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Investigation
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DATE: October 21, 2016

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

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

CASE: Antidumping Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China

SUBJECT: Issues and Decision Memorandum for the Final Determination of Sales at Less-Than-Fair-Value

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SUMMARY

The Department of Commerce ("the Department") finds that certain iron mechanical transfer drive components ("IMTDC") from the Peoples Republic of China ("China") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735 of the Tariff Act of 1930, as amended ("the Act"). The period of investigation ("POI") is April 1, 2015, through September 30, 2015.

After analyzing the comments submitted by interested parties, we made certain changes to the dumping margin calculations for the mandatory respondent, Powermach Import & Export Co., Ltd. (Sichuan) ("Powermach"). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues for which we received comments:

Comment 1: Treatment of Input
Comment 2: Per-Unit Consumption
Comment 3: Generated Iron Scrap
Comment 4: By-Product Offset
Comment 5: Underreported Consumption
Comment 6: Mold Workshop Labor
Comment 7: Separate Rate Status for Baldor Electric Company Canada

Comment 8: Separate Rate Status for Zhejiang Damon Industrial Equipment Co., Ltd.
Comment 9: Separate Rate Status for Zhejiang Dongxing Auto Parts Co., Ltd.
Comment 10: Separate Rate Status for Yueqing Bethel Shaft Collar Manufacturing Co., Ltd.
Comment 11: Surrogate Value for Labor
Comment 12: Surrogate Value for Baking Coal
Comment 13: Surrogate Value for Anti-tarnish Paper
Comment 14: Surrogate Value for Spheroidizing Agent
Comment 15: Surrogate Value for Rail Freight
Comment 16: Selection of Financial Statements
Comment 17: SG&A Expense Calculation in Thai Ductile Inductory Co. Ltd.'s Financial Statements

BACKGROUND

The following events have taken place since the Department published the *Preliminary Determination* in this investigation on June 8, 2016.[1] Between June 21, 2016, and June 25, 2016, the Department conducted verification of the information provided by Powermach.[2] On August 5, 2016, Yueqing Bethel Shaft Collar Manufacturing Co., Ltd. ("Bethel") submitted a case brief.[3] On August 15, 2016, Powermach, TB Wood's Incorporated ("Petitioner"), and Baldor Electric Company Canada ("Baldor") submitted case briefs.[4] Additionally, on August 22, 2016, Petitioner and Powermach submitted rebuttal briefs.[5] Finally, based on timely requests, on September 14, 2016, the Department held a closed hearing limited to issues raised in the case briefs and the rebuttal briefs.[6]

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[1] *See Certain Iron Mechanical Transfer Drive Components From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 36876 (June 8, 2016) ("*Preliminary Determination*"), and accompanying Preliminary Issues and Decision Memorandum ("PDM").
[2] *See* Memorandum from Krisha Hill, International Trade Compliance Analyst, Office IV, Enforcement and Compliance and Jonathan Hill, International Trade Compliance Analyst, Office IV, Enforcement and Compliance through Howard Smith, Program Manager, Office IV Enforcement and Compliance to The File "Verification Report of the Sales and Factors Responses of Powermach Import & Export Co., Ltd. (Sichuan), Sichuan Dawn Precision Technology Co., Ltd., Sichuan Dawn Foundry Co., Ltd., and Powermach Co., Ltd. in the Antidumping Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China," dated August 3, 2016 ("Verification Report").
[3] *See* Letter from Bethel to the Secretary of Commerce "Yueqing Bethel's Case Brief in the Antidumping Duty Investigation on Certain Iron Mechanical Transfer Drive Components from the People's Republic of China. (A-570-032)," dated August 5, 2016 ("Bethel's Brief").
[4] *See* Letter from Powermach to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Case Brief Powermach," dated August 15, 2016 ("Powermach's Brief"); *see also* letter from Petitioner to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Case Brief of TB Wood's Incorporated," dated August 15, 2016 ("Petitioner's Brief"); *see also* letter from Baldor to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Case Brief Baldor," dated August 15, 2016 ("Baldor's Brief").
[5] *See* Letter from Petitioner to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Rebuttal Brief of TB Wood's Incorporated," dated August 22, 2016 ("Petitioner's Rebuttal Brief"); *see also* letter from Powermach to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Rebuttal Brief," dated August 22, 2016 ("Powermach's Rebuttal Brief").
[6] *See* Letter from Donna Watkins "United States of America Department of Commerce: Closed Hearing," dated September 21, 2016.

SCOPE COMMENTS

On June 27, 2016, Petitioner requested that the Department amend the scope to exclude certain parts of torsional vibration dampers ("TVD"), *i.e.*, certain TVD inner rings.[7] On August 4, 2016, Petitioner made further revisions to this requested exclusion.[8] Further, on August 17, 2016, Petitioner submitted scope comments[9] requesting that the Department amend the scope to exclude certain flywheels with outer ring gear attached and that the Department should continue to find that the country of origin is the country in which the IMTDC is cast.[10]

Between July 14, 2016 and August 17, 2016, Caterpillar Inc. ("Caterpillar"), General Motors Company ("GM"), Mercury Marine ("Mercury Marine"), ZF Services, LLC ("ZF"), Speed Solutions, Dahua Machine Manufacturing Co., Ltd. ("Dahua"),[11] Otis Elevator Company and Carrier Corporation (collectively "Otis/Carrier"), and Vibracoustic North America LP ("Vibracoustic") submitted combined scope comments.[12]

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[7] *See* Petitioner's June 27, 2016, submission regarding "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Petitioner's Additional Amendment to the Scope."

[8] *See* Petitioner's August 4, 2016, submission regarding "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Petitioner's Revision to Additional Amendment to the Scope." For purposes of these final determinations, we are only considering Petitioner's August 4, 2016, revised submission concerning an exclusion for certain TVD inner rings.

[9] The Department rejected certain parts of Petitioner's July 15, 2016, scope comments submission regarding IMTDCs from the People's Republic of China because the submission contained new factual information; *see* the Department's August 1, 2016, letter to Petitioner regarding "Antidumping Duty and Countervailing Duty Investigations of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Response to TB Wood's Incorporated's July 15, 2016, Letter;" s*ee also* Memorandum to the File from Patrick O'Connor, International Trade Analyst, AD/CVD Operations, Office IV, regarding "Filing Deficiencies in Multiple Submissions," dated August 2, 2016.

[10] *See* Petitioner's August 17, 2016, submission regarding "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Petitioner's Final Scope Comments," ("Petitioner scope comments").

[11] The Department rejected certain parts of Dahua's original July 15, 2016, scope comments submission regarding IMTDCs from the People's Republic of China because the submission contained new factual information. *See* letter to Dahua regarding "Antidumping Duty and Countervailing Duty Investigations of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Response to Dahua's July 15, 2016, Letter;" *see also* Memorandum to the File from Patrick O'Connor, International Trade Analyst, AD/CVD Operations, Office IV, regarding "Filing Deficiencies in Multiple Submissions," dated August 2, 2016; *see also* letter from Dahua to the Secretary of Commerce "Scope Comments Brief of Dahua Machine Manufacturing Co., Ltd.," dated August 17, 2016.

[12] *See* Letter from Caterpillar to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Caterpillar's Request for Confirmation of Scope Exclusion" dated July 14, 2016; *see also* letter from GM to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: GM's Request for Confirmation of Scope Exclusion and Request that the Department Notify U.S. Customs and Border Protection and the U.S. International Trade Commission of Scope Revisions," dated July 19, 2016; *see also* letter form Caterpillar to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Caterpillar's Final Scope Comments," dated August 17, 2016; *see also* letter from GM to the Secretary of Commerce dated August 17, 2016; *see also* letter from Mercury Marine to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from Canada and China: Case Brief," dated August 15, 2016; *see also* letter from ZF to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from Canada

On August 22, 2016, Petitioner submitted rebuttal scope comments arguing that the Department should accept its flywheel with outer ring gear exclusion with no further modifications and that the scope should not be modified to define "mechanical transfer drive assembly."[13]

On September 13, 2016, Kohler Co. ("Kohler") resubmitted its scope comments[14] arguing that certain toothed gear flywheels be excluded from the scope of these investigations.[15]

For a full discussion of all scope comments, *see* Final Scope Memorandum.[16]

SCOPE OF THE INVESTIGATION

The products covered by this investigation are iron mechanical transfer drive components, whether finished or unfinished (*i.e.*, blanks or castings). Subject iron mechanical transfer drive components are in the form of wheels or cylinders with a center bore hole that may have one or more grooves or teeth in their outer circumference that guide or mesh with a flat or ribbed belt or like device and are often referred to as sheaves, pulleys, flywheels, flat pulleys, idlers, conveyer pulleys, synchronous sheaves, and timing pulleys. The products covered by this investigation also include bushings, which are iron mechanical transfer drive components in the form of a

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and the People's Republic of China: Scope Comments," dated August 15, 2016; *see also* letter from Speed Solutions to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China - Final Scope Comments," dated August 17, 2016; *see also* letter from Otis/Carrier to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Final Scope Comments," dated August 17, 2016; *see also* letter from Kohler to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components (IMTDC) from Canada and China: Final Scope Comments," dated August 17, 2016.

[13] *See* Letter from Petitioner to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Petitioner's Final Rebuttal Scope Comments," dated August 22, 2016.

[14] The Department rejected certain parts of Kohler's original August 17, 2016, submission regarding "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Kohler's Request for Confirmation of Scope Exclusion and Request that the Department Notify U.S. Customs and Border Protection and the U.S. International Trade Commission of Scope Revisions," scope comments because the submission contained new factual information; *see* Memorandum to the File from Stephen Bailey, Senior Analyst, Office IV, AD/CVD Operations "Rejection of Untimely New Factual Information in the Less-Than-Fair-Value Investigations of Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China and Countervailing Duty Investigation of Iron Mechanical Transfer Drive Components from the People's Republic of China," dated September 12, 2016.

[15] *See* Letter from Kohler to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Kohler's Request for Confirmation of Scope Exclusion and Request that the Department Notify U.S. Customs and Border Protection and the U.S. International Trade Commission of Scope Revisions," dated September 13, 2016.

[16] S*ee* Memorandum from Abdelali Elouaradia, Director, Office IV, Antidumping and Countervailing Duty Operations, to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding "Antidumping Duty Investigations of Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China and Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Scope Decision Memorandum for the Final Determinations," ("Final Scope Decision Memorandum") dated concurrently with this notice.

cylinder and which fit into the bore holes of other mechanical transfer drive components to lock them into drive shafts by means of elements such as teeth, bolts, or screws.

Iron mechanical transfer drive components subject to this investigation are those not less than 4.00 inches (101 mm) in the maximum nominal outer diameter.

Unfinished iron mechanical transfer drive components (*i.e.*, blanks or castings) possess the approximate shape of the finished iron mechanical transfer drive component and have not yet been machined to final specification after the initial casting, forging or like operations. These machining processes may include cutting, punching, notching, boring, threading, mitering, or chamfering.

Subject merchandise includes iron mechanical transfer drive components as defined above that have been finished or machined in a third country, including but not limited to finishing/machining processes such as cutting, punching, notching, boring, threading, mitering, or chamfering, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the iron mechanical transfer drive components.

Subject iron mechanical transfer drive components are covered by the scope of the investigation regardless of width, design, or iron type (*e.g.*, gray, white, or ductile iron). Subject iron mechanical transfer drive components are covered by the scope of the investigation regardless of whether they have non-iron attachments or parts and regardless of whether they are entered with other mechanical transfer drive components or as part of a mechanical transfer drive assembly (which typically includes one or more of the iron mechanical transfer drive components identified above, and which may also include other parts such as a belt, coupling and/or shaft). When entered as a mechanical transfer drive assembly, only the iron components that meet the physical description of covered merchandise are covered merchandise, not the other components in the mechanical transfer drive assembly (*e.g.*, belt, coupling, shaft). However, the scope excludes flywheels with a ring gear permanently attached onto the outer diameter. A ring gear is a steel ring with convex external teeth cut or machined into the outer diameter, and where the diameter of the ring exceeds 200 mm and does not exceed 2,244.3 mm.

For purposes of this investigation, a covered product is of "iron" where the article has a carbon content of 1.7 percent by weight or above, regardless of the presence and amount of additional alloying elements.

Excluded from the scope are finished torsional vibration dampers (TVDs). A finished TVD is an engine component composed of three separate components: an inner ring, a rubber ring and an outer ring. The inner ring is an iron wheel or cylinder with a bore hole to fit a crank shaft which forms a seal to prevent leakage of oil from the engine. The rubber ring is a dampening medium between the inner and outer rings that effectively reduces the torsional vibration. The outer ring, which may be made of materials other than iron, may or may not have grooves in its outer circumference. To constitute a finished excluded TVD, the product must be composed of each of the three parts identified above and the three parts must be permanently affixed to one another such that both the inner ring and the outer ring are permanently affixed to the rubber ring. A

finished TVD is excluded only if it meets the physical description provided above; merchandise that otherwise meets the description of the scope and does not satisfy the physical description of excluded finished TVDs above is still covered by the scope of the investigation regardless of end use or identification as a TVD.

Also excluded from the scope are certain TVD inner rings. To constitute an excluded TVD inner ring, the product must have each of the following characteristics: (1) a single continuous curve forming a protrusion or indentation on outer surface, also known as a sine lock, with a height or depth not less than 1.5 millimeters and not exceeding 4.0 millimeters and with a width of at least 10 millimeters as measured across the sine lock from one edge of the curve to the other;[17] (2) a face width of the outer diameter of greater than or equal to 20 millimeters but less than or equal to 80 millimeters; (3) an outside diameter greater than or equal to 101 millimeters but less than or equal to 300 millimeters; and (4) a weight not exceeding 7 kilograms. A TVD inner ring is excluded only if it meets the physical description provided above; merchandise that otherwise meets the description of the scope and does not satisfy the physical description of excluded TVD inner rings is still covered by the scope of this investigation regardless of end use or identification as a TVD inner ring.

The scope also excludes light-duty, fixed-pitch, non-synchronous sheaves ("excludable LDFPN sheaves") with each of the following characteristics: made from grey iron designated as ASTM (North American specification) Grade 30 or lower, GB/T (Chinese specification) Grade HT200 or lower, DIN (German specification) GG 20 or lower, or EN (European specification) EN-GJL 200 or lower; having no more than two grooves; having a maximum face width of no more than 1.75 inches, where the face width is the width of the part at its outside diameter; having a maximum outside diameter of not more than 18.75 inches; and having no teeth on the outside or datum diameter. Excludable LDFPN sheaves must also either have a maximum straight bore size of 1.6875 inches with a maximum hub diameter of 2.875 inches; or else have a tapered bore measuring 1.625 inches at the large end, a maximum hub diameter of 3.50 inches, a length through tapered bore of 1.0 inches, exactly two tapped holes that are 180 degrees apart, and a 2.0- inch bolt circle on the face of the hub. Excludable LDFPN sheaves more than 6.75 inches in outside diameter must also have an arm or spoke construction.[18] Further, excludable LDFPN sheaves must have a groove profile as indicated in the table below:

Size (belt profile)	Outside Diameter	Top Width Range of Each Groove	Maximum Height	Angle
MA/AK (A, 3L, 4L)	$\leq$ 5.45 in.	0.484 – 0.499 in.	0.531 in.	34^{o}

[17] The edges of the sine lock curve are defined as the points where the surface of the inner ring is no longer parallel to the plane formed by the inner surface of the bore hole that attaches the ring to the crankshaft.

[18] An arm or spoke construction is where arms or spokes (typically 3 to 6) connect the outside diameter of the sheave with the hub of the sheave. This is in contrast to a block construction (in which the material between the hub and the outside diameter is solid with a uniform thickness that is the same thickness as the hub of the sheave) or a web construction (in which the material between the hub and the outside diameter is solid but is thinner than at the hub of the sheave).

MA/AK (A, 3L, 4L)	>5.45 in. but ≤ 18.75 in.	0.499 – 0.509 in.	0.531 in.	38°
MB/BK (A, B, 4L, 5L)	≤ 7.40 in.	0.607 – 0.618 in.	0.632 in.	34°
MB/BK (A, B, 4L, 5L)	>7.40 in. but ≤ 18.75 in.	0.620 – 0.631 in.	0.635 in.	38°

In addition to the above characteristics, excludable LDFPN sheaves must also have a maximum weight (pounds-per-piece) as follows: for excludable LDFPN sheaves with one groove and an outside diameter of greater than 4.0 inches but less than or equal to 8.0 inches, the maximum weight is 4.7 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 4.0 inches but less than or equal to 8.0 inches, the maximum weight is 8.5 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 8.0 inches but less than or equal to 12.0 inches, the maximum weight is 8.5 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 8.0 inches but less than or equal to 12.0 inches, the maximum weight is 15.0 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 12.0 inches but less than or equal to 15.0 inches, the maximum weight is 13.3 pounds; for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 12.0 inches but less than or equal to 15.0 inches, the maximum weight is 17.5 pounds; for excludable LDFPN sheaves with one groove and an outside diameter of greater than 15.0 inches but less than or equal to 18.75 inches, the maximum weight is 16.5 pounds; and for excludable LDFPN sheaves with two grooves and an outside diameter of greater than 15.0 inches but less than or equal to 18.75 inches, the maximum weight is 26.5 pounds.

