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October 5, 2016

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

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2014-2015

I. SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty ("AD") order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC") in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended ("the Act"). The period of review ("POR") is September 1, 2014, through August 31, 2015. The review covers the following exporters of subject merchandise:

1. Aeolus Tyre Co., Ltd. ("Aeolus")
2. Shiyan Desizheng Industry & Trade Co., Ltd. ("Desizheng")
3. Qingdao Jinhaoyang International Co., Ltd. ("Jinhaoyang")
4. Weifang Jintongda Tyre Co., Ltd. ("Jintongda")
5. Sailun Jinyu Group Co., Ltd. ("Sailun")
6. Guizhou Tyre Co., Ltd. ("GTC")[1]
7. Qingdao Free Trade Zone Full-World International Trading Co., Ltd. ("Qingdao FTZ")
8. Qingdao Qihang Tyre Co. ("Qihang")
9. Tianjin Leviathan International Trade Co., Ltd. ("Leviathan")
10. Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. ("TWS Xingtai")

[1] The Department previously collapsed GTC and Guizhou Tyre Import and Export Corporation ("GTCIE"), into a single entity in the initial investigation, *see Certain New Pneumatic Off-The-Road Tires From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9283 (February 20, 2008), unchanged in *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008). This decision is unchallenged in the instant review; thus the Department continues to treat GTC and GTCIE as a single entity (collectively, "GTC").

11. Trelleborg Wheel Systems Hebei Co. ("TWS Hebei")
12. Weihai Zhongwei Rubber Co., Ltd. ("Zhongwei")
13. Xuzhou Xugong Tyres Co. Ltd. ("Xugong")[2]
14. Zhongce Rubber Group Company Limited ("Zhongce")

The Department preliminarily finds that mandatory respondent Xugong demonstrated eligibility for a separate rate and made sales of subject merchandise at less than normal value ("NV") during the POR. The Department finds that mandatory respondent GTC, as well as separate rate applicant Aeolus and non-responsive respondent Leviathan, failed to demonstrate eligibility for separate rate status and, thus, have been included in the PRC-wide entity. Furthermore, the Department finds that separate rate applicants Desizheng, Jinhaoyang, Sailun, Jintongda, TWS Xingtai, Zhongwei, Zhongce, Qihang, and Qingdao FTZ are eligible for a separate rate. Finally, the Department finds that TWS Hebei had no shipments during the POR.

If we adopt these preliminary results in the final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the POR in accordance with 19 CFR 351.212(b)(1). We invite interested parties to comment on these preliminary results. Unless otherwise extended, we intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

II. BACKGROUND

On September 1, 2015, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on OTR tires from the PRC for the period of September 1, 2014, through August 31, 2015.[3] On September 9, 2015, the Department initiated a review of fourteen exporters of subject merchandise.[4] As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its authority to toll all administrative deadlines due to the recent closure of the Federal Government.[5] As a consequence, all deadlines in this segment of the proceeding have been extended by four business days. On May 3, 2016, the Department extended the time limit for the

[2] The Department previously collapsed Xugong and its affiliates Xuzhou Armour Rubber Company Ltd. ("Armour") and Xuzhou Hanbang Tyre Co., Ltd. ("Hanbang") into a single entity; *see Certain New Pneumatic Off-The-Road Tires From The People's Republic Of China: Preliminary Results Of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61166, 61167 (October 9, 2015), unchanged in 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). This decision is unchallenged in the instant review; thus the Department continues to treat Xugong, Armour, and Hanbang as a single entity (collectively, "Xugong").
[3] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 80 FR 52741 (September 1, 2015) ("*Opportunity Notice*").
[4] *See Initiation of Antidumping and Countervailing Duty Administrative Review*, 80 FR 69193 (November 9, 2015) ("*Initiation Notice*").
[5] *See* Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" dated January 27, 2016.

preliminary results of review by 120 days, pursuant to section 751(a)(3)(A) of the Act, to October 5, 2016.[6]

On December 15, 2015, pursuant to section 777(c)(2) of the Act, the Department determined that it was not practicable to fully investigate each of the companies for whom the Department initiated an administrative review. Thus, in accordance with section 777(c)(2)(B) of the Act, the Department selected the two companies accounting for the largest volume of exports during the POR for which interested parties requested reviews, as mandatory respondents. In the instant review, the companies accounting for the largest volume of subject merchandise during the POR are GTC and Xugong.[7] Between December 2015 and September 2016, the Department issued and respondents timely responded to the initial and subsequent supplemental questionnaires.

After review of GTC's January 20, 2016, section A submission, as well all subsequent supplemental section A questionnaires responses received on May 25, 2016, August 8, 2016, and September 13, 2016,[8] the Department has preliminarily determined that GTC is ineligible for a separate rate and is part of the PRC-wide entity. As a result of this analysis and instant determination, the Department intends to refrain from requesting further sales and factors of production ("FOP") information from GTC.

III. SCOPE OF THE ORDER

The products covered by the order are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,[9] combine harvesters,[10] agricultural high clearance

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[6] *See* memorandum to Christian Marsh, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Extension of Deadline for Preliminary Results of 2014-2015 Antidumping Duty Administrative Review," dated May 3, 2016. This deadline was tolled per memorandum from the Department, "Tolling of Administrative Deadlines as a Result of the Government Closure during Snowstorm 'Jonas'," dated January 27, 2016.

[7] *See* memorandum to Erin Begnal, Director, Office III, "2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Respondent Selection," dated December 15, 2015 ("Respondent Selection Memo").

[8] *See* letter from GTC, "Section A Response: Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated January 20, 2016 ("GTC's SAQR"); *also see* letter from GTC, "Supplemental Section A Response: Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated May 25, 2016 ("GTC 1st SQR"); *also see* letter from GTC, "Second Supplemental Section A Response: Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated August 8, 2016 ("GTC 2nd SQR"); *also see* letter from GTC, "Third Supplemental Section A Response: Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated September 13, 2016 ("GTC 3rd SQR").

