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February 21, 2017

MEMORANDUM TO: Carole Showers
Executive Director, Office of Policy
Policy & Negotiations

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

RE: Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China

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I. SUMMARY

The Department of Commerce ("Department") analyzed interested parties' comments with respect to the *Preliminary Determination*[1] submitted in this less-than-fair-value ("LTFV") investigation of 1,1,1,2 Tetrafluoroethane (R-134a) ("R-134a") from the People's Republic of China ("PRC"). This investigation covers two mandatory respondents: Zhejiang Sanmei Chemical Industry Co., Ltd. ("Sanmei") and Zhejiang Quzhou Lianzhou Refrigerants Co. Ltd., ("Lianzhou"). In the *Preliminary Determination*, we preliminarily found that Lianzhou was not eligible for a separate rate. As a result of our analysis of the case briefs, rebuttal briefs, and verification, we made certain changes to the margin calculations for Sanmei.[2] We recommend that you approve the positions we developed in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments and rebuttal comments by parties:

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[1] *See 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair Value and Affirmative Determination of Critical Circumstances, in Part, and Postponement of Final Determination*, 81 FR 69786 (October 7, 2016) ("*Preliminary Determination*") and accompanying Preliminary Decision Memorandum ("PDM"), as amended by *1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Amended Preliminary Affirmative Determination of Sales at Less-Than-Fair-Value*, 81 FR 86699 (December 1, 2016) ("*Amended Preliminary Determination*") (collectively, "*Preliminary Determination*").

[2] *See* "Analysis Memorandum, Final Determination of Sales at Less Than Fair Value," dated concurrently with this memorandum ("Analysis Memo").

Comment 1: Whether the Department Correctly Denied Lianzhou and Quhua a Separate Rate
Comment 2: Whether the Scope of the Investigation Overlaps with an Existing Order
Comment 3: Whether Critical Circumstances Exist for Weitron
Comment 4: Sanmei's By-Product Offsets
Comment 5: Selection of Inland Boat Freight Surrogate Value
Comment 6: Use of the CYDSA Financial Statement in Calculation of Surrogate Financial Ratios
Comment 7: Revision of Sanmei's Producer/Exporter Combinations

II. BACKGROUND

The period of investigation ("POI") is July 1, 2015, through December 31, 2015. On October 7, 2016, the Department published its *Preliminary Determination* in the LTFV investigation of R-134a from the PRC. On October 19, 2016, Sanmei submitted a ministerial error allegation ("MEA") with respect to the *Preliminary Determination*.[3] On October 19, and 20, 2016, respectively, Petitioners[4] submitted a ministerial error allegation and rebuttal comments with respect to Sanmei's MEA.[5] On October 24, 2016, Sanmei submitted rebuttal comments with respect to Petitioners' MEA.[6] The Department published the *Amended Preliminary Determination*, which corrected certain errors that the Department agreed to be ministerial in nature, on December 1, 2016.[7] Sanmei submitted further ministerial error comments on the *Amended Preliminary Determination* on December 8, 2016.[8] Petitioners submitted rebuttal comments on December 12, 2016.[9] The Department determined that the issues alleged in Sanmei's December 8, 2016, MEA were not ministerial in nature and did not issue a second amended preliminary determination.[10] Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. ("Weitron"), (an exporter preliminarily granted a separate rate), submitted

[3] *See* Sanmei's letter, mistitled, "1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Request for Extension to Supplemental Section C&D Response," dated October 20, 2016.
[4] Petitioners consist collectively of American HFC Coalition and its individual members, as well as District Lodge 154 of the International Association of Machinists and Aerospace Workers (collectively, "Petitioners")
[5] *See* Petitioners' letter, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Petitioners' Rebuttal to Sanmei's Ministerial Error Comments concerning the Preliminary Determination," dated October 19, 2016 and Petitioners' letter, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Petitioners' Request for Correction of Significant Ministerial Errors in the Preliminary Determination Margin Calculation of Sanmei," dated October 19, 2016.
[6] *See* Sanmei's letter, mistitled, "1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Request for Extension to Supplemental Section C&D Response," dated October 24, 2016.
[7] *See Amended Preliminary Determination* and the memorandum "Antidumping Duty Investigation of 1,1,1,2-Tetrafluorethane (R134a) from the People's Republic of China: Allegation of Ministerial Errors in the Preliminary Determination," dated November 21, 2016.
[8] *See* Sanmei's letter, "1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Ministerial Error Comments – Amended Prelim Determination," dated December 8, 2016. These allegations were first submitted on December 2, 2016, but initially rejected because they included new factual information.
[9] *See* Petitioners' letter, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Resubmission of Petitioners' Rebuttal to Sanmei's Comments Concerning the Amended Preliminary Determination," dated December 12, 2016.
[10] *See* the memorandum, "Antidumping Duty Investigation of 1,1,1,2-Tetrafluorethane (R-134a) from the People's Republic of China: Allegation of Ministerial Errors in the Preliminary Determination," dated December 21, 2016.

its case brief on January 4, 2017.[11] Sanmei, Kivlan and Company ("Kivlan") (an importer), Zhejiang Quhua Fluor-Chemistry Co., Ltd. ("Quhua") (an exporter preliminarily denied a separate rate), and Lianzhou submitted case briefs on January 6, 2017.[12] Petitioners submitted a rebuttal brief on January 12, 2017.[13] We conducted verification of Sanmei's questionnaire responses from November 9, 2016, through November 16, 2016.[14]

III. SCOPE OF THE INVESTIGATION

The product subject to this investigation is 1,1,1,2-Tetrafluoroethane, R-134a, or its chemical equivalent, regardless of form, type, or purity level. The chemical formula for 1,1,1,2-Tetrafluoroethane is CF_3-CH_2F, and the Chemical Abstracts Service registry number is CAS 811-97-2.[15]

Merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2903.39.2020. Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

IV. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

The Department preliminarily found that factual information provided by Petitioners indicated that, beginning in March 2016, five months prior to the filing of the Petition,[16] importers knew or should have known that the exporter was selling the subject merchandise at LTFV and that there was likely to be material injury to a domestic industry. Accordingly, based on an analysis of general import data for subject merchandise in the five-month period of March to July 2016 to the pre-knowledge October 2015 through February 2016 period, less shipment data from mandatory respondent Sanmei submitted for those same periods, the Department preliminarily determined that critical circumstances existed for imports of subject merchandise from the non-

[11] *See* Weitron's letter, "Weitron Administrative Case Brief: Antidumping Duty Investigation of 1,1,1,2-Tetrafluoroethane from the People's Republic of China," dated January 4, 2017.
[12] *See* Sanmei's letter, "1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Administrative Case Brief," dated January 6, 2017 ("Sanmei's Case Brief"), Kivlan's letter, "1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Case Brief – Kivlan and Company, Inc.," dated January 6, 2017 ("Kivlan's Case Brief"), Quhua's letter, "Quhua Fluor Direct Case Brief in Antidumping Duty Investigation of 1,1,1,2-Tetrafluoroethane (R-134A) from the People's Republic of China," dated January 6, 2017 ("Quhua's Case Brief"), and Lianzhou's letter, "Lianzhou Direct Case Brief in Antidumping Duty Investigation of 1,1,1,2-Tetrafluoroethane (R-134A) from the People's Republic of China," dated January 6, 2017 ("Lianzhou's Case Brief").
[13] *See* Petitioners' letter, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Rebuttal Brief," dated January 12, 2017 ("Petitioners' Rebuttal Brief").
[14] *See* the memorandum, "Verification of the Sales and Factors of Production Questionnaire Responses of Zhejiang Sanmei Chemical Industry Co., Ltd. in the Antidumping Investigation of 1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China," dated December 19, 2016 ("Verification Report").
[15] 1,1,1,2-Tetrafluoroethane is sold under a number of trade names including Klea 134a and Zephex 134a (Mexichem Fluor); Genetron 134a (Honeywell); Freon™ 134a, Suva 134a, Dymel 134a, and Dymel P134a (Chemours); Solkane 134a (Solvay); and Forane 134a (Arkema). Generically, 1,1,1,2-Tetrafluoroethane has been sold as Fluorocarbon 134a, R-134a, HFC-134a, HF A-134a, Refrigerant 134a, and UN3159.
[16] *See* Petition for the Imposition of Antidumping Duties on Imports of 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China, dated March 3, 2016 ("the Petition").

selected separate rate respondents.[17] An analysis of Sanmei's reported shipment data demonstrated that critical circumstances preliminarily did not exist for Sanmei, and with respect to the uncooperative PRC-wide entity, we preliminarily made an adverse inference pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended ("the Act") that "massive imports" were dumped over a "relatively short period," finding that critical circumstances existed with respect to the PRC-wide entity.[18]

V. Based on the examination of the shipping data requested by the Department (*i.e.*, import data through the month of publication of the *Preliminary Determination*, as available) and placed on the record by Sanmei after the *Preliminary Determination*, we continue to examine whether the increase in imports was massive pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h)(1)-(2) by comparing shipments over an expanded seven month period of July 2015 through February 2016, with the period March 2016 through October 2016, for both Sanmei and the non-individually examined respondents for this final determination. Based on an examination of Sanmei's data and updated general import data, the Department continues to find for this final determination that critical circumstances do not exist for Sanmei, but do exist for the companies eligible for a separate rate.[19] Furthermore, with respect to the non-cooperative PRC-wide entity, we continue to determine that an adverse inference is warranted, in accordance with sections 776(a) and (b) of the Act, and that the PRC-wide entity dumped "massive imports" over a "relatively short period" and, therefore, that critical circumstances exist for the PRC-wide entity.

