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

A-570-040
Investigation
Public Document
AD/CVD I: TB Tires Team

January 19, 2017

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

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

SUBJECT: Truck and Bus Tires from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances

I. Summary

We analyzed the case and rebuttal briefs submitted by interested parties in the antidumping duty investigation of truck and bus tires from the People's Republic of China (the PRC). As a result of our analysis, we made changes in the margin calculations. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

a. Separate Rate Eligibility Issues
   Comment 1: Aeolus
   Comment 2: Double Coin – Investigation and Verification
   Comment 3: Double Coin – The Validity of the PRC-Wide Rate
   Comment 4: Double Coin – Application of the AFA Rate
   Comment 5: Double Coin – The Presumption of the PRC Government Control
   Comment 6: Double Coin – The PRC Government's Control of Export Activities
   Comment 7: Double Coin – WTO Obligations
   Comment 8: GTCIE
   Comment 9: Pirelli
   Comment 10: Shandong Yongsheng and Yongsheng Marshall
   Comment 11: Zhongce
b. Combination Rates
   Comment 12: Combination Rates for Qingdao Jinhaoyang
c. PCT Issues
   Comment 13: VAT Methodology
   Comment 14: Barge Transportation

II. Background

On September 6, 2016, the Department of Commerce (the Department) published the preliminary affirmative determinations of sales at less than fair value and critical circumstances for truck and bus tires from the PRC.[1] In response to ministerial error allegations raised by interested parties, the Department amended the preliminary determination of sales at less than fair value on October 14, 2016.[2] The Department issued the post-preliminary double remedy analysis memorandum on October 13, 2016.[3] The Department postponed the final determination of this investigation to January 19, 2017,[4] and conducted the verification of U.S. sales and factors of production reported by Prinx Chengshan (Shandong) Tire Co., Ltd. on October 24 through 28, 2016.[5] We received case[6] and rebuttal[7] briefs from various parties to this antidumping duty investigation. Pursuant to requests from interested parties, we held a public

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[1] *See Truck and Bus Tires From the People's Republic of China: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, and Postponement of Final Determination*, 81 FR 61186 (September 6, 2016) (*Preliminary Determinations*), and accompanying Preliminary Decision Memorandum.
[2] *See Truck and Bus Tires From the People's Republic of China: Amended Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 71051 (October 14, 2016) (*Amended Preliminary Determination*).
[3] *See* the Memorandum to the File, "Truck and Bus Tires from the People's Republic of China: Post-Preliminary Double Remedy Memorandum" (Post-Preliminary Double Remedy Memorandum), dated October 13, 2016.
[4] *See Preliminary Determinations*, 81 FR at 61192.
[5] *See* the Report entitled "Less-Than-Fair-Value Investigation of Truck and Bus Tires from the People's Republic of China: Verification of the Sales and Factors of Production Response of Prinx Chengshan (Shandong) Tire Co., Ltd.," dated November 21, 2016 (Verification Report).
[6] *See* Case Briefs filed by Aeolus, Cheetah Chassis, Cooper Tire, Double Coin, GTCIE, PCT, Pirelli, the petitioner, and Zhongce on December 6, 2016.
[7] *See* Rebuttal Briefs filed by PCT, Qingdao Jinhaoyang, Shandong Yongsheng and Yongsheng Marshall, the petitioner, and Zhongce on December 15, 2016, and CIMC Vehicles on December 27, 2016.

hearing on January 6, 2017. Based on our analysis of the comments received, our verification findings, and consideration of the data on the record, for this final determination we have revised the dumping margins for PCT, the non-selected separate rate respondents, and the PRC-wide entity.

III. Company Abbreviations

Aeolus – Aeolus Tyre Co., Ltd.
CIMC Vehicles – CIMC Vehicles (Group) Co., Ltd., Shenzhen CIMC Vehicle Co., Ltd., CIMC Vehicles (HK) Limited, CIMC Intermodal Equipment, and CIMC USA Inc.
Double Coin – Double Coin Holdings Ltd.
Cooper Tire – Cooper Tire (China) Investment Co., Ltd.
GTC – Guizhou Tyre Co., Ltd.
GTCIE – Guizhou Tyre Import and Export Co., Ltd.
GIIC – Guiyang Industry Investment Group Co., Ltd.
Pirelli – Pirelli Tyre Co., Ltd.
PCT – Prinx Chengshan (Shandong) Tire Co., Ltd.
Qingdao Jinnhaoyang – Qingdao Jinhaoyang International Co., Ltd.
Qingdao Milestone – Qingdao Milestone Tyres Co., Limited
SASAC – State-owned Assets Supervision and Administration Commission
Shandong Yongsheng – Shandong Yongsheng Rubber Group Co., Ltd.
Shanghai Huayi – Shanghai Huayi (Group) Company
The petitioner – United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC.
Yongsheng Marshall –Yongsheng Group Co., Ltd.
Zhongce – Zhongce Rubber Group Co., Ltd.

IV. Other Abbreviations

AD – antidumping duty
AFA – adverse facts available
CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – U.S. Court of International Trade
CVD – countervailing duty
Doing Business 2015 – *Doing Business 2015-Trading Across Borders in Thailand*
Doing Business 2016 – *Doing Business 2016-Trading Across Borders in Thailand*
EP – export price
FOPs – factors of production
GTA – Global Trade Atlas
HTS – Harmonized Tariff Schedule
HTSUS – Harmonized Tariff Schedule of the United States
LTFV – less than fair value
NME – non-market economy
POI – period of investigation

SG&A – selling, general, and administrative
SOE – state-owned enterprise
SRA – separate rate application
SV – surrogate value
The Act – The Tariff Act of 1930, as amended
URAA – Uruguay Round Agreements Act
VAT – value-added tax
WTO – World Trade Organization

V. Period of Investigation

The POI is July 1, 2015, through December 31, 2015. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, *i.e.*, January 2016.[8]

VI. Scope Comments

The deadline for filing scope information was March 9, 2016; however, we allowed parties to seek permission to file scope requests after this deadline.[9] In response to their requests,[10] we granted Zhongce and Cheetah Chassis permission to submit scope requests.[11] Zhongce and Cheetah Chassis filed their scope requests on August 24, 2016, and October 18, 2016, respectively.[12] In response to Cheetah Chassis' scope request, the petitioner filed its support, and CIMC Vehicles filed its opposition, on October 31, 2016.[13] Because these scope requests were filed either close to or after the issuance of the *Preliminary Determinations*, we did not analyze these scope requests for the *Preliminary Determinations.* For a full discussion of these two scope requests, *see* Comments 29 and 30, *infra*.

VII. Scope of the Investigation

The scope of the investigation covers truck and bus tires. Truck and bus tires are new pneumatic tires, of rubber, with a truck or bus size designation. Truck and bus tires covered by this investigation may be tube-type, tubeless, radial, or non-radial.

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[8] *See* 19 CFR 351.204(b)(1).
[9] *See Truck and Bus Tires From the People's Republic of China: Initiation of Antidumping Duty Investigation*, 81 FR 9434, 9435 (February 25, 2016) ("However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact the Department and request permission to submit the additional information.").
[10] *See* Letter to the Secretary of Commerce from Zhongce, "Request to Submit Additional Scope Comments," dated August 18, 2016, and Letter to the Secretary of Commerce from Cheetah Chassis, "Request to Submit Additional Scope Comments," dated October 14, 2016.
[11] *See* the Letter from the Department to All Interested Parties (granting permission to Zhongce to file scope comments), dated August 23, 2016, and Letter from the Department to All Interested Parties (granting permission to Cheetah Chassis to file scope comments), dated October 17, 2016.
[12] *See* Letter to the Secretary of Commerce from Zhongce, "Scope Comments,"dated August 24, 2016, and Letter to the Secretary of Commerce from Cheetah Chassis, "Scope Comments," dated October 18, 2016.
[13] *See* Letter to the Secretary of Commerce from the petitioner, "Petitioner's Support for Cheetah's Scope Clarification Request," dated October 31, 2016 (Petitioner's Support for Cheetah Chassis' Scope Request), and Letter to the Secretary of Commerce from CIMC Vehicles, "Response to Cheetah Chassis Scope Clarification Request," dated October 31, 2016 (CIMC Vehicles' Opposition to Cheetah Chassis' Scope Request).

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:

> TR – Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and
>
> HC – Identifies a 17.5 inch rim diameter code for use on low platform trailers.

All tires with a "TR" or "HC" suffix in their size designations are covered by this investigation regardless of their intended use.

In addition, all tires that lack one of the above suffix markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the "Truck-Bus" section of the *Tire and Rim Association Year Book*, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Truck and bus tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes truck and bus tires produced in the subject country whether mounted on wheels or rims in the subject country or in a third country. Truck and bus tires are covered whether or not they are accompanied by other parts, *e.g.*, a wheel, rim, axle parts, bolts, nuts, etc. Truck and bus tires that enter attached to a vehicle are not covered by the scope.

Specifically excluded from the scope of this investigation are the following types of tires: (1) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires; (2) non-pneumatic tires, such as solid rubber tires; and (3) tires that exhibit each of the following physical characteristics: (a) the designation "MH" is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for "Mobile Home Use Only;" and (c) the tire is of bias construction as evidenced by the fact that the construction code included in the size designation molded into the tire's sidewall is not the letter "R."

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1015 and 4011.20.5020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.69.0020, 4011.69.0090, 4011.70.00, 4011.90.80, 4011.99.4520, 4011.99.4590, 4011.99.8520, 4011.99.8590, 8708.70.4530, 8708.70.6030, 8708.70.6060, and 8716.90.5059.[14]

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[14] On August 26, 2016, the Department included HTSUS subheadings 4011.69.0020, 4011.69.0090, and 8716.90.5059 to the case reference files, pursuant to requests by CBP and the petitioner. *See* Memorandum to the File entitled, "Requests from Customs and Border Protection and the Petitioner to Update the ACE Case Reference File," dated August 26, 2016. On January 19, 2017, the Department included HTSUS subheadings 4011.70.00 and 4011.90.80 to the case reference files, pursuant to requests by CBP. *See* Memorandum to the File entitled, "Requests from Customs and Border Protection to Update the ACE Case Reference File," dated January 19, 2017.

While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

VIII. Critical Circumstances

In the *Preliminary Determination*, the Department made an affirmative determination of critical circumstances for PCT, non-selected separate rate respondents, and the PRC-wide entity. We received comments on our preliminary determination of critical circumstances from interested parties. We addressed the critical circumstances comments in Comment 28, *infra*. For the final determination, we continue to determine affirmatively the existence of critical circumstances for PCT, non-selected separate rate respondents, and the PRC-wide entity.[15]

IX. Surrogate Country

In the *Preliminary Determinations*, we treated the PRC as an NME country and calculated normal value in accordance with section 773(c)(1) of the Act. We selected Thailand as the primary surrogate country, pursuant to 19 CFR 351.408(c)(2), because it is at the same level of economic development as the PRC, because it is a significant producer of merchandise comparable to subject merchandise, and because of the availability and quality of Thai data for valuing FOPs.[16] No parties have comments on the Department's selection of the primary surrogate country in this investigation. For the final determination of this investigation, we continue to treat the PRC as an NME country and have continued to use Thailand as the primary surrogate country.

X. Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single AD deposit rate.[17] It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate.[18]

In the *Preliminary Determinations*, we found that, in addition to PCT, certain companies demonstrated their eligibility for separate rate status by demonstrating that they operated free of *de jure* and *de facto* government control. Based on the information on the record of this investigation, we continue to find that the respondents that received separate rates in the *Preliminary Determinations* are eligible for separate rates.

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[15] *See* Comment 28, *infra*.

[16] *See Preliminary Determinations* and accompanying Preliminary Decision Memorandum at 10-12.

[17] *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, 29307 (May 22, 2006), and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079 (September 8, 2006).

[18] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 76956 (December 23, 2014) (*Initiation Notice*).

In addition, for the final determination, we find that Qingdao Milestone is eligible for a separate rate. In the *Preliminary Determination*, we found Qingdao Milestone ineligible for a separate rate because it did not respond to our supplemental questionnaire regarding the company's SRA.[19] On September 1, 2016, Qingdao Milestone filed a late response to our supplemental questionnaire. We rejected this response but we allowed Qingdao Milestone to resubmit its supplemental response because we found that Qingdao Milestone had not received notification of this supplemental questionnaire.[20] Qingdao Milestone resubmitted its supplemental response in a timely manner.[21] On October 16, 2016, Qingdao Milestone requested that the Department find it eligible for a separate rate. We find that Qingdao Milestone's SRA and supplemental response demonstrate the absence of *de jure* and *de facto* control over Qingdao Milestone and find it eligible for a separate rate for the final determination.

Neither the statute nor the Department's regulations address how we are to determine the dumping margin for separate rate companies not selected for individual examination. Our practice in this regard has been to assign to separate-rate companies that were not individually examined a dumping margin equal to the average of the margins calculated for the individually examined respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available. If all dumping margins for the individually examined respondents are zero, *de minimis*, or based entirely on facts available, then we will use any reasonable method, including averaging the dumping margins for the individually examined respondents. In the *Preliminary Determinations*, we calculated a rate for the one mandatory respondent found to be eligible for a separate rate that is not zero, *de minimis*, or based entirely on facts available. No parties commented on the method we used in the *Preliminary Determinations*. Thus, we have continued to assign the separate-rate respondents that are not being individually examined PCT's calculated final margin, *i.e.*, 9.00 percent.[22]

XI. PRC-Wide Rate

For the final determination, we continue to base the PRC-wide rate on AFA. In the *Preliminary Determinations*, the Department selected, and corroborated, the highest petition rate to determine the AFA rate for the PRC-wide entity.[23] In the *Amended Preliminary Determination*, the Department used the amended preliminary margin for PCT as the AFA rate for the PRC-wide entity because it was higher than the highest petition rate.[24] Because changes we have made to the calculation for PCT's final margin has resulted in a rate that is lower than the highest petition rate, for the final determination, we have selected the highest petition rate, to determine the AFA rate for the PRC-wide entity. We hereby adopt the corroboration methodology used in the *Preliminary Determinations* to corroborate the highest petition rate for purposes of the final

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[19] *See Preliminary Determinations* and accompanying Preliminary Decision Memorandum at 16. *See also* Qingdao Milestone's SRA dated March 24, 2016.
[20] *See* the Letter to Qingdao Milestone dated September 6, 2016.
[21] *See* Qingdao Milestone's supplemental response, dated September 9, 2016.
[22] *See* the Memorandum to the File entitled, "Less-Than-Fair-Value Investigation of Truck and Bus Tires from the People's Republic of China: Final Determination Analysis Memorandum for Prinx Chengshan (Shandong) Tire Co., Ltd.," (PCT Final Analysis Memorandum) dated concurrently with this Issues and Decision Memorandum.
[23] *See Preliminary Determinations* and accompanying Preliminary Decision Memorandum at 17-21.
[24] *See Amended Preliminary Determination*.

determination.[25] There is no information on the record that calls into question the relevance or reliability of the petition rate, or that calls into question our corroboration methodology. Therefore, we determine that that AFA rate is corroborated for purposes of this investigation.

XII. Margin Calculations

We calculated EP and normal value using the same methodology stated in the *Preliminary Determinations*, as amended in the *Amended Preliminary Determination*, except as follows:

- We used the U.S. sales and FOP databases PCT submitted after the verification.
- We revised the valuation of PCT's domestic warehousing costs.
- We revised PCT's inland freight distance.
- We revised the valuation of PCT's compound rubber.
- We denied PCT's scrap offset claim.

XIII. Discussion of the Issues

a. Separate Rate Eligibility Issues

Comment 1: Aeolus

The Department preliminarily denied the separate rate eligibility for Aeolus based on record information from certain websites of the China National Chemical Corporation and Aeolus, which demonstrated that state-owned China National Chemical Corporation controls Aeolus's operations.[26]

Aeolus requests the Department to find it eligible for a separate rate in the final determination of this investigation. According to Aeolus, the purpose of a separate rate analysis in an NME case is to determine whether or not a respondent can demonstrate the absence of the *de jure* and *de facto* government control over the respondent's export activities. Aeolus argues that it is not under *de jure* or *de facto* government control with respect to its export activities. Aeolus argues further that even a company with no private ownership is eligible for a separate rate if the government ownership does not influence the company's export activities. Aeolus claims that the information on the record of this investigation demonstrates that it is eligible for a separate rate even under a stricter separate rate analysis in the aftermath of *Advanced Technology & Materials Co., Ltd. v. United States*, 938 F. Supp. 2d. 1342 (CIT 2013) (*Advanced Technology II*), *aff'd Advanced Technology & Materials Co., Ltd. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014).

Aeolus states that the preliminary denial of its separate rate eligibility is based in part on the petitioner's submission of printouts of the websites of China National Chemical Corporation and Aeolus. Aeolus explains that, based on these websites, the petitioner claims that China National Chemical Corporation controls Aeolus. Aeolus states that China National Chemical Corporation

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[25] *See Preliminary Determinations* and accompanying Preliminary Decision Memorandum at 17-21.
[26] *See* the Memorandum to the File entitled, "Truck and Bus Tires from the People's Republic of China: Preliminary Denial of Separate Rate," dated August 26, 2016, at 2 (Preliminary Separate Rate Denial Memorandum).

wholly owns China National Tire & Rubber Co., Ltd., which owned 42.58 percent of Aeolus during the POI. Aeolus contends that the websites in question are primarily for advertisement purposes and not an official business document objectively demonstrating control under the separate rate test.

Aeolus argues that various provisions in the PRC Company Law and Circular on the Issuance of the Code of Corporate Governance for Listed Companies ensure its independence from the *de jure* control with respect to its export activities. Aeolus contends that the Department did not analyze the four criteria for the *de facto* control or consider the totality of circumstances with regards to the *de facto* control. Aeolus claims that it satisfied all four criteria and that the Department should find it independent from the *de facto* control.

The petitioner requests that the Department continue to deny the separate rate eligibility for Aeolus. The petitioner argues that, with the exception of the identities of SOEs which own 49 percent of Aeolus, Aeolus provided no evidence showing the ultimate ownership of its other immediate shareholders. Therefore, the petitioner argues, Aeolus did not satisfy the burden of rebutting the presumption of the PRC government control.

The petitioner disagrees with Aeolus on the characterization of the websites in question as advertisements. The petitioner claims that the websites contain a description of facts appearing in documents prepared outside the context of this investigation and points out that these facts are repeated or confirmed in, *e.g.*, Aeolus's 2014 annual report, which: (1) identifies China National Tire & Rubber Co., Ltd., as the controlling shareholder over Aeolus and SASAC as the actual controlling party over Aeolus; and (2) demonstrates China National Chemical Corporation's control over Aeolus through the ownership structure. The petitioner contends that China National Chemical Corporation placed its own board members on Aeolus's board, and therefore China National Chemical Corporation is able to directly control Aeolus, which includes the chairperson of Aeolus's board.

<u>Department's Position</u>: For the final determination and based on record evidence, we continue to find that Aeolus is not eligible for a separate rate. Aeolus's top four shareholders (China Chemical Rubber Co., Ltd., also known as China National Tire & Rubber Co., Ltd.; Henan Tyre Group Co., Ltd.; Jiazuo Tongliang Assets Management Co., Ltd.; and Xiamen CCRE International Trade Co., Ltd.) are all SASAC entities and account for 49.06 percent of Aeolus' ownership.[27] Record information from the websites of China National Chemical Corporation and Aeolus demonstrates that state-owned China National Chemical Corporation controls Aeolus's operations through China National Chemical Corporation's wholly owned subsidiary China National Tire & Rubber Co., Ltd. The petitioner obtained copies of these websites on December 19, 2015, which is within the POI.[28] Aeolus's response to the petitioner's rebuttal does not dispute the veracity of the information contained on these websites.[29] Also, Aeolus did

[27] *See* the Letter from Aeolus entitled, "Separate Rate Application for Aeolus in the Antidumping Duty Investigation of Truck and Bus Tires from the People's Republic of China," dated April 8, 2016, at 12 and Exhibit 6 (Aeolus's SRA).
[28] *See* Letter to the Secretary of Commerce from the petitioner, "Petitioner's Fourth Rebuttal Factual Submission Pertaining to Certain SRAs," dated April 22, 2016 (the petitioner's 4th SRA Rebuttal) at Attachment 3.
[29] *See* Letter to the Secretary of Commerce from Aeolus, "Aeolus Rebuttal Information Submission," dated April 29, 2016.

not explain how specific information in its SRA and supplemental responses directly rebuts the websites in question, which explicitly state that Aeolus is under the control of SOE owners. In fact, we find that none of the information Aeolus provided in its SRA and supplemental responses directly rebuts the websites at issue.

All SRAs submitted by respondents seeking separate rates are subject to rebuttal from interested parties.[30] The petitioner's rebuttal challenges Aeolus's SRA in its entirety, not just a portion of Aeolus's SRA.[31] Aeolus could have countered the petitioner's challenge with its own rebuttal[32] but Aeolus did not do so.[33] The only argument Aeolus provides in response to the websites is that they are advertisements. We do not agree with Aeolus' characterization of these websites as advertisements. The web addresses and the headers of these websites indicate that they are part of the official company websites published by these companies, *i.e.*, China National Chemical Corporation and Aeolus, with an intent to provide information on their respective companies.

The Department has a long-standing practice of presuming state control in an NME country and places the burden on exporters requesting a separate rate to demonstrate an absence of *de jure* and *de facto* control.[34] The websites at issue support the presumption of PRC government control over Aeolus and challenge the credibility of Aeolus's request for a separate rate but Aeolus left the websites at issue virtually unchallenged. Therefore, we find these websites to be credible documents to support a finding that Aeolus is under the PRC government control through China National Chemical Corporation and its SOE owners. Finally, there is additional information on the record which is business proprietary that further supports our determination that Aeolus is under the PRC government control through its SOE owners.[35] Accordingly, we do not find that Aeolus's SRA and information contained in its supplemental responses rebut the presumption of PRC government control over Aeolus.

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[30] *See* 19 CFR 351.301(c)(1)(v) ("Within 14 days after an initial questionnaire response and within 10 days after a supplemental questionnaire response has been filed with the Department, an interested party other than the original submitter is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information contained in the questionnaire response.").

[31] *See* the petitioner's 4th SRA Rebuttal at Attachment 3.

[32] *See* 19 CFR 351.301(c)(1)(v) ("Within seven days of the filing of such rebuttal, clarification, or correction to a questionnaire response, the original submitter of the questionnaire response is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.").

[33] *See* Letter to the Secretary of Commerce from Aeolus, "Aeolus Rebuttal Information Submission," dated April 29, 2016.

[34] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997) (*Sigma Corp*.) ("We agree with the government that it was within Commerce's authority to employ a presumption of state control for exporters in a nonmarket economy, and to place the burden on the exporters to demonstrate an absence of central government control. The antidumping statute recognizes a close correlation between a nonmarket economy and government control of prices, output decisions, and the allocation of resources. Moreover, because exporters have the best access to information pertinent to the 'state control' issue, Commerce is justified in placing on them the burden of showing a lack of state control.") (internal citations omitted).

