiency as required by law, it could have easily remedied the deficiency by: 1) having its auditor review the price differences and provide a report stating that they were not material; and/or 2) requesting that Dongyue place information on the record from its U.S. customers. According to Dongyue, because the Department failed in this regard, it is now precluded from basing Dongyue's margin on AFA.[262]

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[258] Dongyue notes that the petitioners also did not comment on the different prices in question.

[259] See Letter from Dongyue entitled, "Dongyue Section A Response in the Antidumping Duty Investigation on Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated September 22, 2015 (Dongyue Section A Response), at 19; and Dongyue Section C Response, at 9.

[260] See Dongyue Section C Response, at Exhibits 9A-1 and 9B-1. Indeed, Dongyue notes that it included, in bold type, the following sentence: "**In all, the value of goods in commercial invoice issued to the U.S. customer, which is reported in Field 14.1 Gross Value in Exhibit C-1, may be different from the amount commercial the amount recorded in 'revenue' in accounting system.**" Id. at Exhibit 9B-1, at 4.

[261] Dongyue claims that it maintained careful internal controls and successfully minimized the impact of the difference on its revenue and profits.

[262] See Foshan Shunde Yongjian Housewares & Hardwares Co. v. United States, 33 Int'l Trade Rep. (BNA) 2123 (CIT 2011) (Foshan Shunde) (where the court found that the Department did not notify Foshan Shunde that its questionnaire responses concerning government control were deficient); Calgon Carbon Corp. v. United States, 33 Int'l Trade Rep. (BNA) 1232 (CIT 2011) (where the court held that the Department failed to notify the respondent regarding the deficiency of its separate rate certification); Ta Chen Stainless Steel Pipe v. United States, 23 CIT 804 (CIT 1999) (where the court held that failure by the Department to provide respondents with sufficient notice can render the decision "unsupported by substantial evidence and otherwise contrary to law); Usinor Sacilor v. United States, 19 CIT 711, 744-745 (CIT 1995) (where the court held that the Department failed to advise parties of the deficiencies in their submissions regarding a subsidy program); China Kingdom Imp. & Exp. Co. v. United States, 31 CIT 1329, 1366 (CIT 2007) (where the court concluded that the Department erred in using the facts otherwise available without first finding, pursuant to section 782(d) of the Act, that it would not be practicable to permit the respondent to remedy or explain the deficiency given the time limits for completion of the review); Dongguan Sunrise Furniture Co., Ltd. v. United States, 865 F. Supp. 2d 1216, 1229 (CIT 2012) (where the Department declined to accept missing sales and FOP information related to deficiencies discovered at verification because it

Dongyue notes that, at verification, after receiving Dongyue's list of corrections, the verification team focused solely on the difference between the VAT and commercial invoice prices for certain U.S. sales, despite the company's explanations for the reasons for these differences. Dongyue contends that, by terminating verification without examining the extensive documentation prepared to establish the veracity of its financial accounting system, the Department turned the verification process on its head.

Finally, Dongyue claims that the Department's verifiers are merely "fact finders" who exceeded their authority by deciding to terminate verification. Dongyue notes that the verification report issued in this case states, just as verification reports issued in every case, that the verification report draws no conclusions as to whether the reported information was successfully verified.[263] Dongyue maintains that the verification team decided that the manner in which Dongyue recorded revenue in its audited financial statements was sufficiently egregious for the Department to conclude that all of Dongyue's responses should be rejected,[264] in the same way the Department rejects responses which are patently false or fraudulent. As a result, Dongyue contends that the verification team did not provide Department decision makers with a report as

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lacked time to consider such information); Mukand, Ltd. v. United States, 767 F.3d 1300, 1308 (CAFC 2014) (where the court held that the application of AFA was appropriate where a respondent failed to respond to the Department's questionnaires in a timely and direct manner); Gourmet Equip. Corp. v. United States, 24 CIT 572, 579 (CIT 2000) (where the Department provided the respondent with repeated opportunities to establish that the submitted information was verifiable); Guangxi Jisheng Foods, Inc. v. United States, 35 Int'l Trade Rep. (BNA) 2045 (CIT 2013) (where the respondent failed "to do the maximum it {was} able to do" to accurately complete the record); Reiner Brach GmbH & Co. KG v. United States, 26 CIT 549, 557 (CIT 2002) (where the Department identified and gave the respondent an opportunity to explain its discrepancies); Branco Peres Citrus v. United States, 25 CIT 1179, 1184 (CIT 2001) (where the court held that the Department provided the respondent with adequate notice of the information which it was seeking); Fresh Garlic Producers Ass'n v. United States, 121 F. Supp. 3d 1313 (CIT 2015) (Fresh Garlic Producers) (where the court held that the Department is "required by statute to provide a party with the opportunity to correct deficient responses prior to applying AFA"); Husteel Co. v. United States, 98 F. Supp. 3d 1315, 1352 (CIT 2015) (where the court held that the Department is limited by statute to apply AFA to situations in which it finds that a party failed to act to the best of its ability); and The Stanley Works (Langfang) Fastening Sys. Co. v. United States, 964 F. Supp. 2d 1311, 1329 (CIT 2013) (where the court held that "although Stanley did not submit certain unverifiable data to Commerce, nothing on the record indicates that Stanley did not put forth its maximum effort to provide Commerce with the data it requested.").

[263] See Dongyue Verification Report, at 1.

[264] Dongyue notes that in the Dongyue Verification Report, the Department stated, "{b}ecause Dongyue was unable to establish the integrity of its accounting system using any method other than manual review and spot checks, we terminated the verification process at the end of the third day." See Dongyue Verification Report, at 9. According to Dongyue, however, the verifiers failed to recognize that the verification process itself is intended to be a "spot check" of a company's responses conducted by manual review. See, e.g., Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, 79 FR 54965 (September 15, 2014), and accompanying Issues and Decision Memorandum at Comment 17; Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 60 FR 61362 (October 13, 2015), and accompanying Issues and Decision Memorandum at Comment 16; Certain Uncoated Paper From Indonesia: Final Determination of Sales at Less Than Fair Value, 81 FR 3101 (January 20, 2016), and accompanying Issues and Decision Memorandum at Comment 2; and Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico, 77 FR 17422 (March 26, 2012), and accompanying Issues and Decision Memorandum at Comment 7.

to what it found when it conducted a "spot check" of the voluminous information Dongyue submitted. Dongyue argues that, had the verification team taken the time to review Dongyue's prepared reconciliation packages, it could have very easily: 1) linked each and every U.S. commercial invoice (consisting of only 275 sales observations) to the corresponding VAT invoice; and 2) tied the recorded revenue with the actual payments and the audited financial statements revenue accounts.[265] Moreover, Dongyue maintains that it was fully prepared to establish at verification that this difference did not impugn the remainder of Dongyue's financial accounting system or its Section D questionnaire response. Dongyue notes that the company and its counsel certified as to the accuracy of all of Dongyue's questionnaire responses, and the company's external auditor expressly advised the Department that any differences he observed between revenue accounts and payment were immaterial and required no further investigation.

Thus, Dongyue contends that the Department may not ignore all of the voluminous and accurate information that Dongyue submitted in a timely manner, especially since Dongyue's conduct in this investigation has been "exemplary."

The petitioners disagree that Dongyue's reported data can be used to calculate an AD margin, noting that its responses could not be verified. The petitioners take issue with Dongyue's claim that it advised the Department of the details underlying its faulty accounting system, and, thus, the Department was wrong to walk out of verification based on a "discovery" that the company did not record the actual sales price in its accounting system. According to the petitioners, while Dongyue did state in its response to section C of the questionnaire that it records different amounts in its accounting system from those found on its commercial invoices, it also stated that it could reconcile its reported sales values to its accounts receivables and financial statements.[266] Similarly, the petitioners point out that Dongyue's response to section A of the questionnaire indicated that its accounting system was sufficiently comprehensive to permit verification. Thus, the petitioners dispute Dongyue's contention that these statements alerted the Department to the fact that Dongyue was unable to submit the information requested in the requested form and manner. Consequently, the petitioners assert that nothing Dongyue disclosed about this issue in its responses rose to the level of a deficiency under section 782(d) of the Act that would obligate the Department to provide Dongyue with an opportunity to remedy or explain.

Moreover, the petitioners disagree with Dongyue's contentions regarding verification. The petitioners note that the courts have upheld the Department's discretion to design and implement verification procedures, spot check the reported data, and terminate verification when those spot checks reveal a fatal flaw.[267] According to the petitioners, Dongyue's attempt to assert control

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[265] Dongyue notes that the company proposed a method at verification to establish the accuracy of its response (i.e., downloading the sales data to an Excel spreadsheet and manually tying these data to the associated commercial invoices), and it was prepared to provide to the verifiers an additional check (i.e., tying this information to payment), had they chosen to accept it. See Dongyue Verification Report, at 9.

[266] As support for this assertion, the petitioners cite Dongyue's Section C Response, at 9 (where Dongyue stated that there may be "a slightly different per unit price" on the pro forma invoice and VAT reconciliation invoice than was contained on the "original invoice" but that "{t}hese documents are necessary in order to reconcile actual invoiced amounts and payments with the accounts receivable accounting records and financial statements.").

[267] See Floral Trade Council v. United States, 822 F. Supp. 766, 771-72 (CIT 1993); and United States Steel Corp. v. United States, 953 F. Supp. 2d 1332, 1348 (CIT 2013).

over the verification process is contrary to its fundamental purpose, which is to verify the information already reported by the respondent (rather than to witness the establishment of new information).[268] The petitioners maintain that the Department is not obligated to focus its verification on a respondent's "prepared" materials, nor is it required to verify each item submitted in the questionnaire.[269]

Finally, the petitioners disagree that Dongyue's price difference was de minimis. The petitioners assert that Dongyue ignores the fact that: 1) none of its sales prices could be verified; and 2) the reported U.S. prices were not uniformly lower (or higher) than the prices recorded in Dongyue's accounts. According to the petitioners, it is not the magnitude of the price difference which is damning, but rather that the Department was unable to establish that Dongyue recorded any piece of individual data accurately in its accounting system. For the foregoing reasons, the petitioners argue that Dongyue failed verification, and the Department should assign it a final dumping margin, rather than calculate one for it.

Department's Position:

We disagree with Dongyue. At verification, the Department found that, in the ordinary course of its business, Dongyue did not record the sales prices shown on the commercial invoices in its accounting system. Company officials stated that the commercial invoice prices were the "actual" prices[270] charged to, and paid by, the U.S. customer, and, thus, they intended to report these prices in the U.S. sales listing.

Our verification report states:

> At the start of verification, Dongyue officials disclosed that the company had inadvertently mis-reported the sales prices for all sales to one of the company's main customers, [*******]. Specifically, company officials stated that Dongyue reported the price reflected on the Unified Export Invoice (UEI), instead of the [******] price charged to the customer, which was reflected on the commercial invoice. Company officials indicated that this mistake arose because, in the ordinary course of business, both Dongyue Trade and Dongyue Chemicals: 1) create UEI's which contain [*********]; and 2) record the sales revenue reflected on the UEI in their accounting records. Company officials noted that Dongyue had disclosed the UEI/commercial invoice recording difference in its responses to sections A and C of the Department's questionnaire.

[268] See Final Determination of Sales at Less Than Fair Value: Silica Bricks and Shapes From the People's Republic of China, 78 FR 70918 (November 27, 2013), and accompanying Issues and Decision Memorandum at Comment 7.

[269] See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Notice of Final Results of the 2009-2010 Administrative Review and Revocation, in Part, 77 FR 14501 (March 12, 2012), and accompanying Issues and Decision Memorandum at Comment 5.

[270] See Dongyue Verification Report, at 3. Dongyue also characterized these prices as the "true" sales values, "because they are prices paid by the customer." Id., at 2.

> We discussed the nature of the recording difference with Dongyue officials, as well as with the companies' auditor. We noted that the companies had [********] to track or reconcile the revenue differences between the two document sources. Further, while the auditor did not find these differences to be material to Dongyue's overall operations, we found that the audit report did not establish that Dongyue recorded any given piece of individual data accurately in its accounting system. Because of the [*******] and the recording of admittedly inaccurate information, we were unable to validate the integrity of Donygue's accounting system. As a result, we found that this system could not be used to establish the accuracy of Dongyue's reported sales and factors of production information, and we terminated the verification process after three days. [271]

In light of Dongyue's practice of recording inaccurate information in its accounting system, as noted above, we disagree that it would be appropriate to conduct an additional verification or to rely on information taken from that accounting system for purposes of the final determination.

We further disagree with Dongyue that the problems with its accounting system were so minor that the Department's concerns could easily have been allayed by reviewing prepared reconciliation packages and/or linking every U.S. commercial invoice to the corresponding VAT invoice and payment documentation.[272] As noted above, Dongyue admitted that its company officials frequently and deliberately recorded false information in Dongyue's revenue accounts.[273] It is of no import that Dongyue provided a reason for its actions;[274] the fact that the company had an established practice of generating VAT invoices with different, "untrue" revenue figures gives the Department little confidence that Dongyue would not undertake similar actions in other areas of the company's business.[275]

Equally concerning to the Department is the fact that Dongyue had no formal procedures in place to track or reconcile the differences arising from the above system. For example, the Dongyue Verification Report notes that:

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[271] See Dongyue Verification Report, at 3 (Public Version).

[272] Dongyue notes that the company proposed a method at verification to establish the accuracy of its response (i.e., downloading the sales data to an Excel spreadsheet and manually tying these data to the associated commercial invoices), and it was prepared to provide an additional check (i.e., tying this information to payment) to the verifiers, had they chosen to accept it. See Dongyue Verification Report, at 9.

[273] For example, during the POI, Dongyue misrecorded the price on almost 50 percent of its reported U.S. sales. See Dongyue Verification Report, at 5 and Dongyue's letter, "Huantai Dongyue Trade's Refiling of Request for pre-Verification corrections," dated March 2, 2016, at Exhibit 1.

[274] Contrary to Dongyue's implication, providing a reason alone is insufficient to cure a serious deficiency. Further, we find the reason provided by Dongyue to be unusual at best, and implausible at worst. Because Dongyue has claimed business proprietary treatment for its reasons, we are unable to disclose them here. For further discussion, see the Dongyue Verification Report, at 2 and 4.

[275] In fact, we note that Dongyue had a similar practice of recording inaccurate freight revenue in its accounting system as well. See Dongyue Verification Report, at FN 4.

- Dongyue never attempts to reconcile the overall differences in revenue in its accounting system to reflect the actual amounts;[276]
- Dongyue's accountants do not track the differences on a sales-specific basis;[277]
- Dongyue's salesmen alone have both sets of invoices, and they each prepare their own spreadsheets to check and/or track the differences; and [278]
- Dongyue keeps commercial invoices in a file cabinet.[279]

Based on the above statements, as well as other, business proprietary ones,[280] we disagree with Dongyue that it "maintained careful internal controls," and, as a consequence, we stand by our assessment that Dongyue's current accounting system cannot be used to establish the accuracy of Dongyue's reported information.[281]

We also find irrelevant the fact that Dongyue's auditor expressly stated that any differences he observed between revenue accounts and payment were immaterial and required no further investigation. We discussed the issue extensively with the auditor at verification. Our verification report states:

> We met with an official from Rui Hua, the firm that audits both Dongyue Chemical and Dongyue Trade, in order to understand the auditing process for Dongyue Chemical and Dongyue Trade. The Rui Hua official stated that Rui Hua has been auditing the financial statements of these companies, as well as the all of the other subsidiaries in the Dongyue Group, since 2006. . . [282]
>
> The Rui Hua official stated that Rui Hua applies a materiality principle of five to ten percent of the total before-tax profit. Thus, if income is misreported by more than five percent of the portion of the net profit allocated to the income category, then the auditor reflects this misrepresentation in his final opinion. . . [283]
>
> We discussed the official's concerns, if any, with a company's recording of income in its accounting system, where the value of the commercial invoice (at a

[276] See Dongyue Verification Report, at 5.

[277] Id., stating:

> When questioned as to how the difference appeared in Dongyue Chemical's accounting records, company officials stated that it did not; rather, they stated that the difference only appeared in the customer's net A/R balance (which, in this case, showed that the customer paid more -- and thus had a lower – A/R balance than it actually had). Company officials stated that Dongyue does not inform the customer of the difference, nor does it ever balance the accounts.

[278] Id., at 6.

[279] Id.

[280] See, e.g., Dongyue Verification Report, at 6.

[281] To that end, we are also unable to establish confidence in Dongyue or its counsel's certifications as to the accuracy of the company's responses. See, e.g., Dongyue Section A Response and Dongyue Section C Response.

[282] Id., at 7

[283] Id.