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

sprayers,[11] industrial tractors,[12] log-skidders,[13] agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;[14] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[15] front end loaders,[16] dozers,[17] lift trucks, straddle carriers,[18] graders,[19] mobile cranes,[20] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type[21] or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS

[10] Combine harvesters are used to harvest crops such as corn or wheat.
[11] Agricultural sprayers are used to irrigate agricultural fields
[12] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.
[13] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.
[14] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.
[15] Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.
[16] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.
[17] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform "rough grading" in road construction.
[18] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.
[19] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.
[20] *I.e.*, "on-site" mobile cranes designed for off-highway use.
[21] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

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

Prefix letter designations:

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

Suffix letter designations:

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

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

IV. PRELIMINARY DETERMINATION OF NO SHIPMENTS

On November 17, 2015, TWS Hebei submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.[22] Consistent with our practice, the Department asked CBP to conduct a query on potential shipments made by TWS Hebei, during the POR.[23] CBP did not provide possible contradictory entries from TWS Hebei in its query. As a result, based on record evidence including TWS Hebei's certification and our analysis of CBP data, we preliminarily determine that TWS Hebei did not have any reviewable transactions during the POR.

Consistent with the Department's announced refinement to its assessment practice in non-market economy ("NME") cases, it is appropriate not to rescind the review, in part, in this circumstance, but, rather complete the review with respect to TWS Hebei, and issue appropriate instructions to CBP based on a finding of no shipments in the final results of review.[24]

V. DISCUSSION OF THE METHODOLOGY

A. Nonmarket Economy Country

The Department considers the PRC to be an NME country.[25] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

B. Surrogate Country and Surrogate Value Data

On February 8, 2016, the Department sent interested parties a letter inviting comments on the concurrently released list of six potential surrogate countries and primary surrogate country selection, as well as surrogate value ("SV") data.[26] On March 9, 2016, GTC, Xugong, and Petitioners provided comments on the surrogate country selection criteria for the countries listed

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[22] *See* letter from TWS Hebei, "Trelleborg Wheel Systems Hebei Co. Statement of No Shipments during the POR: New Pneumatic Off-The-Road Tires from the People's Republic of China," dated November 17, 2015 ("TWS Hebei No Shipments Letter").

[23] *See* CBP Message Number 6207309, dated July 25, 2016.

[24] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011).

[25] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

[26] *See* letter from the Department, "2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated February 8, 2016. (The letter contained a memorandum from Carole Showers, Director, Office of Policy, Enforcement and Compliance, to Erin Begnal, Program Manager, Office III, Enforcement and Compliance, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Pneumatic Off-the-Road Tires ("OTR") from the People's Republic of China ("China")," dated February 4, 2016 ("Surrogate Country List")).

on the Surrogate Country List. In the instant case, all parties agree that Thailand is among the appropriate choices for surrogate country.[27] Xugong proposed that the Department also consider Peru, in addition to the six-countries identified by the Department, as a potential surrogate country.[28]

On April 7, 2016, GTC, and Petitioners each provided information and comments on the selection of surrogate values.[29] Since these initial submissions, Petitioners, Xugong, and GTC each provided additional SV information on the record, including rebuttal information.[30]

C. Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOP, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[31] Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department's practice to select an appropriate surrogate country based on the

[27] *See* letter from Petitioners, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Comments on Surrogate Country Selection," dated March 9, 2016 ("Petitioners' Surrogate Country Comments"); *see also* letter from GTC, "GTC Surrogate Country Comments: Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off the-Road Tires from the People's Republic of China," dated March 9, 2016 ("GTC Surrogate Country Comments"). *See also* letter from Xugong, "New Pneumatic Off-the-Road Tires from the PRC: Comments on Surrogate Country Selection of Xuzhou Xugong Co. Ltd.," dated March 9, 2016 ("Xugong Surrogate Country Comments"). Unlike GTC and Petitioners, Xugong did not state explicitly that it considered Thailand to be the most appropriate choice; rather that it found all countries on the list – including Peru, for which it previously submitted comments in support of economic comparability in its February 16, 2016 submission – to be economically comparable with significant producers of similar merchandise appropriate for selection. However, we note that Xugong later noted in its September 6, 2016, surrogate value submission that all Thai SV information previously submitted to the record by GTC and Petitioners, along with the Thai SV information contained in that submission, was sufficient to value Xugong's FOPs for the instant POR, and Xugong provided no rebuttal comments or non-Thai SV information in opposition to the general agreement among parties that Thailand is the most appropriate surrogate country.
[28] *See* Xugong Surrogate Country Comments.
[29] *See* letter from Petitioners, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' First Surrogate Value Submission," dated April 7, 2016 ("Petitioners SV Comments"); letter from GTC, "GTC First Surrogate Value Submission: Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off the-Road Tires from the People's Republic of China," dated April 7, 2016 ("GTC SV Comments").
[30] See letter from Xugong, "New Pneumatic Off-the-Road Tires from the PRC: Submission of Surrogate Values of Xuzhou Xugong Tyres Co. Ltd.," dated September 6, 2016 ("Xugong SV Comments"); *see also* letter from GTC, "GTC and GTC Second Surrogate Value Rebuttal: Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated September 15, 2016 ("GTC 2nd SV Rebuttal"); *see also* letter from Petitioners, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A–570–912): Petitioners' Second Surrogate Value Submission," dated September 6, 2016 ("Petitioners' Second SV Submission").
[31] *See* Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("*Policy Bulletin*").

availability and reliability of data.[32] In this review, the Department determined that Mexico, Romania, Bulgaria, South Africa, Ecuador, and Thailand are countries whose per capita gross national incomes ("GNI") are comparable to the PRC in terms of economic development.[33] The sources of the SVs we used in this investigation are discussed under the "Factor Valuations" section below.