[35] For more details containing certain business proprietary information, *see* the Memorandum to the File, "Truck and Bus Tires from the People's Republic of China: Final Separate Rate Eligibility Memorandum," (Final Separate Rate Eligibility Memorandum), dated concurrently with this Issues and Decision Memorandum.

Comment 2: Double Coin – Investigation and Verification

Double Coin argues that the Department did not satisfy the statutory requirements in section 732 of the Act to investigate Double Coin individually after it selected Double Coin for individual examination. Double Coin contends that an agency may not contravene or ignore the clearly discernable legislative intent or the statute's guiding purpose. Double Coin explains that, once an AD investigation is initiated, the Department is legally obligated to conduct an investigation, but the Department did not do so with respect to Double Coin. According to Double Coin, the statute directs the Department to investigate in order to determine the existence of dumping and, if so, assign an individual weighted-average dumping margin for each known exporter and producer of the subject merchandise. However, Double Coin explains that after it submitted its initial antidumping questionnaire response, the Department did not seek additional information to carry out the investigation and, as a consequence, did not satisfy the statutory requirements to investigate Double Coin.

Double Coin argues that the Department is not able to render a lawful determination for Double Coin because it did not verify Double Coin's response. Double Coin explains that section 782(i) of the Act requires a mandatory verification of Double Coin's response in this investigation but the Department did not satisfy this statutory requirement. Double Coin states that the Department's refusal to verify Double Coin's response is inconsistent with the Department's past practice of verifying mandatory respondents to evaluate whether they have rebutted the presumption of the PRC government control. According to Double Coin, *Jiangsu Jiasheng Photovoltaic Tech. Co. v. United States*, 28 F. Supp. 3d 1317, 1349-50 (CIT 2014) (*Jiangsu Jiasheng*) upheld the Department's responsibility to investigate, question, and verify a respondent's submitted data and evidence to determine the appropriate treatment for the NME respondent. Double Coin contends that the verification requirement in the statute is an absolute one and the Department should have verified Double Coin to determine whether the PRC government actually controls Double Coin's business decisions. Double Coin explains that *Jiangsu Jiasheng* held that the membership of Chinese respondents' senior managers and/or board members in certain SOEs or governmental entities during the POI raises a possibility for, not reasonable likelihood of, governmental control over export activities through these persons. Double Coin states that *Jiangsu Jiasheng* upheld the Department's determination in the underlying investigation that Chinese respondents localized control of their export activities with independent management of their own sales negotiations and export prices. Double Coin claims that its export activities are similarly independent but the Department did not preliminarily address such information or verify such information.

The petitioner argues that the statute does not require the verification of a company that is part of the PRC-wide entity to which the Department assigned the PRC-wide rate based on AFA. The petitioner contends that, when the PRC-wide entity fails to cooperate to the best of its ability in the Department's investigation, verification of some portion of the information of the PRC-wide entity is meaningless. The petitioner claims that Double Coin's information ceased to be meaningful and relevant once Double Coin's section A response showed that it is part of the PRC-wide entity, which refused to cooperate and provide full data.

<u>Department's Position</u>: We preliminarily determined that Double Coin was ineligible for a separate rate because its state-owned parent company owns 72.15 percent of Double Coin.

Double Coin is 72.15 percent owned by Shanghai Huayi, which is 100 percent owned by Shanghai SASAC. As the majority shareholder, Shanghai Huayi has rights to elect directors at the shareholders' general meetings in accordance with the number of shares it owns, *i.e.*, 72.15 percent. Double Coin's board appoints its general manager and the general manager appoints other managers, including deputy general managers. Three of four directors are general manager and deputy general managers. Therefore, Shanghai SASAC controls the selection of Double Coin's management and the *de facto* control over Double Coin exists.[36]

There has been no evidence placed on the record that would support changing our finding from the *Preliminary Determination*. We complied with the statutory requirements to investigate Double Coin by reviewing Double Coin's response to our initial antidumping questionnaire. The examination of Double Coin's section A response led us to the preliminary conclusion that Double Coin is ineligible for a separate rate because a government entity holds a majority ownership share, which entitles that government entity to elect directors proportional share of 72.15 percent and 75 percent of the directors are general and deputy managers. Accordingly, based on Double Coin's section A response, we found that the government exercises, or is likely to have exercised, control over Double Coin's operations through appointment of its managers and therefore, Double Coin is ineligible for a separate rate based on governmental control.[37] Because we found that Double Coin is ineligible for a separate rate based on governmental control, the Department's practice is to include Double Coin as part of the PRC-wide entity.[38]

Having determined that it should be treated as part of the PRC-wide entity, the Department determined that it was not appropriate to verify Double Coin because the PRC-wide entity, of which Double Coin was a part, failed to cooperate to the best of its ability by refusing to provide the data we requested. Even though the information Double Coin submitted in response to our request for information represents a portion of the information requested from the PRC-wide entity, the lack of a response by the rest of the PRC-wide entity means the entity's response is substantially deficient. When a party submits substantially deficient responses, we are under no obligation to use this information.[39] Under such circumstances, there is no requirement to conduct a verification of that information.[40] If a respondent provides substantially incomplete questionnaire responses and we must then base the company's rate entirely on facts available, as in this case, then verification is "meaningless."[41] Thus, a verification of Double Coin's information would not have been appropriate as it would not have allowed the Department to

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[36] *See* Double Coin's Section A Response dated May 23, 2016, at 11-19. *See also* Preliminary Separate Rate Denial Memorandum at 3.
[37] *See Preliminary Determinations* at 13-14 (explaining that following the Court of International Trade's reasoning in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012), in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the respondent is not eligible for a separate rate.)
[38] *Id.*
[39] *See*, *e.g.*, section 782(e) of the Act which provides that the Department should use information submitted by interested parties even if the information does not meet all applicable requirements but only when, *inter alia*, "the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. . . "
[40] *See Galvanized Steel Wire from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 17430 (March 26, 2012) and accompanying Issues and Decision Memorandum at 11.
[41] *Id.*

conduct a complete, meaningful verification of the PRC-wide entity.

Jiangsu Jiasheng does not hold that the statute mandates the investigation and verification of a selected respondent as Double Coin argues. Rather, the court found that we had "reasonably exercised our responsibility for investigating, questioning, and verifying the respondents' submitted data and evidence" in that case. Acknowledging our "expertise and relevant first-hand knowledge" and the various tools available to us – such as, "sending follow-up questionnaires and conducting on-sight {*sic*} verification *as needed*" in order to exercise this responsibility for investigating, questioning and verifying data, the court declined to reweigh the evidence.[42] In this investigation, we determined that Double Coin's section A response showed that government "control was in fact reasonably likely to have been exercised during the POI." We reasonably concluded that it was not necessary follow up with supplemental questionnaires to Double Coin or conduct verification of Double Coin because Double Coin's section A response provided clear and sufficient information for us to make a determination regarding Double Coin's eligibility for a separate rate.

Comment 3: Double Coin – The Validity of the PRC-Wide Rate

Double Coin argues that sections 735(c)(1)(B)(i)(I) and (II) of the Act allow the application of a weighted-average dumping margin for each individually investigated exporter and producer and an estimated all others rate for all exporters and producers not individually investigated. Double Coin contends that the statute unambiguously provides for a country-wide rate for CVD proceedings, but not AD one, and allows no discretion for the Department to determine on its own a country-wide AD rate. Double Coin explains that certain trade cases, *e.g.*, *FAG Italia S.p.A. v. United States*, 291 F.3d 806, 815-16 (Fed. Cir. 2002) (*FAG Italia*) held that the combination of Congress expressly requiring action in one context, but withholding that authority in another context, meant that Congress has spoken clearly and the Department may not create an authority that Congress has withheld, such as the application of the PRC-wide rate.

According to Double Coin, the creation and formalization of the NME-wide rate had no statutory support and the legal defect with respect to the statutory basis for the NME-wide rate has never been directly challenged in litigation. Double Coin contends that the PRC-wide rate cannot be either an individually investigated margin or the all others rate under the statute that provides for both types of rates. Double Coin explains that the PRC-wide rate cannot be a weighted-average dumping margin for an individually investigated exporter because the Department applied it to PRC exporters not individually investigated. In other words, according to Double Coin, PRC exporters not individually investigated could not have been individually investigated exporters. Double Coin contends that the Department cannot justify the PRC-wide rate as an individual company rate because the Department never investigates the PRC-wide entity or any of its other supposed member companies. Similarly, Double Coin claims, the PRC-wide rate cannot be, and is not, an all others rate, which must be constructed from the rates for investigated companies, subject to certain rules, and is applicable only to non-investigated entities.

Double Coin argues that, with the exception of few statutory provisions specifically covering NME cases, there are no statutory distinctions between market economy methodologies and

[42] *See Jiangsu Jiasheng*, 28 F. Supp. 3d at 1349-50. (Emphasis added.)

NME methodologies, including the two types of rates. Double Coin also argues that the statute does not allow the creation of an NME-wide rate as facts available. Double Coin contends that, given the specificity of the statute and the logical force of well-established canons of interpretation, there is no room for deference to fill statutory gaps as provided in *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 843-44 (1984) (*Chevron*). Double Coin explains that *FAG Italia*, 291 F.3d at 817, held that an agency may fill a statutory gap created by ambiguous statutory language but it may not fill a statutory gap that exists because of the absence of statutory authority. In addition, Double Coin argues that no court case affirmed the Department's use of an NME-wide rate based on the statutory authority, though there are court cases making references to the use of an NME-wide rate.

The petitioner argues that *PVLT Tires Final Determination*[43] relied on *Sigma Corp.* and *Transcom Inc. v. United States*, 294 F.3d 1371 (Fed. Cir. 2002) (*Transcom Inc.*) to assign the PRC-wide rate to companies not eligible for a separate rate. The petitioner explains that the courts have upheld the presumption of the NME government control and its consequences and the application of a single NME-wide rate to the NME-wide entity based on the *Sigma Corp*. and *Transcom Inc*. decisions.

The petitioner contends that the PRC-wide rate is the single rate applied to the state-controlled PRC entity and it is not a country-wide rate or a rate applied to independent entities. The petitioner claims that a single PRC-wide entity should be treated as a single entity with a single PRC-wide rate. The petitioner argues that it would be incongruous to conclude that the Department may apply the presumption of a single PRC-wide entity but must deconstruct it and treat each component as a separate entity subject to a separate margin. The petitioner states that the statute does not direct such an outcome but leaves it to the Department's discretion to determine what elements constituted the individual entity.

<u>Department's Position</u>: We have statutory and regulatory authority to issue a rate for the PRC-wide entity. Further, the courts have upheld our well-established NME practice, including our assignment of a specific rate to all NME exporters that do not establish their eligibility for a separate rate.[44] We consider the PRC to be an NME country under section 771(18) of the Act. In AD proceedings involving NME countries such as the PRC, we have a long-standing rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. Therefore, in PRC cases, we apply a rate established for the PRC-wide entity to all imports from an exporter that has not established its eligibility for a separate rate.[45] It is within our authority to employ a presumption of state control in a NME country and place the burden on the exporters to demonstrate an absence of central government control.[46] Our presumption is reasonable under sections 771(18)(B)(iv)-(v) of the Act, which

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[43] *See Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) (*PVLT Tires Final Determination*).
[44] *See*, *e.g.*, *Sigma Corp.*, 117 F.3d at 1405. *See also 1,1,1,2-Tetrafluoroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value Antidumping Duty Investigation*, 79 FR 62597 (October 20, 2014), and accompanying Issues and Decision Memorandum at Comment 1.
[45] *See* 19 CFR 351.107(d) ("in an antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers").
[46] *See Sigma Corp.*, 117 F.3d at 1405-06 ("We agree with the government that it was within Commerce's authority to employ a presumption of state control for exporters in a nonmarket economy, and to place the burden on the

recognized a close correlation between an NME economy and government control of prices, output decisions, and allocation of resources.[47] *Transcom Inc.* upheld the application of a PRC-wide rate to all parties not eligible for a separate rate and the use of a rate based on best information available (BIA) as non-punitive.[48]

Thus, contrary to Double Coin's assertion, the courts have consistently upheld our authority to apply a presumption of state control in NME countries and to apply a single rate to all exporters that fail to rebut that presumption. The courts have agreed that, once a respondent has been determined to be part of the NME-wide entity, inquiring into said respondent's separate sales behavior ceases to be meaningful.[49] Because Double Coin failed to rebut the presumption of government control, as discussed further below, it is treated as part of the PRC-wide entity and receives the rate assigned to the entity.

Comment 4: Double Coin – Application of the AFA Rate

Double Coin opposes the Department's assignment of the PRC-wide rate, which is based on AFA, to it. Double Coin contends that the statute does not allow the Department to assign an AFA rate

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exporters to demonstrate an absence of central government control. The antidumping statute recognizes a close correlation between a nonmarket economy and government control of prices, output decisions, and the allocation of resources. Moreover, because exporters have the best access to information pertinent to the 'state control' issue, Commerce is justified in placing on them the burden of showing a lack of state control.") (internal citations omitted).

[47] *See The Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States*, 44 F.Supp.2d 229, 243 (CIT 1999), quoting *Sigma Corp.*, 117 F.3d at 1405 ("Under the broad authority delegated to it from Congress, Commerce has employed 'a presumption of state control for exporters in a non-market economy'…. Under this presumption, all exporters receive one non-market economy country ('NME') rate, or country-wide rate, unless an exporter can 'affirmatively demonstrate' its entitlement to a separate, company-specific margin by showing 'an absence of central government control, both in law and in fact, with respect to exports."). *See also Michaels Stores, Inc. v. United States*, 931 F. Supp. 2d 1308. 1315 (CIT 2013), quoting *SKF USA Inc. v. United States*, 254 F.3d 1022, 1030 (Fed. Cir. 2001) ("The regulations clarify, however, that for non-market economies, 'rates may consist of a single dumping margin applicable to all exporters and producers.' Moreover, whenever the statute is silent on a particular issue, it is well-settled that Commerce may 'formulate policy' and make rules 'to fill any gap left, implicitly or explicitly, by Congress.'") (internal citations omitted).

[48] *See Transcom Inc.*, 294 F.3d at 1381-83. The PRC-wide rate, and its adverse inference are applicable to all companies which were initiated on yet failed to show their entitlement to a separate rate. "Accordingly, while section 1677e provides that Commerce may not assign a BIA-based rate to a particular party unless that party has failed to provide information to Commerce or otherwise failed to cooperate, the statue says nothing about whether Commerce may presume that parties are entitled to independent treatment under 1677e in the first place." *Id*. at 1376. ("Instead, the objective of BIA is to aid Commerce in determining dumping margins as accurately as possible."). *Id*. The litigation in *Transcom Inc.* covered three periods of review between June 1990 and May 1993. *See Transcom Inc.*, 294 F.3d at 1374-75 and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 65527 (December 13, 1996). BIA is the precursor to facts available and AFA under the current statute. *See, e.g.*, *Transcom Inc.*, 294 F.3d at 1376, and *PVLT Tires Final Determination* and accompanying Issues and Decision Memorandum at Comment 39, n.219.

[49] *See Advanced Technology II*, 938 F. Supp. 2d at 1351, citing *Watanabe Group v. United States*, 34 CIT 1545, 1551 (2010) ("Commerce's permissible determination that {a respondent} is part of the PRC-wide entity means that inquiring into {that respondent}'s separate sales behavior ceases to be meaningful.") and *Jiangsu Changbao Steel Tube Co., Ltd. v. United States*, 884 F. Supp.2d 1295, 1312 n.21 (CIT 2012) ("losing all entitlement to an individualized inquiry appears to be a necessary consequence of the way in which Commerce applies the presumption of government control, … applying a countrywide AFA rate without individualized findings of failure to cooperate is no different from applying such a countrywide AFA rate without individualized corroboration").

to a cooperating respondent such as Double Coin, which responded to the Department's requests for information in a timely manner. Double Coin argues that the Department did not even find a basis to apply facts otherwise available, which cases such as *Zhejiang Dunan Hetian Metal Co. v. United States,* 652 F.3d 1333, 1345-6 (Fed. Cir. 2011) held as a prerequisite for applying an AFA rate. Double Coin explains that the statute does not permit the Department to assign an AFA rate to Double Coin for the failure of other Chinese exporters to provide information the Department requested.

The petitioner argues that the application of the PRC-wide rate to companies that did not rebut the presumption of the PRC government control is not an application of an AFA rate to those companies. The petitioner states that *Peer Bearing Co.-Changshan v. United States*, 32 CIT 1307, 1313 (2008) explained that assigning a PRC-wide rate to a respondent that is part of the PRC-wide entity is not an AFA rate specific to that respondent even when the PRC-wide rate was based on total AFA. The petitioner asserts that the Department correctly applied the PRC-wide rate to Double Coin for its failure to rebut the presumption of the PRC government control.

<u>Department's Position</u>: Contrary to Double Coin's assertion that the Department has acted contrary to the statute, we have not assigned AFA to a fully cooperating respondent. There are two separate determinations involved in Double Coin's allegation. The first determination involves whether a respondent requesting a separate rate rebutted the presumption of state control. *Advanced Technology II* stated that "Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide rate. These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate fully whereas the PRC-wide rate applies to a respondent who has not received a separate rate."[50] Similar to *Advanced Technology II*, here, we are not applying AFA to Double Coin individually, but, rather, we found that Double Coin failed to rebut the presumption of government control, and as such, it receives the rate applied to the PRC-wide entity, of which it now a part. The second, and separate, determination involves the rate assigned to the PRC-wide entity. When the PRC-wide entity failed to cooperate to the best of its ability, it received a rate based on AFA. Because Double Coin failed to rebut the presumption of state control, it did not receive a separate rate, but rather, was treated as part of the PRC-wide entity and received the rate assigned to that entity, which was based on AFA. Double Coin's failure did not involve cooperation but, rather, the rebuttal of the presumption of state control.

Comment 5: Double Coin – The Presumption of the PRC Government Control

Double Coin calls the presumption of PRC government control in the AD investigation outdated and inconsistent with the Department's treatment of the PRC companies in the CVD cases. Specifically, Double Coin argues that the presumption of the PRC-wide entity that consists of all Chinese exporters under the central control of the PRC government in AD cases is not consistent with the application of the CVD law to PRC companies based on the decrease of all-encompassing state control. According to Double Coin, the Department created the presumption

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[50] *See Advanced Technology II*, 938 F. Supp. 2d at 1351. *See also*, *e.g.*, *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015) (*OTR Tires Final Results 2012-2013*), and accompanying Issues and Decision Memorandum at Comment 1.

of PRC-government control in 1991 based on a description of the PRC in the 1980s and has not revisited the factual or legal underpinning of the presumption. Double Coin states that the presumption reflects the determination that the PRC is a state-controlled economy in which all entities are presumed to export under the state control over specific details of foreign trade, *i.e.*, sales product, price, time, and terms, as identified in *Georgetown Steel*.[51] Double Coin explains that the underlying concern for the presumption of the PRC-government control was that, absent verifiable evidence of freedom from central control, the PRC central authorities would be able to export products from different factories through the company with the lowest margin., as explained in *Sparklers*.[52]

Double Coin claims that the *Georgetown Steel Memorandum*[53] justifies the application of CVD laws to the PRC based on significant changes in the PRC economy and the decrease of all-encompassing Soviet-style state control that do not give rise to the same issues litigated in *Georgetown Steel*. In this memorandum, according to Double Coin, the Department has concluded that market forces set prices for some 90 percent of products traded in the PRC. Double Coin contends that the factual reality in the PRC cannot be different between AD cases and CVD cases and the same facts disproving the presumption of a uniform price or controlled pricing in CVD cases cannot be ignored in AD cases because market prices reflect market signals from multiple actors making different economic choices related to costs and prices. According to Double Coin, the Department reiterated in *Notice of Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as amended, In Certain Non-Market Economy Proceedings*, 77 FR 36481 (June 19, 2012), the difference between the PRC today and the PRC in the days of the Soviet-style economy that justified the presumption of state control, for purposes of the application of the CVD laws to the PRC.

Double Coin maintains that the enforcement of the CVD laws based on these conclusions with regards to the PRC eliminates the presumption of the *de jure* control, especially in light of the PRC Company Law of 1994, as amended in 2006, that requires the absence of the PRC government control in all companies' export decisions. Accordingly, Double Coin explains, the Department has found an absence of the *de jure* control when a company has supplied business licenses and export licenses to demonstrate an absence of restrictive stipulations and decentralization of control of the company based on the Company Law. Double Coin argues that the presumption of the *de facto* control over export pricing is no longer valid with the Department's finding that market forces set prices for some 90 percent of products traded in the PRC.

The petitioner claims that *PVLT Tires Final Determination* rejected Double Coin's reliance on a partial quote regarding prices in the PRC from the *Georgetown Steel Memorandum*. The petitioner argues that the partial quote at issue is not a reference to an absence of: (1) direct government control over resource allocations; or (2) government control or influence over economic actors that can fundamentally distort the price formation process. The petitioner states

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[51] *See Georgetown Steel v. United States*, 801 F.2d 1308 (Fed. Cir. 1986) (*Georgetown Steel*).
[52] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*).
[53] *See Memorandum re: Countervailing Duty Investigation of Coated Free Sheet Paper from China- Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy* (Department of Commerce March 29, 2007) (*Georgetown Steel Memorandum*).

that *PVLT Tires Final Determination* rejected conflating the concept of the single economic entity that characterized the economies in *Georgetown Steel* with the concept of the NME-wide entity for AD assessment purposes. The petitioner explains that the presumption of the PRC government control and/or influence is omnipresent but not omnipotent. In other words, according to the petitioner, the PRC government control gives rise to the presumption, but the presumption is rebuttable.