> value agreed upon between the buyer and the seller, per the GAAP requirement noted above) differs from the value on the VAT Invoice or UEI. The official stated that he would first check the value in the contract, and if it is different, then he would see over how long the contract was made to determine if there is still a balance outstanding. If the company had fully delivered on the contract, the auditors would ask the company to document the reason for the difference. Then the auditors would apply the materiality principle, and determine whether, overall, the difference is material. The Rui Hua official stated that the auditors would ask the company to make an adjustment only if the difference were material. Similarly, the official stated that, if the auditors saw that the amounts booked into the accounting system differed regularly from the amounts in the contract, they would recommend correction only if the difference were material.[284]

We also discussed the above materiality principle with Dongyue. Our verification report states:

> We requested that Dongyue provide the auditors' working papers to show that the auditor was aware of the accounting differences; however, company officials stated that the auditors did not review the commercial invoices as part of their audit, and, thus, they would not have known that the differences existed. They further stated that the auditors would have looked at the magnitude of the outstanding accounts receivable balance at year end; however, because Dongyue's customers pay on a rolling basis and the magnitude was small, they would have had no reason to be concerned.[285]

It is clear from the above discussion that Dongyue's auditors perform their review on a macro level, and any potential concerns are directed towards the financial position of the company as a whole. Thus, the auditors would not question differences in the order of magnitude observed by the Department at verification, because they do not reach the materiality threshold of "five to ten percent of the total before-tax profit."[286] However, a dumping analysis is performed on a micro level, and the Department is charged with reviewing information at the transaction-specific (or, sometimes, product-specific) level. Thus, even though the auditor may not find these differences to be material to Dongyue's overall operations, we found that the audit report did not establish that Dongyue recorded any given piece of individual data accurately in its accounting system,[287] and, as a result, this report did not address the Department's specific concerns regarding the inaccuracies observed at verification.

Given the facts set forth above, we disagree with Dongyue that the verification team overstepped its bounds and/or abused its discretion by terminating verification before the allotted ending date. The courts have upheld the Department's discretion to design and implement verification procedures, spot check the reported data, and terminate verification when those spot checks

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[284] Id.

[285] Id., at 5 (emphasis added).

[286] See Dongyue Verification Report, at 7.

[287] Id., at 2.

reveal a fatal flaw.[288] Moreover, as seen by the list of attendees attached to the verification report, the Department sent an exceptionally experienced team to conduct Dongyue's verification.[289] This team included an Office Director and a Program Manager, who collectively have over 40 years of experience at the Department, and who both are highly proficient in the Department's standard verification procedures. Further, this team sought guidance from the Department as to the appropriate course of action, and it was the Department, not the verifiers, which decided to end the verification early, a fact of which Dongyue is well aware.

Similarly, we disagree that the use of standard language at the start of the verification report (i.e., that the verification report draws no conclusions as to whether information was successfully verified) demonstrates that the verification team exceeded its authority in any way. Rather, this statement correctly notes that the purpose of the verification report is to accurately set forth the facts, without drawing any conclusions as to the appropriate disposition of the case. It is a fact that the verifiers were unable to validate Dongyue's accounting system. It is also a fact that, as a result, the verifiers were unable to rely on that accounting system as support for Dongyue's reported information. The report took no position on the appropriate course of action as a consequence of that fact. Rather, the Department must decide the appropriate course of action after considering all arguments raised in case briefs, which is what has occurred in this final determination.

Further, we disagree with Dongyue that it was completely forthcoming about the different prices used in its accounting system, and their potential impact on the Department's analysis. In its Section A response, Dongyue described its three invoices as follows:

> In the normal course of business, Dongyue issues three types of invoices with respect to export sales, including those to the U.S. The first invoice, issued after production and prior to shipment (once the isotanks are filled with the subject merchandise), is the official commercial invoice. This invoice is sent to the U.S. customer and is used for U.S. customs entry purposes and for payment by the U.S. customer. A second commercial invoice (considered to be a "pro forma" invoice) is issued for export declaration purposes with Chinese Customs. Please note that this pro forma commercial invoice may include a slightly different per unit price and total value as it may be based on different terms of sale than the first commercial invoice (e.g., addition of freight to the FOB price on the first commercial invoice). This second invoice is used to create a third VAT Reconciliation invoice, issued prior to the end of the month, which contains the same sale terms, price and quantity as the second invoice. This value is booked into the accounting system. While Dongyue records the values from the VAT reconciliation (the third) invoice in the accounting ledgers, the actual payments made by the customer (based on the first commercial invoice) are recorded as offsets to these amounts. In consideration of the narrative explanation above, both Hunatai Dongyue Trade and Shandong Dongyue Chemical have used the

[288] See Floral Trade Council v. United States, 822 F. Supp. 766, 771-72 (CIT 1993); and United States Steel Corp. v. United States, 953 F. Supp. 2d 1332, 1348 (CIT 2013).

[289] Id., at Attachment I.

> commercial invoice date (the first invoice described above) as the date of sale for reporting subject merchandise during the POI. For both companies, this commercial invoice represents the point at which all material terms of sales, including prices and quantities, are fixed. [290]

While this passage does, in fact, disclose that Dongyue prepares three invoices in the ordinary course of business, it characterizes the difference between the commercial and VAT invoices as "based on different terms of sale than the first commercial invoice (e.g., addition of freight to the FOB price on the first commercial invoice)."[291] Significantly, it does not disclose that the difference in the two prices may be due to other factors or that there is no consistent or logical connection between the two. Thus, we disagree that the Department failed to notify Dongyue of any perceived defect in its response, given that Dongyue failed to notify the Department that such a defect existed.

With respect to the statement contained in Dongyue's Section C response, we acknowledge that Dongyue did include information indicating that it maintained several sets of invoices, and that the prices differed on the two most significant ones (i.e., the commercial invoice sent to the customer and the VAT invoice recorded in the accounting system).[292] However, we note that these statements were buried in Exhibits attached to that response. Further, Dongyue again failed to disclose the reasons that the prices on the VAT invoices differed from those on the commercial invoice, but merely repeated that they "may be different." Thus, contrary to Dongyue's contentions otherwise, we were unaware until verification that a potential problem existed, and, as a result, we disagree that we violated the notification requirement under section 782(d) of the Act.

Further, we disagree with Dongyue's contention that because its price difference was de minimis (i.e., approximately 0.5 percent of the aggregate U.S. sales value), it is, thus, immaterial. At verification, we determined that: 1) Dongyue's reported U.S. prices bore only a loose relation to the prices recorded in Dongyue's accounts;[293] and; 2) we could not establish that Dongyue recorded any given piece of individual data accurately in its accounting system.[294] As noted above, the Department performs its dumping analysis on a micro level. Therefore, while the overall magnitude of Dongyue's price differences is small, the fact that Dongyue could not establish the accuracy of its U.S. sales prices means that the Department cannot rely on Dongyue's reported information. We also disagree with Dongyue that it could have remedied the "deficiencies" with its reported data by either: 1) having its auditor review the reported information with a goal of confirming that the differences were not material; or 2) placing information on the record from its U.S. customers. We note that Dongyue's auditor already reviewed its books and records and determined that any difference was not material from a company-wide standpoint. Further, given the issues with the information recorded in Dongyue's

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[290] See Dongyue Section A response, at 19 (emphasis added).

[291] Id.

[292] See Dongyue Section C response, at Exhibits C-9A-1 and C-9A-2.

[293] See Dongyue Verification Report, at 4 FN 1.

[294] Id., at 2.

accounting system, the Department has serious concerns with not only the accuracy of the information recorded in it, but also its completeness (and, as such, information obtained directly from Dongyue's U.S. customers might cure some, but not all, of these deficiencies). Thus, we do not find that either of Dongyue's proposed options would overcome the deficiencies with its reported U.S. sales prices.

Finally, we disagree that the precedent cited by Dongyue applies here, given that we are not basing Dongyue's final dumping margin on AFA. For further discussion, see Comment 15, below.

Comment 14: *The Margin Assigned to Dongyue*

As noted above, Dongyue failed to establish the validity of its accounting system at verification, and, as a result, the Department considers its reported information unreliable. Under these circumstances, the petitioners argue that either the Department should base Dongyue's final dumping margin on AFA or deny it a separate rate.

According to the petitioners, section 776(a)(2)(D) of the Act provides that the Department shall use facts otherwise available to determine the antidumping margin where information cannot be verified. According to the petitioners, it is the Department's practice when a respondent "fails" verification to apply AFA.[295] For example, the petitioners point out that, in GOES from the Czech Republic,[296] the Department applied AFA to a respondent which failed verification, finding that the information provided was unverifiable and so incomplete that it could not serve as the basis for the Department's final determination. The petitioners maintain that the courts have upheld the Department's application of AFA in such circumstances,[297] and, because Dongyue's reported information could not be verified, the Department similarly has no basis to calculate a dumping margin for it. Thus, the petitioners claim that the only appropriate remedy is to assign Dongyue a margin based on AFA.

According to the petitioners, consistent with its longstanding practice in investigations, as AFA the Department should assign Dongyue either: 1) the highest transaction-specific margin calculated for TTI; or 2) the highest rate listed in the petition (i.e., 300.30 percent).[298] The petitioners note that, if the Department assigns Dongyue a margin based on TTI's data, the Department is not required to corroborate this rate further pursuant to section 776(c) of the Act;

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[295] See, e.g., Fujian Mach. & Equip. v. United States, 276 F. Supp. 2d 1371, 1378-1381 (CIT 2003) (Fujian II) (in which the Court upheld the Department's application of AFA to various respondents which "failed" verification).

[296] See Grain-Oriented Electrical Steel From the Czech Republic: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 58324 (September 28, 2014), and accompanying Issues and Decision Memorandum at Comment 11 (GOES from the Czech Republic).

[297] See Fushun Jinly Petrochemical v. United States, 2016 CIT LEXIS 25, at *38 (CIT March 23, 2016) (Fushun Jinly).

[298] See Certain Uncoated Paper From Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part, 81 FR 3108 (January 20, 2016), and accompanying Issues and Decision Memorandum at Comment 2 (Paper from Australia); and Welded Stainless Pressure Pipe From Thailand: Final Determination of Sales at Less Than Fair Value, 79 FR 31093 (May 30, 2014), and accompanying Issues and Decision Memorandum at Comment 3.

alternatively, if the Department assigns Dongyue the highest rate found in the petition, the underlying data are corroborated by the same evidence on which the Department relied to initiate the investigation.[299]

Finally, the petitioners disagree with Dongyue's arguments, discussed below, that AFA is inappropriate, because: 1) Dongyue's information could not be verified;[300] and 2) Dongyue's counsel is well aware of the Department's verification practices and procedures.

In the alternative, the petitioners argue that Dongyue is not eligible to receive a separate rate. According to the petitioners, Dongyue has called into question the reliability of all of its questionnaire responses because of its failures at verification. The petitioners maintain that, if the Department determines that Dongyue warrants a margin based on AFA, the TPEA now empowers the Department to make the adverse inference that non-cooperative respondents are part of the PRC-wide entity, notwithstanding the Court's pre-TPEA decision in Ad Hoc Shrimp.[301] Therefore, the petitioners assert that the Department should not assign Dongyue a separate rate in this investigation.

Dongyue disagrees that it would be appropriate to assign it a margin based on FA or AFA. Dongyue notes that, in Nippon, the CAFC summarized the factors which the Department is required to examine before applying AFA to a respondent,[302] with a focus on whether a company has been forthcoming in responding to requests for information.[303] Dongyue argues that, in the absence of finding truly egregious conduct, the Department only relies on total AFA when a party fails to disclose a potentially serious verification issue or discloses something too late in the proceeding for the Department to consider properly. However, Dongyue claims that the Department's policy is not to apply AFA because of isolated financial accounting errors.[304] In

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[299] See, e.g., Paper from Australia, at Comment 2 (where the Department found the petition rate to be corroborated based on its review of the adequacy and accuracy of the information in the petition during its pre-initiation analysis).

[300] See GOES from the Czech Republic, at Comment 11.

[301] See Ad Hoc Shrimp Trade Action Comm. V. United States, 802 F.3d 1339, 1358 (CAFC 2015) (Ad Hoc Shrimp).

[302] See Nippon Steel Corp. v. United States, 337 F.3d 1373, 1385 (CAFC 2003) (Nippon), stating that "{a}n adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made…").

[303] See, e.g., Papierfabrik August Koehler S.E. v. United States, 7 F Supp. 3d 1304, 1310 (CIT 2014); Jiangsu Changbao Steel Tube Co. v. United States, 884 F Supp. 2d 1295, 1299 (CIT 2012); Certain Lined Paper Products From the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review and Partial Rescission, 76 FR 23288, and accompanying Issues and Decision Memorandum; and Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China, 69 FR 67313 (November 17, 2004), and accompanying Issues and Decision Memorandum at Comment 4; and Appivon, Inc. v. United States, 100 F. Supp. 3d 1374, 1382 (CIT 2015).

[304] As support for this contention, Dongyue cites Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile, 63 FR 56613, 56616 (October 22, 1998) (where the Department applied partial facts available, using adverse inferences where appropriate, for certain unreported items because "except for certain items, NFP has demonstrated that it acted to the best of its ability in this investigation and has not otherwise significantly impeded this investigation. Therefore, rejection of its responses in their entirety is inappropriate based on the facts of this proceeding."); and Prestressed Concrete Steel Wire Strand From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 28560 (May 21, 2010), and accompanying Issues and

fact, Dongyue contends that the Department has on numerous occasions accepted information from first-time, cooperative respondents whose accounting records did not conform to the Department's standards, but whose information could nevertheless be verified through manual review and spot checking; Dongyue asserts that, in those cases, the Department has placed the respondent on notice that for future proceedings it needs to modify the manner in which it maintains accounting its records.[305]

Further, Dongyue disagrees that the cases cited by the petitioners are on point here. First, Dongyue notes that in the case underlying the Court's ruling in Fushun Jinly, relating to Graphite Electrodes from the PRC, the Department determined it was appropriate to base Fushun Jinly's margin on AFA because the respondent: 1) withheld information; 2) failed to provide information in the form or manner requested by the Department; and 3) provided false information.[306] According to Dongyue, it has engaged in none of these activities and its performance throughout this investigation has been exemplary. Second, Dongyue states that in GOES from the Czech Republic, the Department applied AFA to Sujani, a respondent which, among other things, had failed at verification to: 1) provide requested information; 2) discuss a substantial financial transaction or provide supporting documentation; and 3) reconcile its reported sales to its federal tax return.[307] Dongyue argues that, unlike Sujani, it has provided complete and accurate responses to all of the Department's questions and did not fail or refuse to provide responses to any questions. Third, Dongyue points out that in Fujian I, the Court held that a respondent's "failed" verification does not necessarily mean that the Department should apply AFA to it.[308] Dongyue notes that, while the Court ultimately affirmed the Department's use of AFA in Fujian II, the facts underlying that record showed that the respondent: 1) was unprepared for verification; 2) failed to report certain U.S. sales; 3) failed to provide information about other subsidiaries to prove that they did not make U.S. sales; 4) failed to submit Q&V reconciliation worksheets and other requested sales invoices; and 5) had, for one department, significant discrepancies with the sales revenue shown on its financial statements. Dongyue

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Decision Memorandum at Comment 3 (where the Department disagreed with the petitioners that "WJMP's invoice accounting system prevented the Department from verifying the completeness of WJMP's questionnaire responses, that WJMP's financial statements are unreliable, or that the wire rod utilization reported by WJMP is mathematically impossible…").

[305] See Sinks from the PRC, 78 FR at 13022; and Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Germany, 67 FR 55802 (August 30, 2002), and accompanying Issues and Decision Memorandum at Comment 7. See also First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 75 FR 57995 (November 10, 2009), and accompanying Issues and Decision Memorandum at Comment 16; Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China, 72 FR 9508 (March 2, 2007), and accompanying Issues and Decision Memorandum at Comment 8; Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Final Results of Antidumping Duty Administrative Review, 67 FR 2408 (January 17, 2002), and accompanying Issues and Decision Memorandum at Comment 12; and Certain Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011, 78 FR 16651 (March 8, 2013), and accompanying Issues and Decision Memorandum at Comment 5.

[306] See 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) (Graphite Electrodes from the PRC), and accompanying Issues and Decision Memorandum at Comment 1.

[307] See GOES from the Czech Republic, at Comment 11.

[308] See Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States, 25 CIT 1150, 1157 (CIT 2001) (Fujian I).

claims that, in contrast to Fujian II, it was fully prepared for verification, provided all requested documents in a complete and timely manner, established that the difference between the payments it received and the revenue it reported was de minimis, and established that difference did not impact the completeness of Dongyue's submission. Therefore, Dongyue contends that these cases support its position that the Department cannot assign it AFA.