Petitioners submit that the Department should select Thailand as the primary surrogate country, noting that Thailand is a significant producer of comparable merchandise at a level of economic development similar to the PRC.[34] They also note that Thailand provides publicly available information to value all costs relevant to this review and, of the potential surrogates on the Surrogate Country List that produce OTR tires, Thailand's GNI is closest to that of the PRC.[35] Additionally, Petitioners assert that:

(1) Thailand is a net exporter of OTR tires;
(2) Thailand provides SVs for all inputs, including multiple sources from which to value rubber; and
(3) Thai labor data is specific to the POR.[36]

In its comments on surrogate country selection, GTC agreed that Thailand is an appropriate choice as the primary surrogate country.[37] Xugong's initial surrogate country comments did not explicitly advocate for any specific country to be selected as the primary surrogate, and proposed that the Department also consider Peru in evaluating the most appropriate country for selection, in addition to the six-countries identified by the Department on the Surrogate Country List.[38] However, subsequent surrogate value submissions by Xugong addressed only Thai data sources.

1. Economic Comparability

Consistent with its practice, and section 773(c)(4) of the Act, and as stated above and in the Surrogate Country List, the Department identified Mexico, Romania, Bulgaria, South Africa, Ecuador, and Thailand as countries at the same level of economic development as the PRC based on GNI data published in the World Bank Development Indicators database.[39] As Peru's GNI falls within the bookends of the highest and lowest GNI countries on the Department's list, we also find Peru to be at the same level of economic comparability as the PRC. The Department does not rank the countries identified and it considers all seven countries identified as equivalent in terms of economic comparability. Accordingly, unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these

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[32] *Id.*
[33] *See* Surrogate Country List.
[34] *See* Petitioners' Surrogate Country Comments.
[35] *Id.*
[36] *Id.*
[37] *See* GTC Surrogate Country Comments.
[38] *See* Xugong Surrogate Country Comments.
[39] *See* Surrogate Country List.

countries.[40] Therefore, we consider all six countries identified in the Surrogate Country List, and Peru, to have met this prong of the surrogate country selection criteria.

2. Significant Producer of Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."[41] Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.[42] Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.[43] "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."[44] In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

> In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.[45]

One factor that the Department considers in determining whether a country is, a significant producer of comparable merchandise, is whether the country is an exporter of comparable merchandise. Thus, in this case, because production data of comparable merchandise was not available, we analyzed exports of comparable merchandise from the seven countries found to be economically comparable as a proxy for production data. In order to determine whether the above-referenced countries are significant producers of comparable merchandise, the Department

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[40] *See Certain Steel Wheels From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value, Partial Affirmative Preliminary Determination of Critical Circumstances, and Postponement of Final Determination*, 76 FR 67703, 67708 (November 2, 2011), unchanged in *Certain Steel Wheels From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021, March 23, 2012.

[41] *See Policy Bulletin* at 2.

[42] The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.

[43] *See Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) ("{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.").

[44] *See Policy Bulletin* at 2.

[45] *Id.* at 3.

examines which countries on the surrogate country list exported merchandise comparable to the merchandise under consideration. Information on the record indicates that all countries listed on the Surrogate Country List, and Peru, are exporters of merchandise covered by HTS categories identified in the scope of this investigation.[46] Accordingly, the Department preliminarily finds that Mexico, Romania, Bulgaria, South Africa, Ecuador, Peru and Thailand meet the significant producer of comparable merchandise prong of the surrogate country selection criteria.

3. Data Availability

When evaluating SV data, the Department considers several factors including whether the SVs are publicly available, contemporaneous with the period under consideration, broad-market averages, tax and duty-exclusive, and specific to the inputs being valued.[47] The Department's preference is to satisfy the breadth of these aforementioned selection factors. There is no hierarchy among these criteria. It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[48]

All parties have placed data on the record from Thailand, and the record lacks surrogate value information from any other source country. Further, the Department finds that the Thai data are the best available data for valuing FOPs because we have complete, publicly-available, contemporaneous, product-specific Thai data that are generally tax-exclusive and representative of broad market averages for each input used by the respondent to produce the subject merchandise during the POR. In addition, the Thai surrogate financial statements on the record include publicly-available statements for companies which produce identical merchandise. Therefore, because complete surrogate value information which satisfy the factors for surrogate value selection is available from Thailand, the Department preliminarily determines that the Thai data are the best available surrogate value data.

4. Selection of Surrogate Country

Given the above facts, the Department selects Thailand as the primary surrogate country for this administrative review. Thailand is at the level of economic development of the PRC, is a significant producer of comparable merchandise, and provides reliable and usable SV data. The Department will provide a detailed description of the SVs selected in the "Normal Value" section of this notice.

D. Separate Rates

In proceedings involving NME countries, the Department maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be

[46] *See* Xugong Surrogate Country Comments at Exhibit 1 and Petitioners' Surrogate Country Comments at Attachment 2.
[47] *See, e.g., First Administrative Review of Certain Polyester Staple Fiber From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 FR 1336 (January 11, 2010) and accompanying Issues and Decision Memorandum at Comment 1.
[48] *See* Policy Bulletin,

assessed a single weighted-average dumping margin.[49] In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate rate status in this review.[50] The process requires exporters to submit a separate rate application ("SRA")[51] or certification and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

The Department's policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[52] The Department analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers*[53] and further developed in *Silicon Carbide*.[54] According to this separate rate test, the Department will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, the Department determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.[55]

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades* AD proceeding, and its determinations therein.[56] In particular,

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[49] *See, e.g., 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, 53082 (September 8, 2006) ("Lined Paper"); *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, 29307 (May 22, 2006)("Sawblades");.*Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039, 55040 (September 24, 2008).

[50] *See Initiation Notice*, 80 FR at 69194.

[51] *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 05.1"), available at http://enforcement.trade.gov/policv/bull05-1.pdf.

[52] *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*").

[53] *Id.*

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

[55] *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011*, 78 FR 9493 (February 6, 2013), and accompanying Decision Memorandum at 9, unchanged in final results, 78 FR 35249 (June 12, 2013); *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9284 (February 20, 2008), unchanged in final affirmative determination, 73 FR 40485 (July 15, 2013).