The scope also excludes light-duty, variable-pitch, non-synchronous sheaves with each of the following characteristics: made from grey iron designated as ASTM (North American specification) Grade 30 or lower, GB/T (Chinese specification) Grade HT200 or lower, DIN (German specification) GG 20 or lower, or EN (European specification) EN-GJL 200 or lower; having no more than 2 grooves; having a maximum overall width of less than 2.25 inches with a single groove, or of 3.25 inches or less with two grooves; having a maximum outside diameter of not more than 7.5 inches; having a maximum bore size of 1.625 inches; having either one or two identical, internally-threaded *(i.e.,* with threads on the inside diameter), adjustable (rotating) flange(s) on an externally-threaded hub *(i.e.,* with threads on the outside diameter) that enable(s) the width (opening) of the groove to be changed; and having no teeth on the outside or datum diameter.

The scope also excludes certain IMTDC bushings. An IMTDC bushing is excluded only if it has a tapered angle of greater than or equal to 10 degrees, where the angle is measured between one outside tapered surface and the directly opposing outside tapered surface.

The merchandise covered by this investigation is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8483.30.8090, 8483.50.6000, 8483.50.9040, 8483.50.9080, 8483.90.3000, 8483.90.8080. Covered merchandise may also enter under the following HTSUS subheadings: 7325.10.0080, 7325.99.1000, 7326.19.0010, 7326.19.0080, 8431.31.0040, 8431.31.0060, 8431.39.0010, 8431.39.0050, 8431.39.0070,

8431.39.0080, and 8483.50.4000. These HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

DISCUSSION OF THE ISSUES

Comment 1: Treatment of Input

Powermach's Arguments:

- The Department concluded at verification that Powermach does not consume virgin pig iron ingots in the production of grey iron products. There is no factual or legal basis for the Department to find that Powermach "withheld information" or "significantly impeded" the proceeding.
- Section 782(e) of the Act prohibits the Department from rejecting information submitted by a party if the information is submitted by the deadline, can be verified, is not "so incomplete that it cannot serve as a reliable basis for reaching the applicable determination," the interested party has demonstrated it "acted to the best of its ability," and the information can be used without undue difficulties. Section 776(b) of the Act dictates that finding a failure to cooperate is a necessary prerequisite to apply an adverse inference.
- In this instance, the Department's verification and record evidence demonstrates Powermach's significant efforts to comply with the investigation, corroborates Powermach's responses to the Department's questionnaires, and precludes any finding that would merit an adverse inference because Powermach supposedly withheld information regarding whether it consumed a particular material in producing subject merchandise.
- During verification, the Department confirmed that the material codes at issue, which are reflected in the FOP database, are not virgin pig iron ingots which Petitioner claims Powermach failed to report to the Department.
- Petitioner failed to take notice that Powermach's production process differs from Petitioner's process and thus it did not need to use virgin pig iron ingotswhich Petitioner claims Powermach failed to report to the Department. The Department observed Powermach's production process at verification.
- The Department examined the reported per-unit consumption for each of the Powermach entities and "noted no discrepancies with the per-unit calculation of the raw materials consumed at the melting stage of production" and the casting, machining and finishing stages. There is no basis in the record for the Department to disregard any of Powermach's FOP data.
- Although the confusion in the translation of the Chinese characters in the names of certain material codes at issue is evident (translations which relate to the issue of whether the materials with these codes were properly reported in the FOP database), an ambiguous translation cannot be grounds for the application of AFA.

Petitioner's Arguments:

- Pursuant to Section 776 of the Act, the Department may base a determination on facts available when necessary information is not on the record or an interested party withholds information, fails to provide information in a timely manner, significantly

impedes a proceeding, or provides unverifiable information. In selecting among facts available, the Department may rely on an adverse inference if the agency determines that an interested party has failed to cooperate by not acting to the best of its abilities.

- The Department's decision to apply AFA at the preliminary determination was appropriate. Verification failed to show that AFA should not be applied. Instead, the information discovered at verification demonstrates that Powermach has not provided accurate or verifiable information regarding its use of the materials in question, casts even further doubt on the accuracy of its reporting, and supports the application of AFA.
- The information obtained at verification consisted of unsubstantiated claims, the same unsupported statements made prior to the preliminary determination, and additional information demonstrating that Powermach has not been fully forthcoming with the Department and has provided misleading information.
- Specifically, Powermach did not demonstrate that the samples of the materials examined and tested at verification corresponded to the material codes at issue. Thus, the results of the spectrograph analyzer of the materials tested are of limited value. Furthermore, unless the Department tested the inputs that it observed being put into the melt, as well as the resulting melt, it can't confirm that the inputs identified by Powermach are used in the production of subject merchandise.
- Also, verification revealed that Powermach has been providing the Department with inaccurate information about certain raw materials, which raises questions as to Powermach's reporting and whether these inputs were properly valued at the preliminary determination.
- Lastly, the Department's methodology in applying partial AFA was decidedly non-adverse. For the final determination, the Department should value a certain input using the surrogate value for pig iron as partial AFA.

Department's Position: After further review of record information, and as a result of verification, we disagree with Petitioner that we should apply partial AFA with respect to the particular input at issue for the final determination.[19] Powermach participated fully in the Department's verification of its questionnaire responses. Moreover, based on the Department's verification, we find that with respect to Powermach's reporting of the particular input in question, Powermach cooperated to the best of its ability with the Department's requests for information. We also found no discrepancy with Powermach's total consumption quantities with respect to the metal materials, or the per-unit factor of production calculations.

Therefore, the issue is how to value certain raw materials associated with the input in question. For the reasons explained in the Treatment of Input Memorandum, the Department has determined that valuing the raw materials in question using the HTS category 72011000000 for

[19] The materials associated with the particular input in question, and the input itself, are not identified because they disclose business proprietary information. For further discussion, *see* Memorandum to the File from Abdelali Elouaradia, Office Director, AD/CVD Operations, Office IV, Enforcement and Compliance, through Gary Taverman, Associate Deputy Assistant Secretary, AD/CVD Operations to Ronald Lorentzen, Acting Assistant Secretary, Enforcement and Compliance "Treatment of Input," dated October 21, 2016 ("Treatment of Input Memorandum"). *See also* Powermach's Brief and Petitioner's Brief for identification of the materials associated with the particular input, and the input itself, at pages 3 to 16, and pages 3 to 14, respectively.

pig iron (*i.e.*, Base Metals and Articles of Base Metal; Iron And Steel; Pig Iron And Spiegeleisen In Pigs, Blocks Or Other Primary Forms; Nonalloy Pig Iron Containing 0.5% (Wt.) Or Less Phosphorus, In Primary Forms) constitutes the best available information.[20]

Comment 2: Per-Unit Consumption

Petitioner's Arguments:

- Powermach understated the per-unit consumption of raw materials used in the melting and casting stages of production at its Dawn Precision facility by allocating raw materials at each stage of production to all castings produced and not to castings consuming melting iron only.[21]

Powermach's Arguments:

- The consumption at the casting stage of production that was identified as consumption of materials including melting iron from the melting stage of production relates to the production of all castings and therefore should be allocated to all castings. The Department verified the amount of this consumption.[22]
- The reported raw material consumption at the casting stage of production was also for production of all castings and thus it would be incorrect to allocate this consumption only to castings consuming melting iron.
- Allocating consumption of these raw materials using castings that only consume melting iron would result in an overstatement of raw material consumption.

Department's Position: We disagree with Petitioner that Powermach understated its per-unit consumption of raw materials consumed at the melting and casting stages of production at its Dawn Precision facility. We verified that the total consumption of all raw materials first used at the casting stage was used to produce all castings.[23] In addition, the quantity of the materials including melting iron going into casting production (this quantity was used to allocate raw material consumption at the melting stage of production to all castings) had a value which when added to other costs at the casting stage, reconciled to the cost of manufacturing in the income statement of Dawn Precision.[24] Thus, we find that the quantity used to allocate raw material consumption reported at the melting stage of production to castings related to all castings produced by Dawn Precision. Therefore, it was appropriate to use the quantity of total castings in the allocation.

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[20] *See* Letter from Powermach to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Surrogate Value Comments," dated March 3, 2016 ("Powermach SV Comments") at Exhibit SV-4.

[21] *See* Letter from Powermach to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Response to the Department of Commerce's May 5, 2016 Supplemental Questionnaire," dated May 17, 2016 ("Powermach SQ6") at Exhibit SQ6-9.

[22] *See* Verification Report at 32 where the Department reconciled the breakdown of the cost of production for melting iron, castings, semi-finished products, and finished products recorded in the COM reports (April and May 2015) to the total cost of production for each corresponding product type reported in Dawn Precision's cost reconciliation worksheet. *See* Powermach SQ6 at Exhibit SQ6-9.

[23] *See* Verification Report at 38; *see also* Powermach SQ6-12.

[24] *Id.*

Comment 3: Generated Iron Scrap

During verification, the Department noted that a certain quantity of iron scrap consumed in the production of merchandise under consideration at various manufacturers within the collapsed Powermach entity[25] was generated during production at various manufacturers within the collapsed entity, but was reported as purchased iron scrap rather than reintroduced iron scrap.[26]

Powermach's Arguments:

- The Department valued reintroduced iron scrap and purchased iron scrap with the same surrogate value. Thus, even if the Department concludes that certain iron scrap should be reclassified as reintroduced iron scrap, such a reclassification will not result in any change in the normal value of the merchandise under consideration.

No other party commented.

Department's Position: The Department has applied the same surrogate value to Powermach's purchased iron scrap and reintroduced iron scrap FOPs. We agree with Powermach that any reclassification of these FOPs would have no impact on the normal value of subject merchandise. Hence, we did not find it necessary to reclassify the iron scrap quantities in question as reintroduced iron scrap.

Comment 4: By-Product Offset

Petitioner's Arguments:

- The Department should modify its treatment of Powermach's scrap offset.[27]
- The Department's practice in NME proceedings is to deduct the value of a by-product from the normal value (*i.e.*, the sum of direct materials, labor, energy, overhead, selling, general, and administrative ("SG&A") expenses, profit, and packing).[28] The Department applies the by-product offset in this manner regardless of whether the offset relates to scrap sold or reintroduced into the production process.[29]
- Although Powermach asserts that its re-melting iron scrap recovered is not a by-product, this argument is baseless. A by-product is a good that is generated during the production of another good. Powermach has stated that re-melting iron scrap recovered is generated during the production of subject merchandise.

[25] *See* Memorandum from Krisha Hill, International Trade Analyst, AD/CVD Operations, Office IV, through Howard Smith, Program Manager, AD/CVD Operations, Office IV to Abdelali Elouaradia, Office Director, AD/CVD Operations, Office IV "Certain Iron Mechanical Transfer Drive Components from The People's Republic of China: Preliminary Affiliation and Collapsing Memorandum," dated May 31, 2016.
[26] *See* Verification Report at 43-44 and Exhibit VE-1.
[27] *See* Powermach Analysis Memorandum at 6-7 and Attachment II.
[28] *See Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China*, 77 FR 14493 (March 12, 2012) ("*PET Film from China*") and accompanying Issues and Decision Memorandum ("IDM") at 25.
[29] *See Golden Dragon Precise Copper Tube Group Inc. v. United States*, Slip. Op. 16-73, at 12 (Ct. Int'l Trade July 21, 2016) ("*Golden Dragon Precise Copper Tube Group Inc. v. United States*") (noting the Department's explanation that, "in granting Golden Dragon a by-product offset for copper that Golden Dragon reintroduced into the production process and applying that offset to NV," it followed its well-established practice).

Powermach's Arguments:

- Iron scrap and re-melting iron scrap (which is iron scrap recovered during production) are materially the same (re-melting iron scrap is simply another form of iron scrap), and used interchangeably in the melting stage.[30] Thus, re-melting iron scrap cannot be viewed as anything other than a direct material. It is wrong to convert a direct material in a continuous process[31] (iron scrap going in, coming out and going back into a cauldron) into a by-product.
- The Department properly recognized that iron scrap and re-melting iron scrap are the same input when it used the same surrogate value for both materials.[32]
- The offsetting of the quantity of re-melting iron scrap recovered is to avoid double counting the consumption of iron scrap.
- In *Golden Dragon Precise Copper Tube Group Inc. v. United States*, the Department was considering whether or not to grant the respondent a by-product offset as a deduction from NV, not whether the Department should deduct the by-product offset from direct materials consumption.[33]
- In *PET Film from China*, the issue was whether to grant a by-product offset where the respondents did not report by-product offsets in their FOP databases and their records were lacking.
- Failing to consider net iron scrap consumption would artificially inflate the total cost of manufacture by applying overhead, SG&A and profit to a vastly inflated cost of materials that ignores Powermach's actual production process.

Department's Position: We disagree with Powermach that the value of re-melting iron scrap recovered should be deducted from direct materials costs rather than normal value. Powermach focuses on the physical similarities of purchased iron scrap (a direct material) and re-melting iron scrap and the purported use of a continuous production process to support its position that re-melting iron scrap is more appropriately considered as a direct material (and thus the value of any recovered re-melting iron scrap should be subtracted from direct material costs). Based on its analysis, Powermach incorrectly concludes that failing to deduct the value of any recovered re-melting iron scrap from direct materials artificially inflates the total cost of manufacture. The opposite is true.

Subtracting the value of any recovered re-melting iron scrap from direct material costs (*i.e.*, netting the direct materials consumption) understates the total cost of manufacture. The Department established in *PET Film from China* that the total quantities of all materials used in production are necessary to calculate an accurate normal value; and only after accounting for total quantities used do we apply the offset for recovered inputs. In *PET Film from China*, the Department stated that "{t}he Department needs the quantities of all of the materials necessary

[30] Letter on Behalf of Powermach to the Department re: Response to the Department's Apr. 14, 2016 Surrogate Value Supp. Q'naire at SV-SQ4-5 (April 25, 2016) (Public Version) ("SV Supp. QR").
[31] Powermach's cost of production is based on a continuous melting process where net iron scrap consumption is the basis for Powermach's costs, overhead, SG&A and profits.
[32] *See* Preliminary Analysis Memorandum at Attach. I (Public Version).
[33] *See Golden Dragon Precise Copper Tube Group Inc. v. United States*, Ct. No. 15-00177, slip op. 16-73 at 12-17 (CIT 2016) (declining to consider whether the Department should have considered the scrap a deduction from normal value on the grounds that the respondent had failed to brief the issue).

to produce each product in order to calculate an accurate and complete NV. For instance, if one product has significant amounts of reintroduced PET chips as an input, then to exclude the reintroduced PET chips altogether, or assign them a value of zero, would lead to undervaluing NV for that particular product."[34] Following Powermach's approach of offsetting the value of direct materials consumed with the value of re-melting iron scrap generated would ignore the overhead costs associated with some of the direct material consumption in producing subject merchandise. Thus, in the instant case, we have considered the total quantity of re-melting iron scrap that was used to produce subject merchandise. The casting blanks and semi-finished products (*i.e.*, produced at the casting and machinery processing stages, respectively), were produced using the total quantities of purchased iron scrap and re-melting iron scrap (re-introduced), not the net amount of iron scrap used. Thus, deducting the value of re-melting iron scrap generated from the cost of materials would understate normal value because it does not reflect the larger quantities of materials used in production and the associated costs.

Additionally, despite Powermach's claim, record evidence indicates that re-melting iron scrap recovered is not used in a continuous process. In Powermach's March 17, 2016 supplemental questionnaire response, Powermach indicated that re-melting iron scrap recovered is entered into inventory, and then may be re-entered into production in the same month or the following months.[35] Powermach records the inventory-in quantities of re-melting iron scrap recovered using batch numbers[36] and maintains material codes associated with re-melting iron scrap recovered.[37] Moreover, Powermach tracks the cost of re-melting iron scrap recovered.[38] In other words, the re-melting iron scrap recovered is not used in production in a continuous motion, rather it is recorded in inventory first as a unique material before being used in the production process at a later time. Therefore, record evidence demonstrates that re-melting iron scrap recovered is not used in a continuous production process.