According to Dongyue, in the unlikely event that the Department assigns it an AFA margin, it cannot blindly apply the highest rate alleged in the petition (i.e., 300.30 percent), which is specific to R-143a. Dongyue contends that the Department is required instead to apply an AFA rate determined using the Petition margins calculated for Dongyue's particular components and blends exported. Alternatively, Dongyue argues that the Department could apply as AFA the simple average of the rates contained in the petition (i.e., 176.19 percent). In any event, Dongyue notes that, while the petitioners used surrogate value data from Thailand in the petition, the Department based its calculations in the preliminary determination on surrogate value data for Mexico. Thus, Dongyue claims that the Department should base any AFA rate it applies using realistic Mexican surrogate value data, rather than the unfairly high surrogate values used in the petition.

Finally, Dongyue asserts that the Department cannot deny Dongyue's eligibility for a separate rate, given that: 1) the Department found that Dongyue qualified for a separate rate in the Preliminary Determination; and 2) at verification the Department performed most of the procedures related to separate rates and found that the reviewed information was consistent with the information in Dongyue's responses. Dongyue contends that the CIT has recently held that: 1) the Department's separate rate analysis is separate and distinct from the selection of an AFA rate; and 2) the Department cannot ignore a company's separate rate information solely because it assigns it an AFA rate.[309] Dongyue states that the courts have upheld the Department's denial of a separate rate to a respondent when the defect in the company's response is directly related to separate rate eligibility.[310] Dongyue contrasts the facts of Ad Hoc Shrimp with those present here, in that the deficiencies identified at verification related to Dongyue's accounting records. Therefore, Dongyue argues that the Department should determine that Dongyue qualifies for separate rate status for purposes of the final determination.

Department's Position:

As noted in Comment 13, above, the Department was unable to validate the integrity of Dongyue's accounting system at verification. Because a valid accounting system is fundamental to a respondent's ability to support its separate rate claim, we find that Dongyue is not eligible for a separate rate in this investigation. As a result, we consider Dongyue to be part of the PRC-wide entity.

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[309] See Policy Bulletin 05.1, Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, April *5*, 2005 (Policy Bulletin) (citing Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China, 61 FR 19026, 19027 (April 30, 1996)).

[310] See Policy Bulletin; see also Preliminary Determination, 81 FR at 5099.

A respondent's books and records, including accounting documentation, especially in those cases in which the respondent cites to its books and records to support its claimed independence, are tied to the documentation regarding separate rate eligibility. As noted above, Dongyue's accounting ledgers included unreliable data related to its U.S. export prices. The Department's analysis of how the accounting ledgers impact Dongyue's separate rate information is detailed below.

As a threshold matter, we disagree with Dongyue that the Department successfully verified its separate rates claim. Our verification report states that we examined portions of Dongyue's reported separate rates information and found that information to be consistent with Dongyue's response.[311] The report does not state that we were able to perform all procedures necessary to verify Dongyue's separate rates claim, and, indeed, given the fact that we found the pricing information recorded in Dongyue's accounting system to be inaccurate, and potentially incomplete, we could not have performed every verification procedure satisfactorily.

Pursuant to the Department's practice, in an NME investigation, the Department starts with a rebuttable presumption that all companies within the NME country are subject to government control and therefore, should be assigned a single antidumping duty rate. Typically, the Department considers four factors in evaluating whether a respondent is subject to de facto governmental control of its export functions. They are: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[312]

With respect to de facto government control, the Department examined the relevance of the books and records to the separate rate issue with respect to the statements made by Dongyue that support a de facto determination. In examining this question, we find a critical nexus between certain of the criteria noted above and the company's books and records. In cases in which the Department finds that the company's books and records are unreliable, the submitted responses which rely on the books and records for support cannot be accepted as accurate factual statements.

In its separate rates application, Donguye stated the following:

> For profits realized in a fiscal year, the Applicant follows the rules of Company Law of China. After making up losses from prior years (if any), withdrawal of certain funds and payment of income taxes; the disposition of remaining profits

[311] See Dongyue Verification Report, at 3 (stating that "We performed most of the procedures listed in the {separate rates section} of the verification outline," and with the exception of an incorrect address for Huantai Dongyue International Trade Co., Ltd. (Dongyue Trade), one of Dongyue's two facilities – which conflicts with the address provided on page 5 of Dongyue Trade's SRA, "the information reviewed at verification was consistent with the information contained in Dongyue's responses).

[312] See Silicon Carbide, 59 FR 22585; Furfuryl Alcohol, 60 FR 22545; and Preliminary Determination, and accompanying Preliminary Decision Memorandum at 22.

> shall be determined by its shareholders. Before distribution, such profits are recorded under the account for "Profits Distribution" in the company's books and records.[313]

In order to examine this criterion at verification, the Department informed Dongyue that it would perform the following procedure:

> Review the process by which Dongyue deals with convertible currency from export sales. Document the disposition of the foreign currency earned from sales. Specify and document the percentage of convertible currency kept with respect to the POI.[314]

This procedure entails examining information in Dongyue's accounting system, including cash-in-bank accounts, accounts receivables, and sales accounts. Further, in order to tie this information to Dongyue's response, it would also be necessary to rely on information recorded in Dongyue's retained earnings and profit distribution accounts. However, as noted above in Comment 13, the Department was unable to establish that the information recorded in these accounts is accurate, especially in light of Dongyue's own statements that it does not record its actual sales prices on U.S. exports in its revenue accounts or accounts receivable.[315] Without reliable information on these essential elements of profit, the Department is unable to verify Dongyue's independent distribution of its profits, as required by the de facto criterion.

As discussed above, the submitted accounting ledgers are unreliable and have been invalidated in this review. In order for a respondent to support its assertion that it retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses, the Department requires a statement that is supported by complete accounting ledgers and documentation, and as the Department determined in this investigation, these accounting ledgers include the unverifiable data related to export prices. Accounting principles require that a business maintain various accounts which collectively comprise the firm's general ledger which, in turn, flow into the firm's financial statements. The Department must be able to verify that the accounting system includes controls to ensure that all transactions are fully captured. However, because certain elements of Dongyue's financial ledgers have been found invalid, there is no accurate means to reconcile the general ledger which includes profit and losses and the dispositions thereof. Therefore, the Department is unable to rely upon the statements concerning export proceeds in Dongyue's separate rate application because such statements are unverifiable on the ground that they rest on Dongyue's accounting documentation.

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[313] See Dongyue Chemical's SRA, dated September 1, 2015, at 16; and Huantai Dongyue's SRA, dated September 1, 2015, at 18.

[314] See Letter from the Department to Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Verification Agenda," dated February 23, 2016, at 9.

[315] When recording sales in a company's accounting system, the company debits accounts receivable and credits its revenue account by the same amount.

Indeed, under the Department's de facto separate rates analysis, all of the de facto criteria can be, in some way or another, supported (or refuted) by data recorded in the company's accounting system. For example, the setting of export prices criterion is supported by actual prices reflected in the accounting system; the selection of management criterion is supported by salary payments recorded in the accounting system to specific individuals, and so on. In other words, the accounting system is a cornerstone of the Department's de facto separate rates analysis, and a company has to satisfy all of the criteria in order to demonstrate eligibility for a separate rate.[316]

The separate rates analysis requires that the respondent provide evidence to rebut the Department's presumption of NME control over all exporters. Where a respondent is unable to overcome that presumption, the Department will treat that respondent as part of the PRC-wide entity. Here, Dongyue provided certain documents it claims establish de jure separation from the government. Nonetheless, Dongyue's responses related to its export sales process and its disposition of export proceeds directly implicate its accounting system. Therefore, the Department cannot conclude through verifiable evidence that Dongyue sets prices or retains revenue, despite its statements on the record with respect to these factors.

Finally, we did not address Dongyue's arguments related to AFA, because they are moot. See, e.g., Advanced Technology II, where the CIT stated:

> Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide rate. These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate to the best of its ability whereas the PRC-wide rate applies to a respondent who has not received a separate rate. [317]

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[316] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 22-23, finding that the companies which we granted a separate rate in this investigation met all of the de jure and de facto criteria and, as a result, the Department granted them a separate rate. These companies continue to receive a separate rate in this final determination. See also, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014, 80 FR 60624 (October 7, 2015), and accompanying Preliminary Decision Memorandum at 7, unchanged in Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013-2014, 81 FR 21840 (April 13, 2016); Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 FR 61166 (October 9, 2015), and accompanying Preliminary Decision Memorandum at 12-13, unchanged in Tires 2016, 81 FR 23272; and Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014, 80 FR 80476 (December 28, 2015), unchanged in Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014, 81 FR 39905 (June 20, 2016).

[317] See Advanced Technology II at 1351 (aff'd, ATM), citing Watanabe Group Slip-Op 10-139 at 8 ("Commerce's permissible determination that {a respondent} is part of the PRC-wide entity means that inquiring into {that respondent}'s separate sales behavior ceases to be meaningful.") and Jiangsu Changbao at 1312 (referencing Watanabe at 8) ("losing all entitlement to an individualized inquiry appears to be a necessary consequence of the way in which Commerce applies the presumption of government control… applying a countrywide AFA rate

As in that case, here, the Department is not applying AFA to Dongyue individually, but rather has found that Dongyue has failed to rebut the presumption of government control under the de facto criteria. As a result, we are assigning to it the rate applied to the PRC-wide entity.

Comment 15: *Moot Arguments*

Dongyue raised a number of issues related to its margin calculations, including differential pricing, as well as its FOPs and the appropriate surrogate values used to value them.

Department's Position:

Because we did not calculate a final dumping margin for Dongyue, these issues are moot and we did not address them here.

TTI

Comment 16: *AFA*

The petitioners argue that TTI did not provide complete and reliable information throughout this investigation, based on findings at verification. In particular, the petitioners contend that TTI failed to establish the overall accuracy of its responses and to cooperate fully in this investigation, creating gaps in the record. Therefore, the petitioners argue that the Department may use facts otherwise available and apply an adverse inference, pursuant to sections 776(a) and (b) of the Act. As AFA, the petitioners argue that the Department must use the highest dumping margin alleged in the petition or the highest dumping margin of any respondent in the investigation.[318] Additionally, the petitioners contend that the TPEA applies in this situation.[319]

With respect to the sales verification conducted for TTI, the petitioners allege that the Department found numerous errors and omissions, including: 1) TTI failed to report that the service provider arranging for international freight was an NME freight forwarder; 2) TTI failed to include foreign brokerage and warehousing expenses in its U.S. sales database;[320] and 3) TTI failed to report VAT expenses. Additionally, with respect to the FOP verification, the petitioners argue that there were also multiple discrepancies, including but not limited to: 1) Taicang reported its FOPs using the wrong monthly periods;[321] 2) Taicang failed to disclose the energy consumed in some of its workshops for overhead activities;[322] 3) Taicang failed to report a usage

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without individualized findings of failure to cooperate is no different from applying such a countrywide AFA rate without individualized corroboration.").

[318] See, e.g., Paper From Australia, at Comment. 2.

[319] See Public Law No. 114-27.

[320] TTI Sales Verification Report, at 19 and 21.

[321] See Taicang FOP Verification Report, at 2.

[322] Id., at 14.

rate for catalyst based on actual consumption;[323] and 4) Taicang misreported its by-product offset claim in several ways.[324] According to the petitioners, when these errors, taken as a whole, are combined with the fact that TTI mischaracterized the knowledge of destination held by its suppliers, the Department should conclude that TTI's response, overall, is not reliable.

TTI argues that there is no justification for assigning an AFA rate and that it has submitted complete and accurate responses as demonstrated in the Department's verification reports. TTI also asserts that that the CAFC has stated that cooperating to the best of a respondent's ability does not mean perfection, but that the respondent has "put forth its maximum effort to provide" full and complete answers to all of the Department's inquiries in an investigation.[325] In this instant case, TTI argues that it has put forth its maximum efforts to obtain the requested information from its records. Furthermore, TTI specifically addresses each issue raised by the petitioners in detail in its rebuttal brief.

Department's Position:

We agree with TTI that total facts available is not warranted in this case. According to section 776(a) of the Act, the Department shall use the facts otherwise available in reaching a determination if:

1) necessary information is not available on the record, or

2) an interested party or any other person –

   A) withholds information that has been requested by the administering authority or the Commission under this title,

   B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782,

   C) significantly impedes a proceeding under this title, or

   D) provides such information but the information cannot be verified as provided in section 782(i).

In this proceeding, none of the above provisions is met. Specifically, we find TTI cooperated fully in this proceeding by responding to each of the Department's requests for information in a timely manner. Although we did find a number of issues at TTI's sales, and Taicang's FOPs, verification, none of these errors, taken separately or together, was significant enough to deem TTI's responses so incomplete that they could not be used.

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[323] Id., at 10.

[324] See Petitioners' Case Brief, at 11-12.

[325] See Nippon II, 337 F.3d, at 1382.

Section 782(e) of the Act states that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party demonstrated that it acted to the best of its ability; and, (5) the information can be used without undue difficulties. In the instant investigation, we verified TTI's submitted information and, except as noted below, we are satisfied that complete and accurate information exists on the record of this review.[326] Moreover, we found no evidence of a pattern of misreporting of data, nor any indication that the respondent attempted to mislead the Department or impede the proceeding. Therefore, in accordance with section 782(e) of the Act we will consider TTI's reported information.

Further, in order to apply an adverse inference under section 776(b) of the Act, the Department must find that an interested party has "failed to cooperate by not acting to the best of its ability to comply with a request for information…" Because the record shows that TTI acted to the best of its ability to comply with all information requests made by the Department, and because none of the provisions under section 776(a) of the Act are met, we find that section 776(b) of the Act also does not apply here.

However, we agree with the petitioners that TTI's responses were deficient in certain, limited respects.[327] We have addressed each of these areas of concerns in separate comments, below. For further discussion, see Comments 19, 21, 22, 23, 25 and 26.

Comment 17: *Whether TTI or its Supplier is the Respondent*

TTI is comprised of two entities: TT Dalian, the company's headquarters located in Dalian, PRC, and TT Hong Kong, a company registered in Hong Kong. TTI stated in its questionnaire response that all sales activities and selling functions for both TT Dalian and TT Hong Kong take place in Dalian by company personnel based there. In the Preliminary Determination, we treated TT Dalian and TT Hong Kong as the same company, although we made no formal determination that this treatment was appropriate.[328]

The petitioners argue that, in the event that the Department does not base TTI's margin on AFA, TTI should not receive a separate rate. The petitioners contend that TTI is not an exporter, but rather that it is merely a sales agent for various Chinese manufacturers which, on their own, do not qualify for separate rates. According to the petitioners, TTI functions as a sales conduit for these manufacturers and, thus, the Department should not permit TTI to obtain a lower rate than the PRC-wide entity. Instead, the petitioners argue that TTI itself should be treated as part of the PRC-wide entity.

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[326] See TTI Sales Verification Report.

[327] We disagree with the petitioners that TTI misrepresented its sales process or misreported Taicang's catalyst expenses or by-product offsets. For further discussion, see Comments 17, 24, 26, and 27, below.

[328] See Preliminary Determination, 81 FR at 5099.

Specifically, the petitioners argue that verification established that TTI functions solely as a sales agent, in light of the facts that TTI is not the PRC exporter of record, does not take title to the merchandise,[329] and does not pay VAT or claim a VAT rebate. The petitioners point out that TTI's PRC suppliers themselves perform these functions. Thus, the petitioners argue that the first sale for exportation is between the Chinese suppliers and TT Hong Kong.[330]

In any event, the petitioners argue that, even assuming TTI is not a sales agent, the suppliers are the relevant exporters because they know that merchandise is destined for the United States.[331] The petitioners contend that the facts here are similar to those in Tetrafluoroethane from the PRC, where the Department found that the suppliers of the respondent in that case, Weitron, were "the appropriate exporters for the sale made to Weitron USA."[332] Thus, the petitioners claim that, similar to Tetrafluoroethane from the PRC, TT Hong Kong is the first unaffiliated purchaser from its PRC suppliers, and it takes title, pays the PRC suppliers for the goods, and records sales to the U.S. customer in its accounting records. As a result, the petitioners argue that the relevant sale for dumping purposes occurs between TTI's PRC suppliers and TT Hong Kong.

The petitioners also disagree with TTI's contention (see below) that TT Hong Kong is a mere "paper entity" controlled by TT Dalian, noting that TT Hong Kong is a separate legal entity located outside of the PRC performing numerous functions,[333] and, as a result, it is misleading for TTI to claim that TT Dalian negotiates TT Hong Kong's sales. According to the petitioners, while the Department does not recognize internal sales within an NME as the basis for export price (EP),[334] sales between the Chinese producers and TT Hong Kong are the first sales for exportation and establish that the Chinese producers were the exporters for purposes of the antidumping duty law.[335] Thus, the petitioners argue that TTI is taking advantage of the

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[329] According to the petitioners, title to the merchandise does not pass until TT Hong Kong pays its suppliers, at which time title passes to TT Hong Kong (not TT Dalian).