CHANGES SINCE THE *PRELIMINARY DETERMINATION*

For Sanmei, we calculated export price ("EP") and normal value ("NV") using the same methodology as stated in the *Preliminary Determination*, with the following changes, as discussed below, and as described in the Analysis Memo.[20]

1. As a result of minor corrections presented by Sanmei at verification,[21] we are decreasing a billing adjustment for one sales transaction.[22] *See* Comment 7, below.
2. For the *Preliminary Determination,* we valued inland boat freight using an ocean freight rate. For the final determination, we are valuing inland boat freight using a truck freight rate. *See* Comment 5, below.

[17] *See* the "PDM and the memorandum "Less Than Fair Value Investigation of 1,1,1,2 Tetrafluoroethane ("R-134a") from the People's Republic of China ("PRC"): Critical Circumstances Import Data," dated September 29, 2016.
[18] *Id*. In the PDM, we stated that this adverse inference was made for the non-individually examined companies receiving a separate rate and the PRC-wide entity. This statement was incorrect. Critical circumstances were found to exist for the non-individually examined respondents based on affirmative finding of a history of injurious dumping of like products, margins which confer knowledge, and the standard analysis of import data. Critical circumstances were found based on an adverse inference for the PRC-wide entity based on non-cooperation. However, no adverse inference was used with respect to the finding for the non-selected respondents.
[19] *See* the memorandum, "Less Than Fair Value Investigation of 1,1,1,2 Tetrafluoroethane ("R-134a") from the People's Republic of China ("PRC"): Critical Circumstances Import Data," dated concurrently with this memorandum.
[20] *See* Analysis Memo.
[21] *See* the Verification Report at 2 – 3.
[22] *See* Analysis Memo.

VI. USE OF ADVERSE FACTS AVAILABLE

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the antidumping duty (AD) statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[23] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined in section 776(c) of the Act as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an adverse facts available ("AFA") margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

In the *Preliminary Determination*, we found that the PRC-wide entity did not respond to the Department's requests for information, failed to provide necessary information, withheld information requested by the Department, failed to provide information in a timely manner, and

[23] *See* section 776(b)(1)(B) of the Act; *see also* the Trade Preferences Extension Act of 2015 ("TPEA"), Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015), section 502(1)(B).

significantly impeded this proceeding by not submitting the requested information. We further determined that because non-responsive PRC companies had not demonstrated their eligibility for separate rate status, the Department considered them part of the PRC-wide entity. Finally, the Department preliminarily assigned a PRC-wide rate based on facts available, pursuant to sections 776(a)(1) and (a)(2)(A) - (C) of the Act, applying an adverse inference, pursuant to 776(b) of the Act.[24]

No parties commented on this preliminary finding of AFA, and the Department continues to find that the PRC-wide entity failed to cooperate to the best of its ability in responding to the Department's requests for information.

In order to induce the respondents to provide the Department with complete and accurate information in a timely manner, the Department's practice is to select, as AFA, the higher of: (a) the highest margin alleged in the petition; or (b) the highest calculated rate for any respondent in the investigation.[25] In selecting a facts available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner.

In the *Preliminary Determination*, in order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. When we compared the highest petition dumping margin of 220.90 percent to the transaction-specific dumping rates calculated for Sanmei, we found that the highest petition dumping margin was higher than each of the transaction-specific dumping rates calculated for Sanmei. Therefore, we were unable to corroborate the highest dumping margin contained in the petition for use as AFA, and instead applied the highest transaction-specific rate as the AFA rate preliminarily applicable to the PRC-wide entity.[26] However, once corrections were applied pursuant to the *Amended Preliminary Determination*, Sanmei's estimated weighted-average dumping margin of 232.30 percent exceeded the highest dumping margin alleged in the petition, and we, thus, applied to the PRC-wide entity this 232.30 percent calculated margin as the AFA rate. For the final determination, we are applying the highest transaction-specific rate calculated for Sanmei as the AFA rate, which is the highest calculated rate for any respondent in the investigation and does not reveal Sanmei's proprietary data. Because we are relying on

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[24] *See Preliminary Determination* and accompanying PDM at 18 – 22.
[25] *See* section 776(d)(1) - (2) of the Act; TPEA, section 502(3). *See also, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000) (the Department applied the initiation margin as AFA); *Final Determination of Sales at Less Than Fair Value: Certain Artists Canvas from the People's Republic of China*, 71 FR 16116, 16118-19 (March 30, 2006).
[26] *See Preliminary Determination* and accompanying PDM at 20-21.

information obtained in the course of this investigation on which to base this rate, not on secondary information, it is not necessary to corroborate this calculated rate as AFA.[27]

VII. DISCUSSION OF THE ISSUES

Comment 1: Whether the Department Correctly Denied Lianzhou and Quhua a Separate Rate

Lianzhou's and Quhua's Comments[28]

- Quhua and Lianzhou, henceforth known as "applicants," argue that, because the Department has made no indication that it has changed its separate rate test from its longstanding practice[29] established in *Sparklers* and *Silicon Carbide*[30] and because the Department's preliminary decision to deny the applicants a separate rate is not supported by record evidence, for the final determination, the Department should grant each applicant a separate rate.
- The applicants argue that the "PRC Company Law and Circular on the Issuance of the Code of Corporate Governance for Listed Companies" clearly demonstrate a lack of *de jure* control over each applicant's export activities.[31] The applicants point to their business licenses and foreign operator registration forms effective during the POI, which they argue explicitly show a lack of *de jure* control by the PRC government.[32]
- The applicants also argue that, as a consequence of the final decision in *Advanced Tech,*[33] the Department seems to have adopted a stricter analysis that presumes that majority ownership results in *de facto* control without the support of any additional evidence.[34]

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[27] *See 1,1,1,2-Tetrafluroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014) ("*R-134a 2014*"), and accompanying Issues and Decision Memorandum ("IDM") at 3. *See also* section 776(c) of the Act and 19 CFR 351.308(c) and (d). *See also, Certain Carbon and Alloy Steel Cut-To-Length Plate from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 79427 (November 14, 2016).

[28] *See* Lianzhou's Case Brief at 11 - 22; *see also* Quhua's Case Brief at 11 - 22.

[29] *See* Quhua's Case Brief at 6 and Lianzhou's Case Brief at 6 (citing to *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) ("*SDGEs from the PRC*")).

[30] *See* Quhua's Case Brief at 21 and Lianzhou's Case Brief at 22 (citing to *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*") and *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*")).

[31] *See* Quhua's Case Brief at 10 (citing to the PRC government regulations it provided at Exhibit 7B of Quhua's separate rate application, dated May 9, 2016); and Lianzhou's Case Brief at 10 (citing to the PRC government regulations it provided at Exhibit A-16 of Lianzhou's Section A response, dated May 31, 2016).

[32] *See* Quhua's Case Brief at 10 (citing to Exhibits 4-5 of Quhua's separate rate application); and Lianzhou's Case Brief at 10 (citing to Exhibits A-3 and A-4 of Lianzhou's Section A response).

[33] *See* Quhua's Case Brief at 6 and Lianzhou's Case Brief at 6 (citing to *Advanced Technology & Materials Co., Ltd. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013) ("*Advanced Tech II*"), aff'd 2013 U.S. App. LEXIS 22869 (Fed. Cir. 2013) ("*Advanced Tech III*")).

[34] *See* Quhua's Case Brief at 6 and Lianzhou's Case Brief at 6 (citing *R-134a 2014*, and accompanying IDM at Comment 1).

- The applicants maintain that, contrary to its established policy and practice,[35] the Department did not apply its four-prong *de facto* test established in *Sparklers* or consider the totality of the circumstances whether these applicants were subject to *de facto* government control. The applicants also argue that they clearly demonstrated a lack of *de facto* government control over export activities, the purpose of which has been confirmed, and regularly cited by the Court of International Trade ("CIT" or "Court").[36]
- The applicants argue that the Department did not consider the first two *de facto* factors established in *Sparklers* in its separate rate analysis for these companies and, as a result, it did not consider the totality of the circumstances in making its separate rate determination for the applicants. The applicants maintain that they have demonstrated that they: (1) set their own export prices independent of the PRC government and without the approval of any PRC government authority; and (2) have the authority to negotiate and sign contracts and other agreements independent of government approval.[37]
- The applicants also argue that they have demonstrated autonomy from the PRC government regarding the selection of their management. Specifically, both applicants argue that:
    - Their common parent company, Zhejiang Juhua Co., Ltd. ("Zhejiang Juhua") a publicly traded company, or Zhejiang Juhua's largest shareholder, Juhua Group Corporation ("Juhua Group") a SASAC[38]-owned entity, are not involved in the activities or selection of the board of directors and or supervisors of either applicant.[39]
    - Zhejiang Juhua's board members are not subject to government control because SASAC is not involved in the activities or selection of the board of directors or supervisors of Zhejiang Juhua.[40] Record evidence demonstrates that, as a publicly traded company,[41] Zhejiang Juhua's shareholders may participate in its decision making through normal courses available to shareholders.