<u>Department's Position:</u> The analysis in the *Georgetown Steel Memorandum* focused only on the concept of the single economic entity that characterized the economies in *Georgetown Steel* and it would be incorrect to conflate that concept with the concept of the NME-wide entity for AD assessment purposes.[54] Given the reforms discussed in the *Georgetown Steel Memorandum*, we found that: (1) a single central authority no longer comprises the PRC's economy; and (2) the policy that gave rise to the *Georgetown Steel* litigation does not prevent us from concluding that the PRC government has bestowed a countervailable subsidy upon a PRC producer. As such, the analysis in the *Georgetown Steel Memorandum* is inapplicable to the issue of the PRC-wide entity in antidumping proceedings.[55]

As explained above, in antidumping proceedings involving NME countries such as the PRC, we have a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. This presumption stems not from an economy comprised entirely of the government, *e.g.*, a firm is nothing more than a government work unit, but rather from the NME-government's use of a variety of legal and administrative levers to exert influence and control (both direct and indirect) over the assembly of economic actors across the economy. As such, this presumption is patently different from a presumption that all firms are one and the same as the government, such that they comprise a monolithic economic entity. Moreover, *Sigma Corp.* upheld the presumption underlying the separate rates test and affirmed our separate rates test as reasonable, stating that the statute recognizes a close correlation between an NME and government control of prices, output decisions, and the allocation of resources.[56] *Sigma Corp.* also stated that it was within our authority to employ a presumption of state control for exporters in an NME country and to place the burden on the exporters to demonstrate an absence of central government control.[57] Firms that do not rebut the presumption are assessed a single AD rate, *i.e.*, the NME country-wide entity rate.[58] In recognition that parts of the PRC's economy are transitioning away from the state-controlled economy, we developed the separate rates test. In an economy comprised of a single, monolithic state entity, it would be impossible to identify separate firms, let alone rebut government control. Rather, the PRC's economy today is neither command-and-control nor market-based; government control and/or influence is

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[54] *See*, *e.g.*, *Diamond Sawblades and Parts Thereof From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015) (*Diamond Sawblades Final Results 2012-2013*), and accompanying Issues and Decision Memorandum at Comment 4.
[55] *See*, *e.g.*, *PVLT Tires Final Determination* and accompanying Issues and Decision Memorandum at Comment 36.
[56] *See Sigma Corp.*, 117 F.3d at 1405-06.
[57] *Id.* at 1405.
[58] *See* 19 CFR 351.107(d) ("in an antidumping proceeding involving imports from a non-market economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers.").

omnipresent (which gives rise to the presumption) but not omnipotent (and hence, the presumption is rebuttable).[59]

In our experience applying the separate rate test, the *de jure* factors are not overridingly indicative of the absence of control of export activities in the typical case, but rather they demonstrate an ability on the part of the exporter to control its own commercial decision making. In large part, the laws and regulations that we have examined over the years indicate that a certain level of control has devolved in that the commercial decision-making can lie with the various corporate entities operating under these laws and regulations, which in turn, merits an analysis of the record evidence to ensure that there is an absence of *de facto* aspects of government control over export activities. This is supported by our findings over the years that numerous PRC respondents operating under such laws also maintain *de facto* control over their export functions. These situations where parties are found to be entitled to a separate rate are, however, based on the individual facts with respect to each such party. Because of the centralized control inherent in the PRC's status as a NME country, we presume that decision making of an enterprise in an NME country is under a form of centralized government control (whether at the central, provincial, or local level). Nevertheless, the PRC Company Law and other laws and regulations demonstrate that, within the PRC's NME, distance can exist between decisions made at the central government level and decisions made at the firm level with respect to exports. Thus, an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude us from granting a separate rate.[60]

Even as we follow *Advanced Technology II*, we have not changed our separate rate criteria but we have analyzed the facts provided in SRAs in light of *Advanced Technology II.*[61] Moreover, the analysis in the *Georgetown Steel Memorandum* focused only on the concept of the single economic entity that characterized the economies in *Georgetown Steel* and that it would be incorrect to conflate that concept with the concept of the NME-wide entity for AD assessment purposes.[62] Given the reforms discussed in the *Georgetown Steel Memorandum*, we found that a single central authority no longer comprises the PRC's economy and that the policy that gave rise to the *Georgetown Steel* litigation does not prevent us from concluding that the PRC government has bestowed a countervailable subsidy upon a PRC producer. As such, we find that the analysis in the *Georgetown Steel Memorandum* is inapplicable to the issue of the PRC-wide entity in antidumping proceedings.

We also disagree with Double Coin's reliance on a partial quote regarding prices in the PRC. The *Georgetown Steel Memorandum* states that, "although price controls and guidance remain on certain 'essential' goods and services in China, the PRC Government has eliminated price

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[59] *See Georgetown Steel Memorandum* at 9. *See also PVLT Tires Final Determination* and accompanying Issues and Decision Memorandum at Comment 36.
[60] *Id*.
[61] *See* Final Remand Redetermination pursuant to *Advanced Tech. & Materials Co. v. United* States, 885 F. Supp. 2d 1343 (CIT 2012), dated May 6, 2013, and available at http://enforcement.trade.gov/remands/12-147.pdf, *aff'd*, *Advanced Tech. & Materials Co. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd*, *Advanced Tech. & Materials Co. v. United States*, Court No. 2014-1154 (Fed. Cir. Oct. 24, 2014).
[62] *See*, *e.g.*, *Diamond Sawblades Final Results 2012-2013* and accompanying Issues and Decision Memorandum at Comment 4.

controls on most products; market forces now determine the prices of more than 90 percent of products traded in China."[63] This quote is a reference to deregulation of prices, *i.e.*, phasing out of the direct, administrative price-setting common in command-and-control economies. It is not a reference, for example, to an absence of direct government control over resource allocations or government control or influence over economic actors that can fundamentally distort the price formation process. Therefore, the reference is not relevant to our requirements that NME companies seeking a separate rate demonstrate the absence of *de jure* or *de facto* control.

Comment 6: Double Coin – The PRC Government's Control of Export Activities

Double Coin argues that the Department treated it as part of the PRC-wide entity without an analysis of the *de jure* and *de facto* criteria. Double Coin states that the Department found the PRC government control over Double Coin's export activities based on some possibility for the PRC government's involvement in Double Coin's commercial affairs. Double Coin explains that *Jiangsu Jiasheng* rejected this type of analysis and held that possibility for a government control over export activities is insufficient.

Double Coin claims that, as a publicly traded company, the rights of shareholders with a majority or controlling interest are limited under the PRC Company Law, which establishes the independent legal and financial interests of corporate entities and restricts the abilities of shareholders, directorship, or management to act contrary to the corporate interests through an abuse of their position. Double Coin claims further that the Code of Corporate Governance for Listed Companies provides additional restrictions and legal liability applicable to publicly listed companies. Under the PRC laws, Double Coin asserts, it is an independent company and the directorship and management must act in accordance with the interest of the company, not the shareholders, regardless of the composition of a company's equity structure, directorship, or management.

Double Coin argues that its articles of association provide further restrictions on shareholders, directors, and senior managers. Double Coin explains that its articles of association expose shareholders, directors, and senior managers to criminal prosecution should they act against the interests of the company in violation of the law and administrative regulations. Double Coin states that: (1) its articles of association limit the scope of the activities of its directors to those strategic decisions of the company distinct from the daily operations of the company such as export sales; and (2) its directors never discussed in their meetings about daily operational issues such as production and sales. Double Coin also states that its articles of association limit its directors' scope of direct decisions to those matters involving no less than ten percent of the total audited assets of the company. Double Coin explains that its board members are responsible to all of its shareholders, not just the shareholders who appointed them.

With respect to its senior managers, Double Coin claims that its articles of association: (1) require them to act in good faith and diligence for the benefit of Double Coin; (2) prohibit the senior managers from serving the interests of any holding company of Double Coin or actual

[63] *See Georgetown Steel Memorandum* at 5, citing The Economist Intelligence Unit, Country Commerce: China, 2006 at 73. *See also PVLT Tires Final Determination* and accompanying Issues and Decision Memorandum at Comment 36.

controller of Double Coin while serving as Double Coin's executives; and (3) hold them liable for violations of laws, administrative rules, regulations, and relevant provisions in the articles of association while performing duty and causing losses to the company. Double Coin asserts that its managers make decisions concerning production and sales operations without obtaining the board's approval.

With respect to its minority shareholders, Double Coin argues, it is not under its parent company Shanghai Huayi's unilateral and unlimited control. Double Coin explains that its minority shareholders may: (1) file suit against board members or senior managers who act against the interests of the company by breaching applicable law or the articles of association; and (2) call a shareholders' meeting if they represent ten percent of the shares. Double Coin states that Shanghai Huayi's shares would be excluded from voting in a shareholders' meeting: (1) for a decision debated in a shareholders' meeting in which Shanghai Huayi has a conflict of interest; or (2) if shareholders representing three percent of Double Coin's shares were to raise a proposal at a shareholders' meeting which creates a conflict of interest for Shanghai Huayi.

Double Coin contends that the Department's preliminary analysis concerning Double Coin confuses the right to appoint board members with effective control over the board's actions, decision, policies, and scope of duties, thus resulting in discrediting the effect and integrity of the legal framework under which Double Coin operates without any positive evidence to that extent. Double Coin claims that the Department incorrectly inferred the majority shareholder's full control through majority ownership in direct contradiction to specific and explicit legal provisions in place to deter such control.

With respect to its three independent directors on the seven-member board, Double Coin explains that they are under obligations to make decisions solely in favor of Double Coin's interest, not the majority shareholders' in accordance with the Code of Corporate Governance for Publicly Listed Companies and the articles of association. Double Coin claims that the existence of independent directors under applicable laws and articles of association prevent Shanghai Huayi from encroaching on Double Coin's operations as a publicly listed company.

Double Coin reiterates that Shanghai Huayi never controlled or influenced Double Coin's daily decisions concerning its sales of subject merchandise to the United States and the Department cannot find the *de facto* control without such evidence of control and influence. Double Coin argues that the Department's reliance on Shanghai Huayi's potential control over Double Coin: (1) implies that Double Coin's shareholders, directors, and managers will break the law; and (2) means that facts that rise to the point of potential control are virtually limitless. Double Coin explains that *Jiangsu Jiasheng* has disagreed with the Department's reliance on the PRC government's majority ownership of a company as dispositive of the *de facto* control.

Double Coin argues that the four criteria in the analysis of the *de facto* control are focused on whether the PRC government controls an exporter's export functions. Double Coin contends that, although one of these four criteria is concerned with whether the respondent has autonomy from the central, provincial, and local governments in making decisions regarding the selection of its management, Policy Bulletin 05.1 provides nothing to indicate whether this factor alone is sufficient, in and of itself, to find a company ineligible for a separate rate. Double Coin claims that the underlying rationale for the preliminary denial of the separate rate to Double Coin: (1) is contrary to information on the record of this investigation; and (2) does not demonstrate that the PRC government controlled Double Coin's export activities. Specifically, Double Coin claims that the Department overlooked the fact that the price negotiations with unaffiliated U.S. customers for sales of subject merchandise were conducted by Double Coin's U.S. subsidiary, which is far removed from the PRC government.

The petitioner contends that the evidence on the record of this investigation leads to the same conclusion that the Department made in *PLVT Tires Final Investigation* and *OTR Tires Final Results 2012-2013*, which denied the separate rate eligibility for Double Coin. The petitioner explains that *PVLT Tires Final Determination*: (1) rejected Double Coin's claim that the PRC government cannot control Double Coin's export activities under the PRC laws; and (2) Shanghai Huayi controls Double Coin's board and management and has near complete control over any shareholder decisions, including those that may affect Double Coin's management and operations. The petitioner argues that the burden to rebut the presumption of PRC government control is on the party seeking separate rate status, but Double Coin failed to rebut the presumption of PRC government control over Double Coin's export activities. The petitioner contends that the sales negotiation between Double Coin's U.S. subsidiary and unaffiliated U.S. customers is only one link in a chain of NME government manipulation of prices through various means.

The petitioner states that *OTR Tires Final Results 2012-2013*: (1) determined that Double Coin's majority owner, which is wholly owned by SASAC, exerts considerable influence over Double Coin's board, management, and operations; and (2) reiterated earlier determinations that Double Coin's arguments regarding the PRC laws and U.S. subsidiaries do not rebut the presumption of the PRC government control. The petitioner claims that the evidence on the record of this investigation leads to the same conclusion as in *OTR Tires Final Results 2012-2013* that Shanghai SASAC unilaterally controls Double Coin's board, management, and operations through Shanghai Huayi. The petitioner explains that Shanghai Huayi considers Double Coin as state-owned and refers to Double Coin as a state-controlled manufacturer. The petitioner states that Shanghai SASAC appointed a person to Shanghai Huayi's board which, in turn, appointed the same person to Double Coin's board. That person is Double Coin's chairperson of the board, according to the petitioner. The petitioner notes the increase of SASAC's overall control over Double Coin with the intertwined management.

The petitioner claims that, in addition to the increase of Double Coin's shares held by Shanghai Huayi from 65.66 percent to 72.15 percent, there is evidence suggesting that Double Coin's other shareholders are controlled by the PRC government as a result of the PRC government's efforts to inject state-owned assets into companies that are majority-owned and controlled by the state. The petitioner explains that the PRC government also sells a chunk of the minority stakes in such SOEs to other SOEs, rather than just to private investors. The petitioner states that *PLVT Tires Final Determination* found that, whether or not Shanghai Huayi demonstrably controlled Double Coin's daily operations does not refute Shanghai Huayi's nearly complete control over Double Coin's shareholder decisions.

<u>Department's Position</u>: For the final determination, we continue to find that Shanghai SASAC controls Double Coin through Shanghai Huayi. Our standard practice for determining eligibility for a separate rate is that an NME exporter is presumed to be under the NME government control until such a presumption is sufficiently rebutted. As such, the absence of record evidence of

control or other demonstrable action on behalf of a minority shareholder that Double Coin claims is insufficient to rebut this presumption. The existence of certain minority shareholder rights (such as the ability to bring suit against a board member or manager who acts against the interests of the company, and the right of minority shareholders to call a shareholder meeting) does not by itself overcome the presumption of PRC government control. For example, it remains unclear whether these codified rights are actually exerted and how evidence demonstrating that minority shareholders' exercise of their rights would plainly rebut the presumption of control on behalf of the majority state-owned shareholder. Although the conflict of interest rule (whereby any decision which contains a conflict of interest to Shanghai Huayi would require the abstention of Shanghai Huayi's voting shares) might serve to better rebut this presumption, there is neither indication on the record of any such abstentions nor sufficient information on the record of how this abstention process actually works in practice.

The PRC laws provided as evidence to rebut the presumption of the *de jure* control also do not rebut the presumption.[64] Article 20 of the PRC Company Law does not appear to limit reasonably "the power of the state in the companies in which the state invests," as the courts have required.[65] The structure of the PRC Company Law provides controlling shareholders with direct and effectual control as "{s}hareholders have the ability to hire and fire each board member and decide their pay pursuant to Article 38, and each board member is thereby beholden." That amounts to delegation, as opposed to separation, because the general manager, in point of fact, is selected by the same board of directors "in charge of overall business planning and the selection of upper management" that is "responsible to the shareholders" and can readily be replaced at the board's whim.[66] Furthermore, nothing in Articles 22 through 27 of the PRC Code of Governance for Listed Companies reveals "little to an inquiry into 'governmental control' in the running of a company including its export operations."[67] Regardless of the restrictions of the PRC laws and the protection afforded to minority shareholders, Double Coin's articles of association demonstrate that a majority shareholder – and particularly one with 72.15 percent ownership – would be expected to have near complete control over any shareholder decisions, including decisions which may affect the management and operations of the company.[68] Whether or not Shanghai Huayi, which is Double Coin's majority owner, demonstrably exercised control over Double Coin's daily operations does not refute the fact that a government-owned entity appears to have near complete control of shareholder decisions of Double Coin.[69]

Further, the price negotiations between Double Coin's U.S. subsidiary and the unaffiliated U.S. customers do not rebut the presumption of the PRC government control. The actual setting of price is only one of the four *de facto* criteria, "whereas governmental manipulation of the cost of

[64] *See Advanced Tech. & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343, 1353 (CIT 2012) (*Advanced Technology I*).
[65] *Id.* at 1354.
[66] *Id*. at 1355.
[67] *Id*. at 1358.
[68] *See* Preliminary Separate Rate Denial Memorandum, at 3, and Double Coin's Section A Response dated May 23, 2016, at 11-19.
[69] *See OTR Tires Final Results 2012-2013* and accompanying Issues and Decision Memorandum at Comment 1.

inputs, … or rationalization of industry or output are among numerous other scenarios of concern that can affect seller pricing."[70]

Finally, we note that we made the same determination with respect to Double Coin's separate rate status in another case.[71] As in *OTR Tires Final Results 2012-2013*, we presume that Double Coin's managers are "beholden to the board that controls their pay, in particular to the chairman of the board as the *de facto* company head under the PRC model," until proven otherwise.[72] As explained above, the information on the record of this investigation does not support Double Coin's opposition to our reliance on Shanghai Huayi's potential control over Double Coin.

Comment 7: Double Coin – WTO Obligations

Double Coin argues that two separate WTO panels in 2014 and 2016 found the Department's presumption of the PRC government control to be inconsistent with the United States' WTO obligations. Double Coin states that the WTO Panel decision in 2016 applies to all instances in which the Department applies this practice. The petitioner provided no response to this argument.

Department's Position: Findings of WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[73] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to trump automatically the exercise of the Department's discretion in applying the statute.[74] Moreover, as part of the URAA process, Congress has provided a procedure through which we may change a regulation or practice in response to WTO reports, but we have not so far employed this procedure in response to the WTO reports issued in 2014 and 2016[75] on this issue.[76]

Comment 8: GTCIE

Guiyang SASAC owns 100 percent of GIIC, which owns 25.20 percent of GTC, which owns 100 percent of GTCIE. The Department preliminarily determined that Guiyang SASAC is in a position to control GTCIE through GIIC's control of GTCIE's management selection.[77]

GTCIE requests the Department to find it eligible for a separate rate for purposes of the final determination. According to GTCIE, the purpose of a separate rate analysis in an NME

[70] *See Advanced Technology I*, 885 F. Supp. 2d at 1359-60.
[71] *See OTR Tires Final 2012-2013* and accompanying Issues and Decision Memorandum at Comment 1.
[72] *See Advanced Technology I*, 885 F. Supp. 2d at 1359, 1352 ("{T}he exclusion of 'day to day operations' from 'oversight' responsibility is a straw man.").
[73] *See Corus Staal BV v. United States*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).
[74] *See* 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).
[75] *See United States – Antidumping Measures on Certain Shrimp from Vietnam* (DS 429) (November 2014) and *United States – Certain Methodologies and Their Application to Anti-Dumping Proceedings Involving China* (DS 471) (October 2016).
[76] *See* 19 USC 3533(g). *See also 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), and accompanying Issues and Decision Memorandum at Comment 9.
[77] *See* Preliminary Separate Rate Denial Memorandum at 4.

proceeding is to determine whether or not a respondent can demonstrate the absence of the *de jure* and *de facto* government control over the respondent's export activities. GTCIE argues that it is not under the *de jure* and *de facto* government control with respect to its export activities. GTCIE argues further that, even a company with no private ownership is eligible for a separate rate, if the government ownership does not influence the company's export activities. GTCIE claims that the information on the record of this investigation demonstrates that it is eligible for a separate rate, even under a stricter separate rate analysis in the aftermath of *Advanced Technology II.*

GTCIE argues that various provisions in the PRC Company Law and Circular on the Issuance of the Code of Corporate Governance for Listed Companies ensure its independence from the *de jure* control with respect to its export activities. GTCIE contends that the Department did not analyze the four criteria for the *de facto* control or consider the totality of circumstances with regard to the *de facto* control. GTCIE claims that it satisfied all four criteria to find it independent from the *de facto* control.

GTCIE argues that the information on the record of this investigation shows that the proposals of its SOE owner, GIIC, do not always pass at the shareholders' meetings. GTCIE explains that the Department recognized that some of GIIC's proposals did not pass in a shareholders' meeting, *i.e.*, the 2014 preliminary profit distribution plan and the election of independent directors for the sixth session of the board of GTC, GTCIE's parent company. GTCIE contends that it is irrelevant if the failed proposals were passed in a later shareholders' meeting because all management decisions are made through shareholders' meetings, which are open to all shareholders, including the shareholders that comprise the 75 percent of the shares not held by GIIC. GTCIE explains that the shareholders' meetings the Department relied on to find *de facto* control by the government do not conflict with laws and the articles of association applicable to shareholders' meetings that show the absence of the *de jure* control. GTCIE claims that in all shareholders' meetings, proposals were adopted and rejected in accordance with the *de jure* rule structure governing shareholder votes. GTCIE argues that the Department did not consider certain laws and facts with regard to GTC's selection of management.

Specifically, GTCIE argues that its parent GTC's selection of the board took place in shareholders' meetings available to all shareholders in compliance with laws and the articles of association. GTCIE explains that GTC's board members were elected by its shareholders and GIIC did not appoint or even nominate any of them. The current board members were nominated by the board members of the previous session, with the exception of the employee director, who was elected by employee representatives, according to GTCIE. GTCIE claims that the shareholders' voting was cumulative, which strengthened the voting power of the minority shareholders, and the votes were counted under the strict procedures provided in the articles of association. GTCIE also claims that its on-line voting helps minority shareholders to participate in shareholders meetings without being physically present at them. GTCIE explains that at least half of the board members must be present at a board meeting in which more than half of the board members in attendance must vote in favor of the nominee for a senior management position. GTCIE also explains that the articles of association prevent a person assuming position other than directors at the controlling shareholders or the actual controller of the company from assuming a position of senior management of the company. GTCIE claims that no one from Guiyang SASAC or GIIC attended the shareholders' meetings. GTCIE argues that the

Department found the absence of the *de facto* control over the selection of management in a nearly identical situation in *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils From the People's Republic of China*, 59 FR 55625 (November 8, 1994). GTCIE states that none of GTC's board members hold any position in GIIC, Guiyang SASAC, or any other government agency and Guiyang SASAC does not have the authority to make decisions for GTC, including the appointment or dismissal of board members and senior managers. GTC contends that the Department cited no instance where GIIC or Guiyang SASAC influenced GTC's decision making process.

GTCIE argues that it retains the control of its profits from its export sales and makes independent decisions regarding disposition of profits or financing of losses. GTCIE explains that the 2014 preliminary profit distribution plan was passed in GTC's third extraordinary/interim shareholders' meeting on July 16, 2015, and GTC distributed the profits following this plan. GTCIE claims that GTC's profit distribution according to its plan that was passed in a shareholders' meeting shows its independence from the *de facto* control in profit distribution. GTCIE claims further that the voting record for this profit distribution plan shows the important role of minority shareholders at the shareholders' meeting because they could form a voting block against GIIC.

GTCIE contends that it is not controlled by the PRC government. GTCIE argues that, while GTC wholly owns GTCIE, GTCIE sets its own export prices independent of the PRC government and without the approval of a government authority and negotiates, and has the authority to sign, contracts and other agreements. GTCIE states that GTC selects its management without any involvement of Guiyang SASAC or GIIC.