[330] See TTI Sales Verification Report at 21. The petitioners assert that, given these facts in a market-economy context, the Department will rescind the investigation of a trading company. See e.g., Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Preliminary Results Of Antidumping Duty Administrative Reviews, Partial Rescission Of Administrative Reviews, Notice Of Intent To Rescind Administrative Reviews, And Notice Of Intent To Revoke Order In Part, 69 FR 5950, 5951 (February 9, 2004).

[331] See, e.g., Wonderful Chem. Indus. v. United States, 259 F. Supp. 2d 1273, 1279-1280 (CIT 2003).

[332] See Tetrafluoroethane from the PRC at Comment 17.

[333] See TTI's Second Section A Supplemental Response, dated November 17, 2015 (TTI's Second Section A Supplemental Response), at 2. According to the petitioners, TT Hong Kong contracts with the PRC suppliers, receives payment from U.S. customers, and incurs selling expenses (such as commissions, advertising, and discounts).

[334] See, e.g., Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping, 75 FR 20335 (April 19, 2010), and accompanying Issues and Decision Memorandum at Comment 31 (OCTG from the PRC).

[335] The petitioners note that the Department treats Hong Kong as a third country for purposes of analyzing issues under the antidumping duty law. See Application of U.S. Antidumping and Countervailing Law to Hong Kong, 62 FR 42965 (August 11, 1997).

Department's practice of not treating a transaction between two NME entities as the basis for EP, even when the producer has knowledge of destination.

Finally, the petitioners note that certain of TTI's suppliers (i.e., Taicang and Lantian Fluoro) are SOEs. According to the petitioners, because TTI is only a trading company or a sales agent acting for its suppliers, it is subject to the de facto control of its suppliers. Thus, the petitioners argue that, if TTI obtains its own rate in this investigation, TTI will become a conduit through which SOEs are able to obtain a separate rate. The petitioners claim that TTI will be able to aggregate the export volume shipped by these SOEs and thereby qualify as a mandatory respondent in future segments of this proceeding. The petitioners contend that the Department should not allow SOEs to sidestep the purpose of the antidumping duty law in this manner.

TTI argues that it is the proper respondent in this investigation, asserting TT Dalian and TT Hong Kong are the same entity for purposes of the Department's analysis because they meet the criteria to be considered as a single entity under 19 CFR 351.401(f)(1). Moreover, TTI maintains that it is eligible to receive a separate rate, in light of the fact that it demonstrated it is not subject to either de jure or de facto PRC government control.[336] According to TTI, the Department's policy bulletin on separate rates makes it clear that the Department, when making a determination on separate rates, is concerned with the documents presented to CBP, not the PRC customs authority.[337] TTI maintains that, as the Department confirmed at verification, it is listed as the exporter of record on all U.S. customs entry documents.[338] Therefore, TTI states that these documents support continuing to grant TTI a separate rate and treat it as the "proper" respondent for the purposes of this investigation.

Moreover, TTI argues that, because title passes from the producer to TTI within the customs territory of the PRC, this transaction is disregarded under the Department's NME methodology. As a result, TTI states that the producer's knowledge of the ultimate destination of the sale is moot.[339] In any event, TTI points out that it is in control of the sales transaction from start to finish. Specifically, TTI notes that it negotiates the sale to the U.S. customer, purchases HFCs from unaffiliated suppliers, arranges for all inland freight and international freight, purchases the disposable cylinders and has them delivered to the suppliers for packing and export, is paid by its U.S. customers, and pays its suppliers and freight forwarders.[340] According to TTI, at no point in this process is there a transaction between the supplier and the U.S. customer. Therefore, TTI maintains that the Department should continue to calculate a margin for it in the final determination.

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[336] See TTI Sales Verification Report, at 5-7.

[337] See Policy Bulletin 05.1, dated April 5, 2005, at 1. Thus, TTI states that the fact that it is not the exporter of record for PRC customs purposes is not significant.

[338] See TTI Sales Verification Report, at verification exhibits 14 through 21.

[339] See Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China, 69 FR 34130 (June 18, 2004), and accompanying Issues and Decision Memorandum at Comment 2 (THFA Final).

[340] See TTI Sales Verification Report, at verification exhibits 6 and 14-21.

According to TTI, the petitioners conflate the granting of separate rates with a company's sales analysis.[341] TTI states that, despite the fact that the Department verified that TTI is not subject to de facto or de jure PRC government control, the petitioners are now attempting to attribute de facto control of TTI to TTI's suppliers. However, TTI maintains that there is no factual or legal basis for the petitioners' conclusion that this is so that simply because TTI is a trading company. TTI notes that the Department determined that its suppliers do not qualify for separate rates when acting as exporters themselves, but it cannot attribute its suppliers' (non-)separate rates status to TTI; rather, TTI's separate status is an independent determination which must be based on TTI's own facts.

Finally, TTI argues that the petitioners misstated the facts regarding TTI's operations and sales process. TTI states that it is not a sales agent/conduit for its PRC suppliers, as the petitioners claim, but an independent trading company engaged in the purchase and resale of HFCs.[342] According to TTI, it is the first entity to formalize a purchase order with the U.S. customer, and after doing so it finds a supplier to fill the order; thus, TTI controls and decides from whom it will purchase HFCs to fulfill the orders of its U.S. customers.[343] TTI argues, therefore, that because the PRC suppler neither approves nor directs the U.S. purchase order, it cannot be found to be in de facto control of TTI. Consequently, TTI asserts that the Department must find that the relevant sale for dumping purposes is between TTI and its U.S. customer.

Department's Position:

After considering the arguments and record evidence on this issue, we find that it is appropriate to treat both TT Dalian and TT Hong Kong as a single entity in this investigation. Not only do we find that the same individuals directly or indirectly control both TT Dalian and TT Hong Kong, and thus, the companies are affiliated within the meaning of section 771(33)(F) of the Act, but we also find that there is a significant potential for the manipulation of price or export decisions between them. Specifically, we find that TT Dalian and TT Hong Kong: 1) share common ownership; 2) have overlapping directors and managers; and 3) have significantly intertwined operations (i.e., shared staff, offices, and other sales and administrative functions. Because much of this discussion is proprietary, for further discussion of the Department's analysis, see Memorandum to Melissa G. Skinner, Director, AD/CVD Operations, Office II, from the Team, AD/CVD Operations, Office II, entitled "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Affiliation and Single Entity Status," dated June 21, 2016.

Further, because TT Dalian is located in the PRC, we consider the single entity TTI to be an NME entity. Under the Department's longstanding practice, the Department will not base export

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[341] See Foshan Shunde Yongjian Housewares & Hardware Co. v. United States, 33 Int'l Trade Rep. (BNA) 2123 (CIT 2011).

[342] See TTI's Initial Section A Questionnaire Response, dated September 25, 2015 (TTI's Section A Response), at 3-24.

[343] See TTI's Second Section A Supplemental Response; and TTI Sales Verification Report, at 5-7.

price on internal transactions between two companies located in the NME country.[344] Moreover, a producer's knowledge of the ultimate destination is an issue restricted in its application in NME cases because the knowledge test applies only to exporters that have dealings with entities outside of the NME country.[345] Therefore, we continue to find that TTI is the appropriate respondent in this investigation, and we have calculated a dumping margin using its data for purposes of the final determination.

Moreover, we disagree with the petitioners' contention that, by assigning TTI its own rate in this investigation, we are creating a conduit by which SOEs may obtain a separate rate without qualifying for one on their own merits. Record evidence shows that TTI neither is acting as an agent on behalf of its suppliers nor that TTI and its suppliers are affiliated, such that it would be appropriate to analyze whether TTI and its suppliers should be treated as a collapsed entity.[346] Rather, the record shows that TTI: 1) negotiates sales directly with its U.S. customers and then contacts its suppliers to fill customers' orders;[347] and 2) selects which of its suppliers to use based on which can ship the product the fastest.[348] Further, during the POI, not only did TTI source HFCs from seven different suppliers (including Taicang and Lantian Fluoro),[349] but also these suppliers sold HFCs to other exporters. For example, we note that record evidence indicates that Taicang and Lantian Fluoro supplied HFCs to Weitron, as well as exporting subject merchandise directly to unaffiliated U.S. customers themselves.[350] This fact weighs heavily against a finding that the SOEs are using TTI as a "conduit" to obtain a separate rate in this investigation.[351]

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[344] See Final Determination of Sales at Less Than Fair Value: Tetrahydrofurfuryl Alcohol From the People's Republic of China, 69 FR 34130 (June 18, 2004) (Tetrahydrofurfuryl Alcohol), and accompanying Issues and Decision Memorandum at Comment 2; see also Fresh Garlic from the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review, 62 Fed. Reg. 23758, 23759 (May 1, 1997).

[345] See, e.g., Tetrahydrofurfuryl Alcohol, at Comment 2 (stating that the knowledge test "is restricted with regard to NME cases since the Department does not base export price on internal transactions between two companies located in the NME country").

[346] For example, in SSSSC from Taiwan, the Department found affiliation because of a principal-agent relationship based largely on the following facts: 1) the existence of an agreement between the parties indicating that the one (Company B) was the "sole agent" for the supplier (Company A): and 2) Company B only sold subject merchandise produced by Company A. See Stainless Steel Sheet and Strip in Coils From Taiwan: Final Results and Rescission in Part of Antidumping Duty Administrative Review, 73 FR 6932 (February 6, 2008) (SSSSC from Taiwan), and accompanying Issues and Decision Memorandum at Comment 3. As discussed further below, because similar facts are not present here, we find no basis to determine that either Taicang or Lantian Fluoro currently have a principal-agent relationship with TTI.

[347] See TTI Sales Verification Report at 9.

[348] Id.

[349] See Preliminary Determination, 81 FR at 5099.

[350] See Taicang's SRA submission dated September 4, 2015, at 4; Lantian Fluoro's SRA submission dated September 4, 2015, at 4; and Weitron's SRA submission dated September 4, 2015, at 8.

[351] See section 771(33)(G) of the Act, which states that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

Similarly, we disagree with the petitioners that it is appropriate to make a prospective finding that if the Department treats TTI as a single entity, it may, in future segments of the proceeding, be controlled by their SOE suppliers and thereby circumvent any potential antidumping duty order issued in the case. As explained above, record evidence does not demonstrate that TTI is being used as a "conduit" for its SOE suppliers. We find the petitioners' argument that the treatment of TTI as a single entity would encourage circumvention unsupported by the record. The CAFC has held that "{s}peculation is not support for a finding."[352] Indeed, we note that, in light of the dumping margin calculated for TTI in this final determination, the petitioners' theory that TTI and its SOE suppliers will conspire to manipulate the dumping law to the advantage of the SOEs is unlikely.

It is also important to note that TTI is receiving an exporter/producer combination rate in this investigation and as a result, it is only TTI's sales of merchandise from specific, identified producers that will be subject to TTI's margin. If the petitioners find evidence in future segments of this proceeding to support and submit an allegation that TTI – or, indeed, any other PRC exporter receiving a separate rate – is circumventing the dumping law, we would examine any such allegations and act appropriately on them at that time.

Because TTI has met the separate rates criteria in this case,[353] and for the preceding reasons, we have continued to assign TTI and its NME suppliers separate combination rates for purposes of this final determination.

Comment 18: *VAT Paid by the Suppliers*

The Department's practice is to deduct from U.S. price the amount of VAT paid on the reported FOPs but not recovered upon the exportation of subject merchandise, in accordance with section 772(c)(2)(B) of the Act.[354] However, because TTI neither pays VAT on inputs nor collects any VAT refunds upon exportation of subject merchandise, we made no VAT adjustment to TTI's U.S. prices in the Preliminary Determination.[355]

The petitioners argue that the Department should make a VAT adjustment for TTI in the final determination. The petitioners argue that whether TTI paid VAT on inputs or recovered a VAT rebate does not address the purpose of a VAT rebate, which is a way to account for VAT paid on

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[352] See Asociacion Colombiana De Exportadores v. United States, 40 F. Supp. 2d 466 (CIT 1999), quoting Asociacion Colombiana de Exportadores de Flores v. United States, 13 CIT 13, 15, 704 F. Supp. 1114, 1117 (1989), aff'd, 901 F.2d 1089 (Fed.Cir.1990); and also holding that "{t}his type of conjecture is exactly the type of reasoning the substantial evidence standard aims to prevent, and is totally unsupported by substantial evidence." Id., quoting China National Arts and Crafts Import and Export Corp. v. United States, 15 CIT 417, 422, 771 F. Supp. 407, 412 (1991).

[353] See TTI's Section A Response, at 10 -21, showing that TTI's separate rates claim meets the criteria for the absence of de facto and de jure control; and the Preliminary Determination, 81 FR at 5099, showing the separate combination rates assigned to TTI and its suppliers. We note that no parties in this investigation have challenged the substance of our preliminary decision to assign TTI separate rates in this manner.

[354] 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).

[355] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 30.

the FOPs that is not included in the surrogate value analysis. Thus, the petitioners contend that if the full amount of such VAT is not rebated on export, NV will be understated.[356]

Furthermore, the petitioners argue that TTI's role as an export agent is not relevant to whether the Department makes a VAT adjustment. The petitioners contend that Taicang and other Chinese producers incur VAT in the course of producing subject merchandise,[357] and TTI's purchases from these suppliers are irrelevant to the determination of NV because the purchases are made in an NME. Therefore, the petitioners argue that because the Department must deduct VAT from the export value pursuant to the Department's methodology. According to the petitioners, the amount of this deduction should be either four or 17 percent (i.e., the maximum irrecoverable VAT percentage and the full VAT percentage paid, respectively). With regard to the latter percentage, the petitioners contend that there is no basis to assume that a 13 percent rebate (or, indeed, any) rebate was obtained on exportation.

According to TTI, the Department has consistently applied a specific methodology by which it adjusts for any unrefunded VAT for NMEs, in accordance with 772(c)(2)(B) of the Act. TTI argues that the Department's statement in the verification report that "TTI did not report these VAT refunds" is a factual mischaracterization. TTI contends that if the Department expected TTI to report VAT in its questionnaire response, given that it was not a producer, then it was incumbent upon the Department to clarify the record as to whether a VAT refund was received, who received it, and when it was received. TTI argues that it is unreasonable to presume that it should have reported a VAT refund that it did not incur.

Furthermore, TTI contends that the petitioners are mixing apples and oranges because the FOPs reported by TTI and its unaffiliated suppliers were reported inclusive of VAT. Therefore, TTI asserts that the Department should follow its precedent and practice as addressed in the Preliminary Determination. Notwithstanding, TTI argues that, if the Department decides to adjust U.S. price for VAT, the only reasonable method by which the Department could adjust for the VAT refunds received by TTI's suppliers upon export is to apply the standard adjustment of four percent.[358]

Department's Position:

As noted above, in 2012, the Department announced a change of methodology with respect to the calculation of U.S. price to include an adjustment of any irrecoverable VAT in certain NME countries in accordance with section 772(c)(2)(B) of the Act.[359] The Department explained that when an NME government imposes 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 U.S. prices accordingly, by the amount of the tax,

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[356] See Section 772(c)(2)(B) of the Act; see also, 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) (Methodological Change).

[357] See Taicang FOP Verification Report, at 17, 20, and 25.

[358] See Methodological Change, 77 FR 36481.

[359] Id., 77 FR 36481.

duty or charge paid, but not rebated.[360] Where the irrecoverable VAT is a fixed percentage of U.S. price, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[361]

The Department's methodology, as explained above and applied in this investigation, incorporates two basic steps: 1) determine the irrecoverable VAT on subject merchandise, and 2) reduce U.S. price by the amount determined in step one. Information placed on the record of this investigation indicates that according to the PRC VAT schedule, the standard VAT levy is 17 percent and the rebate rate for the merchandise under consideration is 13 percent.[362] Although record evidence indicates that TTI neither pays VAT on inputs nor collects any VAT refunds upon exportation of subject merchandise,[363] we reconsidered our position on this issue and are now adjusting the U.S. price to account for VAT paid by the Chinese suppliers, pursuant to section 776(a)(1) of the Act.

We disagree with TTI that it would be inappropriate to deduct VAT because this amount is already included in the reported FOPs. While irrecoverable VAT may indeed be included in the purchase prices paid by TTI to its suppliers, the Department does not use these prices in its analysis because they are prices between two NME entities; instead, the Department values the suppliers' FOPs using surrogate values.

With respect to the amount of the irrecoverable VAT adjustment, we agree that with TTI that the Department did not collect the VAT payment rate and export refund rate information from TTI's suppliers of subject merchandise from the PRC. However, information on the record supports the amount of irrecoverable VAT that the suppliers would have incurred on exports of the subject merchandise from the PRC, [364,365] which in this case is four percent, as facts otherwise available. Regardless of whether TTI or its supplier incurred irrecoverable VAT, the record evidence indicates that the irrevocable VAT on this merchandise was four percent and, as a result, four percent of the VAT was included in the price to the ultimate customer.[366] Consequently, and consistent with the Department's 2012 change in VAT methodology, U.S. price must be reduced by this amount.