[56] *See* Final Results of Redetermination pursuant to *Advanced Technology & Materials Co., Ltd., et al. v. United States,* 885 F. Supp. 2d 1343 (CIT 2012) ("*Advanced Technology I*"), and available at http://enforcement.trade.gov/remands/12-147.pdf, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014) ("*Advanced Technology II*"). *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 Memorandum at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty*

in litigation involving the underlying *Diamond Sawblades* proceeding, the CIT found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity exercised control over the respondent exporter.[57] Following the Court's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the respondent is not eligible for a separate rate.[58] Otherwise, we will analyze the impact of government ownership within the context of the *de facto* criteria as established above. This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with our normal separate rate practice, any ability to control, or possess an interest in controlling, the operations of the company (including the selection of board members, management, and the profit distribution of the company) by a government entity is subject to the Department's rebuttable presumption that all companies within the NME country are subject to government control.

In the *Initiation Notice*, we stated that SRAs would be due 30 days after publication of the notice, *i.e.*, Friday, January 8, 2016.[59] The Department received timely filed separate rate applications, certifications, and/or Section A responses from 12 of the 14 respondents upon which we initiated the review and of which had entries of subject merchandise during the POR:

1. Xugong
2. GTC
3. Aeolus
4. Desizheng
5. Jinhaoyang
6. Sailun
7. Jintongda
8. TWS Xingtai
9. Zhongwei

Administrative Review; 2011-2012, 79 FR 35723 (June 24, 2014), and accompanying Issues and Decision Memorandum at Comment 1 (collectively, "*Diamond Sawblades*").

[57] *See, e.g., Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("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).

[58] *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.

[59] *See Initiation Notice*, 80 FR at 69194.

10. Zhongce
11. Qihang, and
12. Qingdao FTZ.

As discussed in the "Preliminary Determination of No Shipments" section above and the accompanying *Federal Register* notice, one respondent upon we initiated the instant review, TWS Hebei, certified that it had no shipments during the POR. The remaining respondent, Leviathan, did not submit a response or certification to the Department's separate rate questionnaire and thus did not demonstrate eligibility for separate-rate status. As discussed below, Leviathan, along with GTC and Aeolus, are found to be preliminarily included as part of the PRC-wide entity is subject to the PRC-wide rate.

<u>Separate Rate Analysis</u>

a. Wholly Foreign Owned

TWS Xingtai is wholly-foreign owned by a company located in a market-economy ("ME") country.[60] Therefore, there is no PRC ownership of TWS Xingtai, because the Department has no evidence indicating that the company is under the control of the PRC government, and conducting a separate rates analysis concerning this company is not necessary.[61] Accordingly, the Department is preliminarily granting separate rate status to TWS Xingtai.

b. Joint Ventures between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Xugong, GTC, Aeolus, Desizheng, Jinhaoyang, Sailun, Jintongda, Zhongwei, Zhongce, Qihang, and Qingdao FTZ variously stated that they are joint ventures between Chinese and foreign

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[60] *See* letter from TWS Xingtai, "Separate Rate Certification of Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: New Pneumatic Off-The-Road Tires from the People's Republic of China," dated November 18, 2014, and letter from Leviathan entitled, "New Pneumatic Off-The-Road Tires from the People's Republic of China: Separate Rate Application Questionnaire Response," dated December 29, 2014.

[61] *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); *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).

companies or are wholly Chinese-owned companies.[62] Therefore, these respondents must demonstrate an absence of both *de jure* and *de facto* governmental control over export activities, as appropriate, to qualify for a separate rate.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate:

(1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses;

(2) any legislative enactments decentralizing control of companies; and

(3) other formal measures by the government decentralizing control of companies.[63]

The evidence provided by Xugong, GTC, Aeolus, Desizheng, Jinhaoyang, Sailun, Jintongda, Zhongwei, Zhongce, Qihang, and Qingdao FTZ supports a preliminary finding of absence of *de*

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[62] *See* Xugong SAQR; GTC SAQR; letter from Aeolus. "Separate Rate Application in the : Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off the-Road Tires from the People's Republic of China," dated December 11, 2016 ("Aeolus SRA"), *see also* letter from Aeolus, "Separate Rate Application Supplemental Questionnaire Response in the : Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off the-Road Tires from the People's Republic of China," dated August 2, 2016 ("Aeolus SRA Supp"); letter from Desizheng, "New Pneumatic Off-the-Road Tires from the PRC: Separate Rate Application of Shiyan Desizheng Industry & Trade Co., Ltd. dated December 1, 2015 ("Desizheng SRA"); *also see* letter from Desizheng, "New Pneumatic Off-the-Road Tires from the PRC: Response to Supplemental Questions - Separate Rate Application of Shiyan Desizheng Industry & Trade Co.," dated August 1, 2016 ("Desizheng SRA Supp."); Letter from Jinhaoyang, "Separate Rate Application of Qingdao Jinhaoyang International Co., Ltd. Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated December 7, 2015 ("Jinhaoyang SRA"); *also see* letter from Jinhaoyang, "Separate Rate Application of Qingdao Jinhaoyang International Co., Ltd. Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated July 27, 2016 ("Jinhaoyang 1st SRA Supp"); letter from Jinhaoyang, "Jinhaoyang's Second SRA Supplemental Questionnaire Response Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated September 6, 2016 ("Jinhaoyang 2nd SRA Supp"); Letter from Sailun Group, "Separate Rate Application in the : Seventh Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off the-Road Tires from the People's Republic of China," dated December 9, 2015 ("Sailun SRA"); Letter from Weifang Jintongda, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China – Separate Rate Application," dated December 4, 2015 ("Jintongda SRA"); Letter from Zhongce, "New Pneumatic Off-the-Road Tires from the People's Republic of China (2014-2015): Separate Rate Application," dated December 9, 2015 ("Zhongce SRA"); *also see* letter from Zhongce, "New Pneumatic Off-the-Road Tires from the People's Republic of China (2014-2015): First Supplemental Questionnaire Response," dated August 2, 2016 ("Zhongce 1st SRA Supp"); letter from Zhongce, "New Pneumatic Off-the-Road Tires from the People's Republic of China (2014-2015): Second Supplemental Questionnaire Response," dated September 27, 2016 ("Zhongce 2nd SRA Supp"); Letter from Zhongwei, "Separate Rate Certification of Weihai Zhongwei Rubber Co., Ltd.: Certain New Pneumatic Off-the-Road Tires from The People's Republic of China," dated December 4, 2015 ("Zhongwei SRC"); Letter from Qihang, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – AR 14-15 Separate Rate Certification," dated December 6, 2015 ("Qihang SRC"); Letter from Qingdao FTZ, "New Pneumatic Off-The-Road Tires from the People's Republic of China: Qingdao Free Trade Zone Full-World International Trading Co., Ltd.'s Separate Rate Certification," dated December 9, 2015 ("Qingdao FTZ SRC").