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[35] *See* Quhua's Case Brief at 11 and Lianzhou's Case Brief at 11 (both applicants cite to *Sparklers* and accompanying IDM at Comment 1; *Silicon Carbide*, 59 FR 22585, 22587 (May 2, 1994), at "Separate Rates" section; *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995), at "Separate Rates" section; and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams from The People's Republic of China*, 66 FR 67197, 67199 (December 28, 2001) (unchanged in the final), at "Separate Rates" section).

[36] *See* Quhua's Case Brief at 11-12 and Lianzhou's Case Brief at 11-12 (both applicants cite to *Jiangsu Jiasheng Photovoltaic Technology Co., Ltd., v. United States*, 121 F. Supp. 3d 1263, 1339 (CIT October 5, 2015) ("*Jiangsu Jiasheng*"); *see also Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997); *see also Tianjin Mach Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1014 (Fed. Cir. 1992); *see also AMS Assocs. v. United States*, 719 F.3d 1376, 1379 (Fed. Cir. 2013); *see also Advanced Tech. & Materials Co. v. United States*, 885 F. Supp. 2d 1343, 1347 (CIT 2012) ("*Advanced Tech I*")).

[37] *See* Quhua's Case Brief at 12-13 (citing to page 19 and Exhibit 11 of Quhua's separate rate application); and Lianzhou's Case Brief at 13 (citing to pages 26 – 27 and Exhibits A-2 and A-8 of Lianzhou's Section A response).

[38] State-owned Assets Supervision and Administration Commission of the State Council ("SASAC").

[39] *See* Quhua's Case Brief at 15 (citing to page 14 and Exhibit 7C of Quhua's separate rate application); and Lianzhou's Case Brief at 15 (citing to page 19 and Exhibit A-12 of Lianzhou's Section A response).

[40] *See* Quhua's Case Brief at 15 (citing to page 13 of Quhua's separate rate application); and Lianzhou's Case Brief at 15 (citing to page 18 of Lianzhou's Section A response).

[41] *See* Quhua's Case Brief at 15-16 and Lianzhou's Case Brief at 15-16 (both applicants cite to PRC Company Law, Circular on the Issuance of the Code of Corporate Governance for Listed Companies, Articles, 39, 37, and 99).

- Zhejiang Juhua's individual shareholders cannot appoint board members outside the prescribed procedures open to all shareholders[42] and may not give more than one vote per shareholder.[43] The acceptance of on-line voting, in connection with Zhejiang Juhua's cumulative voting system strengthens the ability of smaller shareholders to have greater representation in voting.[44]
- Record evidence shows that Zhejiang Juhua's senior management is selected by its own board members and that Quhua's executive director and general manager are appointed by its parent company, Zhejiang Juhua, not SASAC or Juhua Group.[45]

- The applicants argue the record demonstrates that they and Zhejiang Juhua act independent of PRC government control in the distribution of their profits. Specifically, the applicants showed that they retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses and that Zhejiang Juhua's shareholders decided the distribution of its profits.[46]

Petitioners' Rebuttal Comments

- Petitioners assert, in light of the Department's recent findings in *HFC Blends* and *R-134a 2014*,[47] where the Department denied these same applicants a separate rate, any decision to grant the applicants a separate rate in this proceeding would be arbitrary for the Department to treat this case differently without any factual basis for distinguishing the current case from the Department's prior decisions on the same companies.[48]
- For the final determination, the Department should continue to deny separate rate treatment to Lianzhou and Quhua, because their ownership by SASAC, in and of itself, requires it, and there is no reason to depart from the Department's previous determinations.

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[42] *See* Quhua's Case Brief at 17-18 and Lianzhou's Case Brief at 17-18 (both applicants cite to their AoA at Articles 20, 21, 56, 82, and 86).

[43] *See* Quhua's Case Brief at 19 (citing to page 16 of Quhua's separate rate application); and Lianzhou's Case Brief at 19 (citing to page 21 of Lianzhou's Section A response).

See Quhua's Case Brief at 19 (citing to page 16 of Quhua's separate rate application); and Lianzhou's Case Brief at 19 (citing to page 21 of Lianzhou's Section A response).

[44] *See* Quhua's Case Brief at 17-18 and Lianzhou's Case Brief at 17-18 (both applicants cite to their AoA at Articles 20, 21, 56, 82, and 86) citing to Exhibit A-12 of Lianzhou's Section A response).

[45] *See* Quhua's Case Brief at 20 (citing to Exhibit 12 of Quhua's separate rate application); and Lianzhou's Case Brief at 19 (citing to Exhibit A-9 of Lianzhou's Section A response).

[46] *See* Quhua's Case Brief at 20-21 (citing to pages 19 and 23 and Exhibits 7C, 9, 14, and 13B of Quhua's separate rate application); and Lianzhou's Case Brief at 20-22 (citing to pages 14 and 15 and Exhibits A-6, A-11, A12 of Lianzhou's Section A response).

[47] *See* Petitioners' Case Brief at 17 (citing to *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 IDM Comment 8 ("*HFC Blends*"); and R-134a 2014 and accompanying IDM at Comment 1).

[48] *See* Petitioners' Rebuttal Brief at 17-18 (citing to *Pakfood Public Company Limited, et al. v. United States*, 753 F. Supp. 2d 1334, 1342 (CIT 2011) ("Commerce must comply with the basic principle of law that, absent a rational explanation for acting to the contrary, like cases should be decided alike") (citations omitted); *SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001) ("{I}t is well-established that 'an agency action is arbitrary when the agency offers insufficient reasons for treating similar situations differently.'" citing *Transactive Corp. v. United States*, 91 F.3d. 232, 237 (DC. Cir. 1996)).

- Petitioners argue that the applicants' reliance on *SDGEs from the PRC* is misplaced, because in that case, SASAC had a minority ownership in the respondents, which is not the case here. Here, Juhua Group, the applicants' ultimate parent company, is a 100 percent state owned enterprise ("SOE"). Therefore, the applicants cannot demonstrate they are sufficiently autonomous from the PRC-wide entity.[49]
- Petitioners argue that, contrary to the applicants' argument that the PRC Company Law clearly demonstrates a lack of *de jure* government control over their export activities, the PRC Company Law suggests that companies *must* accept Government supervision. Article 5 of the PRC Company Law states explicitly that "{a} company shall, when engaging in business activities…accept the supervision of the Government."[50]
- Petitioners argue the burden of proof to rebut the presumption of government control lies with the separate rate applicants under the *Sparklers de facto* test.
- Petitioners argue that Lianzhou and Quhua admit that the SASAC majority-owned entity negotiated its sales of subject merchandise sales during the POI.[51]
- Petitioners argue that the management of Juhua Group and Zhejiang Juhua are, in fact, interconnected, asserting that the two entities share board members and directors. Petitioners assert that, because of this managerial overlap, coupled with Zhejiang Juhua directly selecting the general managers of Quhua and Lianzhou, the applicants do not select their management autonomously without PRC government interference.[52]
- Petitioners argue that Quhua and Lianzhou are not insulated from government control through Zhejiang Juhua's governing documents and the PRC Company Law. Specifically, Zhejiang Juhua is controlled by the PRC government's influence through its proxy Juhua Group. Therefore, Quhua and Lianzhou are controlled by the PRC government because they are both 100 percent owned by Zhejiang Juhua, which appoints Quhua and Lianzhou's executive management.[53]

Department's Position: As we stated in the *Preliminary Determination*, in proceedings involving non-market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the NME are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, *de jure* and *de facto*, with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,[54] as further developed in *Silicon Carbide*.[55] In accordance with this separate rates test, the Department assigns separate rates to respondents in

[49] *Id.*, at 21.
[50] *Id.,* at 18-19 (citing, *e.g.*, to Exhibit A-15 of Lianzhou's Section A Response).
[51] *Id.,* at 21 (citing to Lianzhou's Section A Response at 25).
[52] *Id.*, at 22 (citing to page 2 of Separate Rates Analysis Memo).
[53] *Id.*, at 18 (citing, *e.g.*, to *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 55328 (September 15, 2015), and accompanying IDM at Comment 11).
[54] *See Sparklers*, 56 FR at 20589.
[55] *See Silicon Carbide*, 59 FR at 2285.