It is the Department's practice to offset a respondent's cost of production by the value of a reported by-product where evidence indicates that the by-product was sold or re-entered into the production process. If there is such evidence, the Department subtracts the value of the by-products generated from normal value (*i.e.*, the cost of manufacturing plus overhead costs, SG&A expenses, profit, and packing). As noted above, if the Department were to offset the cost of raw materials with the value of the by-product generated it would be ignoring overhead expenses related to some of the direct material consumption. In this case, the generated re-melting iron scrap has characteristics of a by-product in that it is a secondary product recovered in the course of manufacturing a primary product. Thus, our approach is consistent with the Department's treatment of by-products.

Finally, Powermach's argument that because purchased iron scrap and re-melting iron scrap are materially the same and, thus, the re-melting iron scrap recovered cannot be considered a by-

[34] *See PET Film from China* at Issue 5.
[35] *See* Letter from Powermach to the Department, regarding "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Response to the Department of Commerce's May 5, 2016 Supplemental Questionnaire," dated May 17, 2016 at SQ6-23.
[36] *Id.*
[37] *Id.*
[38] *Id*. at SQ6-22.

product, is not relevant. Specifically, re-melting iron scrap recovered is like a by-product in an important way because it was generated during the production of subject merchandise. Even if the re-melting iron scrap recovered is essentially physically the same as purchased iron scrap, and later used as a direct material, it was generated during production and like a by-product, would result in understating the cost of manufacturing if it were subtracted directly from direct material costs. Thus, we have modified our calculation from the preliminary determination and deducted the value of Powermach's re-melting iron scrap recovered (*i.e.*, the offset) from normal value for the final determination.

Comment 5: Underreported Consumption

During verification, the Department identified certain consumption by workshops that was not reported in the material consumption worksheets for Dawn Foundry and Dawn Precision. Powermach officials explained that, in general, these materials were classified as overhead items and Powermach provided certain notes regarding why the materials should be classified as overhead. The Department noted, in its verification report, that there was insufficient time to perform any tests regarding these explanations.[39]

Powermach's Argument

- Powermach explained how these materials were used (*e.g.*, tool repair, furnace repair, transfers between affiliated companies, mold-making, testing, *etc.*).[40] Although the Department was unable perform any tests regarding the explanations provided for each material, Powermach complied with the Department's request for information on this issue.[41]
- Powermach listed consumption of these inputs as auxiliary and overhead raw materials in its reconciliations,[42] and Petitioner did not question why such consumption was not included in reported FOPs until the final.
- Powermach should not be punished because the additional information the Department requested at verification regarding the reason why the inputs were not included in the FOPs was only requested for the first time at verification. The fact that the issue did not arise until the last day of verification is also not a basis to apply any punitive measures to Powermach, which had no control over what additional questions the Department would ask or when the Department would ask those questions.
- Should the Department conclude that the materials are direct materials, the record contains verified information to make a neutral adjustment to the reported FOPs. The Department can multiply the reported FOPs by the ratio of the total inventory out for each material for the factories divided by the reported consumption. The Department knows the total inventory-out quantities of each raw material.

[39] *See* Verification Report at 34-35.
[40] *Id.* at VE-19.
[41] *Id.* at 34.
[42] *See* Letter from Powermach to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the Republic of China: Response to Section D Questions of the Department of Commerce's March 15, 2016 Sections C and D Supplemental Questionnaire," dated April 11, 2016 ("Powermach SQ2") at D-SQ2-34.

Petitioner's Argument:

- The fact that Powermach identified certain materials as overhead or auxiliary items in its records does not necessarily mean the items should be treated as overhead by the Department because certain proprietary information regarding Powermach's records and the reconciliations that it submitted to the Department indicate such classifications are not dispositive with regard to how the Department should treat these items.[43] Thus, Powermach's labeling of items as overhead or auxiliary items is not meaningful.
- Early in the proceeding, the Department requested that Powermach identify "any raw materials that should be classified as factory overhead rather than valued as factors of production and directly included in normal value {.}"[44] Powermach never provided any indication that it believed certain raw material consumption quantities should be treated as overhead.
- Because Powermach did not report the full amount of its material consumption and the "notes supporting" its reporting methodology until the final day of verification, the Department was precluded from examining Powermach's approach or verifying the accuracy of its reporting methodology.[45] Because Powermach failed to fully report its FOP consumption when requested by the Department, and did not provide verifiable information regarding its material consumption, the application of facts available, with adverse inferences, is appropriate.
- As an adverse inference, the Department should determine the material consumption of each underreported input for Dawn Precision and Dawn Foundry based on the highest of either the reported total consumption for the input (including any newly reported consumption)[46] for either entity or the consumption for the POI based on using the highest monthly consumption rate as the consumption rate for all months.[47]

Department's Position: We disagree with Powermach. As an initial matter, the Department requested that Powermach identify raw materials that it considered to be overhead early in the proceeding. Specifically, the Department stated the following in its original AD questionnaire to Powermach:

> If you believe that your company uses any raw materials that should be classified as factory overhead expenses rather than valued as factors of production and

[43] *See* Letter from Powermach to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the Republic of China: Response to Section D Questions of the Department of Commerce's March 15, 2016 Section C and D Questionnaire Response," dated February 12, 2016 ("Powermach IQR") at D-12; *see also* Powermach SQ2 at D-SQ2-34; s*ee also* Memorandum from Jonathan Hill, International Trade Compliance Analyst, AD/CVD Operations, Office IV "Final Determination of Sales at Less-Than-Fair Value for the Antidumping Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Proprietary Information Relating to Issues in the October 21, 2016, Issues and Decision Memorandum," dated concurrently with this memorandum ("BPI Memorandum") at Note 1.

[44] *See* Powermach SQ2 at D-1

[45] *See* Verification report at 34-35.

[46] *Id* at Exhibit VE-19.

[47] *See Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) and accompanying IDM at 54 (as AFA for unreported inputs, "using the highest single monthly usage rate for each material, by CONNUM, and applying this monthly usage ratio to all months of the POI").

> directly included in normal value, please: (1) notify the Department official in charge, and (2) identify these materials in your first Section D questionnaire response. Your first Section D questionnaire response should contain a comprehensive list of all such materials you consider to be part of factory overhead. Please provide this information to the Department immediately, as this will afford your company and the Department sufficient time to evaluate your company's specific use of the raw material and to determine the most appropriate manner in which the raw material should be valued.
>
> If you have any questions regarding how to compute the factors of the merchandise under consideration, please contact the official in charge before preparing your response to this section of the questionnaire.[48]

Powermach did not respond to the above request in its response to the Department's AD Questionnaire, nor did it report that certain raw materials should be classified as factory overhead in any of its responses to the Department's subsequent supplemental questionnaires.

We agree with Petitioner that, based on record evidence, Powermach's use of the terms "overhead" and "auxiliary" in its accounts and reconciliation is not sufficient evidence to demonstrate that these are overhead items. Specifically, there is proprietary information on the record indicating that Powermach's classification of these items in its records and in the reconciliations that it submitted to the Department is not dispositive with regard to how the Department should treat these items.[49] Prior to verification, Powermach failed to explain that it reported only the portion of these materials that it considered to be direct inputs while not including the portions of these same materials that it considered to be overhead.

Although Powermach claims that it provided the Department with information regarding how the materials in question were used and complied with the Department's request for information on this issue, as stated above, the Department requested information regarding the classification of any materials as overhead early in the proceeding, and Powermach never identified any materials that it claimed at verification should be classified as overhead. It was only upon our discovery at verification of certain consumption by workshops that was not reported in the material consumption worksheets that Powermach then acknowledged the consumption of materials that it considered overhead. Thus, Powermach did not comply with the Department's original request for information regarding overhead materials. Further, the Department was unable to verify the accuracy of Powermach's claims that these materials should be considered overhead expenses rather than direct material consumption.

Powermach argues that the materials should be treated as overhead materials as they are not physically incorporated into the finished product and their primary purpose is to assist in the manufacturing process through the maintenance of equipment essential to the production process. Additionally, Powermach claims that the consumption of these materials was not

[48] *See* Letter form Robert Bolling, Program Manager, AD/CVD Operations, Office IV, Enforcement & Compliance to Powermach dated December 21, 2015 ("AD Questionnaire") at Section D (emphasis included).
[49] *See* BPI Memorandum at Note 1 .

essential usage with respect to any particular merchandise. Finally, Powermach claims that with respect to silica sand, most of the material is recycled. The Department notes that the previous arguments by Powermach are unsupported by record information and were first provided at verification. The Department did not verify the accuracy of Powermach's claims that the material consumption in question was for overhead purposes and the Department is not relying on these unsupported statements in its analysis.

Sections 776(a)(2)(A) and (D) of the Act provide that if an interested party withholds information, or provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. Given the fact that Powermach did not provide the information requested by the Department regarding the classification of raw materials as overhead, the Department has determined that Powermach withheld information. Specifically, the record information noted above indicates that Powermach's responses to the Department's request were incomplete as it did not identify the consumption of certain raw materials as relating to overhead. In addition, the Department was unable to verify the explanations that Powermach provided at verification to support its claim that the material consumption in question related to overhead. Thus, pursuant to sections 776(a)(2)(A) and (D) of the Act, the use of facts available with respect to whether the material consumption in question was overhead is appropriate. Moreover, the record indicates that the information requested was available to Powermach but Powermach failed to provide the requested information, thus Powermach has failed to cooperate by not acting to the best of its ability to comply with the Department's request for information it did. Powermach did not do the maximum it was able to do in reporting FOPs.[50] Thus, we have applied partial adverse facts available, pursuant to section 776(b) of the Act. As adverse facts available, we have considered all of the consumption in question to be direct production costs not related to overhead. However, we have not used facts available, or adverse facts available, as requested by Petitioner, with respect to the quantity of the materials to be added to the reported FOPs because the Department verified which materials are at issue and the consumption quantity of these materials that had not been reported in the FOP database. Because this information is on the record and was verified, there is no basis for applying facts available with respect to this information.

Comment 6: Molding Workshop Labor

During verification, we noted that Powermach had not reported the labor consumed in its molding workshop.[51]

Powermach's Arguments:

- The Department has consistently treated mold-making and similar elements of the production process as overhead.[52]

[50] *Nippon Steel Corp. v. United States*, 337 F. 3d 1373 (Fed. Cir. 2003)
[51] *See* Verification Report at 46.

- Powermach's mold workshops rely almost entirely on recycled materials that are not included in the final product.[53] Additionally, Powermach classifies fees that it receives for creating certain molds as overhead in the accounting system.[54]

Petitioner's Arguments:

- When directing Powermach to report its direct and indirect labor, the Department stated that this should include "all production workers, inspection/testing workers, relief workers, and any other workers directly involved in producing the merchandise{,}" as well as "all workers not previously reported who are indirectly involved in the production of the merchandise under consideration."[55]
- Powermach does not argue that workers at the mold workshop are not involved, directly or indirectly, in the production of subject merchandise. Thus, there is no reason to exclude labor for the mold workshop from direct and indirect labor.

Department's Position: We agree with Petitioner. It was incumbent upon Powermach, if it considered the labor used to produce the molds as overhead, to report this fact. The AD questionnaire issued to Powermach stated: "Report the indirect labor hours required to produce a unit of the merchandise under consideration. Indirect labor includes all workers not previously reported who are *indirectly involved in the production of the merchandise under consideration*."[56] Powermach did not respond to the Department's request above, and the Department only discovered the unreported labor at verification. Based on our description of indirect labor in the AD questionnaire, the Department finds that the labor involved with the mold workshop to be indirect labor as the employees producing the molds are not directly involved with the production of merchandise under consideration.

Powermach cites *Diamond Sawblades/PRC 2016* and *Magnesium PRC/2011* as support for treating the labor in question as overhead. However, in both cases cited by Powermach, the issue at hand was whether or not materials should be considered direct materials or overhead. In this case, the question is whether the labor involved with mold making should be considered indirect labor or overhead. Based on the analysis above, and consistent with our request regarding indirect labor, we have included the labor involved with the mold workshop as labor that should be included as indirect labor costs in normal value.

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[52] *See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) ("*Diamond Sawblades PRC/2016*") and IDM at Comment at 2 (finding steel molds were overhead); *see also Pure Magnesium From the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 76945 (December 9, 2011) ("*Magnesium PRC/2011*") and accompanying IDM at 7-9 (finding retorts to be overhead).

[53] See Verification Report Exhibit at VE-19.

[54] *See* Letter from Powemach to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Response to the Department of Commerce's April 1, 2016 Supplemental Questionnaire," dated April 14, 2016 ("Powermach SQ3") at A-SQ3-2-3.

[55] *See* Letter from Powemach to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Section C and D Questionnaire Response," dated February 12, 2016 ("Powermach IQR") at D-13-D-14.

[56] *Id.*

Comment 7: Separate Rate Status for Baldor Electric Company Canada ("Baldor")

Baldor failed to respond to the Department's supplemental questionnaire concerning its separate rate application.[57] Thus, in the *Preliminary Determination*, the Department treated Baldor as part of the PRC-wide entity.

Baldor's Arguments:

- The Department's practice and precedent provide that "…where the NME respondent is owned wholly by entities located in market-economy countries, a separate rate analysis is not necessary to determine whether its export activities are independent {of the NME country's government}."[58]
- The record establishes that Baldor is a wholly foreign-owned entity.
- Petitioner has not challenged Baldor's statements concerning its ownership and the Department never requested additional information concerning Baldor's statements that: (1) it is owned by a Canadian entity (which in turn is owned by a widely-held, publicly-traded Swiss entity); (2) it is a wholly foreign-owned enterprise (relative to China); and (3) it is not owned, controlled, or supervised by the Government of China.[59]
- The Department's preliminary analysis that Baldor "ha{s} not demonstrated the absence of both *de jure* and *de facto* government control over {its} export activities,"[60] is inconsistent with the numerous prior proceedings in which the Department has declined to conduct a *de jure* or *de facto* control analysis based on the conclusion that a wholly foreign-owned entity is not controlled by the Government of China.[61]

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[57] *See* PDM at 16-17.

[58] *See Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China*, 60 FR 22359 (May 5, 1995) and accompanying Issues and Decision Memorandum at 3 in which the Department stated "In evaluating the separate rate requests of the two entities that were foreign owned, the Department stated "*…the PRC government does not have any ownership interest in these exporters and, therefore it cannot exercise control through ownership of these companies*. On this basis, we determine that *there is no need to apply our separate rates analysis to these two companies and that PolyCity and Çli-Claque are entitled to individual rates* (emphasis added)."

[59] *See* Letter from Baldor to the Secretary of Commerce "Iron Mechanical Transfer Drive Components from the People's Republic of China – Separate Rate Application of Baldor Electric Canada," dated December 28, 2015 ("Baldor SRA") at 8-9, 11, and Exhibit 3.

[60] *See* Preliminary Decision Memorandum at 19.