[63] *See Sparklers*, 56 FR at 20589.

jure governmental control for each company based on the following: 1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; 2) the existence of applicable legislative enactments decentralizing control of the companies; and 3) the implementation of formal measures by the government decentralizing control of companies.[64]

Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions:

(1) whether the export prices ("EP") 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 disposition of profits or financing of losses.[65]

The Department determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control, which would preclude the Department from granting a separate rate.

The evidence provided by Xugong, Desizheng, Jinhaoyang, Sailun, Jintongda, Zhongce, Zhongwei, Qihang, and Qingdao FTZ supports a preliminary finding of *de facto* absence of government control based on the following: 1) the companies set their own EPs independent of the government and without the approval of a government authority; 2) the companies have authority to negotiate and sign contracts and other agreements; 3) the companies have autonomy from the government in making decisions regarding the selection of management; and 4) the companies retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.[66]

Therefore, the evidence placed on the record by Xugong, Desizheng, Jinhaoyang, Sailun, Jintongda, Zhongwei, Zhongce, Qingdao, and Qingdao FTZ demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, the Department preliminarily grants separate rates to Xugong, Desizheng, Jinhaoyang, Sailun, Jintongda, Zhongwei, Zhongce, Qihang, and Qingdao FTZ.

[64] *See* Xugong SAQR, GTC SAQR, Aeolus SRA, Desizheng SRA, Jinhaoyang SRA, Sailun SRA, Jintongda SRA, Zhongwei SRA, Zhongce SRA, Qihang SRA, and Qingdao FTZ SRA.

[65] *See Silicon Carbide*, 59 FR at 22586-87; *see also 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).

[66] *See* Xugong SAQR, Desizheng SRA, Jinhaoyang SRA, Sailun SRA, Jintongda SRA, Zhongwei SRA, Zhongce SRA, Qihang SRA, and Qingdao FTZ SRA.

c. Companies Not Receiving a Separate Rate

The Department has not granted a separate rate to the following separate rate applicants:

1. GTC

   We preliminarily determine that GTC did not rebut the presumption of the *de facto* control over the company's selection of the board, management and profit distribution.[67] Because we preliminarily determine, based on GTC's section A response, that it is under *de facto* government control, we have not requested additional cost and sales information from GTC after we received its initial section C and D responses.

2. Aeolus

   We preliminarily determine that Aeolus did not rebut the presumption of the *de facto* control over the company's operations, in general, including export activities, selection of management, *etc.*[68]

Because a full analysis of the Department's denial of a separate rate for Aeolus and GTC requires a discussion of both applicants' business proprietary information, *see* the Department's Separate Rate Denial Memorandum for a full discussion of this issue.

3. Leviathan

   Leviathan is not eligible for a separate rate because it did not submit a response or certification to the Department's separate rate questionnaire.

E. <u>Margin for the Companies Individually Examined</u>

As discussed above, the Department selected Xugong and GTC as a mandatory respondent in this proceeding, however, only Xugong demonstrated eligibility for a separate rate. Therefore, Xugong is receiving a separate rate for these preliminary results based on an individual weighted average dumping margin calculated from its own sales and production data, pursuant to Section 777A(c) of the Act. GTC is preliminarily found ineligible for a separate rate and, as such, is considered a part of the PRC-wide entity and is being assigned the PRC-entity rate, as discussed further below in "Margin for Companies Not Receiving a Separate Rate," below.

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[67] *See* Memorandum to the File, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Denial of Separate Rate," dated concurrently with this memorandum ("Separate Rate Denial Memorandum').
[68] *Id*.

F. Margin for the Separate Rate Companies Not Individually Examined

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis*, or based entirely on adverse facts available ("AFA") in calculating an all others rate. Accordingly, the Department's usual practice has been to average the weighted-average dumping margins for the companies selected for individual examination, excluding rates that are zero, *de minimis*, or based entirely on AFA.[69] We may use "any reasonable method" for assigning the rate to non-selected respondents. One method that section 735(c)(5)(B) of the Act contemplates as a possible method is "averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated."

In this review and consistent with our practice, we preliminarily calculated a weighted-average dumping margin for Xugong that is above *de minimis* and not based on AFA. Therefore, we preliminarily assign to TWS Xingtai, Desizheng, Jinhaoyang, Sailun, Jintongda, Zhongwei, Zhongce, Qihang, and Qingdao FTZ a margin of 33.58 percent (*i.e.*, the margin calculated for Xugong) as the separate rate for this review.

G. Margin for Companies Not Receiving a Separate Rate

1. PRC-Wide Entity

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the Department initiated a review to complete either the separate-rates application or certification.[70] In NME proceedings, "'rates' may consist of a single dumping margin applicable to all exporters and producers."[71] As explained above in the "Separate Rates" section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities.

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

[70] The separate-rate application and certification are available at: http://enforcement.trade.gov/nme/nme-sep-rate.html.

[71] *See* 19 CFR 351.107(d).