NME proceedings if respondents demonstrate the absence of both *de jure* and *de facto* government control over their export activities.[56]

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades 2014* AD proceeding, and the Department's determinations therein.[57] In particular, we note that in litigation involving the *Diamond Sawblades 2014* proceeding, the CIT found the Department's existing separate rates analysis deficient in the specific circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.[58] Following the Court's reasoning, as affirmed by the Court of Appeals for the Federal Circuit ("CAFC"), in recent proceedings, we concluded that where a government entity holds a majority ownership share, either directly or indirectly,[59] in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally.[60] This may include control over, for example, the selection of management, a key

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

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

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

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

[60] *See Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying Preliminary Decision Memorandum at 5-9 ("*Steel Wire Rod Prelim*"), unchanged in *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014) ("*Steel Wire Rod Final*").

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

We found in the *Preliminary Determination* that Quhua and Lianzhou demonstrated a lack of *de facto* control, and we continue to reach that conclusion in this final determination. With respect to *de facto* control, as we stated in the *Preliminary Determination*, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: 1) whether the export prices are set by, or are subject to the approval of, a government agency; 2) whether the respondent has authority to negotiate and sign contracts and other agreements; 3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and, 4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.[61]

As noted above, the CAFC has held that the Department has the authority to place the burden on the exporter to establish an absence of government control.[62] For the reasons explained below, the Department continues to find, based on the totality of the record evidence, that Quhua and Lianzhou have not demonstrated an absence of *de facto* government control, and are, therefore, not entitled to a separate rate.

In the *Preliminary Determination*, we determined, and record evidence supports, that Quhua and Lianzhou are indirectly majority-owned by an SOE. As noted above, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.[63] In the *Preliminary Determination*, we identified additional record evidence that we found (and continue to find) supports that expectation in this investigation.[64]

Specifically, we found that Quhua and Lianzhou are both 100 percent owned by their parent company (Zhejiang Juhua), a company which is majority owned by an SOE (Juhua Group), as reflected in Quhua's separate rate application and Lianzhou's section A questionnaire response.[65] Furthermore, the business license of Juhua Group states that it is an SOE.[66] Evidence also shows

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[61] *See Silicon Carbide*, 59 FR at 22586-89; and *Notice of Final Determination of Sales at Less Than Fair Value; Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).
[62] *See Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (Fed. Cir. 1997) (Sigma). *Sigma*, 117 F.3d at 1405–06.
[63] *See*, *e.g.*, *Steel Wire Rod Prelim*, and accompanying Preliminary Decision Memorandum at 5-9, unchanged in *Steel Wire Rod Final*.
[64] *See Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 17. *See also* the BPI memorandum to the file, Preliminary Denial of Separate Rates in the Antidumping Duty Investigation of 1,1,1 ,2-Tetrafluoroethane (R-134a) from the People's Republic of China, dated September 29, 2016 ("Separate Rate Memo").
[65] *See* Quhua's separate rate application, at 12 and Lianzhou's section A questionnaire response, at 11.
[66] *See* Quhua's separate rate application, at Exhibit 6.

that Zhejiang Juhua actively participates in the day-to-day operations of Quhua and Lianzhou.[67] Moreover, Zhejiang Juhua's Articles of Association describes various responsibilities that Juhua Group, the SOE, has in the operations of Zhejiang Juhua which is the only and controlling shareholder in Quhua and Lianzhou.[68] Accordingly, based on the record evidence examined, we found that Quhua and Lianzhou did not demonstrate an absence of *de facto* government control because they do not maintain autonomy in making decisions regarding the selection of management.[69]

The arguments raised in this investigation by Quhua and Lianzhou are similar to ones that were dismissed by the CIT in the *Advanced Tech* litigation. In the *Advanced Tech* litigation,[70] the Court sustained the Department's determination that the respondent was not entitled to a separate rate under similar facts as this investigation. In that proceeding, SASAC owned 100 percent of the majority shareholder of the respondent company. In sustaining the Department's remand determination, the Court rejected the respondent's distinction between actual instances of government control versus the potential to exercise control, finding that "the point is that because (the respondent) had not shown autonomy in choosing its own management, Commerce found that (the respondent) had failed to rebut the presumption of control."[71] The record of this investigation similarly shows that the Juhua Group SOE owns 55.86 percent of Zhejiang Juhua, the parent company of Quhua and Lianzhou, the only shareholder of the two-separate rate applicants.[72]

Also, we note that the PRC laws submitted provided by Quhua and Lianzhou confirm that the government can control the business activities of a company when the government is a controlling shareholder.[73] For example, Quhua and Lianzhou claim that, under *PRC Company Law*, Zhejiang Juhua cannot exercise control over Quhua and Lianzhou in general, or over their export activities, specifically. In rejecting similar arguments, the CIT found in *Advanced Tech I* that the *PRC Company Law* as evidence rebutting the presumption of control to be " inadequate … and it lacks … common business sense."[74] For Article 20 of the *PRC Company Law* in particular, the CIT stated that it "does not appear that this {article} may reasonably be construed to 'limit' the power of the state in the companies in which the state invests."[75] Moreover, 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."[76] That amounts to delegation, as opposed to separation, as the general manager, in fact, is selected by the same

[67] *See* Lianzhou's Section A Response at 25.
[68] *See* Quhua's separate rate application, at Exhibit 7C, Zhejiang Juhua's Articles of Association.
[69] *See* the memorandum, "Preliminary Denial of Separate Rates in the Antidumping Duty Investigation of 1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China," dated September 29, 2016 ("Separate Rates Memo"), at 2-3.
[70] *See Advanced Tech I*; *Advanced Tech II*, *aff'd Advanced Tech III.*
[71] *See Advanced Tech II*, 938 F. Supp. 2d at 1348.
[72] *See* Quhua's separate rate application, at 11 and Lianzhou section A questionnaire response, at 11.
[73] *See Advanced Tech I*, 885 F. Supp. 3d at 1353-54.
[74] *Id.*, at 1353.
[75] *Id.*, at 1354.
[76] *Id.*, at 1355.

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." [77] Furthermore, the CIT addressed Articles 22-27 of the *PRC Code of Corporate Governance*, noting that these articles "reveal little to an inquiry into 'governmental control' in the running of a company including its export operations."[78]

With respect to Quhua's and Lianzhou's arguments that their Articles of Association make clear that each company's managers control the day-to-day operations, the CIT also addressed similar arguments in the *Advanced Tech I* litigation.[79] Specifically, the Court rejected arguments made by the respondent in that proceeding regarding its management and control of daily operations. The Court stated that managers should be presumed "to be 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.[80] Similarly, we find that Quhua's and Lianzhou's management is beholden to Zhejiang Juhua, the sole owner of each company,[81] whose board is controlled by Juhua Group, which is wholly state-owned.

Regardless of the restrictions of PRC law and the protections afforded to shareholders, Quhua's and Lianzhou's Articles of Association demonstrate that, as the only shareholder – and particularly one with 100 percent ownership – Zhejiang Juhua has complete control over any shareholder decisions, including decisions which may affect the management and operations of the company.[82] Whether or not Zhejiang Juhua, as the sole shareholder, demonstrably exercised control over Quhua's and Lianzhou's day-to-day operations does not refute the fact that a government-owned entity has near complete control of shareholder decisions of Quhua and Lianzhou.

We disagree with Quhua's and Lianzhou's argument that their Articles of Association demonstrate that they should be given separate rate status. It is unclear how Article 9, which states there is no shareholder meeting and that the shareholder, *i.e.*, Zhejiang Juhua, shall appoint and replace the executive director and the supervisor and to decide on matters concerning the remuneration of the executive director and the supervisor, or Article 11, which states that the executive director is responsible for implementing the decisions of the shareholder, do not demonstrate control by each company's only shareholder, Zhejiang Juhua. Moreover, other Articles in Quhua's and Lianzhou's Articles of Association show the level of control of its shareholder:

- Article 12 states that there is one general manger who is responsible to the shareholder, can be appointed and dismissed by the shareholder, and that deputy general manager is also appointed and dismissed by the shareholder.

[77] *Id*., at 1355.
[78] *Id*., at 1358.
[79] *Id.*
[80] *See Advanced Tech. II*, 938 F. Supp. 2d at 1359. *See also*, *id*., at 1352 ("…the exclusion of 'day to day operations' from 'oversight' responsibility is a straw man.").
[81] *See* Lianzhou's Section A Response at Exhibit A-7, Lianzhou's Articles of Association; Quhua's separate rate application at Exhibit 10, Quhua's Articles of Association.
[82] *See* Lianzhou's Section A Response at Exhibit A-7; Quhua's separate rate application at Exhibit 10.