[61] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996) where the Department stated "Four of the responding exporters in this investigation are located outside the PRC… *Further, there is no PRC ownership of any of these companies. Therefore, we determine that no separate rates analysis is required for these exporters because they are beyond the jurisdiction of the PRC government* (emphasis added);" *see also Certain Steel Threaded Rod from the People's Republic of China: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2014-2015*," 81 FR 29843 (May 13, 2016) and accompanying IDM at 5 citing *Final Results of Antidumping Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 72 FR 52355 (September 13, 2011) where the Department stated "In its Section A response, the RMB/IFI Group, reported that it is wholly-owned by individuals or companies located in a market economy ("ME") country. *Therefore, because it is wholly foreign-owned, and we have no evidence indicating that it is under the control of the PRC government, a separate rate analysis is not necessary to determine whether this company is independent from government control. Accordingly, we preliminarily grant a separate rate to the RMB/IFI Group* (emphasis added);" *see also Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 44399 (July 31, 2014) and accompanying

- The Department has rescinded a supplemental questionnaire issued to a wholly foreign-owned entity seeking a separate rate, where the agency determined after issuing the supplemental questionnaire that it was requesting information that is not required of wholly foreign-owned entities.[62]
- The absence from the record of documentation substantiating Baldor's statement that "Baldor-Dodge" is a legal name used by Baldor in a single Canadian province (the subject of the supplemental questionnaire that was not answered) does not concern Baldor's ownership, and, thus does not relate to its eligibility for a separate rate as a wholly foreign-owned entity. The Department's reliance on total adverse facts available ("AFA") to determine that Baldor is part of the PRC-wide entity is unwarranted.
- While the statute provides the Department with the authority to rely on facts otherwise available where certain conditions are met, the Courts have emphasized that the statute

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IDM at 13 (unchanged in final determination 79 FR 76970) (citing *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 26716 (May 12, 2010) (unchanged in final determination 75 FR 60725)) in which the Department stated "Moreover, the Department has no record evidence indicating that these companies are under the control of the government of China ("GOC"). *For these reasons, it is not necessary for the Department to conduct a separate rate analysis to determine whether these companies are independent from government control*. Therefore, the Department has preliminarily granted a separate rate to companies… (emphasis added);" *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 77 FR 32522 (June 1, 2012) where the Department stated "GGB reported that it is wholly owned by a market-economy entity. Therefore, consistent with the Department's practice, a separate-rates analysis is not necessary to determine whether GGB's export activities are independent from government control. We have preliminarily granted a separate rate to GGB;" *see also Wooden Bedroom Furniture From the People's Republic of China: Amended Final Results Pursuant to a Final Court Decision*, 75 FR 72788 (November 26, 2010) where the Department stated "Wanvog provided evidence that during the POR it was a wholly foreign-owned company. Therefore, consistent with the Department's practice, further analysis is not necessary to determine whether Wanvog's export activities are independent from government control, and we have preliminarily granted a separate rate to Wanvog;" *see also Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2014-2015*, and accompanying IDM at 13 (June 6, 2016) where the Department stated "Six of the 11 companies provided evidence in their SRAs or SRCs that they are wholly owned by individuals or companies located in a market economy country… Therefore, because they are wholly foreign-owned, and we have no evidence indicating that the PRC controls their export activities, an analysis of the de jure and de facto criteria is not necessary to determine whether these companies are independent from government control. Accordingly, we preliminarily grant a separate rate to these companies;" see also *Decca Hospitality Furnishings LLC v. United States*, 29 CIT 1504, 412 F. Supp. 2d 131 1 (CIT 2005) where the Department denied a separate rate to a wholly foreign-owned entity (based on a determination that it failed to submit a timely response to the Department's Section A questionnaire) only to later determine (on remand from the CIT) that the entity was, in fact, entitled to a separate rate. The Department stated "Upon examination of the cumulative information presented in …, submissions, we have determined that Decca has provided sufficient evidence to demonstrate that it is wholly owned by a company based in a market-economy country. We have further determined that Decca, being wholly owned by a company based in a market economy country, is not subject to a conventional separate rates analysis and qualifies for a separate rate."

[62] The Department issued a supplemental questionnaire to separate rate applicant Union Enterprise Co., Ltd., but subsequently rescinded that questionnaire, stating: "upon further review we determined that Union is a wholly foreign owned enterprise, and therefore the Department's deficiency questionnaire, which requested additional information on sections that wholly foreign-owned enterprises are not required to answer, was withdrawn on December 3, 2007." *See Certain Steel Nails from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928 (January 23, 2008) ("*Steel Nails PRC/2008*"). The Department found Union Enterprise Co., Ltd. eligible for a separate rate in both its preliminary and final determinations.

allows the Department to rely on facts available or AFA only where the record does not contain information that is necessary for the Department's determination.[63]

Petitioner's Arguments:

- The Department's granting of separate rate status to wholly foreign-owned entities is predicated on these entities providing all of the information requested by the Department.
- The separate rate application explicitly states that, "{i}f the applicant does not provide the required documentation in the appropriately required form or is unable or unwilling to make the requested certifications, the applicant will not have demonstrated its eligibility for a separate rate."[64]
- Baldor failed to provide all of the information requested by the Department.
- Baldor's role is not to determine which information requested by the Department is relevant. Baldor is required to provide all of the information requested by the Department. As Baldor failed to do so, it failed to demonstrate that it was eligible for separate rate status.
- No adverse inference was applied by the Department in denying Baldor separate rate status. Baldor did not meet its burden and thus was appropriately denied separate rate status.

Department's Position: We agree with Petitioner. In proceedings involving non-market economy ("NME") countries, the Department maintains a rebuttable presumption that all exporters are subject to government control and, thus, should be assigned a single antidumping

[63] *See, e.g., Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254 (CIT August 31, 2012) where the CIT determined, "In addition, {facts otherwise available ("FOA")} are only appropriate to fill gaps in the record evidence when Commerce must rely on other sources to complete the record. *Zhejiang Dunan Hetian Metal Co. v. United States*, 652 F.3d 1333, 1346 (Fed. Cir, 2011). When Commerce can independently fill in the gaps, without the requested information, FOA and adverse inferences are not appropriate. *Id*. at 1348, *Gerber Food (Yunnan) Co. v. United States*, 29 CIT 753,767-68, 387 F. Supp. 2d 1270, 1283 (2005);" *see also Shandong Huarong Machinery Co. v. United States*, 435 F. Supp. 2d 1261(CIT 2006) where the CIT stated "The text of 19 U.S.C. § 1677e(b) gives Commerce significant discretion to decide whether to apply {adverse facts available} when calculating a respondent's antidumping duty rate. As such, the statute does not require Commerce to use an adverse inference in every instance where a respondent has not supplied information. *See AK Steel Corp. v. United States*, 28 CIT 1408 346 F. Supp. 2d 1348, 1355, 28 Ct. Int'l Trade 1408 (2004). Indeed, the court has found that: {T}he purpose of section 1677e(b) is to provide respondents with an incentive to cooperate, not to impose punitive, aberrational, or uncorroborated margins. {Plaintiff} apparently interprets *Nippon on Steel* {*Corp, v, United States*, 337 F.3d 1373 (Fed. Cir. 2003)} to require Commerce to prove that an importer cooperated to the best of its ability every time that the agency decides *not* to apply adverse facts available. This runs counter to the discretion afforded to Commerce by section 1677e(b) in the application of adverse facts available. *Id*. (quoting *F.LLI De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000)) (emphasis in original) (footnote omitted). Here, Commerce determined that applying AFA to Huarong and SMC for their failure to report data on cast tempers would neither aid the investigation nor serve to encourage their cooperation… As a result, the court finds that it was within Commerce's discretion to not require the submission of unneeded data. *See Timken Co. v. United States*, 18 CIT 486, 489, 852 F. Supp. 1122, 1126 (1994) ("It is well-established…that Commerce has broad discretion with regard to when the use of {AFA} is appropriate… If, however, Commerce did receive all the data or exercise{d} its broad discretion in this matter and deemed the missing information unnecessary, then the dumping margin need not be recalculated."

[64] *See Certain Iron Mechanical Transfer Drive Components from Canada and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 80 FR 73716 (November 25, 2015) at 73720 (The specific requirements for submitting a separate-rate application in the PRC investigation are outlined in detail in the application itself, which is available on the Department's Web site at http://enforcement.trade.gov/nme/nme- sep-rate.html) ("Department's SRA").

duty deposit rate. It is the Department's policy to assign all exporters of subject merchandise this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[65] While part of the Department's separate rates analysis does involve consideration of whether a exporter is wholly owned by persons located in market-economy countries, the Department never made a determination that Baldor was wholly foreign owned. After Baldor ceased cooperating by not responding to the Department's supplemental questionnaire, we discontinued our analysis of Baldor's separate rate application ("SRA"). Thus, the Department never reached a conclusion regarding Baldor's ownership. Baldor cannot now make its own determination regarding its ownership in lieu of a Departmental determination that was precluded by Baldor's lack of cooperation. Moreover, the fact that the last supplemental questionnaire did not request information regarding Baldor's ownership does not serve as proof that the Department had reached some decision concerning its ownership or had completed its analysis. Baldor's lack of continued participation precluded any such additional analysis.

Furthermore, the Department's SRA states that "Applicants must individually complete and submit this form with all the required supporting documentation no later than 30 days from the publication date of the initiation notice. Firms whose applications are incomplete or otherwise deficient may be denied a separate rate."[66] The Department's SRA also states that "If the applicant does not provide the required documentation in the appropriately required form or is unable or unwilling to make the requested certifications, the applicant will not have demonstrated its eligibility for a separate rate."[67] In this case, Baldor has not completed its SRA with all the required documentation as requested by the Department, and thus, has not demonstrated its eligibility for a separate rate.

Finally, Baldor incorrectly concludes that the Department made an AFA determination with respect to its separate rate application. Rather, the Department found that Baldor did not demonstrate that it was eligible for a separate rate based on its failure to provide a supplemental questionnaire response. Baldor has not cited any precedent in which the Department granted separate rate status to a separate rate applicant which failed to participate and respond to the Department's request for information. Further, Baldor argues that in *Steel Nails PRC/*2008, the Department rescinded a supplemental questionnaire issued to a wholly foreign-owned entity, once the Department determined that it was requesting information that is not required of wholly foreign-owned entities. However, in *Steel Nails PRC/*2008, based on the facts of record, the Department determined to rescind its supplemental questionnaire. Here, based on the facts on the record of this investigation, the Department did not rescind its supplemental questionnaire as the information was necessary for its analysis. Therefore, we continue to find that due to Baldor's failure to provide requested information in connection with the Department's supplemental questionnaire, Baldor is ineligible for separate rate status and, as such, should be treated as part of the PRC-wide entity.

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[65] *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *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); *see also* 19 CFR 351.107(d).
[66] *See* Department's SRA at 3.
[67] *See* Department's SRA at 6.

Comment 8: Separate Rate Status for Zhejiang Damon Industrial Equipment Co., Ltd. ("Damon")

Petitioner's Arguments:

- The Department should not grant a separate rate to Damon. Damon has stated that all iron mechanical transfer drive components that it shipped to the United States during the POI are less than 4.00 inches (101 mm) in maximum nominal outer diameter. Therefore, Damon's shipments are not subject to this investigation.[68]
- The instructions to the SRA explain that, "to be considered for separate-rate treatment, the applicant must have a relevant U.S. sale of subject merchandise to an unaffiliated purchaser {.}"[69] As Damon stated that did not export subject merchandise during the POI, and therefore could not provide documentation of a U.S. sale of subject merchandise, it is not eligible for a separate rate.[70]

No other party commented.

Department's Position: Damon stated that it made no shipments of subject merchandise during the POI, and there is no information on the record that contradicts this statement. Thus, consistent with the requirements in the Department's SRA that "to be considered for separate-rate treatment, the applicant must have a relevant U.S. sale of subject merchandise to an unaffiliated purchaser," we find no basis for continuing to grant Damon a separate rate.

Comment 9: Separate Rate Status for Zhejiang Dongxing Auto Parts Co., Ltd. ("Dongxing")

Petitioner's Arguments:

- Dongxing should not be granted a separate rate. The Department requires a separate rate applicant to provide "documentation supporting its certification that the applicant conducts independent price negotiations."[71] The SRA explains that "{a}pplicants must provide documents showing price negotiation, not documents merely confirming that a sale will take place at a given price" and notes that, if documentation is not available, the applicant may submit an affidavit signed by an unaffiliated U.S. customer testifying to independent price

[68] *See* Letter from Damon to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Separate Rate Application Supplemental Questionnaire," dated March 2, 2016 ("Damon's Supplemental Response") at 1-2.

[69] *See* Letter from Damon to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Separate Rate Application," dated December 25, 2015 ("Damon's SRA").

[70] Moreover, Petitioner claims that even if the Department were to find that Damon exported subject merchandise during the period of investigation, Damon failed to fully respond to the Department's supplemental separate rate application. *See* Damon's Supplemental Response at 2 in which Damon explains that, because it did not export subject merchandise, it was not responding to the additional questions in the supplemental questionnaire. Therefore, to the extent that it is appropriate to determine a dumping margin for Damon, it should be treated as part of the PRC-wide entity based on its failure to respond and provide the Department with all the information requested to undertake a fully separate rate analysis.

[71] *See* Letter from Dongxing to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Separate Rate Application," dated December 25, 2015 ("Dongxing's SRA") at 22.

negotiations.[72] Dongxing did not provide this information to demonstrate independent price negotiations.

- Dongxing stated in its SRA that it provided "{a} sample of the purchase order, order confirmation, and relevant emails with its customer…attached as Exhibit SRA-10" that relate to is first sale during the POI.[73]
- The Department noted in the supplemental questionnaire that it issued to Dongxing that, while this exhibit contained, among other things, a purchase order and an order confirmation, it "does not appear to contain price negotiation emails" and requested again that Dongxing "provide evidence of sales negotiations for a sale of subject merchandise to an unaffiliated customer in the United States during the POI."[74]
- Dongxing responded to the supplemental questionnaire by noting that it did not conduct price negotiations specific to its first sale of subject merchandise to the United States during the POI and that the "price was set very long time ago."[75] Dongxing also submitted purchase orders related to the first sale.[76]
- A purchase order does no more than demonstrate that a sale will take place at a given price and thus is insufficient to demonstrate independent price negotiations. This is clear by the Department's request in the supplemental separate rate questionnaire that Dongxing "provide evidence of sales negotiations" despite that fact that a purchase order was among the information submitted with Dongxing's original response to the SRA. Although Dongxing reported that it does not have written confirmation of price negotiations, this does not excuse Dongxing from its obligation to provide the requisite documentation.

No other party commented.

Department's Position: The Department agrees with Petitioner and determines that there is not a basis to continue granting Dongxing a separate rate. One of the factors the Department considers in its separate rate analysis is whether each exporter sets its own export prices independent of the government and without the approval of a government authority.[77] As support for, the separate rate application requests that the applicant provide the following:

> The applicant must provide documentation supporting its certification that the applicant conducts independent price negotiations. (*see* question 7 above) You must submit such documentation related to the first sale of the period of investigation/review with the application. If you cannot provide such documentation please contact the official in charge.
>
> Examples include the following types of documentation:

[72] *Id.* at 22-23.
[73] *Id.* at 23.
[74] *See* Letter from Dongxing to the Secretary of Commerce "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Separate Rate Application Supplemental Questionnaire," dated March 2, 2016 at 3 ("Dongxing's Supplemental Response").
[75] *Id.* at 3.
[76] *Id.*
[77] *See* Dongxing's SRA at 2.

- faxes/e-mail correspondence between applicant and unaffiliated U.S. customer
- purchase order from unaffiliated U.S. customer
- order confirmation
- logs of negotiations conducted over the telephone with an unaffiliated U.S. customer

If you do not have any documentation to support your certification that your firm conducts independent price negotiation, you may submit an affidavit as an alternative. This affidavit testifying to independent price negotiation must be signed and dated by an unaffiliated U.S. customer, and include the unaffiliated U.S. customer's contact information.[78]

Applicants must provide documents showing price negotiation, not documents merely confirming that a sale will take place at a given price. If your firm conducts its price negotiation by phone, does not keep phone logs of meetings conducted over the phone, and therefore has no records of price negotiation, you are required to attach 1) a certification that there are no records of price negotiation, and 2) an affidavit signed and dated by the unaffiliated U.S. customer attesting that it conducts independent price negotiation with the applying firm. Affidavits must provide adequate information to link the applicant to the party signing the affidavit.[79]

After further review of Dongxing's SRA and Supplemental Response, the Department has found that Dongxing has not provided the necessary documentation to support its claim of independent sales negotiation.

In response to our request to provide the requisite documentation related to its first sale during the POI, Dongxing stated that it "…conducted price negotiation with the customer through phone calls, faxes, and face-to-face negotiations, and the price would be finally confirmed by emails enclosed with purchase order and order confirmation." Dongxing further stated in its SRA that it provided "{a} sample of the purchase order, order confirmation and relevant emails with its customer…in Exhibit SAR-10" that relate to its first sale during the POI.[80] However, none of the documentation that Dongxing provided included any correspondence or other evidence of a dialog between Dongxing and the customer showing negotiations regarding sales price nor did Dongxing provide an affidavit from the U.S. customer as described in the SRA. The Department again requested that Dongxing "provide evidence of sales negotiations for a sale of subject merchandise to an unaffiliated customer in the United States during the POI."[81] Specifically, the Department issued a supplemental questionnaire to Dongxing in which it noted that while Exhibit SAR-10 contains, among other things, a purchase order and an order confirmation, it "does not appear to contain price negotiation emails." While a purchase order and order

[78] *Id.* at 22-23.
[79] *Id.* at 22-23, Footnote 21.
[80] *Id.* at 23.
[81] *See* Dongxing's Supplemental Response at 3.

confirmation are some of the documents noted as examples of what respondents could provide in support of certification that an applicant conducts independent price negotiations, after further review of Dongxing's SRA, the Department has found that Dongxing did not provide the requisite documentation. Specifically, Exhibit SAR-10 contains purchase and order confirmation spreadsheets listing certain information associated with certain customer sales and a few e-mail exchanges referencing a sales purchase order.