Comment 19: *Movement Expenses Paid by the Suppliers*

The petitioners argue that the Department discovered during verification that TTI's suppliers pay foreign brokerage and warehousing expenses on behalf of TTI, and then TTI reimburses the

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[360] Id.; 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.A (Chlorinated Isos).

[361] Id.

[362] See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 30.

[363] See TTI Section C Response, at 39.

[365] See TTI Sales Verification Report, at 2.

[365] See TTI Sales Verification Report, at 2.

[366] See Dongyue Section C Response, at 31.

suppliers for these expenses as part of the purchase price.[367] The petitioners note that TTI did not report foreign brokerage and warehousing expenses in its U.S. sales listing, and they argue that these adjustments should be made pursuant to section 772(c)(2) of the Act.

TTI claims that it misinterpreted the Department's instructions and did not report foreign brokerage and foreign warehousing expenses as a result. TTI argues that, if the Department decides to adjust for these expenses, it should assign the surrogate value of $0.030666667 per km/per kg used for domestic brokerage in the preliminary determination.[368]

Department's Position:

We agree that the Department should adjust the export price to account for foreign brokerage and warehousing paid by the NME supplier because these are expenses incurred in connection with the exportation of subject merchandise to the United States.[369] We valued the unreported brokerage expenses using the surrogate value for domestic brokerage used in the Preliminary Determination. As for warehousing expenses, however, there is no surrogate value submitted by parties on the record because these expenses were discovered at verification (i.e., after the deadline for the submission of new factual information). Therefore, we are also assigning the surrogate value used for domestic brokerage for warehousing expenses, pursuant to section 776(a)(1) of the Act.

Comment 20: *Selling Expenses Incurred By TT Hong Kong*

The petitioners argue that verification revealed certain unreported expenses associated with the export sales made by TT Hong Kong to the United States. According to the petitioners, these expenses should be deducted from the export value because they are on TT Hong Kong's books and relate to exports based on the manner in which TTI functions. Moreover, because these expenses were not included as adjustments to the U.S. price in TTI's response and it is not possible to make a sale-by-sale adjustment, the petitioners argue that the Department should calculate the ratio of the total selling expenses incurred by TT Hong Kong to the total U.S. sales. Finally, the petitioners argue that the ratio can then be applied to calculate a deduction from TTI's export values.

TTI contends that the petitioners' argument is without merit. TTI argues that the expenses relating to heels and discounts have already been accounted for in its responses, while the Department has accounted for any indirect selling expenses as part of its surrogate SG&A ratio.

Department's Position:

We agree with TTI. TTI reported the movement expenses incurred by TT Hong Kong, as well as "heel" [370] credits and discounts, in its sales listing.[371] Moreover, we note that any remaining TT

[367] See TTI Sales Verification Report, at 19.

[368] See Memorandum to The File, from Manuel Rey, Analyst, AD/CVD Operations, Office II, entitled Surrogate Value Memorandum for the Preliminary Determination of the Antidumping Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China, dated January 21, 2016, at Exhibit 10.

[369] See Section 772(c)(2) of the Act.

[370] See TTI Sales Verification Report, at 15.

Hong Kong selling expenses are accounted for in the surrogate value ratio for SG&A since this is a NME proceeding. Therefore, we find that any additional adjustment in our calculations relating to this issue is unnecessary.

Comment 21: *Freight Expenses Paid to a Non-Market Economy Provider*

In the Preliminary Determination, the Department treated TTI's international freight as a market economy purchase from a market economy supplier because TTI reported it as such. However, the petitioners note that the Department found at verification that a Chinese freight forwarder made the shipping arrangements for TTI's U.S. sales.[372] According to the petitioners, these transactions should be considered NME transactions because of the involvement of the Chinese freight forwarder. Thus, the petitioners argue that the Department should apply a surrogate value for the international freight expenses.

TTI argues that it demonstrated that it incurred international freight in market economy dollars from a market economy carrier. Furthermore, TTI contends that the Department's questionnaire does not state that the freight forwarder must also be a market economy freight forwarder or that payment should be directly paid to the foreign carrier.[373] Therefore, TTI argues that the Department should not act in contravention to the stated instructions in the Department's questionnaire.

Department's Position:

In TTI's questionnaire response, TTI reported international freight incurred in U.S. dollars.[374] At TTI's sales verification, we noted that TTI used a Chinese (i.e., NME) freight forwarder to make the shipping arrangements for TTI's U.S. sales. However, despite our request, the freight forwarder was unable to demonstrate that the services were performed by a market economy entity. Specifically, the TTI Sales Verification Report states:

> We noted that TTI used a Chinese freight forwarder to arrange for its ocean freight shipments. See, e.g., verification exhibit 18. Company officials stated that they considered these to be market economy transactions because the carriers themselves are market economy companies and the payments are in U.S. dollars. . . We noted that TTI was charged a single amount by its Chinese freight forwarder for observation number 86. However, TTI reported these expenses in three fields: international freight, U.S. inland freight, and other freight expenses (which include loading, unloading, and demurrage charges). Company officials stated that these expenses were split using a document prepared by the Chinese freight forwarder. We requested that TTI demonstrate that each of the components of the calculation was performed by a market economy entity. However, although the

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[371] "Heels" are the amount of gas left in an Isotank when it is returned to the manufacturer. Id.

[372] See TTI Sales Verification Report, at 3.

[373] See TTI's Initial Section C Questionnaire Response, dated October 13, 2015 (TTI's Section C Response), at C-15.

[374] Id.

company officials contacted the freight forwarder, they were unable to provide additional documentation because the forwarder was on a business trip.[375]

It is the Department's practice, where services are provided by an NME vendor or paid for using an NME currency, to base the deduction of these movement charges on surrogate values.[376] In this case, the Department has not used TTI's reported market economy international freight expenses because TTI was unable to provide evidence of the purchase price between the freight forwarder located in the PRC and the market economy service providers, nor was it able to demonstrate that the components of the calculation were, in fact, performed by market economy entities. It is the Department's practice to require a respondent to establish a link between payments to the market economy carrier through the market economy ocean freight carrier's PRC agent.[377]

Therefore, because a surrogate value is not on the record for ocean freight, we are using the amount reported by TTI in its questionnaire response as facts available, pursuant to section 776(a)(1) of the Act.[378] We note that, unless the above conditions are met, we will require expenses paid to an NME freight forwarder to be reported as NME transactions in future segments of the proceeding, and we will value them using a surrogate value.

Comment 22: *Zip Codes Used in the Differential Pricing Analysis*

In the Preliminary Determination, the Department accepted TTI's reported zip codes when determining the geographical region of the sale used in the differential pricing analysis, and TTI argues that the Department should continue to do so for purposes of the final determination. According to TTI, it reported the zip codes corresponding to the actual delivery location as instructed in the Department's questionnaire.[379] Because the region is a function of the place of delivery, TTI argues that it is inconsistent with the Department's practice to define the region based upon the customer's corporate office address which may or may not be located where the ultimate delivery is made.

No other party commented on this issue.

Department's Position:

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[375] See TTI Sales Verification Report, at 19.

[376] See Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results, Partial Rescission, Extension of Time Limits for the Final Results, and Intent To Revoke, in Part, of the Sixth Antidumping Duty Administrative Review, 77 FR 12801, 12806-7 (March 2, 2012) (PRC Shrimp), unchanged in Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012).

[377] See, e.g., PRC Shrimp, 77 FR 1207; and Wire Decking From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32905 (June 10, 2010), and accompanying Issues and Decision Memorandum at Comment 6.

[378] See TTI's Section C Response, at 2-3.

[379] See TTI Initial Questionnaire Response, at C-18.

We disagree with TTI and have modified the zip code based on our findings at verification.

The Department's questionnaire instructs respondents to report the zip code of the delivery location.[380] As noted in the TTI Sales Verification Report, TTI reported the zip code for the delivery location where known;[381] however, TTI admitted that it had reported the zip code of the port of entry for particular categories of sales (e.g., certain sales with sales terms of freight on board (FOB) or cost, insurance, and freight (CIF)).[382] Because these zip codes do not correspond to the customer's delivery location, we used the customer's billing zip code as facts otherwise available under section 776 of the Act for these sales, using the information provided by TTI at verification.

Comment 23: *FOPs Reported Based on the Accounting or Calendar Month*

At verification, we noted that Taicang reported its FOPs based on the company's accounting month, which runs from approximately the 26th of each month to the 25th of the following month, instead of the calendar month.[383] Because we found that this timing difference impacted the reported FOPs, we raised the issue in our verification report as to whether we should adjust Taicang's information for purposes of the final determination.[384]

TTI argues that this timing difference does not result in any meaningful distortions to the reported FOPs, and, thus, the Department should accept its information without adjustment. TTI maintains that the Department does not modify or disregard costs used in the normal course of business unless there is a proven distortion of costs, noting that section 773(f)(1)(A) of the Act states, "{c}osts shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country . . . and reasonably reflect the costs associated with the production and sale of the merchandise."[385] TTI contends that Taicang's reported FOPs were verified and an accurate reflection of Taicang's production experience in the normal course of business. Moreover, TTI asserts that the Department's analysis is not based on a standard of

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[380] Id.

[381] Specifically, the TTI Sales Verification Report, at 2-3 states:

> We found that TTI reported the zip code of the port of entry, instead of the customer's address, for some sales. Company officials stated that, where the delivery location was known, they used the zip code associated with the delivery location specified by the customer; however, in cases where TTI did not have a specific delivery address (such as for sales with free on board (FOB) or cost, insurance, and freight (CIF) terms), TTI used the zip code at the port of entry. Company officials stated that they believed this reporting methodology to be consistent with the instructions in the questionnaire. At our request, TTI provided a list of customer addresses and zip codes. It may be more appropriate to use this alternate information in our final analysis.

[382] See TTI Sales Verification Report, at 2.

[383] See Taicang FOP Verification Report, at 2.

[384] Id.

[385] See section 773(f)(1)(A) of the Act.

perfection but rather a standard of reasonableness.[386] Therefore, TTI argues that the Department should not make any adjustments to the reported FOPs.

The petitioners argue that Taicang's costs should be adjusted to the POI in accordance with the results of verification. The petitioners contend that TTI does not dispute that Taicang reported FOPs for a slightly different period, and the Department's analysis showed Taicang understated the actual FOP. At a minimum, the petitioners argue that the Department should at least increase usage rates for raw materials in accordance with the findings at verification.

Department's Position:

In this final determination, we are adjusting Taicang's FOP data based on our findings at verification. Our verification report states:

> We found that Taicang reported its factors of production (FOPs) based on the company's accounting month, which runs from approximately the 26th of each month to the 25th of the following month, instead of the calendar month (i.e., the basis for the POI). At our request, Taicang prepared a worksheet showing how the timing difference impacted the FOPs reported for its four most significant factors, anhydrous hydrogen fluoride (AHF), perchloroethylene (PCE), R-32, and hydrochloric acid (HCL). This worksheet shows that the POI consumption figures would be less than one percent higher for each of the inputs, and [***] percent higher for HCL. It may be appropriate to adjust the reported FOPs based on these results.

While these adjustments individually are indeed small, three of the four of them do not meet the threshold set forth in 19 CFR 351.413 for individual adjustments to be disregarded.[387] Further, because this regulation does not require the Department to disregard insignificant adjustments, but merely permits it to do so, we also made the fourth adjustment as well given that the information was verified as accurate.

We disagree with TTI that the Department is required to accept Taicang's cost reporting methodology in accordance with section 773(f)(1) of the Act, despite the fact that there is more accurate, and verified, POI information on the record of this case. Therefore, we adjusted the four FOPs examined at verification to account for the observed differences between its accounting periods and the calendar months.

Comment 24: *FOP for Catalyst*

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[386] See Nippon II, 337 F.3d, at 1382.

[387] See 19 CFR 351.413. Groups of insignificant adjustments are only disregarded under this regulation if they are "adjustments for differences in circumstances of sale under § 351.410, adjustments for differences in the physical characteristics of the merchandise under § 351.411, and adjustments for differences in the levels of trade under § 351.412. See 19 CFR 351.413.

As noted in Comment 16, the petitioners argue that Taicang incorrectly reported an amortized amount determined by the useful life of the catalyst rate, instead of basing the FOP on the actual consumption during the POI.

TTI maintains that the catalyst is not incorporated into the final product, but rather is installed in the production equipment for up two years to assist with the chemical reaction of the production process.[388] Further, TTI contends that the consumption of catalyst cannot be quantified like material inputs and is instead expensed by Taicang in its accounting records like a piece of equipment. Therefore, TTI contends that the Department should reconsider its treatment of catalyst as a direct material input and instead classify it as overhead for the final determination.

Department's Position:

We disagree with the petitioners that it was incumbent on Taicang to report the usage of catalyst based on the actual consumption. In the Taicang FOP verification report, we stated:

> With respect to catalyst, company officials stated that the FOP reported for this material is not based on actual consumption, but instead is an amortized amount determined using the useful life of the catalyst. Company officials stated that, in Taicang's experience, the catalyst has a useful life of approximately two years, or 40,000 MT of production of R-125. Company officials stated that, after the two-year/40,000 MT point, the catalyst begins introducing impurities into the process and Taicang replaces it. Furthermore, company officials explained that Taicang does not separately calculate the cost of yield loss, and it records all material consumption in its production costs. [389]

The Taicang FOP verification report further states, "Taicang bases its catalyst cost on monthly depreciation and it records this cost as part of the cost for R-125."[390] Therefore, it is clear from verification that Taicang could not report the actual consumption of catalyst used in the production of subject merchandise as suggested by the petitioners.

Regarding TTI's argument that catalyst should be treated as overhead, we disagree. As noted in our surrogate value memorandum and in Comment 25, below, the overhead ratios used in our calculations only consist of depreciation.[391] However, at verification, we found that Taicang records the cost associated with catalyst as part of the direct cost for intermediate products (albeit on an amortized basis).[392] Given that Taicang does not record its cost of catalyst as depreciation in its own books and records, we find no basis for concluding that the surrogate producers would

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[388] TTI originally did not report catalyst as a FOP but argued in its response that catalyst is treated as an overhead expense. See TTI's Initial Section D Questionnaire Response (for Sinochem Lantian Co. Ltd.), dated October 19, 2015 (TTI's Section D Response), at 3.

[389] See Taicang FOP Verification Report, at 10.

[390] Id., at 9. We note that this report should have used the word "amortization," not "depreciation" here.

[391] See Surrogate Value Memorandum, at Exhibit 11.

[392] See Taicang FOP Verification Report, at 9.

treat similar direct costs as depreciation either. Therefore, we continued to use the per-unit amount reported for catalyst in our FOP calculation, pursuant to section 773(c)(3) of the Act.

Comment 25: *Energy FOPs*

At verification conducted at Taicang, one of TTI's suppliers, the Department noted that Taicang did not report the energy consumed in certain of its workshops which related to overhead activities. The petitioners argue that Taicang significantly underreported electricity, steam and water usage rates by failing to report the energy consumed in these workshops, and, thus, the Department should adjust Taicang's energy FOPs in the final determination to account for the unreported information.[393]

In particular, the petitioners cite to section 773(c)(3)(C) of the Act, which states that the FOPs should include "amounts of energy and other utilities consumed." The petitioners argue that, because only depreciation is included in the overhead ratios used by the Department and there is no electricity is included. Therefore, the petitioners argue that the FOPs reported by Taicang should be adjusted to reflect all electricity, steam and water usage, whether or not it is directly related to production.

TTI disagrees, arguing that, in its verification report, the Department incorrectly noted that Taicang subtracted electricity, water, and steam for certain types of production-related overhead activities (tank yard, filling station) not tied to specific products from the reported energy FOPs.[394] Rather, TTI argues that these expenses had been reallocated based on the relative energy consumption and included in the calculation of energy FOPs, and the Department described this exact step of the energy consumption calculations at pages 12 through 13 in the Taicang FOP Verification Report.[395] Further, TTI asserts that this description is consistent with Taicang's detailed calculation worksheets in its Section D Response at Exhibit DS-48. Therefore, TTI contends that the suggested recalculation of the energy amounts provided in Attachment I of the Taicang FOP Verification Report would constitute double counting.

TTI argues that the Department should not make an upward adjustment to energy for non-production related energy consumed for the following reasons: 1) the Department's AD Manual clearly states that factory overhead includes energy that is not significant enough to be valued separately; and 2) it is an accepted accounting principle that costs not directly related to the acquisition or production of goods are considered period costs which may be captured in SG&A expenses (including, possibly, in the line item 'Other' in Mexichem's SG&A expenses).[396] Therefore, TTI argues that the Department should not penalize TTI and Taicang by double-counting a cost that is already captured.