- Article 13 states that the company may only appoint one supervisor selected by the shareholder. The supervisor shall be responsible to shareholders.[83]
- Article 24 states that the articles of association are formulated by the shareholder.[84]

Thus, Quhua's and Lianzhou's Articles of Association demonstrate that its sole shareholder, Zhejiang Juhua, has complete control over any shareholder decisions, including decisions which may affect the management and operations of the company.[85] We note that the standard for determining such a status is that an NME exporter is presumed to be under government control until such a presumption is sufficiently rebutted.[86] The fact that Quhua's and Lianzhou's shareholder appoints and changes the executive directors, general managers, and supervisors does not prove the absence of government control when the only shareholder, who is majority owned by SASAC, controls all shareholder decisions.

We also take issue with Quhua's and Lianzhou's contention that the Department's reliance on the idea of "potential" for government control over the company's operations should not be a standard and note that Quhua's and Lianzhou's reliance on *Jiangsu Jiasheng*[87] to support their argument that the intertwined board membership between Zhejiang Juhua and Juhua Group is irrelevant to our analysis, as it does not show actual control but only the "possibility," is misplaced.[88] Indeed, Quhua's and Lianzhou's general argument that the Department cannot cite a single example in which Juhua Group has actually exercised its legal right to control or influence a day-to-day decision about the manner in which Quhua and Lianzhou sold subject merchandise to the United States, is similarly unconvincing, as this also ignores the fact that the burden to rebut the presumption of government control is on the party seeking separate rate status. The record shows that the SOE, Juhua Group, has the right to "{perform} supervision on, making suggestion for or inquiry on the operation of Zhejiang Juhua, the sole shareholder of Quhua and Lianzhou."[89]

Furthermore, though Quhua and Lianzhou make arguments related to what they perceive as the absence of certain record evidence showing control, we note that the standard for determining separate rate status is that an NME exporter is presumed to be under government control until such a presumption is sufficiently rebutted. As such, the Applicants' citation to the purported absence of evidence of control or other demonstrable action on behalf of the PRC government does not rebut this presumption.[90]

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[83] *Id.*
[84] *Id.*
[85] *Id.*
[86] *See e.g., Sparklers*, and accompanying Issues and Decision Memorandum at Comment 1.
[87] *See Jiangsu Jiasheng*, 121 F. Supp. 3d at 1317, 1348-1349.
[88] *Id.*, at 1348.
[89] *See* Lianzhou's Section A Response at Exhibit A-12; Quhua's separate rate application at Exhibit 7C. Zhejiang Juhua's Articles of Association at Article 32(III).
[90] *See e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015), and accompanying IDM at Comment 1 ("*Tires*").

Based on the foregoing, and consistent with our view that a majority government ownership holding in and of itself means that the government exercises, or has the potential to exercise, *de facto* control over a company's operations generally, the Department concludes that Quhua and Lianzhou do not satisfy the criteria demonstrating an absence of *de facto* government control over export activities. As a result, the Department continues to find that Quhua and Lianzhou have not demonstrated that they are free from *de facto* government control. Therefore, we determine that Quhua and Lianzhou remain ineligible for a separate rate for this final determination.[91]

Comment 2: Whether the Scope of the Investigation Overlaps with an Existing Order

Sanmei's and Kivlan's Comments

- The Department should ensure that the final scope of the current investigation on R-134a from the PRC does not overlap with the existing antidumping duty order on hydroflourocarbon blends from the PRC (*i.e.*, *HFC Blends*).
    - Antidumping investigations are product-specific and country-specific[92] and an affirmative antidumping duty determination should be based on a class of merchandise which actually is subject to an antidumping duty order.[93] Thus, by implication, duplicative investigations against the same product from the same country are prohibited.[94]
    - Failure to ensure that there is no overlap in the scope of an ongoing investigation and an existing order has been deemed to constitute "manifest error," which taints the proceeding and thus may be deemed appropriate to terminate an investigation to correct for this manifest error.[95]
    - Under the statute, that the Department is responsible for crafting the scope of the product under investigation.[96]
    - Imports of R-134a as a component part of a blend are covered within the existing antidumping duty order on *HFC Blends* from the PRC.
    - The language of the product scope in the *HFC Blends* case is sufficiently broad to cover imports of R-134a within its ambit if interpreted incorrectly by Customs and Border Protection ("CBP").

Petitioners' Rebuttal Comments:

- The scope language regarding R-134a does not overlap the scope of the *HFC Blends* antidumping order and should not be amended.

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

[92] *See* Sanmei's Case Brief at 18 and Kivlan's Case Brief at 2 (citing *Bell Supply Co., LLC v. United States,* 179 F. Supp. 3d 1082, 1097-98 (CIT 2016) ("*Bell Supply*")).

[93] *Id.* (citing *Badger-Powhatan v. United States*, 633 F. Supp. 1364 (CIT 1986) ("*Badger-Powhatan*")).

[94] *Id.* (citing *NTN Bearing Corp. v. United States*, 705 F. Supp. 594, 597 (CIT 1989) ("*NTN Bearing*")).

[95] *See* Sanmei's Case Brief at 19 and Kivlan's Case Brief at 3 (citing *Gilmore Steel Corp. v. United States*, 585 F. Supp. 670, 673 (CIT 1984) ("*Gilmore*")).

[96] *Id*. (citing section 731 of the Act).

- The R-134a scope description includes its chemical formula and does not refer to "blends."
- The scope language defining HFC Blends is fundamentally different in one fundamental respect: it requires a blend of hydrofluorocarbons ("HFC").
- Blending R-134a with R-32, R-125, or another HFC, does not yield a form or type of R-134a, it produces one of the *HFC Blends* specifically defined by that antidumping order.

Department's Position: In the *Initiation Notice*[97] we stated, "As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determination."[98] As an initial matter, we note that neither Sanmei nor Kivlan availed itself of this opportunity to submit comments regarding the scope of this investigation in the requested time period, nor at any point prior to the briefing stage of this investigation. Moreover, neither Sanmei nor Kivlan have identified specific deficiencies in the existing scope description or proposed alternate scope language in their case briefs.

Regardless, we recognize that the courts have held that scopes for separate investigations and orders should not be duplicative and/or overlap;[99] however, we agree with Petitioners that the scope language of this investigation is distinct from, and does not overlap with, the scope of the *HFC Blends* order which covers "blends." The description of merchandise under consideration in this investigation, *i.e.*, R-134a, as stated above in the "Scope of this Investigation" section, is not a blend and specifically states the chemical formula for R-134a, CF_3-CH_2F, and makes no reference to "blends." If R-134a were blended with any other HFC resulting in a blend identified in the *HFC Blends* scope, it would be subject to that order, and thus, would not be subject merchandise in the instant case.

Sanmei and Kivlan argue that R-134a is a "component part of a blend" covered within the existing antidumping duty order on *HFC Blends* from the PRC, and that the ". . . language of the product scope in the *HFC Blends* case is sufficiently broad to cover imports of R-134a within its ambit if interpreted incorrectly by CBP." However, there is no evidence on the record of this investigation to suggest that the *HFC Blends* scope is "broad" to the extent that CBP could misinterpret it. Moreover, Sanmei's and Kivlan's statement that the *HFC Blends* scope is "broad" suggests that their concerns relate to the *HFC Blends* scope, not the scope of the instant investigation, which covers R-134a. With respect to Kivlan's and Sanmei's argument that the reference to "form, type, or purity level" means that "R-134a could arguably be subject to **both** the *HFC Blends* order and to this investigation,"[100] the *HFC Blends* scope states specifically what single component blends are covered and does not state that R-134a is covered.

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[97] *See 1, 1, 1, 2-Tetrafluoroethane from the People's Republic of China: Initiation of Less Than Fair Value Investigation*, 81 FR 18830, 18831 (April 1, 2016) ("*Initiation Notice*").
[98] *Id.*
[99] *See, e.g.*, *Bell Supply*, 179 F. Supp. 3d 1082, 1097-98, *Badger-Powhatan*, 633 F. Supp. at 1364, *NTN Bearing*, 705 F. Supp. at 597, and *Gilmore*, 585 F. Supp. at 673.
[100] *See* Kivlan's Case Brief at 5 and Sanmei's Case Brief at 21.

The *HFC Blends* scope states:

> The single component HFCs covered by the scope are **R-32, R-125, and R-143a**. **R-32** or Difluoromethane has the chemical formula CH2F2, and is registered as CAS No. 75-10-5. It may also be known as HFC-32, FC-32, Freon-32, Methylene difluoride, Methylene fluoride, Carbon fluoride hydride, halocarbon R32, fluorocarbon R32, and UN3252. **R-125** or 1,1,1,2,2-Pentafluoroethane has the chemical formula CF3CHF2 and is registered as CAS No. 354-33-6. R-125 may also be known as R-125, HFC-125, Pentafluoroethane, Freon 125, and Fc-125, R-125. **R-143a** or 1,1,1-Trifluoroethane has the chemical formula CF3CH3 and is registered as CAS No. 420-46-2. R-143a may also be known as R-143a, HFC-143a, Methylfluoroform, 1,1,1-Trifluoroform, and UN2035.[101] (Emphasis added.)

None of these single component HFCs are R-134a, and all have chemical formulas and CAS numbers distinct from the chemical formula and CAS number applicable to R-134a.