The Department's policy regarding conditional review of the PRC-wide entity applies to this review.[72] Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review, and the entity's rate is not subject to change. As such, the PRC-wide rate from the previous review (*i.e.*, the fifth administrative review) remains unchanged, and the PRC-wide entity is receiving a margin of 105.31 percent.[73]Because GTC, Aeolus, and Leviathan have not demonstrated that they are eligible for separate rate status, the Department finds that they have not rebutted the presumption of government control and, therefore, considers them to be part of the PRC-wide entity.

H. Date of Sale

The Department's regulations at 19 CFR 351.401(i) state as follows:

> In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.[74]

Xugong indicated shipment date as the date of sale in accordance with the time when the material terms of the sale are fixed. Specifically, as tires are shipped without packing material and each container is filled with as much subject merchandise possible, the quantity of tires sent in a container may change from the original order as the container is packed.[75] 19 CFR 351.401(i) states that the Department will use the date of invoice, as recorded in the producer or exporter's records kept in the ordinary course of business, as the date of sale. However, the

[72] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

[73] *See,e.g.,id.*; and *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197, 20199 (April 8, 2015).[74] 19 CFR 351.401(i); *see also 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 Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale).

[74] 19 CFR 351.401(i); *see also 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 Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale).

[75] *See* Xugong's SAQR, at 24. Xugong stated that the date of sale was identified as the earlier date of shipment date or invoice date in the "date of sale" field for their EP and constructed export price ("CEP") sales, including out of warehouse sales. The Department determines that record evidence demonstrates that the terms of sale are, in fact, set at date of shipment for all sales, EP and CEP, and has determined preliminarily that the shipment date would be used ubiquitously.

regulations permit the Department to use a different date if it better reflects the date on which the exporter or producer establishes the material terms of sale.[76] Because the Department found no evidence on the record contrary to Xugong's claims that material terms of sale are set at shipment, for these preliminary results, the Department has used the shipment date as the date of sale.[77]

I. <u>Comparisons to Normal Value</u>

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Xugong's sales of OTR tires to the United States were made at less than NV, we compared Xugong's EP or CEP sales to NV, as described in the "U.S. Price" and "Normal Value" sections, below.

1. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.[78]

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation

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[76] The Department's regulations state that it normally will use the invoice date as the date of sale unless a better date reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i); *see also Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756, 38768 (July 19, 1999) (stating that "the Department considers the date of sale to be the date on which all substantive terms of sale are agreed upon by the parties"). However, the Department has made it its practice to use the date of shipment as the date of sale when the date of invoice is after the date of shipment, because, normally, once merchandise is shipped to the customer, the material terms of sale have been established. *See Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issues and Decision Memorandum at Comment 1.

[77] *See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

[78] *See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1; *see also Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.[79] The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the

[79] *See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

2. Results of the Differential Pricing Analysis

For Xugong, based on the results of the differential pricing analysis, the Department preliminarily finds that 76.1 percent of Xugong's export sales pass the Cohen's *d* test, thus confirming the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. As such, the Department finds that these results support consideration of an alternative to the average-to-average method. However, the Department preliminarily determines that the A-A method can appropriately account for such differences because there is no significant difference between the A-A, the A-T, or the mixed alternative margins.[80] Therefore, the Department did not consider an alternative comparison method to the A-A method, and no additional argument to the contrary has been placed on the record. Accordingly, the Department preliminarily determined to use the A-A method to calculate the weighted-average dumping margin for Xugong.[81]

J. U.S. Price

1. Export Price

Pursuant to section 772(a) of the Act, the EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. The Department considers the U.S. prices of certain sales by Xugong to be EPs in accordance with section 772(a) of the Act because they were the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. We calculated EPs based on the sales price to the unaffiliated purchaser(s) in the United States.

In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the sales price for various PRC expenses such as foreign inland freight, brokerage and handling, and international movement costs. Where such expenses were provided by PRC service providers or paid for in renminbi ("RMB"), we based those charges on surrogate values from Thailand.[82] For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price, *see* Xugong's Preliminary Analysis Memo.

2. Constructed Export Price

Pursuant to section 772(b) of the Act, the CEP is "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the

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[80] *See* memorandum from the Department, "2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Xuzhou Xugong Tyres Co., Ltd.," dated concurrently with the memorandum ("Xugong's Preliminary Analysis Memo").

[81] In these preliminary results, the Department applied to Xugong the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs and/or CEPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

[82] *See* "Factor Valuation" section below and "2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results Surrogate Value Memorandum," date concurrently with this memorandum ("Preliminary SV Memo") for further discussion of surrogate value selection.

producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for certain of Xugong's sales because the sales were made on its behalf by its U.S. sales affiliate in the United States (*i.e.*, ATI) to unaffiliated purchasers in the U.S.

For these sales, we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, to the reported gross unit prices for billing adjustments, to arrive at the price at which the subject merchandise is first sold in the United States to an unaffiliated customer in accordance with section 772(d) of the Act. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These included, where applicable, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, ocean freight, U.S. inland freight from port of importation to the warehouse, U.S. freight from warehouse to customer, U.S. warehousing, U.S. customs duties, and U.S. brokerage and handling. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense, otherwise the Department valued the expense with a SV.[83] Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* Xugong's Preliminary Analysis Memo.