In Dongxing's Supplemental Response, Dongxing stated that it did not conduct price negotiations specific to its first sale of subject merchandise to the United States during the POI and that the "price was set very long time ago."[82] Dongxing again submitted purchase orders which it claimed are related to its first sale.[83] However, as noted in the SRA, "{a}pplicants must provide documents showing price negotiation, not documents merely confirming that a sale will take place at a given price" or an affidavit from the U.S. customer "attesting that it conducts independent price negotiation with the applying firm." The purchase orders/order confirmations in Dongxing's Supplemental Response demonstrate that a sale will take place at a given price and thus are insufficient to demonstrate independent price negotiations. Moreover, Dongxing failed to provide an affidavit as an alternative. Additionally, after further review of the documents submitted by Dongxing, it is not apparent that the purchase orders and confirmations correlate to a sale of subject merchandise during the POI. Specifically, the dates on the purchase orders and order confirmations are prior to the first day of the POI, the purchase order numbers do not match the confirmation numbers, and, despite Dongxing's claim, these documents do not appear to relate to Dongxing's first sale of subject merchandise to an unaffiliated customer in the United States during the POI because the customer identified on the documents is not the same as the customer identified in the documents in Exhibit SAR-10.

Although Dongxing claimed that it did not negotiate the sales price with the U.S. customer related to its first sale of subject merchandise to the United States during the POI, in its supplemental questionnaire, the Department asked Dongxing to provide evidence of sales negotiations for *a* sale of subject merchandise to an unaffiliated customer in the United States during the POI, not necessarily evidence of negotiations related to the first sale. As mentioned above, Dongxing stated that it "…conducted price negotiation with the customer through phone calls, faxes, and face-to-face negotiations." Hence, it appears that Dongxing could have provided evidence of price negotiations for another sale of subject merchandise to the United States during the POI, which it failed to do, or in the alternative, Dongxing could have provided an affidavit signed and dated by an unaffiliated U.S. customer attesting that it conducts independent price negotiation with Dongxing; however, Dongxing failed to do so.

Based on the analysis above, the Department has found that Dongxing did not provide the requisite evidence of independent price negotiations relating to a sale of subject merchandise to an unaffiliated customer in the United States during the POI. . Therefore, the Department finds that Dongxing did not provide the necessary evidence to establish whether its export activities are sufficiently independent of the government to be eligible for separate rate status will thus, be part of the PRC-wide entity.

[82] *Id.* at 3.
[83] *Id.* at Exhibit S-6.

Comment 10: Separate Rate Status for Yueqing Bethel Shaft Collar Manufacturing Co., Ltd. ("Bethel")

The Department requested certain information from Bethel in an effort to determine whether it is eligible for a separate rate. However, Bethel did not respond to the Department's request for information. Thus, in the *Preliminary Determination*, the Department treated Bethel as part of the PRC-wide entity.

Bethel's Arguments:

- Bethel did not receive notification of the Department's supplemental SRA questionnaire, and first became aware of the supplemental SRA questionnaire only upon publication of the preliminary determination.
- Bethel cooperated with the Department, including submitting the response to the supplemental SRA questionnaire on July 1, 2016, which was rejected by the Department on July 7, 2016.
- Although the Department claimed that its "records show that ACCESS emailed digests to certain external users (list of external users) for ACCESS barcode 3463484-01 (*i.e.*, the ACCESS barcode associated with Yueqing Bethel's supplemental questionnaire) and your e-mail address was on this list," the Department did not provide any evidence to show that a notification was successfully delivered to Bethel.
- In accordance with 19 CFR 351.302(b) and (c), the Department may grant an extension based on an untimely-filed extension request in the event of an extraordinary circumstance.[84] A failure in the electronic delivery of notice, which is not in Bethel's control, that the Department issued a supplemental questionnaire, is an extraordinary circumstance constituting good cause for granting extensions to deadlines for extension requests and questionnaire responses. It is the Department's long-standing policy to accept untimely filed documents if there is "good cause" for doing so.[85]
- The Department failed to explain how the instant case differs from similar cases in which it allowed submissions or granted extensions based on extension requests filed subsequent to the applicable deadline.[86] Thus, the Department opens the door to conclusions made on an "ad hoc and subjective" basis, with the "attendant dangers of arbitrary and discriminatory applications," in violation of *Hoffman*.[87]

[84] See 19 CFR 351.302(b) and (c)

[85] *See Certain Pasta From Italy: Notice of Final Results of the Fourteenth Antidumping Duty Administrative Review*, 76 FR 76937 (December 9, 2011) ("*Pasta from Italy"*) where the Department accepted a respondent's rebuttal brief filed subsequent to the deadline, even though the respondent did not request an extension to the deadline.; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 37002 (July 16, 2001) and corresponding IDM ("*South African Hot-Rolled)* where a respondent submitted numerous questionnaire and supplemental questionnaire responses after the applicable deadlines without requesting extensions prior to those deadlines; *see also Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japa*n, 72 FR 52349, 52350 (September 13, 2007) ("*Glycine from Japan*") where the Department granted a late-requested extension, giving the respondent an additional twenty-two days after the deadline to submit its Section A response.

[86] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from Ukraine*, 66 FR 50401 (October 3, 2001).

[87] *See Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 498 (1982) ("*Hoffman*").

- In *Grobest*, the Court re-emphasized the "remedial, and not punitive" purpose of the antidumping statute and the statute's goal of determining dumping margins "as accurately as possible." The Court further stated that when the Department is making a decision as to whether it should accept a late submission, "the burden imposed upon the agency by accepting the late submission" is to be weighed against the "the interests of accuracy and fairness" and the potential for harm to the respondent in case the late filing is not allowed."[88]
- The Department's decisions must be supported by substantial evidence on the record.[89] Additionally, the Department must thoroughly articulate a rational connection between the facts and its determinations.[90]

Petitioner's Arguments:

- The Department explained that its records indicate that notification was sent to counsel for Bethel.
- The SRA explains that the Department may issue supplemental questionnaires and warns that if an applicant fails to provide all requested information, the applicant will not be eligible for a separate rate.
- The Department does not consider an untimely request for an extension of time "unless the party demonstrates that an extraordinary circumstance exists."[91] The Department has further explained that "{e}xamples of extraordinary circumstances include a natural disaster, riot, war, *force majeure*, or medical emergency. Examples that are unlikely to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due."[92]
- Bethel has not explained why the Department's conclusion is unreasonable. Instead, it maintains that it was unable to find a notification email despite the fact that the Department's records demonstrate that an email was sent.
- The proceedings identified by Bethel pre-date the 2013 change in the Department's regulations requiring that "extraordinary circumstances" be shown to justify an untimely extension request.[93]
- Bethel was denied separate rate status, not on the basis of AFA, but because it failed to meet its burden to demonstrate eligibility for a separate rate.

Department's Position: The Department disagrees with Bethel, and continues to find that Bethel is not eligible for a separate rate and remains part of the PRC-wide entity. When Bethel ceased cooperating by not responding to the Department's supplemental questionnaire, the Department did not have all of the information that it sought in order to consider Bethel's eligibility for a separate rate, nor was there a basis to continue to analyze Bethel's SRA given that Bethel had already failed to provide required information requested by the Department

[88] *See Grobest* 815 F. Supp. 2d at 1365-1366. ("*Grobest*").
[89] *See Fujitsu Gen. Ltd. v. United States*, 88 F. 3d 1034, 1038 (Fed. Cir. 1996).
[90] *See Queen's Flowers de Columbia v. U.S.*, 981 F. Supp. 617, 627 (CIT 1997).
[91] *See* 19 CFR 351.302(b)-(c).
[92] *See Extension of Time* Limits, 78 FR 57790 (September 20, 2013) ("*Extension of Time Limits*").
[93] *See Modification of Regulations Regarding the Extension of Time Limits*, 78 FR 3367, 3368 (January 16, 2013) (proposed rule; request for comments); *Extension of Time Limits*, 78 FR 57790 (September 20, 2013).

during the course of its analysis. Thus, the Department preliminarily found, and continues to find, no basis for granting Bethel a separate rate.

Bethel argues that it did not receive notification of the supplemental questionnaire uploaded onto ACCESS, and thus, had no knowledge of the existence of the supplemental questionnaire.[94] However, as the Department stated in its June 27, 2016 letter to Bethel, "…the Department's records show that ACCESS emailed digests to certain external users (list of external users) for ACCESS barcode 3463484-01 (i.e., the ACCESS barcode associated with Yueqing Bethel's supplemental questionnaire) and your e-mail address was on this list."[95] ACCESS automatically disseminates electronic notifications of uploaded documents to interested parties with log-in access and, for documents with business proprietary information ('BPI"), appropriate authorization.[96] There is no evidence of a failure with respect to this automatic dissemination. Thus, it is reasonable to conclude, and record evidence shows, that electronic notifications were sent to Bethel's counsel. The electronic notification informs parties that the Department has uploaded a document on the record for the interested parties to access, view, respond to, or comment on. Notwithstanding that the notification was sent to Bethel's counsel, Bethel failed to timely respond to the Department's supplemental questionnaire.

The ultimate responsibility of accessing, viewing, and downloading the documentation in ACCESS remains with the respondent.[97] Further, counsel for Bethel, as an authorized external party with log-in capabilities to view documents on ACCESS, was capable of accessing, viewing, and retrieving documents uploaded to ACCESS during the investigation.[98] All external parties with log-in capabilities were required to partake in ACCESS training, and were provided with the ACCESS handbook. [99]

We agree that the Department has the discretion to extend deadlines in certain instances.[100] However, for the Department to consider untimely extension requests, parties must show that they meet the higher standard of "extraordinary circumstances" rather than the "good cause" standard.[101] Here, Bethel did not provide an adequate explanation demonstrating "extraordinary

[94] *See* Letter from Howard Smith, Program Manager, AD/CVD Operations, Office IV, Enforcement & Compliance to Bethel dated April 25, 2016.
[95] *See* Letter from Howard Smith, Program Manager, AD/CVD Operations, Office IV, Enforcement & Compliance to Bethel "Antidumping Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Response to Yueqing Bethel's June 9, 2016, Letter," dated April 25, 2016.
[96] *See* ACCESS Handbook at 20, available at: https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf
[97] *See Honey From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 27633 (May 14, 2015) and accompanying IDM at Comment 1.
[98] See Letter from Bethel to the Secretary of Commerce "Entry of Appearance in the Antidumping Duty Investigation on Certain Iron Mechanical Transfer Drive Components from the People's Republic of China. (A-570-032)," dated November 30, 2016; *see also* letter form Bethel to the Secretary of Commerce "Quantity and Value Response in the Antidumping Duty Investigation on Certain Iron Mechanical Transfer Drive Components from the People's Republic of China. (A- 570-032)," dated November 30, 2016.
[99] *See* ACCESS handbook at 20, available at: https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf
[100] *See* 19 CFR 351.302(b).
[101] *See Extension of Time Limits* at 78 FR at 57793.

circumstances" that prevented it from filing a timely extension request for responding to the supplemental questionnaire. Bethel claims that a failure in the ACCESS electronic delivery notification system is an extraordinary circumstance. While we find that no such failure occurred here, even if it did, a failure such as the one alleged by Bethel would not generally fall within the meaning of "extraordinary circumstances" as defined in *Extension of Time Limits*. Specifically, *Extension of Time Limits* states that "…examples that are unlikely to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due ...Concerning whether problems with ACCESS constitute "extraordinary circumstances," a technical failure of ACCESS generally is not an extraordinary circumstance. Thus, technical failures (even if one had occurred) generally do not qualify as an "extraordinary circumstance" to grant untimely extension requests."[102]

Moreover, the Court of Appeals for the Federal Circuit ("CAFC") has affirmed the Department's position that "inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due," is not an extraordinary circumstance.[103] In fact, in *Dongtai Peak*, the CAFC addressed much of the same argument presented by Bethel. Specifically, the CAFC affirmed that the Department "properly exercised its discretion in rejecting Dongtai Peak's extension requests and Supplemental Responses because: (1) the extension requests were submitted after the established deadline in violation of 19 C.F.R. § 351.302(c), and (2) Appellant failed to show 'good cause' for an extension as required by § 351.302(b)."[104] As noted above, in this case, the stricter "extraordinary circumstances" rather than "good cause" standard applied for parties seeking an out-of-time extension.[105] Further, the argument that the Department is required to justify denial of an extension request under a "good cause" rule was directly addressed and rejected by the CAFC which stated "Appellant misunderstands its obligation to submit a written extension request before the time limit specified by Commerce and to 'state the reasons for the request.' Id. § 351.302(c). That is, Commerce was not required to demonstrate good cause for rejecting Dongtai Peak's untimely submissions. As the Government notes, '{i}t is not for Dongtai Peak to establish Commerce's deadlines or to dictate to Commerce whether and when Commerce actually needs the requested information."[106] For the reasons stated above, the Department continues to find that Bethel had not demonstrated that it is eligible for a separate and remains part of the PRC-wide entity.

Comment 11: Surrogate Value for Labor

Powermach's Arguments:

- Using the Thai National Statistical Office ("NSO") labor data for general manufacturing as the surrogate value ("SV") of labor is distortive because these data reflect production processes that have no relevance to subject merchandise.

[102] *See Extension of Time Limits*.
[103] *See Dongtai Peak*, 777 F. 3d at 1351.
[104] *Id.*, at 777 F. 3d at 1351-1352.
[105] *See Extension of Time Limits*.
[106] *Id.*, at 777 F. 3d at 1352.

- The Department should instead rely on 2011 NSO labor data in the "manufacture of basic iron and steel" category. "Using the data on industry-specific wages from the primary surrogate country is the best information available for valuing the labor input in NME antidumping duty proceedings," as outlined in *Labor Methodologies*.[107]
- In *Stainless Steel Sinks from the PRC* and *Activated Carbon from the PRC*, the Department used industry-specific labor data, rather than the NSO's general manufacturing labor data to value labor.[108]
- In *Activated Carbon from the PRC*, the Department stated that "{w}hen 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. The Department's preference is to satisfy the breadth of these aforementioned selection factors."
- In *Xiamen Int'l Trade & Indus. Co. v. United States*, the U.S. Court of International Trade ("CIT") determined that "Commerce has not identified a hierarchy among these factors, and the weight accorded to a factor varies depending on the facts of each case."[109]
- In this instance, the Department did not "satisfy the breadth" of its selection factors because it failed to weigh the specificity factor and instead elevated contemporaneity above all other factors.

Petitioner's Arguments:

- The Department and the CIT have favored contemporaneous data over more specific data where the contemporaneous data constitute the best available information for valuing an FOP.[110]
- The record shows that between 2011 and the POI the average labor cost for manufacturing in Thailand increased by 36.2 percent; in contrast, during that same time period, inflation increased by only 6.4 percent. If the Department relies on 2011 NSO labor data, the inflated 2011 data (inflated using the consumer price index) would likely substantially understate the true cost of manufacturing labor in Thailand during the POI because it would not reflect the significant increase in Thai labor costs specifically for manufacturing that occurred since 2011.
- In *Passenger Tires from the PRC*, the Department concluded that the contemporaneous manufacturing labor cost data were the best available information for valuing labor, in part, because "inflating the 2011 industry data would likely provide less accurate results based on the information available in this proceeding."[111]

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

[108] *See, e.g., Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 69644 (November 10, 2015) ("*Stainless Steel Sinks from the PRC*"), and accompanying IDM at Comment 12; *see also Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October, 9, 2015) ("*Activated Carbon from the PRC*"), and accompanying IDM at Comment 11.

[109] *See Xiamen Int'l Trade & Indus. Co. v. United States*, 953 F. Supp. 2d 1307, 1313 *(*CIT 2013).

[110] *See Hangzhou Spring Washer Co.* v. *United States*, 387 F. Supp. 2d 1236, 1250 (CIT 2005).

[111] *See Passenger Vehicle and Light Truck Tires from the PRC: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) ("*Passenger Tires from the PRC* ") and accompanying IDM at Comment 13.

- Powermach does not explain why the inclusion of labor costs from various labor markets distorts general manufacturing labor data. To the contrary, the record shows that the labor cost for general manufacturing is an appropriate proxy for the labor cost for the "manufacture of basic iron and steel" category. Specifically, the average monthly labor cost for the "manufacture of basic iron and steel" category in 2011 was 11,885.40 Baht. The average monthly labor cost for manufacturing overall in 2011 was 11,340.98 Baht.
- In *Stainless Steel Sinks from the PRC,* the Department addressed whether it should convert the reported labor cost data to an hourly labor cost using its normal methodology or using information reported by the NSO, which was specific to the labor cost data on which it was relying. This is different from the issue raised in this case.
- In *Activated Carbon from the PRC,* although the Department valued labor in the preliminary determination using general manufacturing labor costs, all parties argued that industry-specific labor data should be used and the Department used 2011 industry-specific labor data in the final determination. However, there is no indication that information regarding the change in the labor rate relative to inflation was on the record or discussed in that case. In this instance, there is information on the record demonstrating the unreliability of the industry-specific labor data.[112]

Department Position: The Department disagrees with Powermach and has made no changes to the valuation of labor for the final determination. In the instant investigation, interested parties placed on the record Thai NSO data from two statistical categories: (1) basic iron and steel remuneration for 2011 (iron and steel industry data); (2) and manufacturing labor cost for the POI (general manufacturing data). For the reasons explained below, Department continues to find that the contemporaneous general manufacturing NSO labor data are the best information available with which to value labor for the final determination.