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[393] Id., at 13-14.

[394] Id. at 14; and TTI's brief, at Attachment 1.

[395] See Taicang FOP Verification Report, at 5-7 and verification exhibit 18.

[396] TTI contends that CYDSA's financial statements do not indicate what expenses are included in SG&A and that it would be wrong for the Department to assume that any non-production energy costs would not be included in SG&A.

The petitioners argue that Taicang incurred non-production-related energy consumption with respect to overhead and packing operations, and this consumption should not be classified as SG&A expense. The petitioners contend that the unreported energy costs consisted of electricity consumed in the "tank yard and the filling station" and energy related to "overhead and packing." Moreover, the petitioners argue that there is no debate that the surrogate company overhead ratios consist entirely of depreciation. Therefore, the petitioners contend that there would be no double-counting of energy costs included in Taicang's overhead cost pursuant to section 773(c)(3)(C) of the Act. Finally, the petitioners argue that TTI did not identify any precedent for treating electricity costs incurred in the tank yard or in the packing operation as SG&A.

Department's Position:

We agree with both parties, in part, and are adjusting the FOPs for electricity, water, and steam based on our findings at verification. As noted in our surrogate value memorandum and pointed out by the petitioners, the overhead ratios used in our calculations only consist of depreciation; thus, the overhead ratios do not include electricity, water, or steam.[397] Although TTI claims that these costs may be included in SG&A, we disagree that there is any basis for this conclusion. For example, none of Mexichem's SG&A expenses detailed in its financial statements relates to energy.[398]

Therefore, we adjusted the reported electricity, water, and steam FOPs, in order to fully capture the quantity of these inputs used by Taicang in the production of subject merchandise during the POI, pursuant to section 773(c)(3)(C) of the Act. However, after reviewing the calculations set out in the Taicang FOP Verification Report, we found that our original calculation had, in fact, double counted certain expenses, as alleged by TTI. As a result, we are only adjusting the reported electricity, water, and steam for the energy relating to certain non-production cost centers.[399]

Comment 26: *Granting a By-Product Offset for HCL and HF*

In the preliminary determination, the Department granted TTI offsets to NV for two by-products, HCL and hydrofluoric acid (HF). The petitioners argue that the Department should deny TTI's offset for HCL altogether in light of the following facts discovered during the verification at Taicang: 1) Taicang failed to adequately account for the cost of water associated with

[397] See Memorandum to The File, from Manuel Rey, Analyst, AD/CVD Operations, Office II, entitled "Surrogate Value Memorandum for the Preliminary Determination of the Antidumping Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated January 21, 2016, at Exhibit 11 (Surrogate Value Memorandum).

[398] Id.

[399] For further discussion, see Memorandum to the File from Dennis McClure, Senior Analyst, entitled "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Analysis Memo for T.T. International Co., Ltd.," dated June 21, 2016 (TTI Final Analysis Memo).

recovering HCL, despite the clear instruction that it do so[400] in accordance with Department's practice[401]; and 2) Taicang included second-quality HCL in its offset claim. At a minimum, the petitioners maintain that the Department should reduce TTI's offset by the value of water used in recovering HCL.

Regarding HF, the petitioners do not argue that the FOP for HF should be disallowed. However, they note that Taicang reported this by-product based on the production of both R-125 and R-134a, a non-subject product.[402] According to the petitioners, the Department should modify Taicang's reported data to remedy this error.

TTI disagrees, arguing that the Department's practice is to grant offsets for by-products which result from the final stage as well as from intermediate stages of production[403] as long as they have commercial value.[404] TTI contends that it is eligible for an offset because it has substantiated, both in its submissions and at verification, that HCL and HF are: 1) generated are from the production of subject merchandise and have commercial value; and 2) properly treated as by-products, instead of co-products.[405]

With respect to the water used to produce HCL, TTI also disagrees that any adjustment is appropriate, given that: 1) Taicang included all of its water consumption in the FOPs reported for R-125, consistent with the fact that it does not track the quantity of water used to produce HCL; 2) the addition of water is not further processing but a minor finishing step to convert HCL into liquid form and obtain "industrial" grade product; and 3) TTI disclosed both facts in a supplemental response. Nonetheless, TTI contends that, if the Department adjusts the FOP for HCL for water, it should: 1) reduce the water FOP for R-125 by the estimated amount related to the recovery of HCL, as provided at verification; and 2) deduct from the calculated value of HCL the cost of water consumed to convert HCL into liquid form.

Moreover, with respect to second quality HCL, TTI maintains that the Department's practice is "to grant an offset for by-products generated during the production of the merchandise under consideration if evidence is provided that such by-product has commercial value."[406] TTI notes that the Department verified both the production quantity of this second quality material, as well

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[400] See TTI's Second Section D Supplemental Response, dated December 2, 2015, at Exhibit DS-29. The petitioners maintain that, although the specific question was directed at a different supplier, it is clear from the question and response that the Department expected TTI to report additional processing performed by all of its suppliers.

[401] See Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 80 FR 4539 (January 28, 2015), and accompanying Issues and Decision Memorandum at Comment 4B (Chlorinated Isos 2015).

[402] See, e.g., Taicang FOP Verification Report, at 26.

[403] See Certain Preserved Mushrooms from the People's Republic of China: Preliminary Results and Partial Rescission of Fifth Antidumping Duty Administrative Review, 70 FR 10965, 10976 (March 7, 2005).

[404] See, Citric Acid and Certain Citrate Salts from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2011-2012 Antidumping Duty Administrative Review, 79 FR 101 (January 2, 2014), and accompanying Issues and Decision Memorandum at Comment 5.

[405] See Taicang FOP Verification Report, at 2, 3, 18-27, and verification exhibits 1 and 8 to 15.

[406] See Tetrafluoroethane from the PRC, at Comment 4.

as the sales value of it, and, as a result, TTI has satisfied the Department's criteria and should receive a by-product offset for this second quality material.

Finally, regarding HF, TTI points out that the petitioners ignored the Department's verification findings, including the fact that the Department verified that Taicang stored HF generated from the production of R-125 and R-134a in the same tank.[407] TTI notes that it cannot report a product-specific HF by-product amount because the HF is comingled, and Taicang explained this fact to the Department at verification. As a result, TTI maintains that no adjustment should be made to Taicang's reported HF by-product offset.

Department's Position:

The Department's practice is to grant by-product offsets, as long as respondents demonstrate that the by-product was produced during the period under consideration and it has commercial value.[408] In this case, TTI demonstrated that Taicang's reported by-products were both produced and sold during the POI.[409] Therefore, we continued to grant TTI offsets for both HCL and HF for purposes of the final determination.[410]

We disagree with the petitioners that Taicang's treatment of water provides a basis to deny TTI's by-products claim for HCL. While Taicang does add water to the production process in order to extract HCL, it does not track the quantity of this added water in the ordinary course of business; rather, it treats water as part of the production process of R-125. Specifically, our verification report states:[411]

> Company officials stated that Taicang reported all water used in the production process for R-125 as an FOP. Therefore, we requested that Taicang separately split out the water used to produce HCL and water used in the production of R-125. However, company officials stated that Taicang does not track this information in the ordinary course of business. Company officials estimated that Taicang uses approximately [********] of its water to make HCL and [*******]

[407] See Taicang FOP Verification Report, at 22.

[408] See, e.g., Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 77 FR 54563 (September 5, 2012), and accompanying Issues and Decision Memorandum at Comment 3 (Silicon Metal).

[409] See Taicang FOP Verification Report, at 20-21 and 23-24 (Public Version).

[410] Regarding TTI's argument that both HCL and HF are by-products, not co-products, we disagree that the Department explicitly examined that issue at verification. For example, contrary to TTI's claim, it is not possible to draw a meaningful conclusion from the Taicang FOP Verification Report related to the relative sales value of HCL and R-125 because all values stated in the verification report are in Chinese currency. Further, the record in this case does not contain sufficient information to make a determination as to whether HCL and HF are by-products or co-products (e.g., it is lacking surrogate value information needed to determine the net realizable value for R-125, etc.). However, because no party to this proceeding has objected to the classification of HCL and HF as by-products, for purposes of the final determination, we are continuing to treat them as such. In subsequent segments of this proceeding, if this issue is raised, the Department intends to consider whether it is warranted for the Department to treat either HCL or HF as a co-product.

[411] See Taicang FOP Verification Report, at 26.

to cool down the equipment used in the production process of its main products. This estimate was based on the company's production experience.

We have accepted this treatment of water for purposes of the final determination because: 1) the record contains only estimated information related to the amount of water used to produce HCL, and, thus, we would be unable to make an accurate adjustment; and 2) the amount subtracted from the FOPs for R-125 and HCL are the same, and, thus, the impact on the calculation should be minimal.[412]

We also disagree that it would be appropriate to disregard the quantity of second-quality HCL in our calculation of the by-product offset. TTI demonstrated that it produced this product and sold it to customers in the PRC during the POI. Therefore, we continued to grant a by-product offset for it for purposes of the final determination.

Finally, we disagree that the reported HF by-product offset should be adjusted based on our findings at verification. At verification, we noted that Taicang stored HF generated from the production of R-125 and R-132a in the same tanks, and the company does not separately track HF by the source from which it came.[413] Because it is not possible to segregate the HF generated solely from the production of R-125, we did not adjust TTI's reported HF by-product offset in the final determination.

Comment 27: *Whether the By-Product Offset Should be Based on Sales or Production Quantity*

At verification, we found that Taicang separately tracks the quantity of HCL generated during the production of R-125 and R-134a; therefore, we requested that Taicang revise its calculations for HCL to base them on the production of R-125 alone.[414] The petitioners argue that the Department should not rely on this revised figure for two reasons: 1) it increases the by-product offset claim for Taicang; and 2) it is based on Taicang's production, rather than, sales quantity of HCL.

Regarding the first point, the petitioners note that Taicang originally reported a lower by-product offset, and they argue that verification should not be an opportunity for a respondent to revise submitted allocations in a manner that reduces NV.

Regarding the second point, the petitioners contend that the Department limits by-product offsets to by-products that have been sold, and the revenue has been recorded in a company's books and records.[415] The petitioners note that TTI's section D questionnaire response indicates that

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[412] Indeed, we note that it is conservative to use the unadjusted figure in our calculations because the value of the water forms part of the cost of manufacture, the base to which the financial ratios are applied.

[413] See Taicang FOP Verification Report, at 22 and verification exhibit 11.

[414] Id., at 20.

[415] See Guangdong Chemicals Imp. & Exp. Corp. v. United States, 30 CIT 1412, 1423-26, 460 F. Supp. 2d 1365, 1374-76 (CIT 2006) (affirming the use of a by-product credit to account for revenue received from the sale of a by-product); Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006), and

Taicang's parent company, Sinochem Lantian, produced a greater quantity of by-products than it sold.[416] Thus, the petitioners argue that the Department should base any by-product offset on the sales quantity because it is smaller, and also because Sinochem Lantian originally reported its HCL by-product offset on this basis.[417] Finally, although the petitioners assert that the Taicang FOP Verification Report contains sufficient information to adjust Taicang's calculation back to the sales quantity, they argue that this adjustment would not be appropriate for the reasons stated above (i.e., the resulting figure is higher than that originally reported). Therefore, the petitioners argue that the Department should use the originally-reported figures, to the extent it makes any HCL by-product adjustment at all.

TTI disagrees that the by-product offset should be limited to the amount of HCL sold by Taicang, not the amount produced. According to TTI, the Department's standards are that the by-product: 1) must be produced during the period under consideration; and 2) have commercial value.[418] Thus, TTI argues that some of the cases cited by the petitioners, such as Silicon Metal, serve to highlight the Department's practice. TTI argues that the other cases cited by the petitioners are not on point, because the cases relate to respondents that were unable to support the production or sales of the by-products.[419] TTI notes that the Department verified Taicang's production of HCL and that it made actual sales which were verified by the Department.[420] Thus, TTI maintains that it supported fully its HCL by-product offset claim.

Department's Position:

We disagree with the petitioners and have accepted Taicang's revised by-product offset claim based on production quantity, in accordance with our practice.[421]

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accompanying Issues and Decision Memorandum at Comment 11; Silicon Metal, at Comment 3; Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum at 87-88; Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 73 FR 76336 (December 16, 2008), and accompanying Issues and Decision Memorandum at Comment 8 (Pure Magnesium); Saccharin from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 7515 (February 13, 2006), and accompanying Issues and Decision Memorandum at Comment 2 (Saccharin); and Chlorinated Isos, at Comment 5B.

[416] See TTI's Section D Response, at 22.

[417] Id., at 23.

[418] See Silicon Metal, at Comment 3 (stating "the by-product offset is limited to the total production quantity of the byproduct … produced during the POR, so long as it is shown that the byproduct has commercial value.")

[419] See, e.g., Pure Magnesium, at Comment 8; and Saccharin, at Comment 2.

[420] See Taicang FOP Verification Report at 23, 25, and verification exhibit 11.

[421] See, e.g., Chlorinated Isocyanurates From the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Administrative Review and Notice of Amended Final Results of Administrative Review Pursuant to Court Decision, 76 FR 62776 (October 11, 2011) after remand redetermination (Arch Chemicals, Inc. and Hebei Jiheng Chemicals, Co., Ltd. v. United States and Clearon Corporation and Occidental Chemical Corporation, Court No. 08-00040: Final Results of Redetermination Pursuant To Remand, dated July 15, 2011 (Chlorinated Isos Remand Redetermination). In the Remand Redetermination, the Department stated:

> As Jiheng has placed evidence on the record that demonstrates it retains inventory for certain by-products produced during the POR, which can be sold at a later date, we find that it is most

Under the Department's practice, to be eligible for an offset, a respondent needs to provide and substantiate the quantity of by-products it generated from the production of subject merchandise during the POI, as well as demonstrate that the by-product has commercial value.[422] In considering a by-product offset, the Department examines whether the by-product was produced from the quantity of the FOPs reported and whether the respondent's production process for the merchandise under consideration actually generated the amount of the by-product claimed as an offset. Furthermore, the Department's practice ensures that a respondent does not receive a by-product offset for a product generated in the production of non-subject merchandise. Therefore, we continued to follow this methodology for the final determination, consistent with our general practice in NME proceedings before the Department.[423]

To that end, in this investigation, the Department requested that TTI "{p}rovide production records demonstrating production of each by-product/co-product during one month of the POR."[424] Furthermore, at the verification held at Taicang, Taicang provided a revised calculation to: 1) segregate the offset to HCL generated during the production of R-125; and 2) base the offset on Taicang's production quantity of HCL, in accordance with the Department's practice.[425] The Department verified Taicang's revised calculation and noted no discrepancies.[426] The fact that this revised calculation resulted in a higher by-product offset does not indicate that the calculation is not in accordance with the Department's practice.

Finally, we disagree with the petitioners that we should not accept such revisions to reported information at verification. Under certain circumstances, the Department may determine to accept information found at verification that a respondent incorrectly reported.[427] Because the record contains the verified information necessary for an accurate calculation, we used this

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> appropriate to use the current by-product offset methodology and grant Jiheng a by-product offset based on the quantities of by-products that it produced during the POR.

See Chlorinated Isos Remand Redetermination at 4.

[422] See Silicon Metal, at Comment 3.

[423] See, e.g., Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 74644 (December 17, 2012) (OCTG), and accompanying Issues and Decision Memorandum at Comment 2; Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 75992 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 17; and Silicon Metal, at Comment 3.

[424] See Silicon Metal, at Comment 3.

[425] See Chlorinated Isos Remand Redetermination at 4, stating that "the Department has granted a by-product offset based on production during the POR."

[426] See Taicang FOP Verification Report, at 18-27.

[427] See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 R 76916 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 11 (where the Department used an interest rate discovered at verification to calculate third country credit expenses); and Certain Uncoated Paper From Indonesia: Final Determination of Sales at Less Than Fair Value, 81 FR 3101 (January 20, 2016), and accompanying Issues and Decision Memorandum at Comment 3 (where the Department did not use rebate information obtained at verification because it was not complete enough to be useable).

revised HCL by-product offset information in our final determination margin calculations. Therefore, consistent with our practice, we have continued to grant a by-product offset where TTI demonstrated that its by-product was produced during the POI and has commercial value.