The petitioner requests that the Department continue to deny separate rate eligibility for GTCIE. The petitioner reiterates the Department's preliminary determination that Guiyang SASAC was in a position to control the selection of GTCIE's management, even though it owned less than 50 percent of shares of GTC, the parent company of GTCIE. The petitioner explains that the information on the record of this investigation supports the Department's preliminary denial of separate rate eligibility for GTCIE. The petitioner argues that, in addition, Guiyang SASAC identified on its website GTC as one of the 27 enterprises it administers. According to the petitioner, Guiyang SASAC's authority checklist reveals the types of control over its administered enterprises, including review and approval over matters such as establishment of representative offices, returns on state-owned capital, and appointment and removal of corporate executives. The petitioner also argues that Guiyang SASAC's October 2015 notice states that it had conducted annual supervision and inspection of administered enterprises, which included hearing reports by these enterprises on their management, operations, and production; inquiring about subsidiaries' management, operations, and production; reviewing account books; and issuing onsite notices for modification and mandatory submission of modification reports by deadline for the problems identified during the inspection with a primary goal of supervising the situation of state-owned capital. The petitioner states that these facts formed the basis to deny the separate rate eligibility for GTCIE in *PVLT Tires Final Determination.*

The petitioner explains that, after the publication of *PVLT Tires Final Determination*, Guiyang SASAC stated that, starting in 2014, the performance reviews of these enterprises would be performed by remuneration committees of their boards. The petitioner explains further that GTC also clarified that: (1) SASAC's supervisory role is limited to only expressing its opinion regarding relevant significant matters and that GTC's shareholders or directors make the final decision; and (2) SASAC's authority checklist has only referred to the appointment of SASAC's internal personnel, not GTC's internal personnel. However, the petitioner argues that Guiyang SASAC's decision as the government administrator to transfer the power of the performance review to the board members confirms Guiyang SASAC's continued control over GTCIE with the performance review. The petitioner also argues that Guiyang SASAC drafted its clarification specifically for GTCIE's submission in this investigation, with a stake in the outcome of this investigation. The petitioner claims that this clarification conflicts with the pre-existing evidence before becoming an issue in this investigation.

Department's Position: For the final determination, we continue to deny separate rate eligibility for GTCIE. In the *Preliminary Determinations*, we found that GTC wholly owns GTCIE and GTC is under GIIC's *de facto* control and, thus, we determined that both GTC and GTCIE are under the *de facto* control of the SOE GIIC.[78] Our continued denial of the separate rate to GTCIE in this investigation is further supported by an event that took place in the aftermath of the shareholders meeting, in which GIIC was not able to pass the 2014 preliminary profit distribution plan and the election of independent directors for the sixth session of GTC's board.

Record evidence does not support a finding that GTC's selection of the board took place in shareholders meetings available to all shareholders. In fact, record evidence demonstrates that GIIC intentionally selected a shareholders meeting that is most favorable to it to elect members of GTC's board. Whether those shareholders meetings complied with the relevant laws and the articles of association is irrelevant in the selection of a particular type of shareholders meetings to elect GTC's board members. Because of the type of shareholders meetings in which GIIC elected GTC's board members, we do not find any practical difference between electing board members or appointing board members. GIIC's election of GTC's board members was like an appointment of board members.

Although GIIC did not nominate any of the directors by itself under Article 82 of the articles of association, we find that the process of nomination for GTC's board members was under the influence of GIIC. The provisions in the articles of association GTCIE cites to support its assertion for strict voting procedures for the election of board members are irrelevant in finding *de facto* control over the selection of management, because they did not prevent the outcome of the shareholders meetings at issue in which GIIC elected the board members of its preference. Neither did GTC's cumulative voting and on-line voting in shareholders meetings, as provided in the articles of association, prevent GIIC's selection of a particular type of shareholders meetings in which it elected GTC's board members of its preference. Although the articles of association: (1) require the election of senior managers by the board members; and (2) prevents a person who is in a position other than a board of the controlling shareholders or the actual controllers of GTC from serving as a senior manager of GTC, we find that, given the specific nature of the election of the board members and the appointment of senior managers by the board, these provisions do not ensure the absence of the *de facto* control from the selection of management. GIIC's shares that elected the board members of its preference were present in shareholders' meetings. For

[78] *See* Preliminary Separate Rate Denial Memorandum at 4.

these reasons, we find that Guiyang SASAC and GIIC have the authority to make decisions for GTC, including appointments and dismissal of GTC's board members.

We find that the information on the record showing the results of the shareholders meeting in which minority shareholders voted down the 2014 preliminary profit distribution plan is evidence of GIIC's control over GTC's profit distribution. This profit distribution plan was passed in a shareholders meeting on July 16, 2015, in which the minority shareholders' rights were not protected, contrary to GTCIE's assertion.

Our decision to deny GTCIE separate rate eligibility does not rely on Guiyang SASAC's performance review, as alleged by the petitioner. Most of the documents supporting the petitioner's allegation of Guiyang SASAC's performance review predate the POI, dating back to 2013.[79] GTC and GTCIE were eligible for a separate rate for the periods of review September 1, 2012, through August 31, 2013, and September 1, 2013, through August 31, 2014, in certain new pneumatic off-the-road tires from the PRC.[80] Because we find the events that took place within GTC in 2015 are sufficient to deny the separate rate eligibility to GTCIE for this POI, we did not analyze the events that allegedly took place in time periods in which GTC was eligible for a separate rate in another case during another period of review.[81] Also, because Guiyang SASAC's October 2015 notice detailing annual supervision and inspection of administered enterprises does not identify companies subject to the annual supervision and inspection, this information was not used in our determination that GTCIE is under the PRC government control.[82]

Comment 9: Pirelli

Pirelli explains that the Department's preliminary denial of its separate rate eligibility follows the post-diamond sawblades approach involving the four *de facto* criteria by automatically presuming that all four criteria are satisfied when an NME entity owns the majority share of a respondent. Pirelli alleges certain legal flaws in the Department's approach to the *de facto* criteria that led to the denial of its separate rate eligibility.

Pirelli argues that, while there are cases in which majority ownership can be treated as the equivalent of control, the Department treated the rebuttable presumption of the *de facto* control as irrebuttable by disregarding substantial evidence on the record of this investigation that contradicted the application of the presumption of control to Pirelli. According to Pirelli,

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[79] *See* the petitioner's April 22, 2016, rebuttal to GTCIE's separate rate application at Attachment 5.
[80] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 61291 (October 10, 2014), and accompanying Preliminary Decision Memorandum at 10-11, unchanged in *OTR Tires Final Results 2012-2013*, 80 FR at 20197. *See also Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 9695 (February 24, 2015), where the Department rescinded the administrative review with respect to GTC and GTCIE.
[81] *See Diamond Sawblades Final Results 2012-2013* and accompanying Issues and Decision Memorandum at Comment 5, where we stated that we will not revisit our prior decisions in the prior segments of a proceeding to grant a respondent separate rate status.
[82] *See* the petitioner's SRA rebuttal dated April 22, 2016, at Attachment 7 (Adopting New Measures for Supervision and Inspection, and Leaving No Dead Corners for the Regulation of State-owned Capital Updated as of October 15, 2015).

Transcom Inc. v. United States, 182 F.3d 876 (Fed. Cir. 1999), held that the presumption of state control was expressly conditioned on the requirement that the presumption be rebuttable and the party subject to the presumption has a right to attempt to rebut it. Pirelli contends that this approach represents the long-standing principle of administrative law requiring administrative agencies not to use presumptions to short-circuit their requirements to make reasoned determinations based on the individual record before them. Pirelli states that the existence of substantial evidence must be determined in view of the record as a whole and the Department cannot ignore significant contradictory evidence and assert that substantial evidence nevertheless supports its determination. Pirelli reiterates that the Department did not provide a reasoned analysis of important issues that required discussion in determining the separate rate eligibility for Pirelli.

Pirelli claims that the Department's *de facto* analysis is inconsistent with its *de jure* analysis. Specifically, Pirelli explains that, even when the existence of a *de jure* control does not necessitate the Department's evaluation of the *de facto* criteria, the Department, nonetheless, will evaluate the *de facto* criteria, because distances can exist between decisions made at the central government level and decisions made at the company level with respect to exports. Pirelli contends that the same reasoning is applicable with respect to the distance between a majority owner and its subsidiary and that it is inconsistent to recognize this situation in the context of the PRC government ownership, but not when the respondent is owned by an SOE. Pirelli states that the Department's reliance on the potential for the PRC government's exercise of control over a company's operations is inconsistent with the Department's previous rejection of finding the PRC government control on the potential for the PRC government control in another case.

Pirelli denies any *de jure* control over it under the Company Law of the PRC. Pirelli then argues that the *de facto* criteria must be analyzed independently of the post-diamond sawblades presumption of control based on ownership. Pirelli explains that, before the post-diamond sawblades presumption of control based on ownership, the Department found companies directly owned by the PRC government or operated as joint ventures with SOEs as *de facto* independent as long as the information on the record demonstrated a lack of the PRC government control in the daily business operations. Pirelli claims that it sets its export prices independently from the PRC government influence and without the participation or approval of any PRC government authority. Pirelli explains that its U.S. affiliate and its unaffiliated customers determine the prices and Pirelli retains the proceeds from its sales and makes independent decisions regarding the disposition of profit and the financing of losses. Pirelli also explains that its contracts and other agreements are engaged in without any discussion with, or oversight of, the PRC government.

The petitioner explains that Pirelli's arguments are the same as the arguments presented by other respondents in this investigation and in other cases. The petitioner states that the relevant question is not whether the Department provided evidence of the control of Pirelli, but if Pirelli has rebutted the presumption of control. The petitioner contends that substantial evidence on the record of this investigation shows that Pirelli has not satisfied the burden. The petitioner asserts that the PRC government's control of Pirelli directly extends to the control of Pirelli's operations in the PRC.

The petitioner explains that, although the Department automatically presumes PRC government control, Pirelli is incorrect to claim that the Department is somehow applying the presumption differently to Pirelli. The petitioner asserts that the presumption of PRC government control extends to all NME respondents and the burden is on the respondents to rebut the presumption. The petitioner states that the Department does not need to show evidence of control in each of these four criteria. It is NME respondents, according to the petitioner, that must show evidence of no government control in these four criteria. Although Pirelli seeks to reverse the presumption and force the burden on the Department, the petitioner argues, the evidence shows that Pirelli has not shown a lack of PRC government control. The petitioner also argues that the Department did not apply an irrebuttable presumption to Pirelli or examine only two facts to find Pirelli ineligible for a separate rate. The petitioner claims that the Department does examine the potential control of an NME respondent, contrary to Pirelli's argument.

Department's Position: For the final determination, we continue to find that Pirelli is not eligible for a separate rate. Because the record evidence remains the same, our final determination to deny separate rate eligibility for Pirelli is based on the same grounds as detailed in the *Preliminary Determination*.[83] Although Pirelli asserts that the Department ignored certain information related to its separate rate eligibility, the Department considered all of the information on the record related to Pirelli in making its separate rate determination.[84] Contrary to Pirelli's assertion, it is necessary that an NME respondent satisfy all *de jure* and *de facto* criteria to be eligible for a separate rate.[85] In the *Preliminary Determinations*, we explained that our analysis of *de facto* control has changed since *Advanced Tech. II.*[86] Following our current practice, we continue to find that *de facto* control over Pirelli's selection of management exists.

Comment 10: Shandong Yongsheng and Yongsheng Marshall

The petitioner requests that the Department deny separate rates to Shandong Yongsheng and Yongsheng Marshall because they failed to report their affiliation with each other and with Drivemaster Tire Co., Ltd. (Drivemaster Tire). The petitioner argues that: (1) certain advertising materials indicate that Shandong Yongsheng is related to Yongsheng Marshall (*i.e.*, the reported business address for Shandong Yongsheng is the same one provided in Yongsheng Marshall's SRA); (2) a LinkedIn profile of Drivemaster Tire's sales manager, Jeffrey Deng, indicates that Drivemaster Tire is affiliated with Shandong Yongsheng; and (3) Drivemaster Tire's website states it was established by Shandong Yongsheng and includes in its "Contact Us" section the reported business address in the SRAs of both Shandong Yongsheng and Yongsheng Marshall.

The petitioner maintains that Shandong Yongsheng and Yongsheng Marshall failed to rebut evidence that Shandong Yongsheng and Yongsheng Marshall are affiliated. The petitioner maintains further that Yongsheng Marshall's use of Shandong Yongsheng's name to conduct "commercial propaganda" (*i.e.*, business advertising and marketing activities), because "foreign customers are more willing to conduct business directly with the producer or the affiliated

[83] *See* Preliminary Separate Rate Denial Memorandum, at 4-5, and Final Separate Rate Eligibility Memorandum, at 2-3, for more detail containing Pirelli's business proprietary information.
[84] *Id.*
[85] *See Preliminary Determinations* and accompanying Preliminary Decision Memorandum at 14-15.
[86] *Id*. at 13-14.

companies of the producer as they think the price directly offered by the producer will be lower than the price offered by the distributors or traders," contradicts their statement in the same response that states "customers are aware that they are conducting business with Yongsheng Marshall."

The petitioner contends that Yongsheng Marshall, an affiliate of Drivemaster Tire, does not address in its supplemental response why Drivemaster Tire's website provides as a point of contact the business address for both Shandong Yongsheng and Yongsheng Marshall. The petitioner contends further that, if Drivemaster Tire and Shandong Yongsheng are not related, it is not clear how providing potential customers on Drivemaster Tire's website with the contact information of Shandong Yongsheng will support Drivemaster Tire's marketing efforts. The petitioner also argues that, given the admitted affiliation between Drivemaster Tire and Yongsheng Marshall, submission of the shareholder(s) of each company does not contradict the statement on Drivemaster Tire's website that it was established by Shandong Yongsheng.

The petitioner explains that, because Shandong Yongsheng and Yongsheng Marshall have not provided complete responses concerning their affiliated parties, it is not possible for the Department to determine whether any party is sufficiently independent.

In rebuttal, Shandong Yongsheng and Yongsheng Marshall claim that they are eligible for separate rates regardless of whether they are affiliated with each other. Shandong Yongsheng and Yongsheng Marshall assert that they explained their relationship with each other clearly without making any contradictory statements in their SRAs and supplemental responses.

Shandong Yongsheng and Yongsheng Marshall claim that Shandong Yongsheng's contact information on the ECPlaza.net website referred to Yongsheng Marshall because, at that time, with Shandong Yongsheng's permission, it was placed on the website by a former employee of Yongsheng Marshall. Shandong Yongsheng and Yongsheng Marshall explain that Drivemaster Tire's former sales employee published the information in the LinkedIn profile in the name of both Drivemaster Tire and Shandong Yongsheng for advertising and marketing purposes. Shandong Yongsheng and Yongsheng Marshall explain that the statement on Drivemaster Tire's website that it was established by Shandong Yongsheng was solely for advertising and marketing purposes.

Concerning the petitioner's allegation that Drivemaster Tire's website (which lists the business address of Shandong Yongsheng and states it was established by Shandong Yongsheng), Shandong Yongsheng and Yongsheng Marshall deny the allegations that Drivemaster Tire was established by or affiliated with Shandong Yongsheng. Shandong Yongsheng and Yongsheng Marshall contend that Drivemaster Tire's articles of association show that Drivemaster Tire and Shandong Yongsheng have no common shareholders.

With respect to the petitioner's claim that Yongsheng Marshall made contradictory statements concerning the use of Shandong Yongsheng's name to conduct "commercial propaganda" (to attract foreign customers) while customers are aware that they are conducting business with Yongsheng Marshall, Shandong Yongsheng and Yongsheng Marshall argue that the petitioner's claim is not reasonable because: (1) Yongsheng Marshall is solely a distributor of Shandong

Yongsheng for exports; (2) conducting business advertising and marketing is the stage before the formal transaction between Yongsheng Marshall and its foreign customers; (3) all sales activities of Yongsheng Marshall are conducted solely by the staff employed by Yongsheng Marshall; and (4) the formal sales documents (*i.e.*, commercial invoice, packing list, bill of lading, *etc*.) are provided to the customers and issued in the name of Shandong Yongsheng.

Department's Position: For the final determination, we continue to find that Shandong Yongsheng and Yongsheng Marshall are eligible for separate rates. We preliminarily found that they are not under *de jure* and *de facto* control. We find that Shandong Yongsheng and Yongsheng Marshall clearly described their relationship as companies independent from each other and Drivemaster Tire's affiliation with Yongsheng Marshall. We have information on the record of this investigation demonstrating that Shandong Yongsheng and Yongsheng Marshall do not have overlapping shareholders.[87] It is only Yongsheng Marshall and Drivemaster Tires that are under common shareholders and in the same location.[88] Shandong Yongsheng and Yongsheng Marshall provided specific information rebutting the petitioner's basis for its claim that they are affiliated, *i.e.*, websites indicating Shandong Yongsheng and Drivemaster Inc. are affiliated.[89] The information submitted by Shandong Yongsheng and Yongsheng Marshall provide no other basis for us to find that they are affiliated under section 771(33) of the Act and 19 CFR 351.102(3), and the petitioner did not indicate one either. Also, other than the alleged failure to report the affiliation of Shandong Yongsheng and Yongsheng Marshall, which we do not agree with, the petitioner raised no other basis to find them ineligible for a separate rate. For these reasons, we continue to find these two companies eligible for a separate rate.

Comment 11: Zhongce

The petitioner requests that the Department deny the separate rate eligibility for Zhongce for the final determination. The petitioner explains that the Department denied the separate rate eligibility for Zhongce in *PVLT Tires Final Determination*. The petitioner claims that details of the PRC government's partial ownership of Zhongce and involvement in the selection of Zhongce's management are sufficient to prevent a rebuttal of the presumption of PRC government control over Zhongce.

Zhongce claims that the period of the AD investigation of *PVLT Tires Final Determination* ended on March 31, 2014, and the changes to Zhongce's ownership structure since May 2015 justifies the eligibility for a separate rate. Zhongce disagrees with the petitioner's claim that the

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[87] *See* Letter to the Secretary of Commerce from Shandong Yongsheng entitled, "Separate Rate Application," dated March 25, 2016, at pages 18-19 and Exhibits 7-8 (Shandong Yongsheng's SRA). *See* also Letter to the Secretary of Commerce from Yongsheng Marshall entitled, "Separate Rate Application," dated March 25, 2016, at pages 20-21 and Exhibit 3 (Yongsheng Marshall's SRA).
[88] *See*, *e.g.*, Letter to the Secretary of Commerce from Yongsheng Marshall entitled, "Comment on Petitioner's Rebuttal Factual Pertaining to Certain SRAs Dated April 8, 2016," dated April 15, 2016, at Exhibit 1 (Yongsheng Marshall's April 15, 2016 rebuttal); Yongsheng Marshall's supplemental response at Exhibit 2; Yongsheng Marshall's SRA at pages 20-21 and Exhibit 3; and Shandong Yongsheng's SRA at pages 18-19 and Exhibits 7-8.
[89] *See* Letter to the Secretary of Commerce from Shandong Yongsheng entitled, "Comment on Petitioner's Rebuttal Factual Pertaining to Certain SRAs Dated April 8, 2016," dated April 15, 2016; *see* also Yongsheng Marshall's April 15, 2016 rebuttal; *see* also Letter from the to the Secretary of Commerce Shandong Yongsheng and Yongsheng Marshall entitled, "Rebuttal Brief to Petitioner's Case Brief Dated December 6, 2016," dated December 11, 2016.

PRC government ownership of one of Zhongce's owners justifies the denial of the separate rate eligibility for Zhongce. Specifically, Zhongce contends that the ultimate PRC government ownership of this owner is seven steps removed and the PRC government's shareholding percentage of this owner is also diluted within the seven-step ownership structure. Zhongce denies allegations concerning the PRC government's role regarding Zhongce's chairman.

Zhongce disagrees with the petitioner's claim that Zhongce did not provide information concerning two companies in connection with the separate rate analysis for Zhongce. Zhongce denies the PRC government's connection with these two companies. Zhongce explains that it responded to the Department's request for information concerning these two companies' owners and that the Department did not ask for the upper-tier shareholders of the shareholders of these two companies. Zhongce contends that the Department's requests for information concerning the owners of the shareholders is consistent with *Certain Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 76970 (December 23, 2014), in which the Department rejected the petitioner's allegation that the PRC respondents had not disclosed shareholder information regarding holding companies and limited partnership companies that are the respondents' shareholders.

Department's Position: For the final determination, we continue to find Zhongce eligible for a separate rate.[90] The petitioner's request to deny the separate rate eligibility for Zhongce hinges on the alleged state ownership of a shareholder that is seven steps removed from the PRC government. In its request, the petitioner did not explain how the PRC government controls this shareholder through the intermediaries within the seven steps. We find that the diluted percentage of the PRC government's ownership of this shareholder through the seven steps does not give the PRC government majority or controlling ownership of Zhongce. Additionally, there is no evidence on the record demonstrating that the PRC government controlled Zhongce by other means. Finally, with respect to the two companies the petitioner raised as an issue, the information on the record of this investigation indicates that the PRC government does not own or control them.[91]

b. Combination Rates

Comment 12: Combination Rates for Qingdao Jinhaoyang

The petitioner requests that the Department deny assigning a combination rate to Qingdao Jinhaoyang and two producers, Double Coin and Shaanxi Yanchang, for which the Department denied a separate rate in this investigation, in order to prevent these two producers from funneling sales of subject merchandise through Qingdao Jinhaoyang without Qingdao Jinhaoyang acting as the price discriminator in the U.S. market. According to the petitioner, in *Wooden Bedroom Furniture*,[92] the Department took seriously the potential that NME exporters

[90] *See Preliminary Determinations* and accompanying Preliminary Decision Memorandum at 12-15 and Appendices I, II, and IV.
[91] *See* the Final Separate Rate Eligibility Memorandum for more details containing Zhongce's business proprietary information.
[92] *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011*, 78 FR 35249 (June 12, 2013), and accompanying Issues and Decision Memorandum at Comment 3, and *Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of*

with high cash deposit rates may funnel sales of subject merchandise through an exporter with a low cash deposit rate to customers, without that exporter with a low cash deposit rate acting as the price discriminator to the U.S. market.

The petitioner explains that, in NME cases, the Department does not apply a knowledge test to identify an exporter by determining if a party in the chain of commerce prior to the exporter knew that the merchandise was destined for the United States. The petitioner explains further that this practice holds only if the exporter concluded the essential terms of sale and, if not, the exporter is the price discriminator that is in a position to set the U.S. price of subject merchandise. The petitioner claims that Qingdao Jinhaoyang is not a price discriminator in its sales of subject merchandise produced by Double Coin and Shaanxi Yanchang.

The petitioner asserts that the denial of the combination rate to Qingdao Jinhaoyang and its two producers, Double Coin and Shaanxi Yanchang, is consistent with *PVLT Tires Final Determination* and accompanying Issues and Decision Memorandum at Comment 27, in which the Department denied the combination rate and assigned the PRC-wide rate for the subject merchandise produced by a mandatory respondent that refused to cooperate with the Department. According to the petitioner, the Department explained in *PVLT Tires Final Determination* that it denied the combination rate to subject merchandise produced by this mandatory respondent in order to avoid the potential that this mandatory respondent could evade the application of the PRC-wide rate by selling its merchandise through an exporter with a lower cash deposit rate. The petitioner states that there are cases, such as *Tung Meng Dev. Co. v. United States*, 26 CIT 969, 978 (2002), *aff'd*, 354 F.3d 1371 (Fed. Cir. 2004), and *Mid Continent Nail Corp. v. United States*, 949 F. Supp. 2d 1247, 1255 (CIT 2013), that recognize the Department's duty and discretion to prevent the evasion or circumvention of antidumping duties and AD laws and the combination rate as a tool to prevent companies from funneling subject merchandise through exporters with lowest rates, respectively.