In the *Preliminary Determination,* the Department explained that it selected contemporaneous Thai NSO labor data for general manufacturing to value labor rather than the non-contemporaneous, industry-specific Thai NSO labor data for the iron and steel industry because the Department determined that general manufacturing wages in Thailand have increased much more than the rate of inflation during the same approximate time frame as the POI.[113] In fact, as Petitioners state, NSO data on the record of the instant investigation indicate that manufacturing wages grew at a rate of more than 36 percent between 2011 and the POI while the rate of inflation (derived from consumer price index data) grew at rate of only 6.4 percent during the same period.[114] In the *Preliminary Determination,* the Department explained that it is more

[112] *See Certain Activated Carbon From the People's Republic of China: Final Results of Administrative Review: 2013-2014*, 80 FR 61172 (October 9, 2015) and accompanying IDM at 32.
[113] *See* Memorandum to the File through, Howard Smith, Program Manager, AD/CVD Operations, Office IV, Enforcement and Compliance, regarding, "Preliminary Determination in the Antidumping Duty Investigation of Certain Iron Mechanical Transfer Drive Components from The People's Republic of China: Surrogate Value Memorandum," ("Preliminary SV Memorandum") at 7-8 (citing *Passenger Tires from the PRC* and accompanying IDM at Comment 13 (the Department found that that the growth in the manufacturing wage (*i.e.*, 38 percent) outpaced the growth in the CPI (*i.e.*, six percent) from 2011 to the POI for that proceeding (*i.e.*, October 1, 2013, through March 31, 2014)).
[114] *See* Petitioner's May 13, 2016 submission to the Department at 25; *see also* Letter from Petitioner to the Department, regarding "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China:

accurate to use the contemporaneous general manufacturing labor rate data rather than the non-contemporaneous industry-specific labor rate data to value labor since given the rate of inflation for manufacturing wages, inflating the non-contemporaneous data by the consumer price index (the Department's normal methodology) may not result in accurate industry-specific labor rates for the POI.[115] This finding is consistent with *Passenger Tires from the PRC* in which, under a nearly identical fact pattern, the Department found that contemporaneous NSO labor data for general manufacturing were preferable to non-contemporaneous industry-specific labor data to value labor.[116]

Despite Powermach's assertions to the contrary, the Department considered the specificity of Thai NSO labor data when selecting the SV for labor. When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is the Department's practice to select SVs which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous with the {POI}, and exclusive of taxes and duties.[117] The weight accorded these factors varies depending on the facts of each case.[118] As an initial matter, no interested party in this proceeding has argued--and the Department finds no evidence--that the two potential labor SV sources can be distinguished from one another by applying the broad-market average, or tax and duty exclusivity SV selection criteria. Accordingly, the Department considered the two remaining factors, specificity and contemporaneity, in selecting the best information available to value labor used by Powermach to produce merchandise under consideration. As explained above, the Department selected contemporaneous NSO labor data for general manufacturing because inflating the non-contemporaneous industry-specific labor data by the rate of inflation may not result in accurate industry-specific labor rates for the POI.[119] The Department selected this SV for labor based on its analysis of record information in light of both the specificity and contemporaneity SV selection criteria. The Department's selection of this SV reflects the Department's determination that the facts on the record of this proceeding warrant according greater weight to contemporaneity than to specificity rather than the failure to consider the specificity criterion as Powermach asserts.

Powermach's reliance on *Stainless Steel Sinks from the PRC*, *Activated Carbon from the PRC*, and *Labor Methodologies* is misplaced. Unlike the instant investigation, neither *Stainless Steel Sinks from the PRC* nor *Activated Carbon from the PRC* involved circumstances where the facts

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Petitioner's Initial Surrogate Value Comments," dated March 17, 2016 ("Petitioner SV Comments") at Exhibit 12 (containing consumer price index data), and Petitioner's March 17, 2016 SV rebuttal submission at Exhibit 1A (containing 2011 NSO data).

[115] *See* Preliminary SV Memorandum at 7.

[116] *See Passenger Tires from the PRC* and accompanying IDM at Comment 13.

[117] *See, e.g.*, *Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 10); *see also 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 IDM at Comment 2.

[118] *See Xiamen Int'l Trade & Indus. Co.*, 953 F. Supp. 2d at 1313.

[119] *See* Preliminary SV Memorandum at 7-8 (citing *Passenger Tires from the PRC* and accompanying IDM at Comment 13*).*

on the record of the proceeding indicate that the use of the non-contemporaneous industry-specific labor data would fail to accurately reflect the value of labor used during the period under consideration. Rather, as explained above, the facts in the instant investigation are substantially similar to those in *Passenger Tires from the PRC* where the Department found that the use of contemporaneous NSO labor data for general manufacturing was preferable to industry-specific 2011 NSO labor data. In *Passenger Tires from the PRC*, the Department found the fact that manufacturing wages increased significantly more than the rate of inflation during the relevant time period cast substantial doubt as to whether industry-specific labor data from 2011 can be reliably updated using the consumer price index to reflect current circumstances, and determined, therefore, to value labor using contemporaneous general manufacturing labor data.[120] Furthermore, while in *Labor Methodologies*,[121] the Department stated that using industry-specific wages from the primary surrogate country is the best approach for valuing labor in NME antidumping duty proceedings, the Department appropriately considers all of the information on the record and is not precluded from evaluating the quality or reliability of a potential labor SV source using all of the selection criteria identified above, and giving greater weight to a criterion other than specificity.

For the foregoing reasons, the Department has continued to value labor using contemporaneous NSO labor data for general manufacturing for the final determination.

Comment 12: Surrogate Value for Baking Coal

Powermach's Arguments:

- The Department noted that Powermach's baking coal is bituminous coal in the *Preliminary Determination*.[122] Thai HTS category 27011290000 (*i.e.*, Mineral Fuels, Mineral Oils And Products Of Their Distillation, Bituminous Substances, Mineral Waxes; Coal, Briquettes, Ovoids And Similar Solid Fuels Manufactured From Coal; Bituminous Coal, Whether Or Not Pulverized, But Not Agglomerated; Other) is the appropriate SV for this coal because it covers bituminous coal.
- Thai HTS category 27040010000 is an improper SV for Powermach's coal because it does not cover bituminous coal. Specifically, HTS category 2704 covers coke. While coke may be derived from bituminous coal, it does not follow that a tariff designation covering coke, lignite, and peat covers the bituminous coal used by Powermach.

Petitioner's Arguments:

- Powermach's own description of its baking coal indicates that it consists of coke. Coke is manufactured from coal through the process of carbonization; in other words, carbonized coal is coke. Powermach's explanation that baking coal is "used in the melting process by Powermach as fuel to melt the iron or steel scraps" is also a description of coke.[123]

[120] *See Passenger Tires from the PRC*, and accompanying IDM at Comment 13
[121] *See generally Labor Methodologies*.
[122] *See* Preliminary SV Memorandum at 3.
[123] *See* Letter from Powermach to the Department, regarding "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Response to the Department of Commerce's April 14, 2016 Surrogate Value Supplemental Questionnaire," dated April 25, 2016 ("Powermach April 25, 2016, Response") at page SV-SQ4-4.

Therefore, using the HTS category for coke (*i.e.*, 27040010000) to value Powermach's baking coal is appropriate.

- Contrary to Powermach's assertion, the Department recognized that Powermach's baking coal belongs in the bituminous category. In its preliminary SV memorandum, the Department stated that "coke falls in the category of bituminous coal."[124] To support this statement, the Department cited an article that states: "Coke is made by baking a blend of selected bituminous coals{.}"[125]

Department's Position: In the *Preliminary Determination*, we valued Powermach's baking coal using the Thai HTS category for coke (*i.e.*, 27040010000: Mineral Fuels, Mineral Oils And Products Of Their Distillation, Bituminous Substances, Mineral Waxes; Coke And Semicoke Of Coal, Of Lignite Or Of Peat, Whether Or Not Agglomerated, Retort Carbon; Coke And Semicoke Of Coal, Of Lignite Or Of Peat, Whether Or Not Agglomerated; Retort Carbon; Coke And Semicoke Of Coal).[126] We continue to find that Powermach's baking coal has the characteristics of coke.

Powermach explained that its "…baking coal is carbonized and it is not raw coal. It is manufactured from the raw coal and belongs in the category of bituminous coal."[127] Powermach also explained that its baking coal is "…used in the melting process by Powermach as fuel to melt the iron or steel scraps."[128] Coke is also carbonized, or heated, like Powermach's baking coal. Specifically, coke is described as a "…substance made by heating coal until it becomes almost pure carbon."[129] Moreover, like Powermach's baking coal, coke is also used as a fuel to melt metal. Record information indicates that "{c}oke is used chiefly to smelt iron ore and other iron bearing materials in blast furnaces, acting both as a source of heat and as a chemical reducing agent, to produce pig iron, or hot metal."[130] Additionally, during verification, the Department's verifiers observed a material, which company officials stated was baking coal, being poured into the cupola furnace.[131] Similarly, a general overview of how a blast furnace functions indicates that "…iron ore, coke, and limestone are dumped into the top…" of the blast furnace.[132] Thus, Powermach's baking coal is used in the same manner as coke.

Although Powermach states that its baking coal is a precursor to coke, the record does not indicate that coke could be produced from baking coal, a product that is already carbonized. Rather, the record demonstrates that coke, like Powermach's baking coal, is carbonized using raw coal.[133] For the aforementioned reasons, we have determined that HTS category

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[124] *See* Preliminary SV Memorandum at 3.
[125] *See* Letter from Petitioner to the Department, regarding "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Petitioner's Rebuttal Surrogate Value Comments," dated March 17, 2016 ("Petitioner March 17, 2016 Rebuttal SV Comments") at Exhibit 3C
[126] *See* Powermach SV Comments at Exhibit SV-4.
[127] *See* Powermach April 25, 2016, Response at page SV-SQ4-4.
[128] *Id*.
[129] *See* Petitioner March 17, 2016 Rebuttal SV Comments at Exhibit 3A.
[130] *Id*. *See* Petitioner March 17, 2016 Rebuttal SV Comments at Exhibit 3C.
[131] *See* Verification Report at 14.
[132] *See* Petitioner March 17, 2016 Rebuttal SV Comments at Exhibit 3B.
[133] *Id*. at Exhibit 3A. ("Ironmaking uses up huge amounts of coal. The coal is not used directly, but is first reduced to coke which consists of almost pure carbon.").

27040010000 constitutes the best available information to value Powermach's baking coal for the final determination.

Comment 13: Surrogate Value for Anti-tarnish Paper

Powermach's Arguments:

- The Department should value Powermach's anti-tarnish paper using Thai HTS category 48062000. Powermach's anti-tarnish paper is a greaseproof paper expressly covered under heading 4806 rather than the more general paper referred to under heading 4811.

Petitioner's Arguments:

- The Department has recognized, and Powermach stated, that Powermach's anti-tarnish paper is coated with paraffin. Powermach does not contest the accuracy of this description. Thus, Powermach's anti-tarnish paper should be valued using Thai HTS category 48116090090.
- Greaseproof paper is used in cooking and baking applications, and is distinct from wax papers and anti-corrosive papers, which are used as packing materials for metal products to prevent rusting. It seems highly unlikely that Powermach uses a product that is typically used to absorb oil in cooking and baking applications.
- Even if Powermach's anti-tarnish paper could fit the description under HTS category 48062000, the Thai HTS instructs that "paper ..., answering to a description in two or more of the headings of 4801 to 4811 are to be classified under that one of such headings which occur last in numerical order in the Nomenclature."[134] If Powermach's anti-tarnish paper does meet the description under both 48062000 and 48116090090, it is still properly categorized under 48116090090.
- The notes to Chapter 48 in the Thai HTS schedule state that HTS 4806 applies only to paper "in strips or rolls of a width exceeding 36 cm" or "in rectangular (including square) sheets with one side exceeding 36 cm and the other side exceeding 15 cm in the unfolded state."[135] Because the record does not contain information on whether Powermach's anti-tarnish paper meets these criteria, even if Powermach's anti-tarnish paper could be categorized as "greaseproof paper," it is unclear whether it fits the description of HTS category 48062000.

Department's Position: We disagree with Powermach that its anti-tarnish paper should be valued using Thai HTS category 48062000 (*i.e.*, Vegetable Parchment, Greaseproof Papers, Tracing Papers, Glassine And Other Glazed Transparent Or Translucent Papers, In Rolls Or Sheets; Greaseproof Papers (As Manufactured), In Rolls Or Sheets; Greaseproof Papers).[136] While Powermach has referred to its anti-tarnish paper as greaseproof paper, Powermach has not provided any support that its anti-tarnish paper is greaseproof paper. Although Powermach submitted a picture of its anti-tarnish paper, it is not clear based on the picture whether this paper is more appropriately classified under HTS category 48062000 or HTS category 48116090090 (*i.e.*, Paper, Paperboard, Cellulose Wadding And Webs, Coated, Impregnated, Surface-Colored, Surface-Decorated Or Printed, Nesoi, In Rolls Or Sheets; Paper & Paperboard, Coated,

[134] *See* Powermach SV Comments at Exhibit SV-4, pg. 82.
[135] *Id*.
[136] *Id*.

Impregnated Or Covered With Wax, Parafin, Steain, Oil, Or Glycerol; Other).[137] What the record does show is that greaseproof paper is primarily used for cooking and baking, and that it does not allow oil through it.[138] There is insufficient evidence to demonstrate that Powermach is using this type of specialized paper designed for cooking and baking applications to pack subject merchandise. Additionally, HTS category 4806 specifies the dimensions of the paper, which the record does not contain with respect to Powermach's anti-tarnish paper.

On the other hand, Powermach stated that its paper is sold as anti-tarnish paper, and that it is coated with paraffin.[139] Thai HTS category 48116090090 covers paper "impregnated or covered with wax, paraffin." Therefore, we will continue to value Powermach's anti-tarnish paper using HTS category 48116090090 because this category is supported by record evidence and constitutes the best information available for valuing Powermach's anti-tarnish paper.

Comment 14: Surrogate Value for Spheroidizing Agent

Prior to the preliminary determination in this investigation, the Department identified Bulgaria, Ecuador, Mexico, Romania, South Africa, and Thailand as countries at the level of economic development of the PRC based on gross national income ("GNI") data. In the *Preliminary Determination*, the Department selected Thailand as the primary surrogate country.

Powermach's Arguments:

- The Department departed from its preferred practice of valuing all FOPs using data from the primary surrogate country, Thailand, by valuing Powermach's spheroidizing agent using South African import statistics.
- A low value is not a reason to disregard a potential SV. Using third-country data is appropriate only if there is "specific evidence" that particular data from the primary surrogate country are aberrational.[140] As specified in *Clearon Corp. v. United States*, using SVs from a single surrogate country limits distortions introduced into the calculations.
- The Department did not consider import volumes in reaching its conclusion regarding the unsuitability of the Thai data. While the Department excluded Romania and Bulgaria for having no imports during the POI, it considered the SVs from Ecuador and South Africa despite very low relative POI trade volumes (three kilograms, and 389 kilograms, respectively).
- The Ecuadorian and South African import volumes during the POI are small relative to the Thai or Mexican import volumes during that period.
- The South African and Ecuadorian weighted average unit values ("AUVs") of imports during the POI significantly deviate from the overall weighted AUV for the POI (using data from Ecuador, Mexico, South Africa, and Thailand). The Ecuadorian AUV is over 66 times greater than the average AUV, and the South African AUV is nearly 33 times greater than the average AUV. By contrast, the Thai AUV is only four times less than the average AUV,

[137] *See* Powermach SV Comments at Exhibit SV-4.
[138] *See* Petitioner March 17, 2016 Rebuttal SV Comments at Exhibit 3B.
[139] *See* Powermach April 25, 2016, Response at page SV-SQ4-13.
[140] *See* Trust Chem. Co. v. United States,791 F. Supp. 2d 1257, 1264 (Ct. Int'l Trade 2011); *see also* Clearon Corp. v. United States, 2013 Ct. Int'l Trade LEXIS 27, at *19-21 (February 20, 2013).

and the Mexican AUV is less than six times greater than the average AUV. The South African and Ecuadorian AUVs are the outliers.