Furthermore, the *HFC Blends* scope does mention R-134a, but makes clear that it is the blend, not the R-134a, that is subject merchandise under the *HFC Blends* order and specifically states what blends are subject to the *HFC Blends* order:

> Also included are **semi-finished blends** of Chinese HFC components. Except as described below, semi-finished blends are blends of two Chinese HFCs components (*i.e.,* R-32, R-125, and R-143a), **as well as blends** of any one of these components with Chinese R-134a, that are used to produce the **subject HFC blends** that have not been blended to the specific proportions required to meet the definition of one of the subject HFC blends described above (R-404A, R-407A, R-407C, R-410A, and R-507A).[102] (Emphasis added.)

A further indication in the *HFC Blends* scope that R-134a is not covered is the following statement with respect to blends mixed in third countries: ". . . if the *only* Chinese content of such a third country blend is the R-134a portion, then such a third country blend is excluded from the scope of this investigation."[103]

In addition, the U.S. International Trade Commission ("ITC") specifically stated in its HFC Blends investigation that R-134a is excluded from the scope of that investigation. The ITC stated, "{t}he scope of the investigation also includes three of the four HFC components used to produce the five HFC blends within the scope. These three in-scope components are R-32, R-125, and R-143a. A fourth HFC component used to produce in-scope HFC blends, R-134a, is expressly excluded from the scope of the investigation."[104]

[101] *See HFC Blends*, 81 FR 55436 at "Scope of the Order."
[102] *Id.*
[103] *Id.*
[104] *See* the ITC publication "Hydrofluorocarbon Blends and Components from China," Investigation No. 731-TA-1279 (Preliminary), Publication 4558, August 2015, at 6, where the ITC cites to its prior investigation of R-134a it conducted, "R-134a 1,1,1,2-Tetrafluoroethane from China," Investigation No., 701-TA-509, 731-TA-1244 (Final), USITC Pub. 4503 (Dec. 2014).

Comment 3: Whether Critical Circumstances Exist for Weitron

Weitron's Comments:

- For the final determination, the Department should find, as facts available, that critical circumstances do not exist with respect to Weitron.
  - Weitron is a wholly market economy-owned enterprise and received a separate rate in the *Preliminary Determination*. The Department should base its finding regarding critical circumstances with respect to Weitron based on its finding with respect to Sanmei, the mandatory respondent which received a separate rate and for which the Department did not find critical circumstances:
    - The Department did not request that Weitron supply its import data covering the relevant base or comparison period. There is no evidence on the record of the investigation demonstrating that there were massive imports by Weitron during the relevant comparison period.
    - The Department found in the affirmative with respect to critical circumstances for the PRC-wide entity, based upon its conclusion that the PRC-entity was uncooperative, resulting in the Department's imputation of an adverse inference on the issue of massive imports. Because Weitron is not part of the PRC-wide entity, and Weitron was an entirely cooperative respondent, it is an error for the Department to treat Weitron identically to the PRC-wide entity in making an affirmative critical circumstances determination for Weitron.

Petitioners' Rebuttal Comments:

- The Department correctly determined that critical circumstances exist for Weitron and all other non-individually examined separate rate respondents consistent with the statute and the Department's practice. The Department's normal practice to determine whether critical circumstances exist for separate rate companies is to analyze import data from the Global Trade Atlas ("GTA"), less shipment data reported by mandatory respondents for the comparison and base periods. The Department followed its normal practice in the *Preliminary Determination* of this investigation and Weitron has not provided the Department with a reason to depart from its normal practice.

Department's Position: In order to determine whether critical circumstances exist with respect to non-reviewed exporters eligible for a separate rate, it is the Department's normal practice to analyze import data from the GTA (or other appropriate sources), less shipment data reported by mandatory respondents for the comparison and base periods.[105] Though, as noted above, we

[105] *See, e.g.*, *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, 61192 (September 6, 2016) in which we stated "For the non-selected respondents eligible for a separate rate, we relied upon ITC dataweb import statistics specific to truck and bus tires, less PCT's reported shipment data, to determine if imports in the post-Petition period for the subject merchandise were massive," unchanged in *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017). *See also*, *1,1,1,2-Tetrafluroethane from the People's*

erroneously stated in the *Preliminary Determination* that an adverse inference was made for the non-individually examined companies receiving a separate rate and the PRC-wide entity, we applied our standard methodology in the *Preliminary Determination* and found that critical circumstances existed with respect to the companies that were not individually investigated but were found eligible for separate rates based on import data.[106] No adverse inference was used with respect to the critical circumstances finding for the non-selected respondents. Separately, we found that the PRC entity was not cooperative and as an adverse inference, pursuant to sections 776(a) and (b) of the Act, imputed that critical circumstances existed for the PRC entity on the basis of massive imports.[107]

Accordingly, we have not imputed this adverse inference of massive imports to the non-individually examined companies eligible for separate rates, including Weitron, but rather, applied a methodology specific to those respondents (and decidedly not applicable to the non-cooperative PRC-wide entity) in determining that critical circumstances exist in accordance with standard practice. As discussed in the "Final Determination of Critical Circumstances, In Part" section above, we continue to follow this standard practice for this final determination.

Comment 4: Sanmei's By-Product Offsets

Sanmei's Comments

- The Department should continue to grant Sanmei's by-product offsets in the final determination. The byproducts sold by Sanmei have a minor resale value, they are generated as a result of chemical reactions that occur during production of anhydrous hydrogen fluoride and R-134a, no further processing is performed, and the Department fully verified the byproduct information placed on the record by Sanmei during this proceeding.

No other party provided comment on this issue.

Department's Position: We agree with Sanmei that we should continue to grant by-product offsets for certain by-products resulting from the production of R-134a. In the *Preliminary Determination*, Sanmei requested, and the Department granted, by-product offsets for certain materials.[108] At verification, we reviewed the production, sales, and accounting records with respect to these byproducts and found no discrepancies with information on the record of this proceeding.[109] Furthermore, no additional information with respect to by-product offsets has been submitted for the record since the *Preliminary Determination*, which would call into question that determination.

Republic of China: Antidumping Duty Investigation, Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination, 79 FR 30817 (May 29, 2014) unchanged in *R134a 2014*.

[106] *See Preliminary Determination* and accompanying PDM at 10.

[107] *Id.*

[108] *See* the memorandum "Analysis for the Preliminary Determination of the Less-Than-Fair-Value Investigation of 1,1, 1,2-Tetrafluoroethane (R-134a) from the People's Republic of China," at Attachment 1, "Margin Calculation Program Log," lines 585 - 588.

[109] *See* the Verification Report.

Comment 5: Selection of Inland Boat Freight Surrogate Value.

Sanmei's Comments:

- The Department should correct its amended *Preliminary Determination* and accurately account for the inland non-containerized boat freight costs for certain inputs consistent with the Department's longstanding practice to assign a surrogate value for domestic inland water freight based on boat freight.[110]
  - The Department incorrectly assigned an ocean freight surrogate value for Sanmei's inland freight for certain inputs which are transported non-containerized, by boat within China.
  - The surrogate value for inland freight must be both representative and reasonable in that it reflects the cost and purchasing patterns of the non-market economy purchaser and must account for the distance traversed.[111]
  - The use of ocean freight rates to calculate inland freight violates the Department's practice developed as a result of *Sigma Corp. v. United States,* ("*Sigma*") known as the Sigma Rule. The distances associated with the ocean freight rates are neither the shorter of the distance from the factor of production ("FOP") supplier's location to the producer's location or the distance from the nearest port to the producer's location.[112]
  - The statute requires the Department to value FOPs "based on the best available information regarding the values of such factors" in an appropriate surrogate market economy country[113] and calculate antidumping margins "as accurately as possible."[114]
  - The Department must value FOPs using contemporaneous period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POI or review, which are publicly available data,[115] and which are based upon the experience of the responding company.[116]

[110] *See* Sanmei's Case Brief at 6 (citing *Certain Steel Nails from the People's Republic of China: Preliminary Results of the Fourth Antidumping Duty Administrative Review,* 78 FR 56861 (September 16, 2013) and accompanying PDM, dated September 3, 2013 at 20 ("*Steel Nails 11-12 Prelim*"); *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Review*, 74 FR 6372, 6384 (February 9, 2009), and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Determination of* Sales *at Less Than Fair Value and Postponement of Final Determination*, 73 FR 70328, 70334 (November 20, 2008)).
[111] *See* Sanmei's Case Brief at 7 (citing the Antidumping Duty Manual, Chapter 10, at 11-12).
[112] *Id.*, at 9 (citing *Sigma Corp. v. United States*, 86 F. Supp. 2d 1344, 1349 (CIT 2000)).
[113] *Id.*, at 11 (citing section 773(c)(1) of the Act, *Shakeproof Assembly Components v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001) ("*Shakeproof*"), *Ningbo Dafa Chem. Fiber Co. v. United States*, 580 F.3d 1247, 1254 (Fed. Cir. 2009) (emphasizing that statute mandates that the Department "shall" use "best available information" in valuing factors of production)).
[114] *Id.*, at 12 (citing *Shakeproof*, 268 F.3d at 1382 (*quoting Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994))).
[115] *Id.*, at 12 – 13 (citing Policy Bulletin 04.1).
[116] *Id.*, at 13 (citing *Jacobi Carbons AB. v. United States*, 992 F. Supp. 2d 1360, 1370-71 (CIT 2014)).