Comment 28: *Surrogate Value for HCL*

In the Preliminary Determination, we valued TTI's by-product HCL using GTA data for Mexican HTS category 280610. The petitioners agree that this classification is correct. However, they argue that the data in this HTS category for Mexico is aberrational, and, as a result, the Department's use of this data produced absurd results (i.e., the by-product offset is higher than the raw materials used to create it). Thus, the petitioners contend that, at a minimum, the Department should ensure that the value of HCL does not exceed the value of the underlying raw materials.[428]

The petitioners assert that the Department can avoid its absurd result altogether by using the GTA data for imports of HCL into Bulgaria or Romania. According to the petitioners, these data do not suffer from the same defects as the Mexico data, which include: 1) import quantities for particular shipments so low that they cannot be considered commercial quantities; and 2) various individual imports of high quality product. With respect to this latter point, the petitioners cite an analysis of Mexico import statistics provided in their comments submitted prior to the Preliminary Determination.[429] The petitioners assert that these statistics show that there is a substantial difference in price between full container loads (low) and sales in smaller lots (high), and many of the highest priced imports were "Ultrapur" HCL supplied by Merck. The petitioners further assert that the container-load shipments were priced at approximately one third of the non-container load shipments, and accounted for 92 percent of the import volume. Thus, the petitioners conclude that the very high prices for the non-container-load shipments distort the average price to such an extent that it is unusable.

TTI argues that the Department should continue to value HCL using Mexico GTA data. Regarding the petitioners' request that the Department cap the HCL value determined using these data, TTI argues that this request is unnecessary for two reasons: 1) the value of HCL computed in this manner in the Preliminary Determination was lower than the associated raw material costs for the main product; 2) the surrogate value for HCL is lower than the average surrogate values of TTI's raw material inputs (i.e., the comparison used in Glycine to determine if capping was appropriate, a variant of which was applied in Tires).

According to TTI, there is no valid reason to change the source country for the HCL surrogate value. TTI notes that that, where appropriate, the Department caps the surrogate value from the primary surrogate country instead of disregarding it altogether. Further, TTI asserts that the petitioners have ignored the Department's practice, which is to not analyze whether particular

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[428] See, e.g., Gylcine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014, 80 FR 62027 (October 15, 2015)(Glycine), and accompanying Issues and Decision Memorandum at Comment 3 (citing Tires, at Comment 20).

[429] See Letter from the petitioners, "Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Preliminary Determination Comments and Submission of Factual Information," December 22, 2015, at Exhibit 7A (Petitioners' Surrogate Value Rebuttal Comments).

surrogate values are distortive based solely on the volume of imports in question.[430] Indeed, TTI notes that the Department often finds that small quantities alone are not inherently distortive.[431] Further, TTI maintains there is no evidence that the Mexican import volume is not commercially viable, especially since the Department has found that a volume of four metric tons was not small enough to be distortive.[432]

TTI claims that the Mexico HCL average unit value (AUV) is also not aberrational, given that it falls with the range of the data from the six potential surrogate countries, and, thus, it is reasonable when viewed in the context of that data. TTI disagrees that it is appropriate to reject the GTA data in favor of a calculation based on proprietary data, especially since this calculation would involve "cherry picking" import data based on an arbitrary division between "full" and "less-than-full" container loads. According to TTI, the Department's well-known preference is to rely on GTA data because it is publicly available, represents a broad market average, and is tax and duty exclusion. TTI maintains that, because the Mexico GTA data for HCL are all of these things, the Department should continue to use these data for purposes of the final determination.

Department's Position:

We continued to rely on GTA data from Mexico to calculate the surrogate value for HCL. As previously noted, we selected Mexico as the primary surrogate country. For this final determination, we continued to value HCL using Mexican import data, in accordance with 19 CFR 351.408(c)(2), and consistent with our practice of normally valuing all factors using a single country.[433] The petitioners have not challenged our selection of Mexico as the primary surrogate country.[434]

As stated in our Preliminary Determination, the Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POI, and exclusive of taxes and duties.[435] In this case, the Mexico import data meet all of these criteria.

In testing the reliability of surrogate values alleged to be aberrational, or in this case, surrogate values which produce an unreasonable result, the Department applies certain criteria in making

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[430] See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping DutyAdministrative Review, 2012-2013, 79 FR 57047 (September 24, 2014) (Vietnam Shrimp) and accompanying Issues and Decision Memorandum at Comment 7.

[431] Id.

[432] 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), and accompanying Issues and Decision Memorandum at Comment 4.

[433] See Clearon Corp. v. United States, Court No. 08-364, Slip Op. 13-22 at 12-14 (CIT 2013) (upholding the Department's regulatory preference for a single surrogate country).

[434] See Preliminary Results, and accompanying Preliminary Decision Memorandum at 9.

[435] See, e.g., Preliminary Determination, and accompanying Preliminary Decision Memorandum at 31.

its decision. First, the Department's current practice is to compare the surrogate values in question to the GTA average unit values (AUVs) calculated for the same period using data from the other potential surrogate countries on the Surrogate Country List, to the extent that such data are available.[436]

In this investigation, the petitioners argue that the Mexico data are inappropriate for four reasons: 1) using these data produces absurd results because the value of HCL in some cases may exceed the value of the underlying raw materials; 2) total Mexico imports amounted to only 536 tons; 3) import data provided by the petitioners prior to the Preliminary Determination show certain individual import quantities to be so low (i.e., less than a container load) that they cannot be considered commercial quantities;[437] and 4) the same data show imports of high quality imported product (i.e., "Ultrapur" HCL supplied by Merck).[438] After evaluating the data on the record in light of our practice, however, we disagree that the HCL GTA data relied upon in the Preliminary Determination are aberrational, and, thus, we continued to use these data in our final determination.

With regard to the petitioners' argument that total Mexico imports of HCL are small, we disagree that the mere fact that the quantity of imports into Mexico is lower than imports into some of the other potential surrogate countries demonstrates that the data themselves are somehow flawed. The quantity of these imports falls within the range of the import volumes from these other countries, as does the AUV.[439] Thus, we find no reason to find that the volume of import data into Mexico, or the AUV of that data, are in and of themselves distorted, unreliable, or aberrational.[440]

With regard to the petitioners' arguments that individual imports within the Mexico GTA data are skewed, either because the quantities are too low to be full container loads or the prices are

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[436] See, e.g., PRC Shrimp, 77 FR 12807; Carbazole Violet Pigment 23 from the People's Republic of China: Final Results of Antidumping Administrative Review, 75 FR 36630 (June 28, 2010), and accompanying Issues and Decision Memorandum at Comment 4; and Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 5.

[437] See Petitioners' Surrogate Value Rebuttal Comments, at Exhibit 7A.

[438] Id.

[439] See Petitioners' Surrogate Value Rebuttal Comments, at 10.

[440] See Certain Activated Carbon From the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review, 77 FR 67337 (November 9, 2012), and accompanying Issues and Decision Memorandum at Comment 1, finding GTA import data less than three times greater than the simple average of other values on the record to be non-aberrational, and citing Steel Wire Rope (where the Department stated that it would determine whether unit values are aberrational if they are many times higher than the import values from other countries) and Fish from Vietnam (where the Department found the surrogate values for labels to be aberrational where the AUVs varied between 30 and 79 times greater than the average of the rest of the import data). See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rope From India and the People's Republic of China; Notice of Final Determinations of Sales at Not Less Than Fair Value: Steel Wire Rope from Malaysia, 66 FR 12759 (February 28, 2001), and accompanying Issues and Decision Memorandum for the People's Republic of China at Comments 1 and 6 (Steel Wire Rope); and Final Results of Redetermination Pursuant to Catfish Farmers of America v. United States, Consol. Court No. 08-00111, Slip Op. 09-96, (September 14, 2009), dated December 10, 2009, at 4-7 (Fish from Vietnam).

too high because of the possible purity level, we also disagree that the information provided by the petitioners call into question the overall reliability of the data. When analyzing whether imports were made in commercial quantities, the Department's practice is to make such a determination for all imports from the country as a whole, not on an individual shipment basis.[441] Further, we note that the total quantity and value of the petitioners' information is similar, but different (i.e., slightly larger) than the quantity reported in the GTA data; thus, it is not certain that it covers the same universe of imports.[442]

Regarding the data themselves, we note that only two of the line items in the petitioners' information relate to "Ultrapur" HCL, and an additional six relate to "Suprapur" (out of just under 200 line items). However, in each of these instances, the concentration level of the HCL is approximately the same as the concentration level of the HCL sold by TTI's supplier Taicang in the ordinary course of business. Thus, we disagree that the petitioners' data raises questions related to the specificity of the Mexican GTA data or that the use of pricing information based on these data is necessarily distortive.

In any event, there is no evidence on the record of this proceeding concerning how this HTS category of imports for Bulgaria or Romania would be materially different than the exact same HTS category of imports from Mexico that the petitioners suggest we use. Thus, even if the Department were to find the data useful to our analysis, because the petitioners did not provide similar import statistics from other countries, there is no assurance that the same import patterns – or different patterns, but equally troubling to the petitioners – did not exist in those countries. Consequently, for the foregoing reasons, we have continued to value HCL using Mexico GTA data for purposes of the final determination.

Finally, we agree with the petitioners that it would be inappropriate to grant TTI a by-product offset for HCL that exceeds its cost of materials. However, we have examined the calculations performed for the final determination and found that, in all cases, TTI's by-product offset was lower than its costs. Thus, we find that no further adjustment to TTI's HCL by-product offset is necessary.

Comment 29: *Surrogate Value for AHF*

In the Preliminary Determination, we valued AHF using GTA data under Mexican HTS category 2811.11.01("hydrogen fluoride (hydrofluoric acid), technical grade"). TTI argues that the

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[441] See, e.g., Chlorinated Isocyanurates from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 4386 (January 22, 2013), and accompanying Issues and Decision Memorandum at Comment 7 (finding that, because the volume of imports of liquid chlorine for the Philippines exceeded 1,000 metric tons, it was imported into the Philippines in commercial quantities during the period under review); and Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Administrative Review; 2011-2012, 78 FR 56209 (September 12, 2013), and accompanying Issues and Decision Memorandum at Comment 4 (finding that a quantity of four metric tons was not so small that it resulted in a distorted AUV).

[442] For example, many of the line items over which the petitioners have expressed concern (i.e., those involving small quantities and/or made by Merck) may be in the petitioners' information, but not in the GTA data. Thus, the extent to which the petitioners' concerns are relevant is unclear.

Department should instead have used AHF using HTS category 2811.11.99 (i.e., "hydrogen fluoride (hydrofluoric acid), other") because the products in this category are more similar to the AHF used by TTI's unaffiliated supplier Taicang. [443]

Specifically, TTI claims that the AHF Taicang used is materially and chemically different from technical grade hydrofluoric acid (HF). TTI states that Taicang uses AHF, which is HF not in an aqueous solution, and has a concentration level of 99.99 percent, which Taicang demonstrated at verification.[444] Thus, TTI contends that record evidence supports the conclusion that Taicang's AHF has a very high purity level and is anhydrous.[445]

Moreover, TTI argues that technical grade HF has very different characteristics from AHF. TTI states that "technical grade" chemicals are defined as not having an established set of quality and impurity levels, or products where the purity is less than 90 percent,[446] while the HF concentration levels for technical grade HF products vary between 25 and 70 percent.[447] In addition, TTI points to an affidavit from a Mexican customs expert which it claims establishes that there are seven purity grades for HF, with "technical grade" as the lowest and "ultra high purity" (with a concentration level exceeding 99.9 percent) as the highest.[448] Therefore, TTI argues that, based on the classification criteria of the Central Lab of Mexican Customs, the applicable HTS category for AHF classified as "ultra high purity" (i.e., over 99.9 percent) is 2811.11.99, while for AHF with a concentration level below 99.9 percent, the applicable HTS category is 2811.11.01.[449]

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[443] According to TTI, and the Court addressed this issue, holding that "…the inputs actually used by plaintiffs must be taken into account." See Jacobi Carbons AB v. United States, 992 F. Supp. 2d 1360, 1370-71 (CIT 2014) (Jacobi).

[444] TTI states that the Department reviewed documentation demonstrating that, in order to produce subject merchandise, the AHF purity level must be greater than 99.96 percent. See Taicang FOP Verification Report at 8 and verification exhibit 16. According to TTI, this purity level is consistent with the definition of AHF (one of the purest forms of HF with very little water content). TTI also notes that information on the record: 1) defines "anhydrous grade" as having a water content ranging from ten to 30 parts per million; and 2) specifies that the HF concentration level of AHF is a minimum of 99.96 percent. See Letter from TTI, "Hydrofluorocarbon Blends & Components Thereof from the People's Republic of China: T.T. International Co. Ltd. – Initial Surrogate Value Comments," November 23, 2015, at Exhibits SV-30 and SV-32 (TTI's Surrogate Value Rebuttal Comments).

[445] TTI notes that "anhydrous" literally means free from water. Therefore, TTI argues that it is not logical to value AHF using an HTS category for technical grade HF that by definition has a much higher water content.

[446] See TTI's Surrogate Value Rebuttal Comments, at Exhibit SV-30.

[447] Id., at Exhibit SV-31.

[448] See Letter from Dongyue, "Second Surrogate Value Submission of Dongyue : Antidumping Duty Investigation on Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," December 22, 2015, at Exhibit 28 (Dongyue's Second Surrogate Value Submission).

[449] Id. This exhibit contains an affidavit from a Mexican legal advisor to Dongyue. According to this affidavit, this advisor spoke with Mexican customs officials who confirmed the classification criteria of the Central Lab of Mexican Customs. Based on this information, the Mexican legal advisor concluded that Dongyue's AHF, with a tested concentration of 99.99 percent, could not be classified under HTS category 2811.11.01 ("technical grade"). Instead, he stated that the applicable HTS category would be 2811.11.99.

Finally, TTI disputes the petitioners' assertion (see below) that nearly 90 percent of the Mexican imports under HTS category 2811.11.01 are of HF not in aqueous solution.[450] According to TTI, Dongyue submitted public information from Datamyne which rebuts this claim.[451] Therefore, TTI contends that, to value AHF as accurately as possible, the Department should use GTA data for HTS category 2811.11.99 in the final determination.

The petitioners disagree, noting that unrebutted record evidence demonstrates that Mexican imports classified under HTS category 2811.11.99 during the POI consisted of recycled HF in aqueous solution.[452] Thus, according to the petitioners, not only are these imports not anhydrous, but they are also too impure to be used in the production of subject merchandise.[453,454]

Conversely, the petitioners point out that the Mexican GTA import data under HTS category 2811.11.01 consist of AHF suitable for producing subject merchandise. According to the petitioners, while some of the imports under this HTS category are explicitly described as being in solution, nearly 90 percent of products reported in this category are not.[455] The petitioners assert that it is clear from the record that the hydrofluorocarbon industry uses the terms "hydrofluoric acid," "hydrogen fluoride," and "anhydrous hydrogen fluoride" interchangeably. For example, the petitioners note that, although TTI claims to use only the highest-purity AHF, it refers to the product as "hydrofluoric acid."[456] Thus, the petitioners assert that it is reasonable to assume that, when the bill of lading does not indicate that merchandise is in solution, aqueous solution, or at a specific percentage concentration, then the material consists of AHF. Moreover, the petitioners assert that AHF is a hazardous material and HTS category 2811.11.01 applies to HF in hazardous form, while HTS category 2811.11.99 does not.[457] In any event, the petitioners maintain that, even if the specifics of the imports under HTS category 2811.11.01 were unclear, these data would still represent a better surrogate value than imports under HTS category

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[450] TTI points out that the data the petitioners use in their analysis is business proprietary information. As a result, TTI claims that the Department should reject this information and not consider it here because it may have been selectively chosen by the petitioners.

[451] See Dongyue's Second Surrogate Value Submission at Exhibit 6. Datamyne is a subscription database that gathers international trade data from authorized government sources. Id.

[452] See Letter from the petitioners, "Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Rebuttal to Factor Value Submissions of Dongyue, TTI, Weitron, and Daikin," November 23, 2015, at Exhibit 4 (Petitioners' Surrogate Value Rebuttal Comments). The petitioners state that these data tie to the GTA data on the record and show that the imports were sourced from KMG Electronic Chemicals, Inc., a company which supplies HF solutions ranging from 0.53 percent to 49.20 percent. Id., at 6-7 and Exhibit 5.

[453] See Petitioners' Surrogate Value Rebuttal Comments, at 5 and Exhibit 4.

[454] Further, the petitioners dispute arguments that the Department should ignore their business proprietary data for comparison purposes over concerns it may be "cherry picked." The petitioners state that it only placed these data on the record for the limited purpose of demonstrating that Mexican imports under HTS 2811.11.99 consist of HF in solution. Moreover, the petitioners point out that there is no basis to claim that they altered these data because they tie to the GTA data on the record.

[455] See Petitioners' Surrogate Value Rebuttal Comments, at 6.

[456] See, e.g., Taicang FOP Verification Report, at 18.

[457] See Petitioners' Surrogate Value Rebuttal Comments, at 7-8 and Exhibit 6.

2811.11.99 which unquestionably consist almost entirely of recycled solution.[458] Thus, the petitioners state that, when faced with a choice between a surrogate value that might be wrong and a surrogate value that is certainly wrong, the former is the best available information.