- In *Hydrofluorocarbon Blends from the PRC*, the Department upheld using primary surrogate country data after analyzing the relative import volumes of HCL among other potential surrogate countries. In *Glycine from the PRC*, the Department upheld using primary surrogate country data after comparing "total import volume and average unit price."[141]
- The Department's use of low-volume high-value data from another potential surrogate country in place of primary surrogate country data in an effort to ward off potential distortion from high-volume data of the primary surrogate country is incompatible with the Department's past practice of excluding SV data that are based on low import volumes.[142]
- The Department must consider the respondent's consumption volume when analyzing the propriety of a particular SV source. The non-primary surrogate country import volume associated with the SV used by the Department in the *Preliminary Determination* is less than Powermach's consumption of this input during the POI. In *Jiaxing Brother Fastener Co. v. United States*, the CIT overturned the Department's surrogate country selection, at least partially, because the import volume of a certain input fell below the amount consumed by the company under investigation.[143]
- The Mexican import data undermines the Department's decision to disregard the Thai import data. The Mexican AUV for imports under HTS 280519 is $7.60 per kg, which is far closer to the Thai AUV than the South African or Ecuadorian AUVs.
- Although the Department claims that the South African AUV is supported by AUVs from the United States, Germany and France, those countries were not selected as potential surrogate countries because their GNI does not fall within a comparable range.

Petitioner's Arguments:

- The Department cannot reject data solely because they are not from the primary surrogate country nor does it err in relying on data from a secondary country if data from the secondary surrogate country are the best available information for valuing an FOP.
- The CIT has recognized that "because the statute requires Commerce to compare the chosen data set with other data sets on the record and thereby determine what is the best available information, the regulatory preference {for selecting SVs from the primary country} cannot suffice as adequate reasoning if it is the only factor that Commerce considers." Accordingly, "{t}his 'preference' ... carries the day only when it is used to 'support a choice of data as the best available information where the other available data upon fair comparison, are otherwise seen to be fairly equal.'"

[141] *See, e.g.*, *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) ("*Hydrofluorocarbon Blends from the PRC*"), and accompanying IDM at Comment 28; *see also Glycine from the People's Republic of China: Final Results of Antidumping Administrative Review*, 77 FR 64100 (October 18, 2012), and accompanying IDM at Comment 1.

[142] *See Shakeproof Assembly Components Div. of IL Toll Works. Inc. v. United States*, 59 F. Supp. 2d 1354, 1360 (Ct. Int'l Trade 1999).

[143] *See Jianxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1333 (2014) ("*Jiaxing Brother Fastener Co. v. United States*").

- The Department has previously rejected the argument that a low import volume, in and of itself, renders import data problematic for use in valuing FOPs.[144] This argument is only viable if other record evidence does not corroborate the South African AUV. If other import AUVs are consistent with the South African AUV, there is no basis for finding that the South Africa AUV is unreasonable simply because there was a low import volume into South Africa during the POI for the HTS category in question.
- Although the South African import volume was relatively low, the AUVs from France, Germany, and the United States are consistent with the South African AUV of $45.86 and demonstrate that the South African AUV is reasonable. No record evidence supports the reasonableness of the Thai AUV. In fact, the next lowest AUV on the record for HTS 280519 (*i.e.*, $6.35) is almost twenty times greater than the Thai AUV.
- In *Peer Bearing Co-Changshan v. United States*, the CIT rejected the contention that data from non-economically comparable market economy countries cannot be used as benchmark data.[145]
- Because the Thai import volume is larger than the import volumes for South Africa, Ecuador, and Mexico, the overall weighted AUV is necessarily going to be closest to the Thai import AUV. This does not independently demonstrate that the Thai AUV is reasonable.

Department's Position: In the *Preliminary Determination*, we valued Powermach's spheroidizing agent using South African import data because we found the Thai import data aberrational. For the final determination, for the reasons explained below, we have continued to use South African import data under HTS category 280519 to value spheroidizing agent. We note that, irrespective of country, both Powermach and Petitioner agree that HTS category 280519 should be used to value spheroidizing agent.

When selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, it is the Department's practice to select SVs which, to the extent practicable, are product-specific, representative of a broad-market average, publicly available, contemporaneous with the period under consideration, and exclusive of taxes and duties.[146] Moreover, it is the Department's well-established practice to rely upon the primary surrogate country for all SVs, where possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.[147]

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[144] *See Hydrofluorocarbon Blends from the PRC* at 109.

[145] *See Peer Bearing Co-Changshan v. United States*, 752 F. Supp. 2d at 1372 (CIT 2011), *vacated on other grounds, Peer Bearing Co.-Changshan* v. *United States*, 766 F.3d 1396 (Fed. Cir. 2014) ("*Peer Bearing Co-Changshan v. United States*").

[146] *See, e.g.*, *Fuwei Films (Shandong) Co. v. United States*, 837 F. Supp. 2d 1347, 1350-51 (CIT 2012) (citing *Certain Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 10; *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 IDM at Comment 2).

[147] *See* 19 CFR 351.408(c)(2); *see also Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review*, 76 FR 66903 (October 28, 2011); unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012).

In this case, the record contains useable import data from three potential surrogate countries (*i.e.*, Ecuador, South Africa, and Thailand). Although the record also contains import data from another potential surrogate country (*i.e.*, Mexico), the document including these data was not translated and thus we continue to find that these data are not useable.[148] As stated in the *Preliminary Determination*, two potential surrogate countries (*i.e.*, Romania and Bulgaria) did not import products under HTS category 280519 during the POI.[149] Additionally, the record contains import data from countries that were not identified by the Department as being at the same level of economic development as the PRC (*i.e.*, Belgium, France, Germany, Netherlands, and the United States).

When a party claims that a particular SV is not appropriate to value the FOP in question, the Department has determined that the burden is on that party to demonstrate the inadequacy of said SV or, alternatively, to show that another value is preferable.[150] In this case, we agree with Petitioner that the Thai AUV for HTS category 280519 is aberrational when compared with the South African and Ecuadorian AUVs for this HTS category, as well as with the AUVs from the countries not identified by the Department as being at the same level of economic development as the PRC. The Thai AUV (*i.e.*, USD$0.32/kg) is significantly different from the Ecuadorean AUV (*i.e.*, USD$92.09/kg) and the South African AUV (*i.e.*, USD$45.86/kg).[151] The South African AUV is approximately 143 times higher than the Thai AUV, and the Ecuadorian AUV is approximately 287 times higher than the Thai AUV. As noted above, there are only three useable AUVs on the record from the countries which the Department found to be at the level of economic development of the PRC.

Based on the information on the record of this investigation, both a comparison of the Thai data with the data of other countries that are at a level of economic development comparable to the PRC (*i.e.*, in this case, South Africa and Ecuador), and a comparison of data from South Africa and Ecuador with data from non-surrogate countries demonstrates that the Department's determination to rely on the South African data is reasonable. The South African AUV (*i.e.*, USD$45.86/kg) is also consistent with other AUVs on the record (*e.g.*, USD$34.14/kg (United

[148] *See* Petitioner March 17, 2016 Rebuttal SV Comments at Exhibit 4A.
[149] *Id.*
[150] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) at Comment 6; Laminated Woven Sacks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 35646 (June 24, 2008) at Comment 2; *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 73 FR 14216 (March 17, 2008) ("Carrier Bags/PRC") at Comment 6; and *Notice of Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 FR 60980 (October 14, 2004) at Comment 3.
[151] *See* Powermach SV Comments at Exhibit SV-1; *see also* Letter from Petitioner to the Department, regarding "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Petitioner's Second Submission of Surrogate Value Information," dated May 2, 2016 ("Petitioner May 2, 2016, Submission") at Exhibit 2; *see also* Petitioner March 17, 2016 Rebuttal SV Comments at Exhibit 4A.

States), USD$27.17/kg (France), USD$37.07/kg (Germany)).[152] While Powermach contends that it is inappropriate to rely on SVs from countries that are not potential surrogates for comparison purposes, the Department has used data from such countries as benchmarks to test the reliability of surrogate data. For example, in *TRBs from China*, the Department used U.S. import data to benchmark the SV for each of the tapered roller bearing components (*i.e.*, cups, cones, rollers, and cages) in order to assess the reasonableness of the surrogate values in question.[153] Additionally, in *Peer Bearing Co-Changshan v. United States*, the CIT reasoned that because import data from Indonesia and the Philippines (both surrogate countries) were consistent and were corroborated with the U.S. import data, the Department's decision to use Indian import data calls into question whether the Indian import data is the best available information to value alloy steel wire rods.[154]

While Powermach argues that the Department did not consider relative import volumes in its analysis when determining to use the South African AUV, the Department has consistently found that small import quantities alone are not inherently distortive. Although Thailand has significantly larger import quantities for the HTS category in question when compared with South Africa, the record evidence identified above indicates that the Thai AUV is aberrational, and the South African AUV is not, when compared with other data points on the record. Thus, we do not find that the smaller South African import volume indicates that its AUV is necessarily distortive.

We disagree with Powermach that the Department should consider the quantity of spheroidizing agent consumed by Powermach when analyzing the propriety of a particular SV source. Although Powermach claims that the South African import volume used to calculate the SV is small relative to its own consumption, the statute does not require the Department to match importation volumes in potential surrogate countries with the respondents' own consumption volumes, nor is it the Department's practice to undertake such a comparison in determining the best available information with which to value FOPs. The mere fact that Powermach's consumption of spheroidizing agent during a particular period might exceed the South African import volume during the POI, or the POI import volumes of other countries used in our analysis, does not necessarily render those imports unreliable or unreasonable SV sources. Powermach points to *Jiaxing Brother Fastener Co. v. United States* and notes that the CIT directed the Department to reconsider Thailand as the primary surrogate country, in part because the imports of a particular material into Thailand appear to reflect small, noncommercial shipment quantities thereby resulting in a higher value. Additionally, the plaintiffs in that CIT case noted, which the CIT took into consideration, that imports of HCL into Thailand from certain countries were significantly less in any given year than Plaintiffs' consumption quantities of HCL. However, in the instant case, as noted above, record evidence does not demonstrate that the South African import volume under HTS category 280519 resulted in a distortive AUV

[152] *See* Petitioner March 17, 2016 Rebuttal SV Comments at Exhibit 4B; *see also* Letter from Petitioner to the Department, regarding "Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Petitioner's Pre-Preliminary Determination Comments," dated May 13, 2016 at page 33.
[153] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1998- 1999 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 1953 (January 10, 2001).
[154] *See Peer Bearing Co-Changshan v. United States.*

because the South African AUV, unlike the Thai AUV, is within the realm of other AUVs on the record.

In summary, the South African SV constitutes the best available information in valuing Powermach's spheroidizing agent. South Africa is economically comparable to the PRC, and its AUV is closer to the other data points on the record when compared with the Thai AUV. Therefore, we will continue valuing spheroidizing agent using the South African SV.

Comment 15: Surrogate Value for Rail Freight

Powermach's Arguments:

- The State Railway of Thailand ("SRT") data, as published by the Thailand Board of Investment ("BOI"), used to value rail freight in the *Preliminary Determination* does not indicate how the commodities are shipped.[155]
- The Department should instead use another set of SRT data which provides rates for containerized transport in 20-foot containers, and Hapag-Lloyd data to obtain the weight of a fully loaded 20-foot container.[156] This information reflects the mode of transportation used by Powermach and constitutes the best available information for valuing rail freight.

Petitioner's Arguments:

- The surrogate data source used in the *Preliminary Determination* to value rail freight constitutes the best available information for determining that value. While that source does not explicitly state whether the data cover containerized shipments, this is not the same as demonstrating that it does not cover containerized shipments. Even Powermach has admitted that the data does not indicate how the goods are shipped. It is reasonable to assume that at least some of the goods identified in the data are shipped in containers.
- Powermach's proposed data source for valuing rail freight contains limited information. For example, the source does not indicate the time period covered by the data, the types of goods covered, or whether the data should be inflated.

Department's Position: In the *Preliminary Determination*, we selected Class 4 data from the SRT, as published by the BOI, to value rail freight because the specimen product list for Class 4 data identifies a metal product (*i.e.*, steel) as one of the products to which the rail rate applies. While the Class 4 data, and the underlying BOI source, used to value rail freight in the *Preliminary Determination* does not explicitly reveal whether or not the data reflects containerized shipments, we find this is a better source to value rail freight than the surrogate source advocated by Powermach because: (1) the Class 4 data are contemporaneous with the POI (it is unclear whether Powermach's recommended source is contemporaneous); (2) the freight cost for Class 4 data is reported on a pre-calculated per-ton basis. In contrast, Powermach's recommended source (*i.e.*, another set of SRT data which provides rates for containerized transport) requires the use of a secondary source (*e.g.*, Hapag-Lloyd) which provides container weight in order to calculate a per-unit freight cost. The record does not

[155] *See* Petitioner SV Comments at Exhibit 8B.
[156] *See* Powermach SV Comments at Exhibit SV-9

indicate that the weight from the Hapag-Lloyd source reflects metal products. By relying on the Class 4 data, we eliminate the possibility of a distorted per-unit value which may result from introducing an unrelated secondary source for weight in our calculation; and (3) unlike the Class 4 data which identifies a metal product as one of the products which qualifies for the listed rail rate (thus a product similar to subject merchandise), the other set of SRT data recommended by Powermach does not have any information on the products qualifying for the reported rail rates. For the foregoing reasons, we have continued to value rail freight using the Class 4 data for the final determination because it constitutes the best available information for valuing rail freight.

Comment 16: Selection of Financial Statements

Powermach's Arguments:

- The Department should value overhead, SG&A expenses, and profit using Thai Iron Foundry's ("Thai Iron") financial statements, which provide all of the information necessary to calculate surrogate financial ratios and not use Thai Ductile Inductory Co. Ltd.'s ("Thai Ductile") financial statements for this purpose.
- Powermach's cost structure and FOPs reported to the Department are based on both casting and machining processes. Machining costs are not reflected in Thai Ductile's financial statements because Thai Ductile outsources its machining to a separate entity. Record evidence also indicates that Thai Ductile may receive technological support from Taiwanese firms. Thus, relying on Thai Ductile's financial statements introduces significant distortions in the normal value build-up.
- In *Rhodia Inc. v. United States*, the CIT held that, based on record evidence, selecting a surrogate producer that is less integrated than the NME respondent would lead to the inference that the surrogate producer has a lower overhead ratio.[157]
- Thai Ductile's administration expenses include a line item for "Forbidden Payment." There is no explanation for this line item, but the line item name "Forbidden Payment" indicates payment for some form of unlawful or otherwise prohibited activity.
- While Petitioner argues that the Department should disregard Thai Iron's financial statements because the Thai financial statements originally placed on the record are incomplete, in *CP Kelco US, Inc. v. United States*, the CIT observed that the Department, "does not have a practice of always rejecting incomplete financial statements" if the financial statements still contain data points that are considered "vital."[158] In *Wood Flooring from the PRC*, the Department found that issues such as repeated paragraphs, missing page numbers or pages that are out of sequence, does not negate the financial statement's reliability.[159]
- Moreover, in *Ass'n of Am. Sch. Paper Suppliers v. United States*, the Department explained that its "primary concern is whether the financial statements contain usable data."[160]
- In a supplemental questionnaire to Powermach, the Department expressly requested "the fully translated version of Thai Iron Foundry's financial statements complete with the

[157] *See Rhodia Inc. v. United States*, 240 F. Supp. 2d 1247, 1251 (CIT 2002).
[158] *See CP Kelco US, Inc. v. United States*, 2016 Ct. Intl. Trade LEXIS 35 (2016).
[159] *See Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 26712 (May 9, 2014) ("*Wood Flooring from the PRC*"), and accompanying IDM at Comment 2.
[160] *See Ass'n of Am. Sch. Paper Suppliers v. United States*, 791 F. Supp. 2d 1292, 1299 (Ct. Int'l Trade 2011).

auditor's report." Powermach submitted the requested information. Providing any information beyond what the Department requested would be rejected as unsolicited or untimely information.

- Petitioner has not contended that the translation of the financial statements is inaccurate. Thai Iron's financial statements are responsive to the Department's request for a full translation. Moreover, the statements, are of high quality and specific, contain usable data and are not missing vital information.