In accordance with section 772(d)(1) of the Act, the Department deducted, where applicable, commissions, credit expenses, interest revenue, warranty expenses, advertising expenses, repackaging costs, inventory carrying costs, and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In accordance with section 772(d) of the Act, we calculated ATI's credit expenses and inventory carrying costs based on its short-term interest rate. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.[84]

3. Value-Added Tax

The Department's recent practice in NME cases is to adjust EP or CEP for the amount of any unrefunded, (herein "irrecoverable") value-added tax ("VAT") in certain non-market economies in accordance with section 772(c)(2)(B) of the Act.[85] In changing the practice, 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 EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[86] Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax

[83] *See* Preliminary SV Memo for a detailed description.
[84] For a detailed description of all adjustments, *see* Xugong's Preliminary Analysis Memo.
[85] *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).
[86] *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.

neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.[87]

In an initial questionnaire, the Department instructed Xugong to report VAT on the subject merchandise it sold to the United States during the POR and to identify which VAT are unrefunded upon export.[88] We asked Xugong to explain in detail why and provide worksheets demonstrating how they calculated the amount reported as VATTAXU, which should reconcile to actual VAT returns and be accompanied by a detailed narrative explanation that describes the calculations. In addition, for each reconciling item reported in the worksheets, we requested Xugong provide documentation and a citation to the laws and regulation that fully support the reason for the reconciling item. In response, Xugong stated it disagreed with our product-specific methodology and reported that its total VAT refund was less than the 8 percent used in the standard Department calculation, but did not provide the requested reconciliation and documentation to support its claim.[89] Xugong indicated that according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is 9 percent.[90]

However, our practice is that we will not consider allocations across all company sales or across sales of products with different VAT schedules but, rather, use the difference between the VAT rate and the refund rate, consistent with PRC regulations (*i.e.* the standard VAT levy of 17 percent and the rebate rate for subject merchandise of 9 percent), unless the company can show otherwise for the subject merchandise including a complete reconciliation of each reported instance.[91] The Department's methodology, as explained above and applied in this review, 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. The information placed on the record of this review by Xugong indicates that according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is 9 percent.[92] For the purposes of these preliminary results, therefore, we removed from U.S. price the difference between the rates for Xugong (*i.e.*, 8 percent), which is the irrecoverable VAT as defined under Chinese tax law and regulation.[93] This is consistent with the Department's longstanding policy and the intent of the statute, that dumping comparisons be tax-neutral.[94]

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[87] *Id.*
[88] *See, e.g.,* the Department's initial questionnaires to Xugong entitled, "2014-2015 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Questionnaire," dated December 16, 2015 ("Department's Initial Questionnaire").
[89] *See* Xugong's letter entitled, "Xuzhou Xugong Tyres Co., Ltd. ("Xugong") Section C Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated February 4, 2015 ("Xugong CQR").
[90] *See, e.g.,* Xugong SCQR at 54-57.
[91] *See, e.g., 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 6.
[92] *See, e.g.,* Xugong SCQR at 54-57.
[93] *See* Xugong's Preliminary Analysis Memo.
[94] *See Methodological Change*, (*citing Antidumping Duties; Countervailing Duties*, 62 FR27296, 27369 (May 19, 1997) and Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. I 03-316, vol. I, 827, reprinted in 1994 U.S.C.C.A.N. 3773, 4172); *see also Polyethylene Terephthalate Film, Sheet,*

K. Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that a respondent provide information regarding the weighted-average FOPs across all of the company's plants and/or suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier.[95] This methodology ensures that the Department's calculations are as accurate as possible.[96]

The Department calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs used by Xugong in the production of OTR Tires include, but are not limited to, (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on Xugong's reported FOPs for materials, energy, and labor.

L. Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by Xugong, the Department calculated NV based on the FOPs reported by Xugong for the POR. The Department used Thai import data and other publicly available Thai sources in order to calculate SVs for Xugong's FOPs. To calculate NV, the Department multiplied Xugong's reported per-unit FOP quantities by publicly available SVs.[97] The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[98]

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Thai import SVs a surrogate freight cost

and Strip from the People's Republic of China: Preliminary Results of Antidumping Administrative Review; 2011-2012, 78 FR 78333 (December 26, 20 13) and accompanying Preliminary Decision Memorandum at Issue 9, unchanged in Final Results.

[95] *See* Department's Initial Questionnaire, at Section D.

[96] *See, e.g., Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) and accompanying Issues and Decision Memorandum at Comment 7.

[97] *See* Preliminary SV Memo.

[98] *See, e.g., Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, and the Department converted all applicable FOPs to a per-kilogram basis.

Furthermore, with regard to the Thai import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized.[99] We have reason to believe or suspect that prices of inputs from Indonesia, India, and South Korea may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies.[100] Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.[101] Therefore, we have not used prices from these countries either in calculating the Thai import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, 85 percent or more),) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, the Department uses the actual purchase prices to value the inputs if substantially all of the factor, by total volume, is purchased from the market economy supplier. [102] In accordance with the regulation, substantially all is defined to be 85 percent or more of the total volume purchased of the factor.[103] Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective

[99] *See* Section 505 of Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, *129 Stat. 362* (June 29, 2015) ("TPEA"). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46795 (August 6, 2015) ("*Application Notice*").
[100] *See, e.g., Carbazole Violet Pigment 23 from India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order*, 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4-5; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19-20.; *Certain Lined Paper Products From Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order*, 76 FR 73592 (November 29, 2011), and accompanying Issues and Decision Memorandum at 1.
[101] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).
[102] *See Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) ("*Market Economy Inputs*").
[103] *Id*.

shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.[104] When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.[105]

Information reported by Xugong demonstrates that certain inputs were sourced from an ME country and paid for in ME currencies below the 85 percent threshold for other inputs.[106] Accordingly, the Department implemented its ME purchase methodology (outlined above) to value Xugong's ME purchases, as appropriate, and applied freight expenses to the ME prices of the inputs where necessary.[107] The information reported by Xugong also demonstrates that certain inputs were purchased from countries which maintain broadly available, non-industry-specific export subsidies; thus, consistent with our practice and the statute, we have not used the actual price paid for these inputs (or portion of inputs) and instead valued them using an SV.[108]

For the preliminary results, the Department used Thai Import Statistics from Global Trade Atlas ("GTA") to value raw materials, byproducts, packing inputs, and certain energy inputs that Xugong used to produce subject merchandise during the POR, except as listed below.[109] Parties placed data from the GTA for Thailand on the record for the aforementioned items, and the GTA is a source that is regularly used by the Department because the data therein meet the Department's SV criteria. The record shows that data in the Thai import statistics, as well as those from the other sources, are contemporaneous with the POR, product-specific, representative of a broad market average, and duty and tax-exclusive.[110]

The Department valued natural rubber inputs using the average of daily prices of natural rubber during the POR, as reported by the RRIT and recorded by the ANRPC.[111] This source is (1) publicly available, (2) in the primary surrogate country, (3) spans the POR and (4) is representative of a broad market average, and duty and tax-exclusive. The ANRPC compiles the prices of natural rubber from Kuala Lumpur, Bangkok, Kottayam, and Malaysia on a daily basis. The prices for Thailand are the country-wide "Official Noon Price," on a free on board basis, as reported by the RRIT and Department of Agriculture for natural rubber of grade RSS3.