Further, the petitioners maintain that the record does not support the argument that "technical grade" AHF, classified under HTS category 2811.11.01, in not pure enough to produce subject merchandise. As an initial matter, the petitioners point out that there is no evidence that only 99.99 percent pure AHF can be used to produce subject merchandise. According to the petitioners, a single test report does not prove that all AHF the respondents used was of the same quality. Regarding the Mexican "expert's" affidavit, claiming to show that 2811.11.01 is the only applicable HTS category for AHF with a purity of less than 99.99 percent,[459] the petitioners assert that this claim is contradicted by other evidence which demonstrates that imports under HTS category 2811.11.99 include HF with purity levels well below 99.99 percent.[460] Further, the petitioners maintain that the record does not support the conclusion that "technical grade" AHF cannot be used to produce subject merchandise. According to the petitioners, none of the definitions TTI cites relate to tariff classification or AHF specifically. The petitioners assert that, at most, these definitions confirm that "technical grade" chemicals can be used for "commercial and industrial" purposes," such as the production of refrigerants.[461]

Finally, the petitioners disagree that the Datamyne information placed on the record by Dongyue demonstrates that there were no imports of AHF into Mexico under HTS category 2811.11.01. According to the petitioners, the Datamyne data are similar to the ANIQ import data they submitted;[462] the difference is how the descriptions of the merchandise on the bills of lading are interpreted. The petitioners point out that the data specify when an import is HF in aqueous solution,[463] and, when this is not specified, they interpret this to mean that the data consist of HF not in a solution. However, the petitioners assert that Dongyue unreasonably interprets both "silence" and any reference to "solution" as just the opposite (i.e., the HF is in solution). In any event, the petitioners note that "anhydrous" is not a grade of HF,[464] but rather it describes HF when not in its normal state as a gas or liquid.[465] Similarly, the petitioners state that hydrofluoric

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[458] The petitioners note that imports under HTS 28111199 were sold at lower prices than imports under HTS 28111101. However, the petitioners argue that it is not logical that imports of higher grade HF (which is what the respondents argue imports under HTS 28111199 represent) would be sold at a lower price.

[459] See Dongyue's Second Surrogate Value Submission, at Exhibit 28.

[460] See Petitioners' Surrogate Value Rebuttal Comments, at Exhibit 4.

[461] See Dongyue's Second Surrogate Value Submission at Exhibit 6F. The petitioners argue that Dongyue's own website indicates that it produces AHF with a specification of "technical" grade. See Petitioners' Surrogate Value Rebuttal Comments, at Exhibit 1.

[462] ANIQ stands for the Asociacion Nacional de la Industria Quimica (ANIQ). Similar to Datamyne, ANIQ is a subscription database that provides detailed Mexican import statistics. See Petitioners' Surrogate Value Rebuttal Comments, at 6.

[463] See Petitioners' Surrogate Value Rebuttal Comments, at 6-7 and Exhibit 5.

[464] See, e.g., Dongyue's Second Surrogate Value Submission at Exhibit 6F, showing that Dongyue's listing of generic chemical grades does not include "anhydrous."

[465] See Petitioners' Surrogate Value Rebuttal Comments, at Exhibit 2.

acid, when there is no indication that the material is in aqueous solution, simply means that the HF is in liquid form. As a result, the petitioners maintain that the Department should continue to value AHF using Mexican GTA import data for HTS category 2811.11.01 in the final determination.

Department's Position:

We continued to rely upon Mexican GTA import data under HTS category 2811.11.01 to calculate the surrogate value for AHF. We believe that data in this HTS category represent the best available information on the record to value this FOP. As stated in our Preliminary Determination and noted in Comment 28, above, the Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, surrogate values which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POI, and exclusive of taxes and duties.[466] In this case, the Mexico GTA data in HTS category 2811.11.01 meet all of these criteria. Further, we find that the data in this HTS category are preferable to the data in HTS category 2811.11.99 for the following reasons.

First, we note that HTS category 2811.11.99 is a basket category (i.e., "hydrogen fluoride (hydrofluoric acid), other") which appears to contain imports of many products unrelated to AHF (or even HF). Specifically, the Datamyne information submitted by Dongyue shows that POI imports under this category included not only HF, but also products such as "gel de grabar" (ceramic etching gel), "acido sulfamico" (sulfuric acid), and "compuesto a base de fluororo de hidrogeno y acido de amonio (compound based on hydrogen fluoride and ammonium hydrogen), products which are clearly not HF.[467] In contrast, this same information shows that POI imports under HTS category 2811.11.01 are comprised only of HF.[468] Thus, we find that the inclusion of such dissimilar items to AHF in HTS category 2811.11.99 makes these data, on their face, less representative of the FOPs used by TTI's suppliers.

Further, we disagree with TTI that we must rely on HTS category 2811.11.99 because TTI's supplier Taicang does not use "technical grade" AHF in its production process. While TTI argues that imports of AHF with "ultra high purity" would fall under HTS category 2811.11.99, the Datamyne information shows that at least one of the HF imports in this category is concentrated at only 48 percent.[469] In addition, the petitioners provided an affidavit from Mexichem attesting that it imported recovered HF in a 70 percent solution,[470] and record

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[466] See, e.g., Preliminary Determination, and accompanying Preliminary Decision Memorandum at 31.

[467] See Dongyue's Second Surrogate Value Submission, at Exhibit 6.

[468] Further, we note that while certain of the imports under HTS category 2811.11.01 in the Datamyne data are clearly in aqueous solution (i.e., "en solucion acuosa"), most of them are not (contrary to TTI's claim that this is what the Datamyne data show). In any event, we find the inclusion of HF in solution in this category to be of little import, given that the same is also true for the HF imported under HTS category 2811.11.99. Id.

[469] Id. The import in question is described as "acido fluorhidrico 48% para analysis" (i.e., hydrofluoric acid 48% by analysis).

[470] See Letter from the petitioners, "Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Preliminary Determination Comments and Submission of Factual Information," December 22, 2015, at Exhibit 4 (Petitioners' Preliminary Determination Comments).

evidence shows that Mexichem imported this product under HTS category 2811.11.99;[471] according to the affidavit Mexichem provided, this recovered HF cannot be used for the manufacture of refrigerants because it contains a high level of impurities.[472] Regarding imports under HTS category 2811.11.01, while we acknowledge that the Datamyne information shows that certain of these imports have concentration levels listed between 49 and 70 percent (and, thus, also are too impure to be used in the manufacture of refrigerants), the majority of these imports have no concentration level listed.[473] Thus, given that both HTS categories contain HF of varying purity levels, we find no basis to conclude that HF with a purity level of 99.9 percent or more would be classified solely under HTS 2811.11.99 (if, indeed, it is classified under this category at all).

Moreover, while we agree that the imports under HTS category 2811.11.01 are not described as anhydrous, the same is true of imports under HTS category 2811.11.99. As noted above, both of these HTS categories contain HF imports which are described as being in aqueous solution, as well as those which are not. Information from Datamyne shows that neither HTS category lists imports which are described as "anhydrous."[474] Furthermore, information indicates that AHF is a hazardous material and HTS category 2811.11.01 applies to HF in hazardous form, while HTS category 2811.11.99 does not.[475] We find this clear distinction meaningful.

The above analysis shows that neither HTS category 2811.11.01 nor 2811.11.99 represents data which are a perfect fit as the surrogate value for AHF. Nonetheless, the Court has held, "…when "faced with a choice between two imperfect options, it is within Commerce's discretion to determine which choice represents the best available information."[476] Consequently, when presented with these two choices, we find it appropriate to select the more product-specific option, which is HTS category 2811.11.01 (i.e., the category comprised only of HF imports).

Finally, we disagree with TTI that our determination in this case is inconsistent with the Court's ruling in Jacobi. Despite TTI's claims to the contrary, we considered "the inputs actually used" by the respondents in selecting the appropriate surrogate value for AHF.[477] For the reasons set forth above, we find that imports under HTS category 2811.11.01 represent the best available information to value the inputs actually used by TTI's suppliers in their production of HFCs. As a result, we continued to rely on this information in our final determination.

Comment 30: *Surrogate Financial Statements*

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[471] See Petitioners' Surrogate Value Rebuttal Comments, at Exhibit 4.

[472] See Petitioners' Preliminary Determination Comments, at Exhibit 4.

[473] See Dongyue's Second Surrogate Value Submission, at Exhibit 6.

[474] Id.

[475] See Petitioners' Surrogate Value Rebuttal Comments, at 6-8 and Exhibits 3 and 6. Thus, we disagree with the assertions provided via affidavit by Dongyue's Mexican advisor that the applicable category for Dongyue's AHF is HTS category 2811.11.99.

[476] See CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States, Slip Op. 14-33 at 26 (CIT 2014) (citing Dorbest Ltd. v. United States, 30 CIT 1671, 1687, 462 F. Supp. 2d 1262, 1277 (CIT 2006)).

[477] See Jacobi, 992 F. Supp. 2d, at 1370-71.

In the Preliminary Determination, the Department relied on the financial statements of two Mexican producers of refrigerant gases, Mexichem and CYDSA, S.A.B. de C.V. (CYDSA), to calculate the surrogate financial ratios. TTI argues that, for the final determination, the Department should not use CYDSA's financial statements because the selling, general, and administrative (SG&A) expenses shown on them are not sufficiently detailed to permit the Department to deduct freight out expenses. Therefore, TTI argues that the use of the CYDSA financial statements introduces potential distortions into the calculations of the surrogate SG&A ratio. According to TTI, the Department has rejected financial statements under similar circumstances (e.g., where the financial statements lack specificity with respect to certain line items[478] or where they do not include specific line items for SG&A expenses[479]).

The petitioners argue that CYDSA's financial statements contain sufficient detail to be used for purposes of the final determination. The petitioners maintain that these financial statements are no less detailed than the Thai financial statements placed on the record by the respondents. Further, the petitioners contend that TTI misstates the law when it suggests that the Department must select between the financial statements of CYDSA and Mexichem. The petitioners assert that the Department's preference is to rely on the financial statements from more than one surrogate company whenever possible, in order to normalize any potential distortions that may arise from using those of a single producer.[480]

Finally, the petitioners contend that CYDSA's financial statements are a better choice than Mexichem's because CYSDA manufactures an HCFC refrigerant, R-22, while Mexichem does not manufacture refrigerants at all; thus, the petitioners assert that CYDSA produces products that are more comparable to the HFC blends under the investigation. The petitioners argue as a result that the Department should continue to rely on the financial statements of both CYDSA and Mexichem when determining the surrogate financial ratios.

Department's Position:

We disagree with TTI and continue to find that the financial statements from CYDSA and Mexichem used in the Preliminary Determination constitute the best information available on the record with which to value TTI's financial ratios. When selecting financial statements for purposes of calculating surrogate financial ratios, the Department's policy is to use data from one or more market economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[481] Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such

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[478] See Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 32344 (June 8, 2015), and accompanying Issues and Decision Memorandum at 48 (Diamond Sawblades 2015).

[479] See Chlorinated Isos, at Comment 1.

[480] See Steel Wire Garment Hangers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 28803 (May 16, 2013), and accompanying Issues and Decision Memorandum at Comment 1.

[481] See Diamond Sawblades, at Comment 1.

factors…" In accordance with 19 CFR 351.408(c)(4), the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit.[482] In determining the suitability of surrogate values, the Department considers the available evidence with respect to the particular facts of each case and evaluates the suitability of each source on a case-by-case basis.[483] Accordingly, when examining the merits of financial statements on the record, the Department does not have an established hierarchy that automatically gives certain characteristics more weight than others. Rather, the Department must weigh available information with respect to each situation and make a product- and case-specific decision as to what constitutes the "best" available information. Furthermore, the CIT has upheld the Department's discretion in selecting the best surrogate values on the record.[484]

In this case, we find that CYDSA's financial statements are publicly available, contemporaneous with the POI, and there is no evidence that the company received subsidies under a program that the Department has found to be countervailable. Further, these statements showed that CYDSA produced both identical and comparable merchandise,[485] and the company made a profit during the POI.

While we agree that the SG&A expenses shown on CYDSA financial statements are not detailed, we disagree with TTI that the SG&A ratio derived from these expenses is necessarily distorted and that the financial statements are unusable as a result. TTI has provided no evidence showing that freight expenses are definitively included in CYDSA's SG&A, but rather it merely speculates that these expenses may be captured. Given that CYDSA produces some identical merchandise (while Mexichem produces only comparable merchandise), we find that the lack of detail with respect to SG&A expenses is outweighed by the increase in product specificity.

Using both CYDSA's and Mexichem's financial statements in this investigation is consistent with the Department's preference for using multiple financial statements to determine surrogate financial ratios.[486] Using multiple financial statements allows the Department to average the factory overhead, SG&A, and profit ratios and, thus, to normalize any potential distortions that

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[482] See Third Administrative Review of Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Recession of Antidumping Duty Administrative Review, 74 FR 46565 (September 10, 2009) and accompanying Issues and Decision Memorandum at Comment 1.

[483] See Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Recession of the Sixth Adminstrative Review, 71 FR 40477 (July 17, 2006) (Mushrooms), and accompanying Issues and Decision Memorandum at Comment 1.

[484] The CIT has upheld its previous determinations that "when Commerce is faced with the decision to choose between two reasonable alternatives and one alternative is favored over the other in their eyes, then they have the discretion to choose accordingly." See FMC Corp., 27 CIT 240, 251 (CIT 2003), (citing Technoimportexport, UCF America Inc. v. United States, 783 F. Supp. 1401, 1406 (CIT 1992)), affirmed, 87 Fed. Appx. 753 (CAFC 2004).

[485] According to CYDSA's 2014 financial statements, CYDSA "started production of the HFC410a refrigerant gas to supply the repair market," and also produces the HCFC R-22. See Petitioner's surrogate value comments dated November 16, 2015, at Exhibit 5, CYDSA's Audited Financial Statements of CYDSA, S.A.B. de C.V. for the 2014 Fiscal Audited Financial Statements of CYDSA, S.A.B. de C.V. for the 2014 Fiscal Year, at 66.

[486] See, e.g., OCTG from the PRC, at Comment 13.

may arise from using those of a single producer. Thus, by using the average of multiple surrogate companies, we arrive at a broader-based surrogate valuation that minimizes the particular circumstances of any one producer. This is consistent with section 773(c)(3)(D) of the Act, which stipulates that when calculating NV, the Department should use representative capital costs.[487]

Finally, with respect to Diamond Sawblades 2015 and Chlorinated Isos, we acknowledge that the Department has rejected financial statements in past cases for lack of specificity. However, as noted above, we find the increase in product similarity in CYDSA's financial statements potentially renders CYDSA's experience more representative of TTI's suppliers' own, and, thus, we do not find that their lack of detail with respect to one of the ratio categories (i.e., SG&A expenses) constitutes a fatal flaw.

Therefore, for the reasons stated above, the Department determines that relying on the financial statements of both CYDSA and Mexichem continues to be appropriate when determining the surrogate financial ratios.

Comment 31: *Margin Calculation Errors*

TTI alleges that the Department made the following errors in its preliminary margin calculation: 1) the Department made calculation errors with respect to surrogate values for ammonia, methanol, R142b, heavy oil, and diesel oil when converting the unit of measure from USD/L to USD/kg; and 2) the Department used the incorrect surrogate value in its SAS program to calculate the direct material input for R142b. TTI requests that the Department correct each of these errors in its final margin calculations.

The petitioners disagree that the Department made any conversion errors and they provided an example to support that the Department's calculations were correct. However, the petitioners agree that the Department assigned the wrong surrogate value for input for R142b.

Department's Position:

We have reviewed our calculations and disagree with TTI that we made any conversion errors with respect to the surrogate values for ammonia, methanol, R142b, heavy oil, and diesel oil.[488] However, we agree with TTI that we made an error with respect to the calculation of the direct material inputs for R142b. We have revised our calculations accordingly.[489]

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[487] See Mushrooms, at Comment 1; see also Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 70 FR 34082 (June 13, 2005), and accompanying Issues and Decision Memorandum at Comment 5.

[488] Using ammonia as an example, we divided the number of pesos per liter by the number of kilograms per liter to come up with the correct number of pesos per kg. Specifically, we used the following formula:

$$\frac{\text{[redacted] pesos}}{1\ \text{liter}} + \frac{\text{[redacted] kilogram}}{1\ \text{liter}} = \frac{\text{[redacted] pesos}}{\text{[redacted] kg}} = 9.59\ \textit{pesos per kg}$$

[489] See TTI Final Analysis Memo.

In the course of researching the above allegations, we found that we had incorrectly valued liquid ammonia using the surrogate value for ammonia gas. We have revised our calculations for the final determination to use the surrogate value for liquid ammonia.[490]

Recommendation:

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

Agree ✓ Disagree _____

Ronald K Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

June 21, 2016
Date

[490] Id.