Qingdao Jinhaoyang calls the petitioner's request inconsistent with Policy Bulletin 05.1, which states, in part, as follows:

> {T}he exporter's cash-deposit rate will be applied to merchandise it sourced from any combination of its identified producers without restriction. In other words, the Department will not assign combination rates to an exporter and individual producers, but rather to an exporter and its producers as a group.

Qingdao Jinhaoyang argues that, once an exporter establishes separate rate eligibility, the Department automatically applies the combination rate to all producers identified by the exporter as its suppliers of subject merchandise during the POI with no additional analysis, criteria, or test. Qingdao Jinhaoyang contends that the petitioner essentially made a request to change the law, modify the Policy Bulletin, and depart from the Department's long-standing practice with no legitimate justification for doing so. Qingdao Jinhaoyang explains that the petitioner's request is inconsistent with the Department's finding that: (a) Double Coin and Shaanxi Yanchang are part of the PRC-wide entity; and (b) Qingdao Jinhaoyang is independent from

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Antidumping Duty Administrative Review; 2014, 80 FR 77321 (December 14, 2015), and accompanying Preliminary Decision Memorandum at 10 (collectively *Wooden Bedroom Furniture*).

PRC government control and eligible for a separate rate. Based on these two findings, Qingdao Jinhaoyang claims that it is not under the control of either Double Coin or Shaanxi Yanchang and the petitioner is incorrect to assert that Qingdao Jinhaoyang is not a price discriminator. Qingdao Jinhaoyang states that the Department's rejection of the petitioner's request would be consistent with *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), and accompanying Issues and Decision Memorandum at Comment 17, in which the Department denied a similar request by the petitioner.

Qingdao Jinhaoyang identifies *Wooden Bedroom Furniture* as inapposite because the trading companies at issue failed to cooperate with the Department's request for information and decided not to participate in the reviews and, as a result, the Department found insufficient evidence to determine whether they acted as conduits for their respective producers. Further, Qingdao Jinhaoyang contends that *PVLT Tires Final Determination* denied the combination rate without analyzing any facts to establish whether the trading companies acted as a conduit for the mandatory respondent at issue. Qingdao Jinhaoyang calls the Department's approach in *PVLT Tires Final Determination* inappropriate and not reflective of the Department's requirement of substantial evidence to support its decision.

Department's Position: For the final determination, we continue to assign the combination rate to the exporter-producer combination of Qingdao Jinhaoyang and Double Coin and the combination of Qingdao Jinhaoyang and Shaanxi Yanchang, consistent with Policy Bulletin 05.1 and our practice. Policy Bulletin 05.1 guides us to evaluate the separate rate eligibility of exporters in order to determine the eligibility for a separate combination rate. In our SRAs, we did not ask questions pertaining to an exporter's reported producers' separate rate eligibility.[93] Qingdao Jinhaoyang is not the only exporter that reported Double Coin, Shaanxi Yanchang, and/or other companies that are part of the PRC-wide entity as producers.[94] The petitioner did not explain why it singled out only Qingdao Jinhaoyang and its two state-controlled producers, Double Coin and Shaanxi Yanchang, in its request for denial of a separate combination rate. A denial of the separate combination rate to Qingdao Jinhaoyang and its two unaffiliated state-controlled producers would be inconsistent with our stated practice in Policy Bulletin 05.1 and unfair to Qingdao Jinhaoyang when we continue to assign the separate combination rate to other exporters and state-controlled producers under the same circumstances for the final determination.

Moreover, Qingdao Jinhaoyang reported two separate rate respondents, Qingdao Fudong Tyre Co., Ltd., and Zhucheng Guoxin Rubber Co., Ltd., as its two other producers that supplied subject merchandise. The fact that Qingdao Jinhaoyang identified four different producers as its

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[93] *See* "Separate Rate Application of Qingdao Jinhaoyang International Co., Ltd.," dated March 25, 2016.
[94] For example, Qingdao Fullrun Tyre Corp. Ltd., Qingdao Yongdao International Trade Co., Ltd., Rover Tire Co., Ltd., reported Double Coin as their supplier of subject merchandise and Megalith Industrial Group Co., Ltd., and Sportrak Tire Group Limited reported Shaanxi Yanchang as their supplier of subject merchandise. We preliminarily assigned the combination rate to these exporters and Double Coin and Shaanxi Yanchang as producers, as applicable. *See Preliminary Determinations*, 81 FR at 61187-91. The petitioner did not challenge the preliminary assignment of the combination rate to these exporters.

suppliers indicates that it is Qingdao Jinhaoyang that decides from whom to purchase subject merchandise for exportation to the United States.

We do not prospectively find that, if we assign a separate combination rate to Qingdao Jinhaoyang and its two state-controlled producers, the state-controlled producers will control Qingdao Jinhaoyang and circumvent any potential antidumping duty order issued in this case.[95] The record does not support the petitioner's contention that Double Coin and Shaanxi Yanchang use Qingdao Jinhaoyang as their only conduit for funneling the exports of subject merchandise. On the contrary, the record indicates multiple other exporters eligible for a separate rate in this investigation identified Double Coin and Shaanxi Yanchang as their suppliers of subject merchandise and Qingdao Jinhaoyang reported two other producers that are eligible for a separate rate in this investigation as its suppliers of subject merchandise. In light of the fact that the dumping margin percentage assigned to Qingdao Jinhaoyang and other separate rate exporters that reported state-owned producers as their suppliers is the same, we do not find it likely that Qingdao Jinhaoyang and its two state-controlled producers will conspire only among themselves to manipulate the dumping law to the advantage of the state-owned producers.[96] *PVLT Tires Final Determination* is inapposite to Qingdao Jinhaoyang in this investigation because the facts on the record of this investigation, as explained above, do not support a denial of combination rates to Qingdao Jinhaoyang and the two SOE suppliers. *Wooden Bedroom Furniture* is also inapposite. Because all exporters eligible for a separate rate receive the same dumping margin and cash deposit rate, Qingdao Jinhaoyang does not stand out as an exporter with the lowest dumping margin and cash deposit rate.

c. PCT Issues

Comment 13: VAT Methodology

PCT argues that the Department's deduction of irrecoverable VAT from U.S. prices violates section 772(c)(2)(B) of the Act, which requires that the export price be reduced by the amount of any export tax, duty, or other charges imposed by the exporting country on the exportation of the subject merchandise to the United States. According to PCT, *Fine Furniture (Shanghai), Ltd. v. United States*, 182 F. Supp. 3d 1350 (CIT 2016) held that the Department's treatment of the irrecoverable VAT as export tax within the meaning of section 772(c)(2)(B) of the Act does not comport with the deduction of export tax under section 772(c)(a)(B) of the Act.

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[95] *See 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), and accompanying Issues and Decision Memorandum at Comment 17 ("Similarly, we disagree with the petitioners that it is appropriate to make a prospective finding that if the Department treats TTI as a single entity, it may, in future segments of the proceeding, be controlled by their SOE suppliers and thereby circumvent any potential antidumping duty order issued in the case. As explained above, record evidence does not demonstrate that TTI is being used as a "conduit" for its SOE suppliers. We find the petitioners' argument that the treatment of TTI as a single entity would encourage circumvention unsupported by the record. The CAFC has held that '{s}peculation is not support for a finding.' Indeed, we note that, in light of the dumping margin calculated for TTI in this final determination, the petitioners' theory that TTI and its SOE suppliers will conspire to manipulate the dumping law to the advantage of the SOEs is unlikely.").
[96] *Id.*

PCT requests that, if the Department continues to deduct irrecoverable VAT from U.S. prices, the Department take PCT's bonded warehousing scheme into consideration for the final determination. PCT states that it was not charged VAT for certain raw materials including natural rubber, synthetic rubber, and steel cord during the POI under a bonded warehousing scheme. According to PCT, these raw materials were stored in PCT's bonded warehouse, separate from other raw materials imported under normal trade or purchased from domestic sources. PCT explains that the raw materials imported under the bonded warehousing scheme and the finished products exported under the bonded warehousing scheme were all eligible for VAT exemption. PCT claims that the Chinese State Tax Administration assigned the company a planned allocation ratio applicable to all future importations and exportations under the bonded warehousing scheme until the agency issues a new ratio. PCT states that it produced subject merchandise with inputs eligible for VAT exemption under the bonded warehousing scheme. PCT argues that the Department accepted the bonded warehousing scheme in the calculation of the irrecoverable VAT in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipment and Partial Rescission of Review; 2012-2013*, 79 FR 72166 (Dec. 5, 2014) and accompanying Preliminary Decision Memorandum.

The petitioner argues that the Department has regularly rejected claims that the statute does not allow the Department to adjust for irrecoverable VAT. According to the petitioner, in *PVLT Tires Final Determination*, the Department not only rejected the claim that it lacks statutory authority to deduct irrecoverable VAT but also declined to take into consideration the bonded warehousing scheme because no evidence supported the contention that all of the bonded materials excepted from input VAT were actually used in the production of subject merchandise and the bonded warehouse ratio was not specific to subject merchandise only. Likewise, the petitioner asserts that no evidence on the record of this investigation shows that PCT's planned allocation ratios, or bonded warehouse ratios, were specific to subject merchandise. The petitioner supports the Department's preliminary calculation of PCT's irrecoverable VAT by multiplying PCT's U.S. price by the percentage of the irrecoverable VAT, *i.e.*, eight percent, without taking the bonded warehousing scheme into consideration.

<u>Department's Position:</u> For the reasons explained below, we continue to apply our formula used in the *Preliminary Determinations* to adjust the VAT to deduct from the reported U.S. prices an amount for irrecoverable VAT.

In 2012, we announced a change of methodology with respect to the calculation of the EP or CEP to include an adjustment of any irrecoverable VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[97] In this announcement, we stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise *or on inputs* used to produce subject merchandise, from which the respondent was not exempted, we will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.[98] In a typical VAT system, companies do not incur any VAT expense;

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[97] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482 (June 19, 2012).
[98] *Id.* at 36483. *See also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) (*Chlorinated Isocyanurates*), and accompanying Issues and Decision Memorandum at Comment 5.

they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports (input VAT), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.[99] However, China's VAT regime is not a typical VAT system; rather, in China's VAT regime, some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[100] This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of the U.S. price, the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[101]

In response to the claims that we do not have the statutory authority to adjust for VAT, section 772(c)(2)(B) of the Act authorizes us to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. PCT argues that Chinese VAT is not an export tax, duty or charge, but it misstates what is at issue. The issue is the irrecoverable VAT, not VAT *per se*. In this context, irrecoverable VAT, as defined in Chinese law, is a net VAT burden that arises solely from, and is specific to, exports.[102] It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost. Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States. Neither the statute nor its legislative history defines the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise. The court upheld our interpretation of these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.[103] It is set forth in Chinese law and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[104]

Our methodology, as explained above, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise; and (2) reducing U.S. price by the amount determined in step one. PCT reported that the standard VAT levy on the subject

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[99] *See*, *e.g.*, *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 38673 (June 14, 2016) (*Diamond Sawblades Final Results 2013-2014*), and accompanying Issues and Decision Memorandum at Comment 2, *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*), and accompanying Issues and Decision Memorandum at Comment 3, and *Methodological Change*, 77 FR at 36483.

[100] *See* "Truck and Bus Tires from China: Section C Response of Prinx Chengshan (Shandong) Tire Co., Ltd." at C-66 - C-67 (PCT's Section C Response).

[101] *See Methodological Change*, 77 FR at 36483.

[102] *See*, *e.g.*, *Diamond Sawblades Final Results 2013-2014* and accompanying Issues and Decision Memorandum at Comment 2.

[103] *See Fushun Jinly Petrochemical Carbon Co., Ltd. v. United States*, Court No. 14-00287, 2016 Ct. Intl. Trade LEXIS 25, at *36-37 (Ct. Int'l Trade Mar. 23, 2016) (*Fushun Jinly*).

[104] *See Methodological Change*, 77 FR at 36483, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) (citing Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103-106, vol. 1, 827, reprinted in 1995 U.S.C.C.A.N. 3773, 4172).

merchandise is 17 percent and the VAT rebate rate for the subject merchandise is nine percent.[105] For the final determination, therefore, we removed from U.S. price an amount calculated based on the difference between these rates (*i.e.*, eight percent) applied to the export sales value (*i.e.*, U.S. price net of international movement expenses), consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.[106]

Irrecoverable VAT is defined as: (1) the free-on-board value of the exported good, applied to the difference between; (2) the standard VAT levy rate; and (3) the VAT rebate rate applicable to exported goods.[107] The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulation.[108]

Our methodology is based on removing irrecoverable VAT on exports, which is product-specific and is explicitly defined in Chinese tax regulations.[109] Our deduction of product-specific irrecoverable VAT from the price of the subject merchandise is a reasonable and accurate methodology because the export tax, duty, or other charge is a product-specific expense that is directly linked with the exportation of the subject merchandise. Our method of relying on the standard formula provided for under Chinese tax law and regulation is straightforward, consistent, and a verifiable method to make this adjustment under section 772(c)(2)(B) of the Act. In that respect, the irrecoverable VAT formula for taxation purposes is solely a function of the rates under Chinese regulation and the respondent-specific export value of subject merchandise.

There could be any number of differences between the irrecoverable VAT reported for Chinese tax purposes and how the irrecoverable VAT is actually recorded in a given respondent's records. For all of the reasons stated above, we will not consider allocations across all company sales or across sales of products with different VAT schedules. The irrecoverable VAT liability is determined on a product-specific basis, and it is on this basis that we will consider respondent-specific claims for adjustments to the standard formula, taking into account whether such adjustments are permitted under Chinese law and regulation and supported with record evidence.

For this reason, we did not take into consideration the allocation ratio under the bonded warehousing scheme PCT used in its calculation of the reported VAT deduction amount. During the verification, PCT presented us with documents supporting its claim for the bonded warehousing scheme. One of those documents identifies import materials and export products that are not related to the subject merchandise.[110] Also, none of the documents PCT presented to

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[105] *See* PCT's Section C Response at C-66 - C-67.
[106] *See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Prestressed Wire*), and accompanying Issues and Decision Memorandum at Comment 1, and *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 3.
[107] *See Prestressed Wire* and accompanying Issues and Decision Memorandum at Comment 1, n. 35, and *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 3.
[108] *See Prestressed Wire* and accompanying Issues and Decision Memorandum at Comment 1, n. 36, and *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 3.
[109] *See Prestressed Wire* and accompanying Issues and Decision Memorandum at Comment 1, and *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 3.
[110] *See* the PCT Final Analysis Memorandum for more details containing PCT's business proprietary information.

us to claim its eligibility for bonded warehousing scheme proves that the percentage of the bonded warehousing allocation ratio it used to calculate the reported VAT deduction amount is specific to the subject merchandise only.[111] Therefore, consistent with *PVLT Tires Final Determination*,[112] we did not use the VAT deduction amount reported by PCT. Based on our practice and record evidence, [113] we continue to use the same VAT deduction for PCT that we used in the *Preliminary Determinations*.

Also for the final determination, consistent with our reasons explained above and in the *Preliminary Determinations*, we deducted the VAT in the calculation of PCT's EP sales.

Comment 14: Barge Transportation

PCT requests the valuation of its coastal barge transportation based on an average water freight rate from the *Executive Summary Report – The Study of Transport Cost Structure and Logistics System* (*Executive Summary Report*) published by the Thai Ministry of Transport's Office of Transport and Traffic Policy and Planning, instead of the truck freight SV that the Department preliminarily used. PCT contends that this average water freight rate covers 2005 through 2009 and is more representative of PCT's experience with the coastal barge transportation.

The petitioner argues that the average water freight rate at issue is not an actual market price but, rather, a theoretical estimate of cost calculated only for the *Executive Summary Report*, which does not provide a calculation methodology for this rate at issue. According to the petitioner, the Department has recognized *Doing Business* reports as: (1) representative of broad market average based on actual experiences; and (2) containing data collected from local freight forwarders, shipping lines, customs brokers, port officials, and banks and reflective of the freight costs of multiple vendors and users. The petitioner states that the Department prefers actual transaction prices to value FOPs and declines to rely on estimates to value FOPs. The petitioner argues that truck freight SVs have been used to value barge freight transportation in the absence of surrogate barge freight data in past cases.

Department's Position: The average water freight rate in the *Executive Summary Report* is a forecast rate for future inland water transportation costs with 2009 as the base year. PCT explains that this alternative rate covers the time between 2005 and 2009, but the source document does not indicate the exact time period covered by this alternative rate.[114] The

[111] *Id.*

[112] *See PVLT Tires Final Determination* and accompanying Issues and Decision Memorandum at Comment 34 ("For both the GITI companies and the Sailun Group, record evidence does not support the contention that all of the bonded materials that were exempted from input VAT were actually used in the production of subject merchandise. In addition, neither respondent could demonstrate that the materials entered under bonded warehouse, or the 'bonded ratio,' was calculated for subject merchandise only. We could not tie the 'bonded ratio' to the calculation of the U.S. price of subject merchandise and the non-funded percentages to amounts reported in those companies' VAT returns.").

[113] *See Prestressed Wire* and accompanying Issues and Decision Memorandum at Comment 1, *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 3, and *Chlorinated Isocyanurates* and accompanying Issues and Decision Memorandum at Comment 5A. *See also Diamond Sawblades Final Results 2013-2014* and accompanying Issues and Decision Memorandum at Comment 2, and *Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 13833 (March 17, 2015), and accompanying Issues and Decision Memorandum at Comment 7.

[114] *See* Double Coin's Surrogate Value Comments dated June 17, 2016, at Exhibit SV-9 (Double Coin's SV

alternative rate PCT proposes is found on page 42 of the *Executive Summary Report*, which is in Exhibit SV-9 of Double Coin's SV comments dated June 17, 2016. On pages 42 and 82 of this report, it is not clear what time period is covered by this alternative rate.[115] Moreover, because page 80 and 82 of this report lists 2009 as the base year, and 2014 and 2019 as forecast years, and lists the same alternative rate on page 82 of this report, it is not clear whether this rate covers a certain past time period or is a forecast for future years up to 2019.[116] With these uncertainties, we are not able to inflate accurately this rate to the POI. Even assuming that this report was published in 2010, one year after 2009, this alternative rate is outdated. For these reasons, we continue to use the same truck freight SV used in the *Preliminary Determinations*, *i.e.* truck freight SV based on *Doing Business 2016*,[117] which we believe is the best information on the record to value PCT's domestic coastal barge transportation of the subject merchandise. In prior cases, we used truck freight SV to valued barge transportation costs if viable surrogate barge transportation data did not exist on the record.[118]

Comment 15: Domestic Warehousing Expense

PCT argues that the Department's valuation of domestic warehousing expenses using the Thai Airways Cargo price schedule is aberrational and distortive. PCT insists that the Department should have accepted SV data for domestic warehousing PCT filed after the *Preliminary Determinations*. PCT maintains that the preliminary valuation of domestic warehousing expenses should not have been based on the Thai Airways Cargo price schedule because it postdates the POI by two months and is not specific to how PCT stored the subject merchandise. Cooper Tire contends that PCT incurred domestic warehousing expenses not at an airport, but in connection with the shipment of tires by truck from the plant to an intermediary port in the PRC. PCT argues that its warehousing cost should be comparable to an industrial area outside of a small town and not to air cargo at an airport hub. PCT and Cooper Tire claim that the Department should instead use demurrage fees as a surrogate for warehousing fees. In the alternative, PCT and Cooper Tire request, if the Department continues to value domestic warehousing expenses based on Thai Airways Cargo price schedule, that the Department deduct two free storage days for general goods to be consistent with Thai Airway Cargo price schedule, which gives two free storage days for general goods.

Comments).

[115] *See* Double Coin's SV Comments at Exhibit SV-9, at 42 and 82.

[116] *See* Double Coin's SV Comments at Exhibit SV-9, at 80-82.

[117] *See* Comment 17, *infra.*

[118] *See*, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 (October 17, 2012) and accompanying Issues and Decision Memorandum at Comment 22 (*Crystalline Silicon Photovoltaic Cells*) ("The Department has previously used truck freight rates to value barge transportation when it found no acceptable barge rates on the record {for Thailand}."), and *Certain Cut-to-Length Carbon Steel Plate from Romania: Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 12651 (March 15, 2005), and accompanying Issues and Decision Memorandum at Comment 14 (*CTL Plate from Romania*), in which the Department rejected a respondent's proprietary barge rate and stated "…the Department will continue to value the surrogate barge transportation rate using the surrogate truck rate because no other surrogate barge rate is on the record.").

The petitioner disagrees with PCT that our valuation of domestic warehousing expense is aberrational. The petitioner claims that PCT points to no evidence that suggests that warehousing at an airport is fundamentally different from warehousing in an industrial area outside of a small town and that the Thai Airway Cargo price schedule cannot reasonably be used to value domestic warehousing expense. The petitioner argues that the source data for SVs can be something sufficiently specific but they do not need to be an exact duplicate. The petitioner argues that the onus is on the respondents to build a sufficient record of information and that PCT had ample opportunity until July 27, 2016, which is 30 days before the issuance of the *Preliminary Determinations*, to place new warehousing SV info on the record for the Department to use. The petitioner opposes the use of demurrage costs because they are separate and non-interchangeable. The petitioner opposes the deduction of two free days of warehousing in our valuation of domestic warehousing expenses because the Thai Airways Cargo price schedule does not include the minimum charge regardless of how long merchandise stayed in warehouse. The petitioner argues that, should the Department revalue domestic warehousing expenses using the two free storage days, it should include the minimum charge as well as the separate charges and increase the SV for domestic warehousing expenses.

Department's Position: For the final determination, we continue to value PCT's domestic warehousing expenses as we did in the *Preliminarily Determinations*, which was based on the Thai Airway Cargo warehousing fee of 1.50 Baht/kg/day. However, to be more consistent with the source document for the SV and the nature of the subject merchandise, for the final determination we also deducted two days from the days of domestic warehousing PCT reported in its U.S. sales database. The Thai Airway Cargo warehousing fee of 1.50 Baht/kg/day that we preliminarily used as a domestic warehousing value applies to both general goods and dangerous goods, with the only distinction between general and dangerous goods being the free storage period: two days for general goods and 24 hours for dangerous goods.[119] Because nothing on the record of this investigation indicates that the subject merchandise PCT produced and exported would qualify as dangerous goods, the most appropriate way to value the domestic warehousing fee of the subject merchandise PCT produced and exported is to treat such merchandise as general goods, distinguishing it from dangerous goods, and to deduct two days for free storage. Accordingly, we find that we inadvertently overvalued PCT's domestic warehousing expenses in the *Preliminary Determinations* by not taking into account the two-day free storage period and, therefore, have deducted these free two days from the domestic warehousing value for the final determination.