We valued electricity and water using values from the *Cost of Doing Business in Thailand 2015* report issued by the Thailand Board of Investment.[112] We valued steam using data published in

[104] *Id*.
[105] *Id*.
[106] *See* letter form Xugong, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Section D Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires the People's Republic of China," dated February 11, 2016 ("Xugong SDQR"), at Exhibits D4-1 and D4-2.
[107] *See* Preliminary SV Memo.
[108] *Id*.
[109] *Id*.
[110] *Id*.
[111] *Id*.
[112] *Id*.

the 2014 annual report of Glow Energy Public Company Limited, a Thai company that supplies electricity, steam, and water for industrial use, contained therein.[113]

We valued brokerage and handling ("B&H") using information in the World Bank's *Doing Business 2016: Thailand* report. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in *Doing Business 2016: Thailand* by the World Bank, the data gathered and reported is contemporaneous with the POR.[114]

We valued truck freight using data published in the World Bank's *Doing Business 2016: Thailand* for inland transportation and handling relating to importing and exporting a standardized cargo of goods.[115] This report gathers information concerning the distance and cost to transport products in a 20-foot container weighing 15 metric tons from the largest city in Thailand (Bangkok) to the Laem Chabang port 129 kilometers away. Because this data used in the report is current as of June 2015, it is contemporaneous, thus we did not inflate this value. In addition, because the value was denominated in USD, no currency conversion was required. We divided the $147 value reported by the average distance and that result by 15,000 kilograms (for the 15 ton container) to get a truck freight SV. We calculated a truck freight cost of .000076 USD per kilogram, per kilometer.[116]

In *Labor Methodologies*, the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country.[117] Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A from the International Labor Organization's ("ILO") Yearbook of Labor Statistics ("ILO Yearbook"). [118]The Department does not, however, preclude all other sources from evaluation labor costs.[119] Rather, we continue to follow our practice of selecting the best available information to determine SVs for inputs such as labor. In this case, we valued labor using data reported by the Thailand National Statistics Office *Labor Force Survey of Whole Kingdom Quarter 4 2014 – Quarter 3, 2015,* which is specific to manufacturing and contemporaneous with or closest in time to the POR from the labor sources available on the record.[120]

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[113] *Id*.
[114] *Id*.
[115] *Id*.
[116] *Id.*
[117] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) ("*Labor Methodologies*").
[118] In *Labor Methodologies*, the Department decided to change to the use of ILO Chapter 6A data from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs. The Department did not, however, preclude all other sources for evaluating labor costs in NME AD proceedings.
[119]*See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75854 (December 4, 2015) and Issues and Decision Memorandum at 22-23, unchanged in the final determination.
[120] *See* Preliminary SV Memo; *see also See Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 53490 (September 4, 2015) and accompanying Preliminary Decision Memorandum unchanged at AR6 Final Results.

The Department's criteria for choosing surrogate financial statements from which we derive the financial ratios are the availability of contemporaneous financial statements, comparability to the respondent's experience, and publicly available information.[121] Moreover, for valuing factory overhead, selling, general, and administrative ("SG&A") expenses and profit, the Department normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.[122] In addition, the CIT has held that in the selection of surrogate producers, the Department may consider how closely the surrogate producers approximate the NME producer's experience.[123] To value factory overhead, selling, general and administrative expenses ("SG&A"), and profit, we used information from the financial statements of Thai OTR tire producers S.R. Tyres Co. Ltd. ("S.R. Tyres") and Hwa Fong Rubber Ind. Co., Ltd. ("Hwa Fong") all for the year ending December 31, 2014, both are producers of identical merchandise.[124] From these Thai financial statements we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy ("ML&E") costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A.[125]

<u>Currency Conversion</u>

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank. These exchange rates are available on the Enforcement and Compliance website at http://enforcement.trade.gov/exchange/index.html.

For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* the Preliminary SV Memo.

VI. Adjustment Under Section 777A(f) of the Act

In applying section 777A(f) of the Act in this administrative review, the Department examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to

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[121] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005), and accompanying Issues and Decision Memorandum at Comment 3.
[122] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China, Final Determination in the Antidumping Duty Investigation*, 71 FR 29303 (May 22, 2006), and accompanying Issues and Decision Memorandum at Comment 2; see also section 773(c)(4) of the Act; 19 CFR 351.408(c)(4).
[123] *See Rhodia, Inc. v. United States*, 240 F. Supp. 2d 1247, 1253-1254 (CIT 2002); *see also Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 6836 (February 9, 2005), and accompanying Issues and Decision Memorandum at Comment 1.
[124] *Id.*
[125] *Id.*

section 773(c) of the Act, has increased the weighted average dumping margin for the class or kind of merchandise.[126] For a subsidy meeting these criteria, the statute requires the Department to reduce the antidumping duty by the estimated amount of the increase in the weighted average dumping margin subject to a specified cap.[127]

In order to examine the effects of concurrent countervailable subsidies in calculating antidumping margins for respondents in this review, the Department provided Xugong with an opportunity submit information with respect to subsidies relevant to their eligibility for an adjustment to the calculated weighted-average dumping margin. However Xugong did not submit a response to this questionnaire; therefore no adjustments based on countervailable subsidies will be made.

VII. Recommendation

We recommend applying the above methodology for these preliminary results.

✓
Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

October 5, 2016

Date

[126] *See* section 777A(f)(1)(A)-(C) of the Act.
[127] *See* section 777A(f)(1)-(2) of the Act.