- Absent boat or river freight surrogate values, the next most reasonable and best information on the record would be the inland truck freight which is also consistent with the Department's own practice.[117]

Petitioners' Rebuttal Comments:

- The Department's determination to value Sanmei's boat freight charges using the surrogate value for ocean freight is reasonable.
  - Sanmei failed to submit any specific surrogate values representing boat charges.
  - Sanmei's argument that the Department has used truck freight to value boat freight in previous proceedings is misplaced. The Department has also used ocean freight rates to value boat freight in previous proceedings.[118] Specificity must be the foremost consideration in determining the best available information to value FOPs and freight expenses.[119] Ocean freight and boat freight incur similar expenses while truck freight charges are fundamentally different.
  - The record is devoid of any evidence that the Department's ocean freight surrogate value is distortive. Sanmei contends that the ocean freight surrogate value used by the Department is distorted because it represents a considerable portion of its normal value. However, transportation charges can often account for a significant portion of suppliers' costs.
  - The Department did not err by calculating inland boat freight on a per-trip basis rather than a per-kilometer basis. There is no distance information with respect to the ocean freight surrogate value on the record with which a kilogram per kilometer surrogate value can be calculated.

Department's Position: We agree with Sanmei that truck freight rates are the best available information on the record with which to value inland boat freight. There is no data on the record specific to inland boat freight. The transportation surrogate values on the record of this investigation are for ocean freight and truck freight. Further, there is no data on the record with respect to the distances on which the ocean freight rates are based, thus using ocean freight rates, we could not calculate a per kilogram per kilometer freight surrogate value, as is our practice. Furthermore, the use of ocean freight rates to value inland boat freight would not be specific to Sanmei's production experience and would be inconsistent with the *Sigma* rule.

The antidumping statute requires the Department to value factors of production "based on the best available information regarding the values of such factors" in an appropriate surrogate

[117] *Id.,* at 15 (citing *Steel Nails 11-12 Prelim* and accompanying PDM at 20).
[118] *See* Petitioners' rebuttal brief at 4 (citing *e.g.*, *Creatine* and accompanying IDM at Comment 8: "We have continued to value inland shipping rates in the same manner as that in the preliminary determination" *i.e.*, by using "the cost of shipping on large vessels").
[119] *Id.*, at 5 (citing *Jinan Yipin Corp., Ltd. v. United States*, 800 F. Supp. 2d 1226, 1304 (CIT 2011) ("*Jinan Yipin*"), *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 366 F. Supp. 2d 1264, 1273-74 (CIT 2005) ("*Hebei Metals*"), and *Qingdao Sea-Line Trading Co. v. United States*, 766 F. 3d 1378, 1386 (Fed. Cir. 2014) ("*Qingdao Sea-Line*")).

market economy country.[120] Furthermore, section 773(c) of the Act grants the Department broad discretion to determine the best available information in a reasonable manner on a case-by-case basis.[121] The statute grants the Department broad discretion to determine the "best available information" in a reasonable manner on a case-by-case basis.[122] We agree with Petitioners that the Department and the Courts have consistently held that the Department's surrogate value analysis must be done on a case-by-case basis to account for the particular facts of each industry.[123] Moreover, we agree with Petitioners that the Courts have repeatedly held that specificity "must be the foremost consideration in determining 'best available information'"[124] because specificity ensures that the Department's surrogate value reflects as closely as possible the respondents' production experience.[125] However, we disagree with Petitioners' argument that ocean freight rates are the best available information with which to value inland boat freight because the costs associated with ocean freight and inland boat freight are similar.

As stated above, surrogate values must reflect as closely as possible the respondents' production experience. The ocean freight rates cover specific international, trans-ocean shipments from specific points of origin to specific destinations, which are not the same points of origin and destination applicable to the inland boat freight. Furthermore, the actual distances applicable to the inland boat freight are on the record of this investigation; however, the distances relevant to the ocean freight rates are not on the record. Therefore, the ocean freight rates cannot be used to calculate a per kilogram, per kilometer inland boat freight surrogate value. However, using the truck freight surrogate value, we are able to calculate a per kilogram per kilometer surrogate value, as is our normal practice. Furthermore, the inland boat freight we are valuing covers domestic inland river freight within a single province. While there is no surrogate value for inland boat freight on the record of this segment of the proceeding, there is a surrogate value for truck freight, which is another form of domestic transportation. The Department has relied on truck freight rates to value inland boat freight in prior proceedings where an inland boat freight value was not on the record of the proceeding.[126] Petitioners argue that the Department has also

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[120] *See* section 773(c)(1) of the Act; *see also Shakeproof*, 268 F.3d 1376, 1382 (Fed. Cir. 2001); *Ningbo*, 580 F.3d at 1254 (emphasizing that statute mandates that Commerce "shall" use "best available information" in valuing factors of production).

[121] *See Peer Bearing Co. v. United States*, 182 F. Supp. 2d 1285, 1291 (CIT 2001).

[122] *See Lasko Metal Prods., Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994) (noting that the statute "simply does not say--anywhere--that the factors of production must be ascertained in a single fashion").

[123] Petitioners cite *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 75 FR 844 (Jan. 6, 2010) and accompanying IDM at comment 3; *Timken Co. v. United States*, 201 F. Supp. 2d 1316, 1321 (CIT 2002) (citation omitted); *Zhejiang DunAn Hetian Metal Co. v. United States*, 707 F. Supp. 2d 1355, 1363 (CIT 2010), *reviewed on other grounds*; *Certain Preserved Mushrooms from the People's Republic of China*, 71 FR 40477 (Jul. 17, 2006) and accompanying IDM at comment 1.

[124] *See Jinan Yipin*, 800 F. Supp. at 1304; *see also Hebei Metals*, 366 F. Supp. 2d. at 1273-74; *Qingdao Sea-Line*, 766 F. 3d at 1386.

[125] *See Taian Ziyang Food Co. v. United States*, 783 F. Supp. 2d 1292, 1330 (CIT 2011) ("In sum, 'product specificity' logically must be the primary consideration in determining 'best available information.' If a set of data is not sufficiently 'product specific,' it is of no relevance whether or not the data satisfy the other criteria set forth in Policy Bulletin 04.1.").

[126] *See, e.g., Steel Nails 11-12 Prelim*, 78 FR 56861, 56864 (September 16, 2013) in which we stated, "The Department determined the best available information for valuing boat freight to be the same as that for truck freight because no party submitted, nor were we able to locate, a Thai boat freight rate," unchanged in *Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR

used ocean freight in a prior proceeding, *i.e*., *Creatine*, but there is no information on the record of this investigation or in the *Creatine Federal Register* notice indicating whether the ocean freight rates used in *Creatine* were distance-specific.

It is, thus, reasonable to value inland boat freight using truck freight rates in this case because there is no inland boat freight rate on the record, the ocean freight rates on the record are not the best available information to value inland boat freight, and truck freight rates, in lieu of inland boat freight rates, represent a conservative value and are consistent with *Sigma*. *Sigma* is based on the premise that an importer of a material input will base its decision as to whether to import a material input or buy it domestically, on the cost of the freight to deliver the material inputs to the producer's premises. In this case, Sanmei chose inland boat freight, presumably because that was the least expensive method of delivery. Thus, use of the truck freight rate surrogate value as facts available pursuant to section 776(a)(1) and (2) of the Act, allows us to value boat inland freight consistent with the *Sigma* requirement that we value inland freight using the shorter of the distance from the producer's facilities to the material input supplier or to the nearest ocean port, as the ocean freight rates represent a third, unknown distance not contemplated by *Sigma*.

Comment 6: Use of the CYDSA Financial Statement in Calculation of Surrogate Financial Ratios

Sanmei's Comments

- In the *Preliminary Determination*, the Department relied on the financial statements of Mexichem and CYDSA S.A. de C.V ("CYDSA") to calculate the surrogate financial ratios. For the final determination, surrogate financial ratios for Sanmei should be based only on Mexichem's financial statement to establish antidumping margins as accurately as possible.
    - The antidumping statute requires the Department to value FOPs based on the best available information regarding the values of such factors in an appropriate surrogate market economy country.[127]
    - CYDSA's financial statements are significantly lacking in detail. There is no information provided in the financial statements that lists what expenses are captured in the cost of goods sold ("COGS") and selling, general, and administrative expenses ("SG&A"). In addition, CYDSA's financial statements do not provide sufficient detail to calculate accurately the surrogate financial ratios specific to the product under investigation.
    - Relying on financial statements such as those of CYDSA is against Department practice.