Having re-evaluated the domestic warehousing expenses, we have determined not to include the additional warehousing expenses requested by the petitioner. First, those additional expenses are not on per kilogram basis[120] and the petitioner did not explain how we should convert them into a per-kilogram basis. Next, the petitioner originally requested that we value domestic warehousing expenses at 1.50 Baht/kg/day with no additional expenses.[121] The petitioner requests that we now use the additional expenses to value domestic warehousing, only if we decide to deduct the two free days from the reported warehousing days. However, our decision

[119] *See* "Petitioner's First Surrogate Value Submission" dated June 17, 2016, at Attachment 11 (the petitioner's SV Comments I).
[120] *Id.*
[121] *Id.* at Attachment 1.

to deduct the two free storage days is so that our valuation of domestic warehousing is consistent with the two free storage days provided for general goods, as opposed to dangerous goods, for which Thai Cargo provides only 24 hours of free storage. Therefore, our deduction of two days' worth of storage expenses for the two-day free storage in the source surrogate data is a reasonable reflection of the selected SV data and is based on the best information available on the record of this investigation. We do not find that a further departure from the petitioner's original request is necessary to value domestic warehousing.

With respect to PCT's recommendation that the Department use the demurrage fee to value warehousing expenses, we find that it is not appropriate to use this proposed SV because it does not involve the storage of goods in warehouses. Between using demurrage and cargo warehousing as a surrogate for domestic warehousing, we do not find demurrage to be a more similar surrogate than the Thai Airways Cargo warehousing price schedule, because it does not involve the storage of goods in warehouses.

Finally, we find that our rejection of PCT's untimely submitted SV data for domestic warehousing was proper. We initially set the deadline for submission of new SV information to May 18, 2016,[122] and then, upon requests by interested parties, we extended the deadline to June 17, 2016.[123] PCT did not submit SV information for domestic warehousing by this deadline.[124] The petitioner submitted Thai Airways Cargo price schedule in its SV comments dated June 17, 2016, but PCT did not provide any rebuttal within our regulatory deadline.[125] PCT had another opportunity to submit SV information for domestic warehousing under 19 CFR 351.301(c)(3) by July 27, 2016, which was 30 days before the issuance of the *Preliminary Determinations,*[126] but again PCT did not do so. On September 15, 2016, more than six weeks after the last regulatory opportunity to file SV information, PCT attempted to file further information regarding SVs for domestic warehousing. Therefore, our rejection of PCT's untimely filed SV information concerning domestic warehousing was appropriate.[127]

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[122] *See* the Letter to all interested parties, "Antidumping Duty Investigation of Truck and Bus Tires from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated March 14, 2016.
[123] *See* the SV comments extension grant letter dated June 6, 2016.
[124] *See* "Truck and Bus Tires from China: Surrogate Value Submission of Prinx Chengshan (Shandong) Tire Co., Ltd.," dated June 17, 2016 (PCT's SV Comments).
[125] *See* the petitioner's SV Comments I at Attachments 1 and 11. July 1, 2016, was the deadline for rebuttals to surrogate value comments submitted on June 17, 2016. *See* the surrogate value comments extension grant letter dated June 6, 2016. PCT submitted no surrogate value rebuttal on July 1, 2016.
[126] *See* 19 CFR 351.301(c)(3). *See also* the letter to all interested parties, "Antidumping Duty Investigation of Truck and Bus Tires from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information" dated March 14, 2016, at 2. August 26, 2016, was the signature date of the *Preliminary Determinations*.
[127] We rejected PCT's untimely filed new factual information three times since the *Preliminary Determinations*. *See* the Letters to PCT dated September 15, 2016, September 21, 2016, and October 7, 2016, for our reasons for the rejections.

Comment 16: Inland Freight Distance

PCT requests a revision of the distance between its factory to the Port of Qingdao that the Department preliminarily used to value truck freight. PCT explains that the Department preliminarily used 340 kilometers but confirmed that the correct distance is 297 kilometers.

Department's Position: During verification we confirmed that the correct distance between PCT's factory and the Port of Qingdao is 297 kilometers.[128] Based on our verification of the correct distance, we revised the distance in our valuation of truck freight for the final determination.

Comment 17: Truck Freight

The petitioner requests that the Department revise the valuation of truck freight by using *Doing Business 2015*, instead of *Doing Business 2016*, which the Department relied on in the *Preliminary Determinations* to valuate truck freight. According to the petitioner, *Doing Business 2015* covers the freight transport distance between Bangkok and the Port of Bangkok and *Doing Business 2016* covers the freight transport distance between Bangkok and the Port of Laem Chabang. The petitioner claims that, while *Doing Business 2016* does not identify the most widely used mode of transportation, a worldwide shipping group named CMA CMG identifies rail as the most widely used mode of transportation between Bangkok and the Port of Laem Chabang in 2016. The petitioner also contends that *Doing Business 2016*'s Trading Across Borders Methodology also notes that, for the inland transportation costs reported for two Indian cities, the two reported modes of transportation were rail and truck. For these reasons, the petitioner believes that the transportation data in *Doing Business 2016* are mostly likely based on rail transportation and asserts that *Doing Business 2016* is not specific for purposes of valuing truck freight. The petitioner contends that *Doing Business 2015* provides a better truck freight value because nothing on the record indicates a transportation mode other than truck in the freight transportation route from Bangkok to the Port of Bangkok that is used in *Doing Business 2015*. The petitioner states that the Department has previously relied on *Doing Business 2015* to value truck freight. The petitioner argues that *Doing Business 2016* is not specific for purposes of valuing truck freight.

PCT requests the continued reliance on *Doing Business 2016* for the valuation of truck freight. PCT explains that the petitioner's request is a departure from its reliance on *Doing Business 2016* in the petition for this investigation, with an apparent motive to increase the final margin for PCT. PCT claims that, similar to *Doing Business 2015*, *Doing Business 2016* only stated that the reported costs were based on the most widely used mode of transportation such as truck, train, and riverboat and the most widely used route such as road, port, border posts, as reported by contributors to survey. PCT contends that, according to the CMA CGM report, only 9.9 percent of CMA CGM's import cargos were shipped by rail from Laem Chabang to Bangkok and the remainder of CMA CGM's import cargos were transported using other modes of transportation, *i.e.*, truck or riverboat. PCT also contends that, because *Doing Business 2016* was compiled based on surveys of local freight forwarders, customs brokers, and traders, and CMA CGM is an international shipping company, CMA CGM most likely did not contribute to the

[128] *See* Verification Report at Exhibit V-6, at 1.

survey that formed the basis for *Doing Business 2016.* PCT maintains that the inland freight costs in *Doing Business 2016* are more likely to be based on truck than train, because the speed of the inland transportation in *Doing Business 2016* ranges between 52.9 km/hr and 55.8 km/hr, whereas the current average freight train speed in Thailand is 39 km/hr.

Department's Position: For the final determination, we continue to value truck freight based on *Doing Business 2016*. Upon a careful comparison between the two *Doing Business* editions on the record, we find that *Doing Business 2016* provides the best surrogate for truck freight value. In *Doing Business 2016*, the domestic transportation speed for inland transportation is between 52.9 km/hr and 55.8 km/hr, which is much faster than the current average speed of Thai rail.[129] The Thailand's Transport Infrastructure Development Strategy for 2015-2022 states its plan to increase the average speed of freight train from 39 km/hr to 60km/hr by 2020 and the average speed of passenger train from 60km/hr to 100 km/hr.[130] Therefore, based on the difference between the inland transportation speeds listed in *Doing Business 2016* and the current average speed of Thai freight train, we find that the inland transportation expenses in *Doing Business 2016* are more likely to be based on truck freight than rail freight. The petitioner did not explain if and how *Doing Business 2016* relied on CMA CMG's data to report the inland freight expenses. We also do not find any link between the CMA CMG's report and *Doing Business 2016* for purposes of valuing truck freight. Finally, *Doing Business 2016* predates the POI by one month,[131] whereas *Doing Business 2015* predates the POI by more than a year.[132] Contemporaneity with the POI is one of the criteria in our selection of SVs.[133] Also, although both *Doing Business 2015* and *Doing Business 2016* predate the POI, we find that it is more reasonable to rely on data that predate the POI by only one month when the alternative data source predates the POI by more than one year.

Comment 18: Natural Rubber

The petitioner requests that the Department value PCT's natural rubber based on Thai POI price information for technically specified natural rubber. The petitioner opposes the Department's preliminary valuation of PCT's natural rubber based on the GTA statistics for HTS code 4001.29. The petitioner claims that, based on the technical specification of the natural rubber PCT reported, it is more appropriate to value PCT's natural rubber using the value of technically specified natural rubber. The petitioner argues that HTS code 4001.29 covers scrap natural

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[129] *See* Double Coin's SV Comments at Exhibit SV-10, *Doing Business 2016* at 75.
[130] *See* Double Coin's SV Comments at Exhibit SV-9, Thailand's Transport Infrastructure Development Strategy 2015-2022, at 34.
[131] *See* Double Coin's SV Comments at Exhibit SV-10, Doing Business Thailand at 1 ("The data in this report are current as of June 1, 2015….").
[132] *See* the petitioner's SV Comments I at Attachment IX ("The data in this report are current as of June 1, 2014….").
[133] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 38673 (June 14, 2016), and accompanying Issues and Decision Memorandum at Comment 16, in which we selected one labor data source over another based on, in part, contemporaneity. *See also Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1331 (CIT 2013) (*Blue Field*) ("Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets.").

rubbers, which PCT did not report as raw materials used in the production of subject merchandise.

PCT contends that the petitioner provided no evidence of actual imports of scrap natural rubber under HTS code 4001.29. PCT explains that the Department's preliminary valuation of natural rubber was correct because HTS code 4001.29 includes all primary forms of natural rubber not enumerated in other HTS subheadings. PCT states that the Department prefers to rely on GTA import data over domestic market price data because the GTA data are publicly available, representative of broad market averages, contemporaneous with the POI, and tax-exclusive.

Department's Position: For the final determination, we continue to value PCT's natural rubber based on the GTA statistics for HTS code 4001.29, as we did in the *Preliminary Determinations.* The petitioner provided surrogate data to value natural rubber in its SV comments dated June 17, 2016, at Attachment 3. The first two pages of this attachment provide daily prices of natural rubber between January 1, 2016, through March 7, 2016, which postdate the POI, printed from the website of The Association of Natural Rubber Producing Countries. The fourth and fifth pages of this exhibit provide spreadsheet data covering daily natural rubber prices during the POI without identifying the source of the data.[134] Given its non-contemporaneous and incomplete data, we find the petitioner's data unreliable for purposes of valuing natural rubber. Because there is no other viable alternative to value natural rubber on the record, we continue to rely on HTS code 4001.29 to value natural rubber for the final determination.

Comment 19: Compound Rubber

PCT requests the valuation of its reported compound rubber as natural rubber. PCT explains that, although it uses natural rubber and compound rubber interchangeably in the production of truck and bus tires, it used only natural rubber in the production of subject merchandise to follow its U.S. customer's demand. PCT claims that the Department verified that it only used particular types of natural rubber and it did not use compound rubber. PCT also points to bills of materials for two control numbers which lists natural rubber as one of the direct materials but not compound rubber. PCT contends that, even if the Department continues to treat the reported compound rubber as compound rubber, it should nonetheless value compound rubber as natural rubber because of the percentage of the composition of natural rubber within compound rubber, and because of the interchangeable nature of natural rubber and compound rubber in the production of subject merchandise, which have substantially the same content. PCT argues that no SV other than the SV for natural rubber on the record of this investigation is more specific for its compound rubber, if the Department decides to continue to treat it as compound rubber. PCT requests that, in any event, the Department value compound rubber using the GTA statistics for HTS code 4001.29 – "Natural Rubber In Primary Forms Or In Plates, Sheets Or Strip, Nesoi."

The petitioner requests that the Department value compound rubber using the GTA statistics for HTS code 4005.10 – "Compound Rubber, Unvulcanized, Compounded With Carbon Black Or Silica, In Primiary Forms Or In Plates, Sheets or Strip." The petitioner explains that PCT reported two types of compound rubber, one identified by PCT in its request for the valuation of

[134] *See* the petitioner's SV Comments I at Attachment 3, at 4 and 5.

it as natural rubber, and another consisting of certain materials that justify the reliance on HTS code 4005.10 for the valuation of compound rubber.

The petitioner explains that PCT first reported compound rubber as compound rubber, but then it claimed during the verification that its reported compound rubber is, in fact, natural rubber. The petitioner contends that PCT also claimed in its double remedy response that it used compound rubber and substantiated its claim of the use of compound rubber with a number of documents in the double remedy response. The petitioner argues that, as the verification report does not draw conclusions as to whether the reported information was successfully verified, the Department did not verify that PCT did not use compound rubber in the production of subject merchandise. The petitioner states that the new factual information of PCT's choice to support PCT's new, contradictory assertion with respect to compound rubber was provided to the Department during the verification. The petitioner contends that even this new factual information does not support PCT's claim of its use of natural rubber instead of compound rubber.

<u>Department's Position</u>: In its submissions filed before the verification, PCT categorized its reported compound rubber under the natural rubber category.[135] During the verification, PCT explained that it did not use compound rubber in the production of the subject merchandise exported to the United States. PCT presented us with documents demonstrating that it did not either store or use a particular type of compound rubber designated for use in the production of subject merchandise.[136] However, PCT did not present information demonstrating that this particular compound rubber is the compound rubber PCT reported in its submissions filed before the verification.[137] In other words, PCT did not identify this particular compound rubber that was presented at verification with the same raw material code for the compound rubber that it reported in its original and supplemental responses to section D of the questionnaire.

Moreover, during the FOP cost reconciliation, we tied the quantities of compound rubber PCT reported in its original and supplemental section D responses to source documentation PCT presented, using the raw material code for the reported compound rubber.[138] For the type of compound rubber that PCT claims not to have used in the production of subject merchandise, PCT presented accounting data showing that it did not store and use such compound rubber. However, for the other type of compound rubber that PCT reported in its responses concerning the production of subject merchandise, PCT presented source data demonstrating that it did store and use such compound rubber. Therefore, we do not find that these two types of compound rubbers are the same type of compound rubber. Just because PCT did not store and use one type of compound rubber does not mean that PCT did not store and use another type of compound rubber.

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[135] *See*, *e.g.*, PCT's SV Comments at Exhibit 1. *See also* the Verification Report at 18 ("PCT reported natural rubber 3 as natural rubber, but its specification indicates that it is compound rubber.").
[136] *See* the Verification Report at 18 and Exhibit V-21.
[137] *See* the Verification Report at 16 and 18 and Exhibits V-14 and V-21, "Truck and Bus Tires from China: Section D Response of Prinx Chengshan (Shandong) Tire Co., Ltd." dated June 16, 2016, at Exhibit D-5 (PCT's Section D Response), and "Truck and Bus Tires from China: First Supplemental Questionnaire Response of Prinx Chengshan (Shandong) Tire Co., Ltd." dated August 3, 2016, at Exhibit S-14 (PCT's First Supplemental Response).
[138] *See* the Verification Report at 16 and 18 and Exhibits V-14 and V-21, and PCT's First Supplemental Response at Exhibit S-14.

In determining the "best available information" to value inputs in NME cases, it is our practice to consider the following five criteria: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data.[139] In the *Preliminary Determinations*, we valued PCT's compound rubber using the GTA statistics for HTS code 4005.91 – "Compounded Rubber, Unvulcanized, In Plates, Sheets, And Strip, Nesoi." The preliminary SV for PCT's compound rubber is 104.08 Baht/kg. Given that we have specific information on the composition of PCT's compound rubbers on the record of this investigation, as identified by PCT and the petitioner in their arguments concerning this issue, we find that HTS codes 4005.91 and 4005.10 are overly broad for us to rely on to value PCT's compound rubber because the descriptions of these two HTS codes do not provide details demonstrating any similarity to the two types of PCT's compound rubbers.[140]

For the final determination, we took into consideration that PCT's reported compound rubber consists of natural rubber, synthetic rubber, and stearic acid. Based on this composition, we find that it is reasonable to value PCT's compound rubber based on the SV for natural rubber, in part. The SVs for natural rubber, synthetic rubber, and stearic acid are 33.58 Baht/kg, 67.50 Baht/kg, and 28.49 Baht/kg, respectively.[141] Because compound rubber includes synthetic rubber, which is valued higher than natural rubber, using the SV for natural rubber alone to value compound rubber would undervalue PCT's compound rubber. As the petitioner argues with respect to PCT's compound rubber mixed with different materials, we need to take into consideration other components within PCT's compound rubber. For this reason, we added the SVs for natural rubber, synthetic rubber, and stearic acid proportional to the percentages of the composition of these materials within the compound rubber to calculated the SV for the compound rubber.[142] We did not use the composition of the compound rubber the petitioner relies on in its argument for revaluation of compound rubber because PCT reported that it purchased compound rubber mixed with natural rubber, synthetic rubber, and stearic acid during the POI.[143]

Again, in determining the "best available information" to value inputs in NME cases, as stated above, it is our practice to consider five criteria.[144] Our revaluation of PCT's compound rubber is based on the GTA data that we used in the *Preliminary Determinations* and the GTA data are reliable under these five criteria. Our revaluation methodology is more specific because it is based on the average unit prices of the components of PCT's compound rubber that are already

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[139] *See Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012), and accompanying Issues and Decision Memorandum at Comment 4.
[140] *See* the PCT Final Analysis Memorandum for more details containing PCT's business proprietary information.
[141] *See* the Memorandum to the File entitled "Truck and bus tires from the People's Republic of China: Surrogate Values for the Preliminary Affirmative Determination of Sales at Less Than Fair Value" dated August 26, 2016, at Exhibit 1, Surrogate Values and Master tabs. For the final determination, we continue to use the preliminary surrogate value calculation spreadsheet.
[142] *See* the PCT Final Analysis Memorandum for more details of the calculation containing PCT's business proprietary information.
[143] *See* "Truck and Bus Tires from China: Double Remedy Questionnaire Response" dated September 23, 2016, at 7 and Exhibits 8, 9, and 10 (PCT's Double Remedy Response), as corrected in the Verification Report at Exhibit 1, and the PCT Final Analysis Memorandum for explanation containing PCT's business proprietary information.
[144] *See Fresh Garlic from the People's Republic of China: Final Results of the 2009-2010 Administrative Review of the Antidumping Duty Order*, 77 FR 34346 (June 11, 2012), and accompanying Issues and Decision Memorandum at Comment 4.

on the record, whereas the HTS codes 4005.91 and 4005.10 are overly broad and not as specific as our revaluation methodology. Given the options that the petitioner and PCT presented and based on the information on the record, we find that the valuation method we have used in the final determination is the best method, based on the information available on the record of this investigation.

Comment 20: Synthetic Rubber

The petitioner requests that the Department value PCT's synthetic rubber as compound rubber using the GTA statistics for HTS code 4005.10. The petitioner claims that PCT interchangeably used the terms "synthetic rubber" and "compound rubber" in PCT's double remedy response until PCT claimed that it made an error in identifying synthetic rubber as compound rubber. The petitioner explains that PCT made this correction only after the petitioner raised this issue concerning synthetic rubber. The petitioner contends that details of synthetic rubber provided in PCT's double remedy response justifies the valuation of synthetic rubber as compound rubber.

PCT claims that, in its pre-verification minor correction, it corrected this error with respect to its synthetic rubber in its double remedy response. PCT also claims that it proved that synthetic rubbers are different from compound rubbers during the verification. PCT contends that it: (1) explained in its double remedy response that it consumed synthetic rubber including butadiene rubber, which is a common type of synthetic rubber; and (2) provided a detailed accounting record to reconcile its reported consumption of synthetic rubber to its inventory record and accounting system.

<u>Department's Position</u>: For the final determination, we continue to value synthetic rubber as synthetic rubber. PCT's misidentification of synthetic rubber as compound rubber is limited to its double remedy response.[145] In all other responses PCT submitted, including its double remedy supplemental response, PCT sufficiently demonstrated that it consumed synthetic rubber that is not compound rubber.[146]

PCT has corrected its earlier misidentification of compound rubber as synthetic rubber in its double remedy response. PCT's double remedy response demonstrates that those compound rubbers misidentified as synthetic rubbers do contain a certain percentage of synthetic rubbers but they are in fact compound rubbers, not synthetic rubbers.[147] PCT maintains the raw material records for compound rubbers and synthetic rubbers under different raw material codes and reported them in its section D response as such.[148] Internal raw materials documents we obtained during the verification show that PCT maintains the records of compound rubbers and synthetic rubbers separately under separate raw materials codes and classifications.[149] Because

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[145] *See* PCT's Double Remedy Response at 7.
[146] *See* PCT's Section D Response dated June 16, 2016, at Exhibits D-5, D-6, and D-8, First Supplemental Response at Exhibit S-10, "Truck and Bus Tires from China: Third Supplemental Questionnaire Response and Additional Correction Information of Prinx Chengshan (Shandong) Tire Co., Ltd." dated August 19, 2016, at Exhibits SS-5, SS-9, SS-10, SS-11 (PCT's Third Supplemental Response), and "Truck and Bus Tires from China: Supplemental Double Remedies Questionnaire Response of Prinx Chengshan (Shandong) Tire Co., Ltd." dated October 10, 2016 (PCT's Double Remedy Supplemental Response). *See also* the Verification Report at Exhibit V-15.
[147] *See* PCT's Double Remedy Response at Exhibits DR-8 and DR-9.
[148] *See*, *e.g.*, PCT's Section D Response at Exhibit D-8.
[149] *See* Verification Report at Exhibit V-14.

of our revised method to value compound rubber using the SVs for natural rubber, synthetic rubber, and stearic acid as explained above, our valuation of synthetic rubber as compound rubber would result in an undervaluation of synthetic rubber.

Comment 21: Scrap Offset

The petitioner claims that PCT is ineligible for a scrap offset because PCT did not provide production records for scrap that it claims to have generated during the production of subject merchandise. According to the petitioner, the Department stated that scrap offsets are only granted up to the amount of that scrap actually produced during the POI. The petitioner claims that PCT's allocation of its reported scrap quantity is based on the quantity of scrap that it sold. The petitioner also claims that, because PCT allocated scrap produced in its mixing stage in addition to scrap produced in its truck and bus production facility, the scrap quantity reported is not limited to the production of subject merchandise.

The petitioner explains that, although the Department does accept sales quantity of scrap as evidence of the quantity of production only where the sales are reasonably related to the production of scrap during the period examined, the scrap sales quantity reported in *Electrodes*[150] was inadequate. According to the petitioner, in that case, the Department did not accept scrap sales as a proxy for the scrap production because: (1) the record in that case did not show that the scrap was sold in the month it was produced; (2) the ratio of scrap sales to production of merchandise varied greatly by month; and (3) the respondent did not show that scrap sales were limited to scrap generated from the production of subject merchandise. The scrap reported by PCT is similar to the scrap in *Electrodes* in that, *inter alia*, its reported scrap sales is inadequate to estimate the actual scrap quantity PCT generated during the POI.