Petitioner's Arguments:

- The Department should disregard Thai Iron's financial statements because the Thai financial statements originally submitted on the record lack the auditor's statement testifying to the reliability of the statements. Instead, the Department should rely only on Thai Ductile's financial statements because the full original and translated financial statements for Thai Ductile are on the record.
- It is the Department's practice to reject financial statements that are incomplete. For example, in *OTR Tires from the PRC*, the Department rejected financial statements missing the auditor's statement and certain data in the income statement.[161] In *Silicomanganese from Kazakhstan*, the Department rejected financial statements which lacked the auditor's statement and accounting notes.[162] In *Steel Wheels from the PRC*, the Department found that it would be problematic to use financial statements where the first two pages of the untranslated financial statements were missing and only translations were provided, because the Department could not "trace them to an untranslated version."[163]
- Powermach did not provide, and the record does not contain, the original Thai version of the auditor's statement. This absence is a meaningful deficiency because an auditor's statement is part of what renders a financial statement complete. Additionally, the Department is unable to determine the accuracy of the English translated version of the auditor's statement without the original Thai document.
- The record does not demonstrate that Thai Ductile outsources all of its machining to a separate entity, as Powermach claims. Record information indicates that Thai Ductile has machining capabilities. Thai Ductile's website states that it is capable of further processing. The website also shows that its manufacturing process includes "finishing," and that it has grinding machines (*i.e.*, which relate to the finishing process).
- In selecting financial statements for determining financial ratios, the Department is not required to duplicate the production experience of the Chinese manufacturers.[164] Thai Ductile produces castings that are identical and comparable to the merchandise produced by Powermach.

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[161] *See 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) ("*OTR Tires from the PRC*") and accompanying IDM at 37.

[162] *See Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Kazakhstan*, 67 FR 15535 (April 2, 2002) and accompanying IDM at Comment 3.

[163] *See 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) and accompanying IDM at 22.

[164] *See High Pressure Steel Cylinders From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012) and accompanying IDM at 10.

- Powermach's statement that Thai Ductile may receive technological support from Taiwanese firms appears to be based on the fact that Thai Ductile's website states that it has "technologies provided by Taiwan Ductile Factory Co., Ltd." Powermach does not explain how another firm providing technologies to Thai Ductile in any way affects whether Thai Ductile's production process is representative of Powermach's production process.
- Powermach has not explained how the "Forbidden Payment" line item in Thai Ductile's financial statements distorts Thai Ductile's financial statements or otherwise renders the statements unusable. Powermach is simply making assumptions with no supporting evidence.

Department's Position: In the *Preliminary Determination*, we relied on financial ratios calculated as simple averages of the respective ratios calculated from information in Thai Iron and Thai Ductile's financial statements. However, upon further review, we find that the original Thai Iron financial statements lack an auditor's statement. Therefore, we have determined that Thai Iron's financial statements are incomplete, and accordingly, we are not relying on these financial statements for use in the final determination.

It is the Department's practice to disregard incomplete financial statements as a basis for calculating surrogate financial ratios. In *Rebar from Belarus*, the Department found it inappropriate to use a certain set of financial statements for calculating surrogate financial ratios, in part, due to missing sections of the auditor's report. In *WBF from China NSR*, the Department disregarded financial statements for a number of reasons, but noted a missing auditor's report as a significant cause.[165] Furthermore, as Petitioner noted, the Department rejected surrogate financial statements, in part, due to missing auditor's statements in *OTR Tires from the PRC* and *Silicomanganese from Kazakhstan.* Our decision not to rely on Thai Iron's financial statements for this final determination is consistent with the aforementioned cases that lacked the auditor's statement, or certain sections of the auditor's statement, for certain financial statements indicating those were incomplete financial statements.

The Department disagrees with Powermach that Thai Iron's financial statements are useable because they contain the "vital" information necessary for financial ratio calculations. The Department cannot rely on the Thai Iron financial statements without an auditor's statement. An auditor's statement provides an opinion regarding the reliability of a company's financial statements. And, although the translated version of Thai Iron's financial statements include an auditor's statement, the original Thai financial statements do not. Without the original Thai auditor's report, it is not possible to compare and determine whether the translated version is accurate. It is also unclear whether the original Thai financial statements were in fact audited.

Powermach points to *CP Kelco US, Inc. v. United States* and *Wood Flooring from the PRC* in noting that the Department does not have a practice of always rejecting incomplete financial statements, and that the Department has acknowledged that certain issues in the financial statements (*e.g.*, pages out of sequence, missing page numbers, repeated paragraphs) do not undermine their reliability. In *CP Kelco US, Inc. v. United States*, a case which remains on-going, the CIT found that the Department failed to conduct a faithful side-by-side comparison

[165] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the 2004-2005 Semi-Annual New Shipper Reviews*, 71 FR 70739 (December 6, 2006) (*"WBF from China NSR").*

between two sets of financial statements on the record, both of which contained flaws.[166] The CIT found that the Department did not examine the implications of one set of financial statements, which showed evidence of subsidies, as thoroughly as another set of financial statements, which were incomplete; thus, the CIT remanded the Department's selection of financial statements. The fact pattern in the instant case is different because, unlike the financial statements in question in *CP Kelco US, Inc. v. United States*, Thai Ductile's statements are complete, do not show evidence of countervailable subsidies, and are useable. Thus, unlike the scenario presented in *CP Kelco* the Department is not faced with a situation of deciding which of two deficient surrogate financial statements to use. In *Wood Flooring from the PRC*, while the Department noted that the financial statements that it ultimately relied on in calculating surrogate financial ratios were missing information, the Department also noted that the financial statements "…are not missing any information, such as, Notes or any references to qualified opinions, non-interest bearing advances from shareholders, or any other information that might cause the Department to reject their use."[167] In *Ass'n of Am. Sch. Paper Suppliers v. United States*, the financial statements lacked certain data and schedules, however it contained the director's report, auditor's reports, balance sheet, profit and loss statement, notes, and accounting policies. Powermach's references to *Wood Flooring from the PRC and Ass'n of Am. Sch. Paper Suppliers v. United States* are inappropriate because while these financial statements in question contained some deficiencies, they contained the pertinent information, such as the auditor's report.

The burden to build the record of a proceeding and to provide useable surrogate value information which parties wish the Department to consider lies with the interested parties to that proceeding.[168] Thus, it was Powermach's responsibility to provide complete financial statements if it wished the Department to use those statements as a surrogate source. All interested parties had the opportunity to submit SV data until 30 days before the preliminary determination (*i.e.*, May 2, 2016). Powermach submitted its supplemental questionnaire, with the complete translated version of Thai Iron's financial statements, on April 25, 2015. Thus, Powermach could have submitted the original Thai auditor's report until May 2, 2016. We note that Petitioner submitted surrogate value information on May 2, 2016.[169]

At the preliminary determination, we found that Powermach's level of integration was similar to that of both Thai Ductile and Thai Iron.[170] We stated that the record indicates that both Thai Ductile and Thai Iron produce merchandise that is identical to the merchandise under consideration, and both have integrated production facilities, as does Powermach, because all three companies melt iron to produce castings.[171]

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[166] *See Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) and accompanying IDM; *see also Xanthan Gum From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 78 FR 43143 (July 19, 2013).
[167] *See Wood Flooring from the PRC* at Comment 2.
[168] *See Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246 (April 10, 2013); *see also Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717 (September 12, 2016).
[169] *See* Petitioner May 2, 2016, Submission.
[170] *See* PDM at 35.
[171] *Id.*

Powermach asserts that Thai Ductile's production process is not comparable to Powermach's process because Thai Ductile outsources its machining to a separate entity. We disagree with Powermach that the production processes are not similar. As noted above, both Thai Ductile and Powermach melt iron to produce castings. While Thai Ductile may outsource its machining process to a separate entity, its website also states that it performs "further processing" and "finishing" which seems to indicate that Thai Ductile performs some machining. Nevertheless, even if there is a difference between Thai Ductile and Powermach with respect to machining, the courts have held that the Department is neither required to "duplicate the exact production experience of the PRC manufacturers," nor undergo "an item-by-item analysis in calculating factory overhead."[172]

Powermach also points out that Thai Ductile's financial statements contains a line for "Forbidden Payment," under administrative expenses which, according to Powermach, suggests prohibited activity and thus may distort the financial ratio calculations. The record does not contain further information regarding this line item, therefore we agree with Petitioner that Powermach's concerns are speculative.

For the foregoing reasons, we will disregard Thai Iron's financial statements in calculating financial ratios because they are incomplete. Thai Ductile is a producer of identical merchandise, with a production process comparable to that of Powermach. Furthermore, its financial statements are complete, reliable, and useable. Therefore, we will calculate surrogate financial ratios using Thai Ductile's financial statements.

Comment 17: SG&A Expense Calculation in Thai Ductile Inductory Co. Ltd.'s Financial Statements

In the *Preliminary Determination*, we excluded the transportation expense line item which is classified under selling expenses in Thai Ductile's financial statements from our financial ratio calculations.

Petitioner's Arguments:

- The Department should include transportation expense as part of SG&A expenses when calculating financial ratios using Thai Ductile's financial statements.
- It is the Department's practice to exclude expenses from the financial ratio calculations only when the information contained in the financial statements demonstrates that the expense at issue is captured elsewhere in the calculation of normal value, and thus its inclusion would result in double-counting.[173] Here, there is nothing in the financial statements to suggest that

[172] *See Rhodia, Inc. v. United States*, 240 F.Supp.2d 1247, 1251 (CIT 2002); *Magnesium Corp. of Am. v. United States*, 166 F.3d 1364, 1372 (Fed. Cir. 1999); *Nation Ford Chem. Co. v. United States*, 985 F. Supp. 133 (CIT 1997); *cf. Dongguan Sunrise Furniture Co., Ltd. v. United States*, 856 F.Supp.2d 1216, 1244 (CIT. 2012) (finding it reasonable for the Department to decline to adjust the financial statements to match exact selling expenses).

[173] *See, e.g., Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part*, 76 FR 49729 (August 11, 2011) ("*WBF from China 2009*") and accompanying IDM at 30-31.

the excluded transportation line item expenses included expenses that have been accounted for elsewhere.

- In *Activated Carbon from China*, the Department explained that because the financial statements did not provide a clear definition or record evidence to trace the "Transportation/Trucking" line item to a particular non-general operation of the company, it was appropriate to include the expense in SG&A expenses.[174] In *WBF from China 2009*, the Department found no reason to exclude import and export expenses from SG&A expenses, explaining that "{t}here are no details in the financial statements that indicate that the export related expenses in those statements are the same type of export related expenses that the Department accounts for elsewhere in its calculations…."[175]
- Thai Ductile's financial statements do not indicate that expenses included in the transportation expense line item are related to export, and provide no information as to what expenses are included in the transportation expense line item.
- Transportation expenses related to exports are most likely reflected in the "Cost export" line item under administrative expenses in Thai Ductile's financial statements. In *Steel Rail Tire Wire from China*, the Department found that freight costs associated with importing inputs was likely included in the raw material expense and that "transportation" cost, reported under costs of sale, was an overhead expense.[176] In *Silicon Metal from China*, the Department did not exclude "freight outward" from the financial ratios because export-related expenses were captured by the separate line item for "freight on export."[177]

Powermach's Arguments:

- Should the Department use Thai Ductile's financial statements to derive the financial ratios, it must reject Petitioner's argument to include transportation expense as SG&A expenses because including such transportation expense would directly contradict "the Department's longstanding practice to avoid double-counting costs."[178]
- Freight costs are separately included in the Department's margin calculation by using a SV for freight expenses. Including transportation expenses in the surrogate financial ratios would thus result in double counting this expense. Because there is no separate line item for freight expenses in Thai Ductile's financial statements, such expenses are necessarily captured in the line item for transportation expense.
- Although Petitioner cites *WBF from China* to support its position, this case supports the opposite conclusion. In that case, the Department declined to exclude "Transp. & Travel" expenses that were incurred by a surrogate company from its calculation of surrogate

[174] *See Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 70163 (November 25, 2014) and accompanying IDM at 45.
[175] *See WBF from China 2009* and accompanying IDM at 30-31.
[176] *See Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) ("*Steel Rail Tire Wire from China*") and accompanying IDM at 35; *see also Silicon Metal From the People's Republic of China*, 76 FR 3084 (January 19, 2011) and accompanying IDM at 31.
[177] *See Silicon Metal From the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 3084 (January 19, 2011) ("*Silicon Metal from China*") and accompanying IDM at 31.
[178] *See WBF from China 2009* and accompanying IDM at Comment 19; *see also Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 28801 (May 16, 2013), and accompanying IDM at Comment 6.

financial ratios because "given that transportation costs are included together with travel expenses it is more likely that these costs relate to transportation of personnel rather than movement of goods." This reasoning does not apply in this instance because there is no evidence that Thai Ductile's transportation expense includes personnel travel expenses. With respect to another surrogate company, the Department excluded "transportation and delivery" expenses from SG&A expenses to avoid double counting that expense.

Department's Position: We disagree with Petitioner that the transportation expense line item should be included in the calculation of SG&A expenses, since including this expense in the SG&A ratio would result in double counting the expense.[179] It is the Department's practice in NME proceedings to avoid double-counting expenses that already are deducted from U.S. price by not including such expenses in the calculation of the surrogate SG&A or overhead ratios that are used to calculate normal value.[180] Consistent with this practice, we will exclude movement expenses related to the sale of finished goods, but not movement expenses related to the manufacturing of products, from our financial ratio calculations.[181] The transportation expense line item in Thai Ductile's financial statements is classified under selling expenses; transportation expenses classified under selling expenses are normally movement expenses related to the sale of finished goods. In this case, excluding the transportation expense line item from SG&A expenses is appropriate because such movement expenses are separately accounted for in the Department's margin calculation through the use of truck and rail SVs to value export-related movement expenses for finished goods.

Petitioner's references to *Activated Carbon from China*, *WBF from China*, and *Steel Rail Tire Wire from China* are inappropriate in this case. With respect to *Activated Carbon from China*, it is unclear based on the IDM how the "Transportation/Trucking" line item was classified in the surrogate company's financial statements. Specifically, it is unclear whether this line item was classified under selling expenses in the financial statements. Petitioner also points to *WBF from China* in arguing that the Department should include transportation costs in the financial ratio calculations if it is not possible to determine that these transportation costs are the same type of export related expenses that the Department has accounted for elsewhere. However, the transportation expense line item at issue is specifically classified under selling expenses in Thai Ductile's financial statements while there are separate line items identified as "Traveling expenses" and "Travel expenses" under administrative expenses. While a transportation expense classified under selling expenses could relate to salespersons' transportation expenses or outbound freight expenses on finished goods, the fact that it appears that Thai Ductile classifies travel expenses separately as administrative expenses lends weight to the conclusion that the transportation expense classified under selling expenses relates to outbound freight expenses on finished goods. As noted above, transportation expenses are already accounted for as an adjustment to U.S. price and thus should be excluded from the financial ratio calculations.

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[179] *See Notice of Final Determination of Sales at Less Than Fair Value; Honey From the People's Republic of China*, 66 FR 50608 (October 4, 2001) and accompanying IDM at Comment 3.
[180] *Id.*
[181] *See Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) at Comment 1.

Finally, Petitioner speculates that transportation expenses related to exports are likely reflected under the "cost export" line item, which is classified under administrative expenses in Thai Ductile's financial statements and which was already excluded from the Department's financial ratio calculations and points to *Steel Rail Tire Wire from China* and *Silicon Metal from China*. In *Steel Rail Tire Wire from China*, the issue at hand was whether the transportation expense line item, which was listed under "cost of sales and services" in the financial statements, should be categorized under manufacturing overhead or raw materials. Given the lack of detail regarding the generic transportation expense line item, the Department reasoned in that case that freight related to transporting purchased raw materials is typically included in the raw material expenses in the financial statements; thus, this transportation expense line item was categorized under manufacturing overhead.[182] However, the transportation expense at issue in *Steel Rail Tire Wire from China* was not a selling expense related to finished goods, given that it was categorized as a manufacturing overhead expense by the Department and listed under the costs of goods and services sold. In the instant investigation the transportation expense at issue was listed under "Selling Expenses" and not the "Cost of goods sold and Service" line item in Thai Ductile's financial statements and for the reasons noted above, indicates that this expense was related to outbound freight for finished goods. In *Silicon Metal from China*, the Department found that the "freight on export" line item represents export-related transportation costs, and thus excluded this line item from the financial ratios calculations. Because the surrogate company specifically identified export-related transportation expenses as a separate line item in its financial statements, the Department found no basis to conclude that another line item, "freight outward," represents export related transportation expenses. Thus, the Department classified the "freight outward" line item under manufacturing overhead in the calculation of the financial ratios. In the instant case, however, it is not explicitly stated in the financial statements that the "cost export" line item includes transportation expenses, unlike the "freight on export" line item in *Silicon Metal from China* which includes the words "freight" and "export" and suggests that the "freight on export" line item relates to transportation expenses for exports. Based on all of the above, we find it appropriate to exclude the transportation line item from the calculation of SG&A.

[182] *See Steel Rail Tire Wire from the PRC* at Comment 11.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination in the *Federal Register*.

Agree ✓ Disagree _____

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

October 21, 2016
Date