19316 (April 8, 2014). *See also Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Review*, 74 FR 6372, 6384 (February 9, 2009) unchanged in *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 41374 (August 17, 2009), *Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 70328, 70334 (November 20, 2008) unchanged in C*itric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009).

[127] *See* Sanmei's Case Brief at 24 (citing *FMC Corp. v. United States*, 27 C.I.T. 240, 251 (Feb. 11, 2003)).

        - The Department stated in *Diamond Sawblades*,[128] that, where possible, it does "not calculate financial ratios based on financial statements that show discrepancies or lack of specificity with respect to certain line items."
        - In *Chlorinated Isocyanurates*,[129] the Department stated that it would only use a financial statement to calculate financial ratios when it included "specific line item{s} for SG&A expenses that allow the Department to directly calculate the surrogate financial ratios."

Petitioners' Rebuttal Comments

- It is appropriate to continue to use both the CYDSA and Mexichem's financial statements to calculate surrogate financial ratios for the final determination.
    - Both companies are producers of comparable merchandise.
    - Both companies' financial statements are sufficiently detailed to calculate surrogate financial ratios.
        - Contrary to Sanmei's claim that the CYDSA financial statements do not provide detail for costs included in COGS, auditors' notes 9, 12, and 15 of the CYDSA financial statements demonstrate that COGS includes raw materials, finished goods, works in progress, depreciation, and wages and salaries, in addition to other costs. This breakdown of costs is similar to that included in the Mexichem financial statements.
        - The SG&A expenses reported in the CYDSA financial statements include a line item for wages and salaries and are not distorted. Sanmei's complaint that other items in CYDSA's SG&A are not broken out misstates Department practice. Sanmei conflates the Department's preference for detailed breakouts of factory overhead ("FOH") costs with SG&A expenses. The absence of a detailed FOH breakout has the potential to impact the Department's segregation of costs for comparable and non-comparable products. SG&A expenses, in contrast, are not directly tied to material costs but are calculated on a company-wide basis. Thus, the absence of a detailed breakout does not necessarily impact the reliability of the SG&A calculation.
    - It is consistent with the Department's longstanding policy to use the financial statements of more than one producer whenever possible to calculate surrogate financial ratios.
    - The CYDSA financial statements are more specific to the subject merchandise and the surrogate country. CYDSA produces refrigerants in the surrogate country, Mexico. In contrast, Mexichem produces a variety of products including specialty resins, and pipes and fittings of PVC. The Mexichem financial statements reflect the revenues and expenses associated with 48 production and operational facilities across the world, including Europe, Asia and Africa.

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[128] *Id.*, at 25 (citing *Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015) and accompanying IDM at 48).
[129] *Id.* (citing *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 4852 (January 17, 2017) ("*Chlorinated Isocyanurates 14-15*")).

Department's Position: When selecting financial statements for purposes of calculating surrogate financial ratios, the Department's policy is to use publicly available[130] financial statements from market-economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[131] Moreover, for valuing overhead, SG&A expenses, and profit, the Department uses non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country.[132] Additionally, it is the Department's practice to disregard financial statements where we have reason to believe or suspect that the company has received actionable subsidies, if there is other usable data on the record.[133] Further, the courts have recognized the Department's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[134]

Contrary to Sanmei's assertion that CYDSA's financial statements do not include breakouts for subcategories of COGS and SG&A, they, in fact, do include breakouts. CYDSA's financial statements demonstrate that COGS includes raw materials, finished goods, works in progress, depreciation, and wages and salaries, in addition to other costs.[135] Using both CYDSA's and Mexichem's financial statements in this investigation is consistent with the Department's preference for using multiple financial statements to determine surrogate financial ratios. Using multiple financial statements to calculate surrogate financial ratios allows the Department to average FOH, SG&A and profit ratios in order "to normalize any potential distortions that may arise" from using the statements of a single producer and to "arrive at a broader-based surrogate valuation that minimizes the particular circumstances of any one producer."[136] CYDSA's financial statements are also most specific to Sanmei's production experience, as CYDSA produces refrigerants in the surrogate country, Mexico. Furthermore, CYDSA's 2014 financial statements were used to calculate financial ratios in the *HFCs Blends* investigation and its 2015 financial statements (*i.e.*, the same financial statement on the record of this investigation) were recently used to calculate financial ratios in the 10th administrative review of chlorinated isocyanurates from the PRC.[137] With respect to Sanmei's concerns regarding the breakout of SG&A, given the totality of circumstances, it is appropriate to use CYDSA's financial

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[130] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005), and IDM at Comment 3.
[131] *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 76945 (December 9, 2011) and the accompanying IDM at Comment 5. *See also* Import Administration Policy Bulletin 04.1, "Non-Market Economy Surrogate Country Selection Process," at "Data Considerations" (March 1, 2004).
[132] *See* 19 CFR 351.408(c)(4).
[133] *See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affimmtive Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008), and accompanying IDM at Comment 17 A.
[134] *See Shakeproof*, 268 F.3d at 1381. *See also*, *e.g.*, *FMC Corp. v. United States,* 27 CIT at 251 (finding that the Department "has wide discretion in choosing among various surrogate sources"), aff'd *FMC Corp. v. United States*, 87 Fed. Appx. 753 (Fed. Cir. 2004)).
[135] *See* Petitioners' submission, "Antidumping Duty Investigation of 1,1,1,2 Tetrafluoroethane from the People's Republic of China: Initial Surrogate Value Data," at Exhibit 10, Auditors' Notes at notes 9, 12 and 15.
[136] *See HFC Blends* and accompanying IDM at Comment 30.
[137] *See* the memorandum, "2014-2015 Administrative Review of the Antidumping Duty Order on Chlorinated Isocyanurates from the People's Republic of China, Preliminary Results Surrogate Value Memorandum, dated July 5, 2016, at 6, submitted as Attachment 6 to Petitioners' July 18, 2016 submission, "1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Rebuttal to Surrogate Value Submissions of Sanmei and Lianzhou." *See also Chlorinated Isocyanurates 14–15*.

statements to calculate surrogate financial ratios due to their specificity. In *HFCs Blends*, with respect to specificity, we stated, "… these statements showed that CYDSA produced both identical and comparable merchandise, and the company made a profit during the POI," and, "… we find the increase in product similarity in CYDSA's financial statement potentially renders CYDSA's experience more representative of TTI's suppliers' own, and, thus, we do not find that their lack of detail with respect to one of the ratio categories (*i.e.*, SG&A expenses) constitutes a fatal flaw." Thus, for the final determination we will continue to calculate surrogate financial ratios using both the CYDSA and Mexichem financial statements.

Comment 7: Revision of Sanmei's Producer/Exporter Combinations.

Sanmei's Comments:

- At verification, Sanmei informed the Department that its list of producer/exporter combinations should also include the following: Zhejiang Sanmei Chemical Ind. Co. Ltd./Shanghai Fuluo International Trade Co. Ltd ("Fuluo") and Zhejiang Sanmei Chemical Industry Co. Ltd./Shanghai Fuluo International Trade Co. Ltd. Accordingly, the Department should assign a unique producer/export combination rate for all of Sanmei's entities.

No other interested party commented on this issue.

Department's Position: We disagree with Sanmei that the Department should assign a unique producer/export combination rate to Fuluo. At verification, we reviewed sales and accounting records demonstrating that Fuluo had begun exporting subject merchandise produced by Sanmei to the United States subsequent to the POI.[138] However, Fuluo did not submit a separate rate application ("SRA") (or a section A questionnaire response). The SRA clearly states in the instructions that "each applicant seeking separate rate status must submit a separate and complete individual application regardless of any common ownership or affiliation between firms and regardless of foreign ownership. Each firm must apply for a separate rate by submitting an individual application."[139] Furthermore, Fuluo had no sales or exports to unaffiliated U.S. customers under its own name during the POI.[140] It is incumbent upon the exporter seeking a separate rate to establish that it is not subject to government control,[141] and Fuluo has not provided evidence to that end in this investigation.

Accordingly, we have not revised the accompanying *Federal Register* notice to reflect the requested combinations.

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[138] *See* the Verification Report.
[139] *See* the Department's Separate Rate Application, available at: http://enforcement.trade.gov/nme/sep-rate-files/app-20150323/srv-sr-app-20150416.pdf, at pages 3-4. *See also*, *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review*, *2013-2014*, 80 FR 55328 and accompanying IDM at Comment 12.
[140] *Id.*, where we stated, ". . . we continue to deny Camimex Corp. separate rate status for this POR, as it is a producer with no sales or exports to unaffiliated U.S. customers and has no reviewable POR entries under its own name."
[141] *See Sigma Com v. United States*, 117 F. 3d 1401, 1405-06 (Fed. Cir. 1997): "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."

VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register* and inform the International Trade Commission of our findings.

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Agree Disagree

2/21/2017

X Carole Showers

Signed by: CAROLE SHOWERS

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Carole Showers
Executive Director, Office of Policy
Policy & Negotiations