PCT requests the continued offset for PCT's scrap because PCT's questionnaire responses and the Department's verification demonstrated that scrap was generated in the production of the subject merchandise. The Department's preliminary acceptance of the quantity of scrap sold by PCT when the quantity of scrap production was not recorded in the normal course of business is consistent with the Department's practice and the law, and thus should be continued in the final determination. PCT claims to have established a reasonable link between the scrap sold and the scrap generated with its report of sales of scrap and the Department's verification report that confirmed that PCT generated scrap during the POI in the production of the subject merchandise. PCT notes that, through questionnaire responses and the on-site verification, it established that, while it generated scrap in the production stage, it did not maintain records on the production and inventory of scrap products in the ordinary course of business and only tracked the quantity of scrap sold.[151]

<u>Department's Position:</u> For the final determination, we denied the scrap offset PCT claimed because PCT did not establish a reasonable link between the scrap generated during the POI and the quantity of scrap sold during the POI. In its section D response, PCT reported that it does not

[150] *See Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62474 (September 9, 2016), and accompanying Issues and Decision Memorandum at Comment 7 (*Electrodes*).
[151] *See* Verification Report, at 22. *See also* PCT's Section D Response, at 17-18.

maintain production records of scrap.[152] During the verification, in response to our questions, PCT officials stated that PCT does produce scrap, but the company does not maintain production or inventory records for scrap.[153] Other than the sales record, PCT provided no production record, inventory record, or alternative record to prove the scrap production.[154] Therefore, PCT did not provide, and we do not have, information pertaining to the production of scrap that we can tie to the sales of scrap, which PCT reported to claim the scrap offset. Our denial of the scrap offset PCT claimed is consistent with other cases in which we denied a respondent's claim for scrap offset because it did not provide any production document or any alternative document to prove the scrap production.[155]

Comment 22: Profit Ratio

PCT requests that the Department use either: (1) PCT's actual profit ratio for its sales of subject merchandise to the United States; or, in the alternative, (2) the simple average of the profit ratios that are placed on the record by the interested parties including PCT's actual profit ratio. PCT argues that the preliminary surrogate profit ratio from the 2015 financial statements of Hwa Fong Rubber (Thailand) Public Company Limited is arbitrary and inconsistent with other record evidence in this investigation. Specifically, PCT contends that the preliminary surrogate profit ratio is the highest on the record of this investigation but the Department provided no explanation for its significant difference from other surrogate profit ratios on the record. Moreover, PCT claims that its own actual profit ratio from its sales of subject merchandise shows that the preliminary surrogate profit ratio is aberrational. PCT explains that its actual profit ratio is based on a market economy price.

The petitioner contends that PCT did not substantiate its claim of the aberrational nature of the preliminary surrogate profit ratio. The petitioner explains that the existence of SVs that are higher or lower than other data on the record does not in and of itself demonstrate the value to be aberrational. The petitioner argues that the Department should not use PCT's own profit ratio at issue because it is the profit on goods produced in the PRC and based on PCT's NME costs. The petitioner argues further that PCT's own ratio is business proprietary information and the Department's practice is to use a publicly available surrogate profit ratio. The petitioner states that the Department's valuation of the profit ratio should be based on the same source as the valuations of factory overhead and SG&A so that the valuation of the profit ratio is not based on a source that bears no relationship to the SG&A ratio. The petitioner argues that, because PCT did not substantiate that the preliminary profit ratio is aberrational, the Department does not need to consider the use of any other data to value the profit ratio.

Department's Position: For the final determination, we continue to use the surrogate profit ratio we used in the *Preliminary Determinations*. PCT's own profit ratio at issue is based exclusively

[152] *See* PCT's Section D Response, at 17 and Exhibit D-11.
[153] *See* Verification Report at 22
[154] *See* Verification Report at Exhibit V-12.
[155] *See*, *e.g., Multilayered Wood Flooring From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015), and accompanying Issues and Decision Memorandum at Comment 16, and *Electrodes* and accompanying Issues and Decision Memorandum at Comment 7. *Compare with Diamond Sawblades Final Results 2013-2014* and accompanying Issues and Decision Memorandum at Comment 18, in which we granted the scrap offset based on the reported warehouse-out slips and sales record for scrap.

on PCT's COM, which is comprised of NME purchase prices. The underlying production cost data that formed PCT's own profit ratio reflect the production experience in an NME country and they are, as such, subject to valuation using surrogate data. Therefore, the use of PCT's own profit ratio at issue will result in using NME purchase prices to calculate surrogate ratios, which is inconsistent with the statutory guidance to use surrogate data from market-economy countries at a level of economic development comparable to that of the NME country to value FOPs in an NME antidumping proceeding.

The PRC is an NME country. Section 773(c)(1) of the Act directs us to base normal value, in most circumstances, on the NME producer's FOP valued in a surrogate market-economy country or countries we consider to be appropriate. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, we utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are, *inter alia*, at a level of economic development comparable to that of the NME country.[156] PCT's profit ratio at issue does not satisfy the statutory guidance to value FOPs from a NME country using the prices or costs of FOPs in one or more market-economy countries that are "at a level of economic development comparable to that of the NME country." PCT's profit ratio at issue came from the NME country subject to surrogate valuation, *i.e.*, the PRC, not a country at a level of economic development comparable to that of the PRC. The preliminary surrogate profit ratio came from the primary surrogate country, *i.e.*, a country that we determined to be at a level of economic development comparable to the PRC, which is, in this case, Thailand. Our preliminary profit ratio more closely follows the statute and results in greater accuracy of the margin calculation. Furthermore, because PCT's production reflects the production experience in a NME country, applying the surrogate profit ratio from a country at a level of economic development comparable to the PRC to PCTs FOPs better reflects PCT's profit ratio than PCT's profit ratio itself, which is based on production data that reflects the production experience in a NME country.[157]

The fact that a SV may be higher or lower than other values on the record does not, in and of itself, demonstrate that the SV is aberrational.[158] Moreover, we do not find it reasonable to compare the financial statements that are contemporaneous with the POI to the financial statements that are not contemporaneous with the POI to determine whether a surrogate financial ratio is aberrational or not.[159] In the *Preliminary Determinations*, we explained why we did not rely on the other financial statements on the record of this investigation and why the 2015 statement of Hwa Fong Rubber constituted the best available information.[160] Because those

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[156] *See Preliminary Determinations* and the accompanying Preliminary Decision Memorandum at 11.
[157] *See* Final Remand Redetermination pursuant to *Diamond Sawblades Manufacturers Coalition v. United States*, Court No. 13-00241, slip op. 14-112 (Ct. Int'l Trade Sept. 23, 2014), dated May 18, 2015, and available at http://enforcement.trade.gov/remands/14-112.pdf (*AR2 Remand*), *aff'd*, *Diamond Sawblades Manufacturers' Coalition v. United States*, Court No. 13-00241, slip op. 15-116 (Ct. Int'l Trade Oct. 21, 2015).
[158] *See Trust Chem Co. v. United States*, 791 F. Supp. 2d 1257, 1263 (CIT 2011) ("While Plaintiff correctly notes the large discrepancy in price, the court agrees with Commerce that Plaintiff did not place sufficient comparative data on the record, such as data from other identified potential surrogate countries, to support its challenge based on numerical differences alone. Thus Commerce's decision not to place weight on the numerical differences … was not unreasonable.").
[159] *See Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1331 (CIT 2013) (*Blue Field*) ("Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets.")
[160] *See Preliminary Determinations* and accompanying Preliminary Decision Memorandum at 29 ("We also received

financial statements predate the POI and the only set of POI-contemporaneous financial statements are the financial statements we preliminarily relied on to value financial ratios, *i.e.*, the 2015 financial statements of Hwa Fong Rubber (Thailand) Public Company Limited, we continue to value the profit ratio as we did in the *Preliminary Determinations.*[161]

Comment 23: Electricity and Water Consumption

PCT requests that the Department revise PCT's water consumption for the final determination. PCT explains that, in its pre-verification minor corrections, it corrected its water consumption quantity because the water consumption quantity that it previously reported was for the period covering June 2015 through November 2015, which is one month off from the POI.

The petitioner states that PCT reported a downward adjustment to its water consumption and an upward adjustment to its electricity. The petitioner requests that, if the Department makes the downward adjustment for water consumption, the Department should make the upward adjustment for electricity as well.

Department's Position: In its post-verification FOP database, PCT included the downward adjustment to the water consumption and the upward adjustment to the electricity consumption. For the final determination, we used PCT's post-verification FOP database that reflects these changes. [162]

Comment 24: Double Remedy – Synthetic Rubber

The petitioner requests that the Department deny the double remedy adjustment for synthetic rubber, because the synthetic rubber PCT reported is compound rubber. PCT contends that it corrected the misidentification of synthetic rubber as compound rubber and the record shows that the synthetic rubber that it consumed is not compound rubber.

Department's Position: PCT's misidentification of synthetic rubber as compound rubber is limited to its double remedy response.[163] In all other responses PCT submitted, including its double remedy supplemental response, PCT demonstrated that it consumed synthetic rubber that is not compound rubber.[164] As we find that PCT consumed synthetic rubber in the production of subject merchandise, we have no basis to deny the double remedy adjustment for synthetic rubber.

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financial statements of Hihero Co., Ltd., Hwa Fong, and S.R. Tyres Co., Ltd., with the fiscal years ending before the POI.")

[161] *See*, *e.g.*, *Diamond Sawblades Final Results 2013-2014* and accompanying Issues and Decision Memorandum at Comment 14, where the Department declined to value financial ratios based on financial statements that predate the period of review.

[162] *See* Verification Report at Exhibit V-1.

[163] *See* PCT's Double Remedy Response dated September 23, 2016, at 7.

[164] *See* PCT's Section D Response dated June 16, 2016, at Exhibits D-5, D-6, and D-8, First Supplemental Response at Exhibit S-10, Third Supplemental Response at Exhibits SS-5, SS-9, SS-10, SS-11, and Double Remedy Supplemental Response. *See also* the Verification Report at Exhibit V-15.

Comment 25: Double Remedy – Electricity

The petitioner requests the denial of a double remedy adjustment for electricity in the final determination. The petitioner claims that PCT did not show a cost-to-price link for electricity between the export prices of subject merchandise and PCT's per-unit cost of electricity. PCT contends that the petitioner misunderstands the cost-to-price link at issue. PCT claims that it has established that the cost of electricity was taken into account in setting the export prices of subject merchandise between PCT and its sole U.S. customer.

Department's Position: Based on details of the price negotiation and the electricity purchase quantity and data reported in PCT's double remedy response, we do not find that it has established the cost-to-price link for electricity between the export prices of subject merchandise and PCT's per-unit cost of electricity. PCT changed its price of tires exported to the United States on a quarterly basis, based on certain components of the cost of manufacturing.[165] PCT negotiated the price changes with its sole U.S. customer on a quarterly basis, and for purposes of these quarterly negotiations, PCT e-mailed the raw materials cost data to its sole U.S. customer.[166] Accordingly, we calculated the quarterly averages of the electricity cost reported in PCT's double remedy response for the third and fourth quarters of 2015, which is the POI. Based on our analysis, we find it reasonable to exclude electricity from the double remedy adjustment for the final determination.[167]

Comment 26: Double Remedy – Domestic Pass-Through Rate

The petitioner requests that the Department replace the Bloomberg pass-through rate of 87.16 percent with a business proprietary rate derived from PCT's double remedy response showing price and cost changes between the second and third quarters of 2015 and the third and fourth quarters of 2015. PCT claims that the petitioner's proposed rate is distortive because it is based on the simple average of the rate for the changes between the second and third quarters of 2015 and the rate for the changes between the third and fourth quarter of 2015. PCT contends that the changes in costs and sales price from the third quarter to the fourth quarter of 2015 using one particular product yields the alternative pass-through rate of 99.71 percent. PCT argues that, if the Department decides to rely on company-specific information to determine the pass-through rate, the rate should be 100 percent.

Department's Position: We are unable to use the pass-through rate proposed by the petitioner because it is business proprietary information. The rates for the domestic subsidy programs used in the double remedy analysis are public information in the concurrent CVD investigation. The domestic subsidy adjustment rate is calculated by multiplying the total domestic subsidy programs rate by the pass-through rate. The sum of the domestic subsidy adjustment rate and export subsidy rate, which is public information, is deducted from a dumping margin, which is public information, in the calculation of an adjusted cash deposit rate, which is public information. Therefore, it is inevitable that the pass-through rate and the domestic subsidy

[165] *See* PCT's Double Remedy Response, at 3, and the Verification Report at 23.
[166] *See* PCT's Double Remedy Response, at 1-6 and Exhibit DR-1, and the Verification Report at 23 and Exhibits V-15 and V-17.
[167] *See* the PCT Final Analysis Memorandum with details containing PCT's business proprietary information for more explanation.

adjustment rate will be disclosed to the public. Even if we treat the petitioner's proposed pass-through rate as business proprietary information, the domestic subsidy adjustment rate can be disclosed to the public by subtracting from the dumping margin the export subsidy rate and the adjusted cash deposit rate and then the pass-through rate can be disclosed as public information by dividing the domestic subsidy adjustment rate by the total domestic subsidy programs rate.

Because it is inevitable that the pass-through rate would be disclosed to the public, replacing the publicly available Bloomberg pass-through rate with a business proprietary pass-through rate would result in an unauthorized disclosure of PCT's business proprietary information. Our refusal to use the business proprietary pass-through rate is consistent with our practice of avoiding the use of business proprietary information if doing so risks a possible unauthorized disclosure of business proprietary information, *e.g.*, our decision not to use the actual net U.S. sales values and AD amounts of the two selected respondents in order to protect the business proprietary information of the two selected respondents.[168] Moreover, the business proprietary pass-through rate proposed by the petitioner is distortive because it is a simple average of two different percentage figures. Because PCT's 100 percent pass-through rate is based on only one particular product, we did not use PCT's 100 percent pass-through rate either.

The Bloomberg pass-through rate is the only rate publicly available for purposes of double remedy analysis and we consistently used the Bloomberg pass-through rate in past cases.[169] The Bloomberg data was calculated as a ratio of changes in a production price index to changes in a purchasing price index of raw materials, fuels, and power (purchasing price index). The purchasing price index is a broad measure of variable cost, and the production price index measures changes in ex-factory prices, *i.e.*, prices that are not specific to any market, but common to all markets (foreign and domestic), and set by the producer before any market specific add-ons.[170] The broad cost measure that the purchasing price index represents and the "matched" or "paired" nature of the Bloomberg cost and price data – the same (surveyed) enterprises report both the cost and price data – are necessary features of any data that we would use for the pass-through calculation.[171] Although the Bloomberg data is aggregated, it exhibits these features. Thus, for the final determination, we continue to use a pass-through ratio constructed from the Bloomberg data.[172]

[168] *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1.
[169] *See*, *e.g.*, *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016), and accompanying Issues and Decision Memorandum at Comment 2 (*OTR Tires Final Results 2013-2014*).
[170] *See*, *e.g.*, *PVLT Final Determination* and accompanying Issues and Decision Memorandum, at Comment 7.
[171] *Id.*
[172] *See*, *e.g.*, *OTR Tires Final Results 2013-2014* and accompanying Issues and Decision Memorandum at Comment 2.

d. Preliminary Cash Deposit Rates

Comment 27: Request for an Amendment to Preliminary Cash Deposit Rates

Cooper Tire argues that the Department should retroactively adjust the preliminary cash deposit rates for the domestic pass-through subsidy offset because the Department did not conduct the double remedy analysis until after the *Preliminary Determinations*.

Cooper Tire explains that nothing in the statute or regulations prevents the Department from retroactively adjusting the preliminary cash deposit rates. Cooper Tire requests that this retroactive adjustment should be applied between the date of the publication of the preliminary determination of the concurrent CVD investigation, *i.e.*, July 5, 2016, and the date of the subsequent expiration of the provisional CVD measures, *i.e.*, November 2, 2016. Cooper Tire argues that adjusting the cash deposit rates to account for the post-preliminary double remedy analysis is similar to the Department adjusting the preliminary cash deposit rates to account for the expiration of the provisional CVD measures. Cooper Tire argues that these current cash deposit rates could become the final rates assessed if another party does not request the first administrative review of a possible AD order. The petitioner made no rebuttal comments on this issue.

Department's Position: Generally, we amend preliminary cash deposit rates in an AD investigation if we correct significant ministerial errors and issue an amended preliminary determination, which we did in this AD investigation.[173] The Department has also, in certain instances, amended its preliminary determination for reasons other than significant ministerial error, based on specific fact patterns that formed extraordinary circumstances.[174] For instance, in *CWP China*, a fraud allegation directed against a respondent after parties had an opportunity to submit case briefs and the respondent's subsequent decision not to participate in an investigation was a basis to issue an amended preliminary determination.[175] However, in *Lawn Groomers*, when we faced a similar situation with a respondent that requested the removal of all of its submissions but without a fraud allegation, we declined to issue an amended preliminary determination, stating that there is no fact pattern forming an extraordinary circumstance such as evidence of submission of fraudulent documents.[176]

[173] *See Amended Preliminary Determination*, 81 FR at 71051. A ministerial error is defined as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial." *See* section 735(e) of the Act. A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa. See 19 CFR 351.224(g).

[174] *See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 29167 (June 19, 2009), and accompanying Issues and Decision Memorandum at Comment 5 (*Lawn Groomers*).

[175] *See Amended Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Carbon Quality Steel Pipe From the People's Republic of China*, 73 FR 22130 (April 24, 2008) (*CWP China*).

[176] *See Lawn Groomers* and accompanying Issues and Decision Memorandum at Comment 5.

Unlike *CWP China*, there is no allegation that the data we relied on in the post-preliminary double remedy analysis are fraudulent. Also, unlike *Lawn Groomers*, PCT fully participated in this investigation and did not request removal of the data we relied on in the post-preliminary double remedy analysis. The fact pattern concerning the double remedy data PCT submitted does not involve any of the fact patterns present in *CWP China* or *Lawn Groomers*.

The post-preliminary double remedy analysis is, based on the facts of this case, not one of the situations that falls within those that result in an amended preliminary determination. In the absence of an amended preliminary determination there is no legal authority to amend the cash deposit rates. The omission of the double remedy analysis in the preliminary stage of this investigation resulted in an adjusted cash deposit rate that did not reflect a methodological analysis that should have been included. However, this omission was not a ministerial error or an extraordinary circumstance that would have warranted an amended preliminary determination. It is not our practice to amend a preliminary cash deposit rate only because a calculation methodology that we used in the final determination, but not in the preliminary determination, changed the margin from the preliminary determination to the final determination.[177]

The purpose of the post-preliminary double remedy analysis was to provide the parties with notice of the Department's preliminary analysis, which we had not conducted for the *Preliminary Determinations*, and to provide them an opportunity to comment on the issue in their case and rebuttal briefs.[178] Thus, we are not retroactively adjusting the preliminary cash deposit rates for the domestic pass-through subsidy offset.

e. Critical Circumstances

Comment 28: Critical Circumstances for the PRC-Wide Entity

Double Coin requests that the Department reverse the preliminary affirmative critical circumstances determination with respect to Double Coin. Double Coin states that the Department made a negative critical circumstances determination for Double Coin in the preliminary determination of the concurrent CVD investigation. Double Coin argues that the Department violated U.S. laws and WTO obligation by rejecting Double Coin's import quantity and value that it submitted in response to the petitioner's critical circumstances allegations. Double Coin describes the Department's affirmative finding of critical circumstances for Double Coin as part of the PRC-wide entity as arbitrary and capricious. Double Coin reiterates that it cooperated to the best of its ability by providing import quantity and value data, but the Department rejected the data in violation of U.S. laws and WTO obligations. Double Coin contends that there is no connection between the separate rate analysis and the critical circumstances finding because they serve two distinct purposes – deterrence of central authorities from exporting products from different factories through the company with the lowest margin

[177] *See Universal Polybag Co., Ltd. v. United States*, 577 F. Supp. 2d 1284, 1302-03 (CIT 2008) (recognizing that the "provisional measures cap" described by section 737(a) of the Act is established by a completed past event and need not be revisited). *See also Certain Steel Nails From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 28955 (May 20, 2015), and accompanying Issues and Decision Memorandum at Comment 5.
[178] *See* Post-Preliminary Double Remedy Memorandum.

and response to an importer deliberately importing and stockpiling large quantities of a product under investigation before the suspension of liquidation in order to avoid AD duties later. For these reasons, Double Coin explains that it is inappropriate, unreasonable, and punitive to rely on the former in carrying out the latter, especially when the concurrent CVD investigation preliminarily found no critical circumstances based on Double Coin's own import quantity and value.

Double Coin claims that, even if the Department continues to reject Double Coin's import quantity and value, the Department should find no critical circumstances with respect to Double Coin for the final determination, based on the import data from the USITC Dataweb covering the period July 2015 through August 2016.

The petitioner argues that Double Coin is not eligible for a separate critical circumstances determination based on its own data because, once it becomes part of the uncooperative PRC-wide entity, Double Coin's separate sales behavior is no longer meaningful. The petitioner explains that the Department makes critical circumstances determinations for the PRC-wide entity as a whole, not individual components of the PRC-wide entity.

The petitioner opposes the expansion of the time period for the critical circumstances analysis to beyond June 2016 because the data after June 2016 show a clear impact in volumes from the preliminary determination of the concurrent CVD investigation. The petitioner asserts that the inclusion of the reduced imports after June 2016 would distort the critical circumstances analysis. The petitioner explains that the exclusion of the time period affected by the preliminary determination of a concurrent CVD investigation from the final critical circumstances determination is consistent with *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008), and accompanying Issues and Decision Memorandum at Comment 14.

The petitioner requests that the Department first determine whether the inclusion of the import data for the period after the preliminary determination of the concurrent CVD investigation would mask massive imports that occurred after the petition. If the import data show a substantial drop in import volumes between June 2016 and July 2016 (before and after the preliminary determination of the concurrent CVD investigation), according to the petitioner, the Department should use the five-month period from the filing of the petition to the preliminary determination of the concurrent CVD investigation to examine whether the imports have been massive. The petitioner states that, when the evidence on the record demonstrates the effect of the preliminary determination of the concurrent CVD investigation on the imports of subject merchandise, the use of the period from the filing of the petition to the month of the preliminary determination of the concurrent CVD investigation is consistent with *PVLT Tires Final Determination* and accompanying Issues and Decision Memorandum at Comment 3.

<u>Department's Position</u>: Double Coin is part of the PRC-wide entity for which we continue to find the affirmative critical circumstances determination. Because our affirmative critical circumstances determination for the PRC-wide entity is based on AFA, as a result of the entity's failure to cooperate to the best of its ability, the import data in the USITC Dataweb are not relevant to our analysis of the existence of critical circumstances for the PRC-wide entity. Even

if the USITC Dataweb data were relevant, we would not have used the data for the period covering July 2015 through August 2016 because the reduction of the imports since the publication of the preliminary determination of the concurrent CVD investigation in July 2016 masks the existence of critical circumstances that we affirmatively determined in the *Preliminary Determinations*.[179] Also, none of the respondents eligible for a separate rate requested a revision to our preliminary affirmative critical circumstances determination. Therefore, we find that the critical circumstances that we preliminarily determined continue to exist for the final determination.

f. Scope Issues

Comment 29: Exclusion of Mobile Home Tires

Zhongce requests the exclusion of mobile home tires from the scope of this and the concurrent CVD investigation. Zhongce states that mobile home tires, *i.e.*, tires designated for the transport of mobile homes with a "MH" suffix appearing on the sidewall of the tire, may arguably be covered by the scope of the investigation. Zhongce argues that, because mobile home tires are not produced in the United States and the petitioner is not interested in including them within the scope of these investigations, the Department does not need to include them within the scope of these investigations. Zhongce explains that it is contrary to the intent of the AD and CVD laws to include products for which the petitioner does not seek relief. Zhongce's proposed scope exclusion language reads as follows:

> and (3) tires designed and marketed exclusively for use on mobile homes which, in addition, exhibit each of the following physical characteristics: (a) the designation "MH" is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for "Mobile Home Use Only;" and (c) the tire is of bias construction as evidenced by the fact that the construction code included in the size designation molded into the tire's sidewall is not the letter "R."

The petitioner states that it does not oppose Zhongce's request as long as each of the criteria listed within Zhongce's proposed scope exclusion language is included in the exclusion language.

Department's Position: For this and the concurrent CVD final determinations, we have excluded mobile home tires from the scope of the investigation. We used the scope exclusion language proposed by Zhongce, with the exception of the phrase "designed and marketed exclusively for use on mobile homes which, in addition," because this language raises an enforceability concern. Specifically, CBP is unlikely to know or be able to determine at the time of entry how a product was designed or marketed and, thus, such requirements would be difficult for CBP to enforce. Similarly, the terms "designed" and "marketed" are undefined, and there is no basis in the

[179] *See* the Memorandum to the File entitled "Truck and Bus Tires from the People's Republic of China: Critical Circumstances Import Data for the Final Determination" dated concurrently with this Issues and Decision Memorandum, at Exhibit 1.

petition or the record overall upon which the Department can rely to clarify the meaning of the terms.

Additionally, the required physical characteristics listed in the exclusion achieve the aim of the "designed" requirement in the phrase we deleted. Specifically, the exclusion provides clear guidance on how to identify tires designed for exclusive use on mobile homes, *i.e.*, "tires that exhibit each of the following characteristics: (a) the designation 'MH' is molded into the tire's sidewall as part of the size designation; (b) the tire incorporates a warning, prominently molded on the sidewall, that the tire is for 'Mobile Home Use Only;….'" The scope of the investigation in the *Preliminary Determinations* and the *Amended Preliminary Determinations* states that the designation code "MH" identifies tires for mobile homes.[180] Further, the Petition also identified tires with the designation code "MH" as tires for mobile homes.[181] Therefore, we find that, even with the omission of the designed requirement from the scope exclusion proposed by Zhongce, this scope exclusion is limited to those tires that are only for use with mobile homes.

Additionally, we find that there is no basis to include a marketing requirement in the scope exclusion. The annually updated Tire and Rim Association Year Book, which is included in the scope of the investigation as a reference, lists the designation code "MH" for tires for mobile homes and nothing else, the designation code "TR" for tires for trucks and buses, and the designation code "HC" for a 17.5 inch rim diameter code tire for use on low platform trailers.[182] The Tire and Rim Association Year Book also states that these designation codes "are included, when necessary, as part of Tire Size Designations to differentiate between tires for service conditions which may require different loads and inflations and/or tires, which *must be* used on different types of rims."[183] Because these different designation codes serve the purposes of differentiating "between tires for services conditions which may require different loads and inflations and/or tires, which must be used on different types of rims," it is unlikely that tires that are designated with "MH" and satisfy the two other criteria for the exclusion of mobile home tires would be marketed as tires for any other purposes than mobile homes. Moreover, there is no record evidence indicating that mobile home tires are in fact marketed towards use, or actually used, with other vehicles.

Comment 30: Limitation on Exclusion of Tires Attached to Vehicles

Cheetah Chassis requests a limitation on the exclusion of truck and bus tires that enter attached to a vehicle from the scope of the investigation. Specifically, Cheetah Chassis argues that this exclusion should be narrowed to exclude truck and bus tires that enter attached to a vehicle capable of self-propulsion, to be consistent with the petitioner's intent for this exclusion. Cheetah Chassis explains that this investigation covers truck and bus tires and, thus, indicates that the type of vehicles this investigation is concerned with are motorized vehicles capable of self-propulsion. For this reason, Cheetah Chassis claims, it is necessary to refer to vehicles capable of self-propulsion and vehicles incapable of self-propulsion, to identify particular tires

[180] *See Preliminary Determinations*, 81 FR at 61192, and *Amended Preliminary Determinations*, 81 FR at 71056.
[181] *See* "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Truck and Bus Tires from the People's Republic of China" dated January 29, 2016, at Exhibit I-14, at XV – Suffix Letters Used by the Tire and Rim Association in Tire Size Designations and Their Definitions (the Petition).
[182] *Id*.
[183] *Id*. (Emphasis added.)

that are subject to this investigation to ensure that all truck and bus tires are properly subject to this investigation.

According to Cheetah Chassis, HTSUS code 8716 covers trailers and semi-trailers and other vehicles that are not mechanically propelled, and container chassis and intermodal chassis are normally imported under this HTS code. Cheetah Chassis explains that HTSUS code 8701 covers tractors and semi-trailers not defined in HTSUS code 8716. Cheetah Chassis believes that tractors and semi-trailers not defined under HTSUS code 8716 would have to be mechanically propelled. Cheetah Chassis asserts that only tires attached to those vehicles capable of self-propulsion as defined in the HTSUS should be excluded from the scope: (1) to be consistent with the intent to only exclude finished vehicles with significant value added; and (2) in order to prevent possible circumvention that can take place with the inclusion of other types of vehicles in this exclusion. Cheetah Chassis claims that it is less likely that companies will import large numbers of complete vehicles with engines simply to remove tires for resale in the United States because the value of a vehicle capable of self-propulsion with mounted tires ready for use upon importation is significantly greater than the possible duty liability on the tires. Cheetah Chassis contends that, because HTSUS 8716 classifies even shopping carts as vehicles, truck and bus tires attached to shopping carts would satisfy this exclusion, which is irrational and contrary to the petitioner's intent. Cheetah Chassis explains that, although Chapter 87 of HTSUS includes the word "vehicles," because the general rule of interpretation of HTSUS requires that, for legal purposes, classification is determined according to the terms of the headings and any relative section or chapter notes, the Department should not ignore HTSUS code 8716.

Cheetah Chassis expresses a concern that, because this exclusion does not define the word "attached," an importer could simply lash multiple tires to a trailer, claim that they are attached to a vehicle, and avoid duties. Cheetah Chassis reiterates that the exclusion contemplates tires mounted to complete motorized vehicles that are ready for use upon importation. Cheetah Chassis points to CIMC Vehicle's own description of its packing configuration as illustrative of the potential for circumvention and evasion of duties. According to Cheetah Chassis, CIMC Vehicles imports chassis kits to which some tires are attached with lashing straps for shipping, removed from the chassis upon importation to the United States, and then reattached. Cheetah Chassis contends that companies could simply claim that they attached tires to the chassis frame for space reasons and then remove those tires upon importation and sell them separately, just as tires subject to duties would enter the United States. Cheetah Chassis argues that CBP would not be able to confirm that the companies, in fact, mount those tires onto the chassis they import, instead of selling the tires separately.

Cheetah Chassis expresses concern with respect to tires attached directly to the chassis axles as well. Cheetah Chassis argues that even those tires are not ready for use upon importation until the axles are attached to the body of the vehicle upon importation. According to Cheetah Chassis, this raises the same circumvention concern as tires that are merely lashed to the chassis frame. Cheetah Chassis explains that it would be burdensome for CBP to determine the type of chassis in the shipment to determine whether the shipment includes any extra unexplained tires. Cheetah Chassis contends that importers can easily lash multiple tires to non-motorized trailers in the empty space of a container to avoid duties.

The petitioner supports Cheetah Chassis' scope request. The petitioner expresses concern that, because this exclusion does not define how the tires must be attached or to what type of vehicle, the exclusion could be used to circumvent a possible order. The petitioner reiterates Cheetah Chassis' concern that tires could be attached to any vehicle by methods as simple as lashing them to a chassis in a shipping container, unlashed from the vehicle after importation, and sold separately in the U.S. market along with other domestically produced truck and bus tires and imported truck and bus tires under a possible order. The petitioner also reiterates Cheetah Chassis' concern that truck and bus tires can be loaded in an empty space of a container in which a chassis is loaded for purposes of circumvention of a possible order. The petitioner contends that limiting this exclusion to truck and bus tires mounted ready for use on a self-propelled vehicle would prevent such circumvention by requiring that excluded truck and bus tires be imported as a legitimate step in the actual commercial chain of the merchandise as it will ultimately be used and would account for only a small portion of the value of the product that is entered and sold.

The petitioner explains that, on the issue of whether to modify a scope in an investigation, the Department's primary concerns are to: (1) ensure that the revised scope accurately reflects the products for which the petitioner seeks relief; (2) provide interested parties with sufficient opportunity for comments for the Department's review; and (3) ensure that the revised scope would be administrable by CBP and that it is not susceptible to circumvention. The petitioner states that its intent for this exclusion was to alleviate the burden on CBP in applying a possible order to the extent possible, not to provide a route for a circumvention of a possible order by importing tires with a vehicle that the tires are not intended to ultimately be used with. The petitioner expresses its intent to limit the susceptibility of a possible order to circumvention by limiting this exclusion. The petitioner states that the Department recognizes the significance of the enforceability of a possible order and relevant concern to the Department in making scope determinations.

The petitioner explains that the Department's standard practice is to provide ample deference to the petitioner with respect to the definition of the products for which it seeks relief during an investigation. The petitioner requests that the Department modify this exclusion following the petitioner's stated support for the modification proposed by Cheetah Chassis in order to better prevent circumvention.

CIMC Vehicles first points out that neither Cheetah Chassis nor the petitioner contests the legitimacy of CIMC Vehicles' chassis imports or the potential disruption to them embodied in Cheetah Chassis' request. CIMC Vehicles characterizes the proposed limitation on this exclusion an unjustifiable, unnecessary, and a destructive means to damage CIMC Vehicles' business beyond the enforcement of a possible order on truck and bus tires from the PRC. CIMC Vehicles contends that a possible order on one product should not disrupt long-established and legitimate imports of another product.

CIMC Vehicles argues that, although some trucks and buses are more expensive than chassis, because non-tire components of a chassis account for the majority of a finished chassis' value, the alleged circumvention strategy would cost more than would the payment of AD/CVD duties themselves, unless those duties exceed several hundred percent. Even in such a case, CIMC Vehicles explains, the prohibitive cost of adding to the container an expensive chassis that lacked a downstream purchaser would discourage any potential circumvention activity. CIMC Vehicles contends that, because chassis kits are vehicles too and because the value of the vehicle would significantly exceed the value of the tires, any incentive to circumvent a possible order by using the vehicle to import the tires would be negligible to non-existent.

CIMC Vehicles denies any physical possibility of stuffing extra tires in a container in which a chassis kit is loaded but explains that, even if it were possible, a substantial increase of the number of tires per chassis kit would jeopardize the imported product's proper tariff classification as a chassis because chassis components other than tires would no longer impart the whole import's essential character. In such an instance, CIMC Vehicles explains, the importer needs to enter the tires as tires and the chassis components as chassis components. CIMC Vehicles claims that an assumption that an importer would declare an incorrect tariff classification ignores the practical reality that a superabundance of tires would be visible to CBP and increase the importer's risk of getting caught. CIMC Vehicles explains further that only a gargantuan number of excess tires would make the alleged circumvention strategy cost-effective and a gargantuan number of excess tires would consume so much space as to stand out. CIMC Vehicles argues that the fact that tires constitute a smaller portion of the production cost for trucks and buses than they do for chassis means that including chassis tires in the scope of this investigation would disrupt the chassis business more.

CIMC Vehicles contends that Cheetah Chassis cannot argue, on one hand, that spotting one or two extra unexplained tires would impose burden on CBP and, on the other hand, an importer wanting to evade duties could simply lash presumably a large number of tires to a chassis. CIMC Vehicles explains that CBP's difficulty in spotting a small number of extra tires would prove that the tires and other chassis parts that CIMC Vehicles imports are closely integrated kit components, rather than slapped-together circumvention ploys that Cheetah Chassis is concerned about. CIMC Vehicles explains further that a more reasonable packing arrangement for shipping a large number of tires intended for resale would segregate them from the chassis.

CIMC Vehicles expresses concern that Cheetah Chassis' request, if adopted by the Department, would impose undue burden on CBP because CBP would need to check whether the shipment of a chassis included undeclared tires. According to CIMC Vehicles, if the shipment includes tires as part of a complete chassis kit, CBP's assessment of AD and CVD duties could not use the statutorily preferred transaction-value method of appraisement, unless the commercial invoice segregated the cost of each tire from the rest of the chassis. Even in creating such segregation for CBP, according to CIMC Vehicles, an importer could not use the original "price paid or payable" for the tires because their overseas purchase would have been for production of chassis in the PRC, not for exportation to the United States. CIMC Vehicles states that Cheetah Chassis' proposal ignores the difference between legitimately traded goods, *e.g.*, chassis, and allegedly dumped and subsidized goods, *e.g.*, tires., and would distort this investigation.

CIMC Vehicles disagrees with Cheetah Chassis' reliance on the HTSUS codes to redefine the word "vehicle" in this exclusion. CIMC Vehicles argues that classifications of trucks, buses, and chassis all under different HTSUS codes for different reasons make it irrelevant to rely on them to redefine the word "vehicle." For example, according to CIMC Vehicles, HTSUS code 8701 classifies mechanically-propelled tractors and semi-trailers, HTSUS code 8702 classifies buses that transport ten or more persons, and HTSUS code 8716 classifies container chassis and intermodal chassis, and the relevant tires which are designed for use on all these varieties of vehicles. CIMC Vehicles also points out that the word "vehicles" exists in the titles of HTSUS Chapter 87 and the specific language of HTSUS code 8716 and, in this context, the word "vehicle" applies to chassis. CIMC Vehicles argues that HTSUS 8716 expressly characterizes the container chassis and intermodal chassis as vehicles, regardless of their being not mechanically propelled.

CIMC Vehicles claims that it does not suggest an exclusion of truck and bus tires imported with shopping carts. CIMC Vehicles does not expect such an exclusion because, although they are designed for use on chassis, truck and bus tires are not designed for use on shopping carts. CIMC Vehicles believes CBP would require separation of tires imported with shopping carts, instead of calling the combination of them a kit or set. CIMC Vehicles argues that chassis kits are vehicles under HTSUS General Rules of Interpretation.

CIMC Vehicles explains that merely lashed tires are not truly attached. In response to Cheetah Chassis' contention that some of the imported tires are already mounted on axles does not make the tire ready for use on importation, CIMC Vehicles argues that the most reasonable interpretation of the word "attached" in this context is "imported together for relatively prompt end-use together." CIMC Vehicles claims that the fact that a driver has to open the door of a truck or a bus before entering the vehicle, or that a truck or bus during shipment lacks motor fuel prevents the truck or bus from being ready for immediate use on importation, as well. CIMC Vehicles argues that these facts do not prevent the vehicle from being a truck or a bus.

CIMC Vehicles argues that, although Cheetah Chassis and the petitioner characterize their most recent interpretation of this exclusion as what the petitioner intended all along, no one in this investigation challenged or questioned this exclusion until Cheetah Chassis made its request. According to CIMC Vehicles, the petitioner's intent of this exclusion was to alleviate the burden on CBP in applying a possible order to the extent possible, not to provide a circumvention route for tires imported with a vehicle that the tires are not intended to ultimately be used with. CIMC Vehicles reiterates that a chassis is a vehicle that the tires are intended ultimately to be used with and that tires lashed to a chassis frame are imported with the chassis for use with the chassis. CIMC Vehicles explains that, even during an investigation, the Department may reject a petitioner's later interpretation of its own earlier language.

Cheetah Chassis argues that the issue is not whether importers are required to import tires separately from other vehicle components, but whether the vehicles are entered under different HTSUS subheadings depending on whether they are self-propelled or not.

The petitioner argues that the information CIMC Vehicles submitted concerning the treatment of chassis kits from various outside sources, *e.g.*, HTSUS and Internal Revenue Service, *etc.*, are not dispositive for purposes of defining subject merchandise with the scope. The petitioner explains that the treatment of a chassis kit outside this investigation does not address whether this exclusion may allow circumvention or a proper implementation of a possible order.

<u>Department's Position:</u> For the final determination, we did not modify the exclusion of truck and bus tires that enter attached to a vehicle. The scope exclusion at issue states: "Truck and bus tires that enter attached to a vehicle are not covered by the scope." Under this exclusion, truck

and bus tires that enter attached to a vehicle are not covered by the scope regardless of the type of the vehicle to which truck and bus tires are attached.

Cheetah Chassis requests that the Department limit this exclusion to the truck and bus tires that enter attached to a vehicle capable of self-propulsion. The petitioner specifically requests modification of this exclusion as follows:

> Truck and bus tires that enter attached to a *self-propelled* vehicle *in such a way that the vehicle is ready for immediate use upon importation* are not covered by the scope.[184]

The proposed limitation to this exclusion would ensure truck and bus tires that enter attached to "a self-propelled vehicle in such a way that the vehicle is ready for immediate use upon importation" will continue to be excluded but truck and bus tires attached to all other types of vehicles will be newly covered by the scope of the investigation. Although the petitioner characterizes the modification of the exclusion language as a clarification the intent behind the exclusion, we find that the proposed limitation to this exclusion is in fact an expansion of the scope, not a clarification of the scope. The petitioner has not identified any language in the Petition indicative of its intent, and appears to have expressed its intent for this exclusion for the first time in its October 31, 2016, letter in support of Cheetah Chassis' scope request, where it stated that its intent for this exclusion was to alleviate the burden on CBP in applying a possible order to the extent possible.[185]

In their requests for this scope expansion, both Cheetah Chassis and the petitioner express their concern with respect to the prevention of a circumvention of a possible order on truck and bus tires from the PRC. Cheetah Chassis and the petitioner claim that this limitation is necessary in order to prevent importers from lashing large quantities of truck and bus tires to chassis and claim them as truck and bus tires attached to a vehicle and outside the scope.

Neither Cheetah Chassis nor the petitioner, however, adequately explained how the inclusion of truck and bus tires attached to a vehicle not capable of self-propulsion, *e.g.*, chassis, within the scope would prevent a circumvention of a possible order. Despite their expressed concern for a potential circumvention, Cheetah Chassis and the petitioner continue to support the exclusion of truck and bus tires attached to a vehicle capable of self-propulsion, *e.g.*, trucks, from the scope. In other words, neither Cheetah Chassis nor the petitioner adequately explained why importers would use only chassis, but not trucks or any other vehicles capable of self-propulsion and transporting a large quantity of goods, to circumvent a possible order by attaching excessive quantities of truck and bus tires. Other than expressing concern for potential circumvention of a possible order, Cheetah Chassis and the petitioner did not explain how and why their proposed scope expansion would prevent the circumvention.

Cheetah Chassis does explain that it is less likely that companies will import large numbers of complete vehicles with engines simply to remove tires for resale in the United States because the value of a vehicle capable of self-propulsion with mounted tires ready for use upon importation is significantly greater than the possible duty liability on the tires. However, Cheetah Chassis

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[184] *See* Petitioner's Support for Cheetah Chassis' Scope Request, at 3-4.
[185] *Id.*.

does not address whether there is a possibility for such a circumvention involving the use of a vehicle capable of self-propulsion. Even assuming that an importer might be more likely to use a chassis than a vehicle capable of self-propulsion for purposes of such circumvention, the possibility of circumvention involving the use of a vehicle capable of self-propulsion may also exist. Although Cheetah Chassis and the petitioner express their concern over a potential circumvention of a possible order, their proposed scope modification does not justify targeting certain types of vehicles, rather than tires, which are the subject merchandise. For these reasons, we find that, if the proposed scope expansion is added to the scope of the investigation, it would result in discrimination against one type of vehicle over another type of vehicle with no certainty that the modification would address the underlying circumvention concern.

Additionally, we find that the proposed limitation is also inappropriate because the phrase "vehicle is ready for immediate use upon importation" could create confusion for CBP. As CIMC Vehicles correctly observes, the fact that a driver has to open the door of a truck or a bus before entering the vehicle, that a truck or bus during shipment lacks motor fuel, or any other possible situation involving the readiness of a truck or bus upon importation would create a situation in which CBP must evaluate the readiness of a truck or bus at the time of entry and determine whether the imported vehicle meets this requirement. Neither Cheetah Chassis nor the petitioner clearly defined what is meant by "when an imported vehicle capable of self-propulsion is ready for immediate use upon importation." Cheetah Chassis and the petitioner simply stated that a vehicle capable of self-propulsion is ready for immediate use upon importation whereas a vehicle incapable of self-propulsion is not. The potential confusion arising from this additional language could undermine the petitioner's stated intent of alleviating the burden on CBP.

We disagree with Cheetah Chassis on its assertion that, because this investigation covers truck and bus tires, the type of vehicles this investigation is concerned with are limited to motorized vehicles capable of self-propulsion. The tires within the scope of this investigation are not just those that are used with trucks and buses, but also those used with trailers. The scope of the investigation states, in part:

> Subject tires may also have one of the following suffixes in their tire size designation, which also appear on the sidewall of the tire:
>
> > TR – Identifies tires for service on trucks or buses to differentiate them from similarly sized passenger car and light truck tires; and
> >
> > HC – Identifies a 17.5 inch rim diameter code for use on low platform *trailers*.
>
> All tires with a "TR" or "HC" suffix in their size designations are covered by this investigation regardless of their intended use. (Emphasis added.)

Therefore, we are not aware of a basis to interpret that the type of vehicles this investigation is concerned with are only motorized vehicles of self-propulsion. Also, the different HTSUS classifications of trucks, buses, and other vehicles capable and incapable of self-propulsion are not issues pertinent to our analysis on the reasonableness of this proposed scope expansion.

XIV. 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 of this investigation and the final dumping margins for all of the investigated companies in the *Federal Register*.

✓
Agree   Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
For Enforcement and Compliance

January 19, 2017
Date