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

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

SUBJECT: Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof from the People's Republic of China

I. Summary

We analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC) covering the period November 1, 2014, through October 31, 2015. We made changes in the margin calculations as a result of our analysis. We recommend that you approve the positions we have developed in the *Discussion of the Issues* section of this memorandum. Below is a complete list of the issues for which we have received comments and rebuttal comments from the interested parties:

a. Adverse Facts Available
   Comment 1: Application of AFA to the Jiangsu Fengtai Single Entity
   Comment 2: Due Process Afforded to the Jiangsu Fengtai Entity in AFA Determination
   Comment 3: Total AFA Request for Bosun
   Comment 4: Partial AFA Request for Bosun's Sales Identified Using the FIFO Methodology
   Comment 5: Partial AFA Request for Bosun's Sales Reported with Incorrect Control Numbers
   Comment 6: Partial AFA Request for Bosun's Sales Later Deleted from Sales Database
   Comment 7: Separate Rate for Non-Selected Respondents
b. Differential Pricing
   Comment 8: WTO Obligations
   Comment 9: Cohen's d Test
   Comment 10: Denial of Offsets for Non-Dumped Sales When Using the A-T Method
c. Value-Added Tax
   Comment 11: *Deduction of Irrecoverable Value-Added Tax*
d. Surrogate Values
   Comment 12: *Container Weight in Brokerage and Handling and Inland Freight Expenses*

Comment 13: Copper Powder and Copper Iron Clab
Comment 14: Labor

II. Background

On December 9, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades from the PRC.[1] We invited interested parties to comment on the *Preliminary Results*. We received case[2] and rebuttal[3] briefs from various parties to this administrative review. We extended the deadline for the final results of this review from April 8, 2017, to June 7, 2017.[4] We conducted the verification of Bosun's U.S. sales and sales identification methodology from May 7, 2017, to May 9, 2017, and invited parties to submit case and rebuttal briefs limited to the verification.[5] We received a post-verification case brief from the petitioner and a post-verification rebuttal brief from Bosun.[6] For company abbreviations, other abbreviations, and prior diamond sawblades administrative determinations and results, *see* Appendix.

III. Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semi-finished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order.

[1] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 89045 (December 9, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.
[2] *See* Case Briefs filed by the petitioner, Bosun, and the Jiangsu Fengtai Single Entity on January 17, 2017.
[3] *See* Rebuttal Briefs filed by the petitioner and Bosun on January 24, 2017.
[4] *See* the Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated April 5, 2017 (Final Results Extension Memorandum).
[5] *See* the Memorandum to the File, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Verification of the U.S. Sales Response of Bosun Tools Co., Ltd.," dated May 17, 2017 (Verification Report), and the Letter to All Interested Parties dated May 18, 2017.
[6] *See* the petitioner's Post-Verification Case Brief dated May 23, 2017, and Bosun's Post-Verification Rebuttal Brief dated May 25, 2017.

Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, the Department included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by CBP.[7]

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

IV. Surrogate Country

In the *Preliminary Results*, we treated the PRC as an NME country and calculated normal value in accordance with section 773(c) of the Act. We selected Thailand as the primary surrogate country, pursuant to 19 CFR 351.408(c)(2), because it is at the level of economic development of the PRC, because it is a significant producer of merchandise comparable to subject merchandise, and because of the availability and quality of Thai data for valuing FOPs.[8] For the final results of review, we continued to treat the PRC as an NME country[9] and have continued to use Thailand as the primary surrogate country.

V. Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate.[10] It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate.[11]

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

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[7] *See Diamond Sawblades and Parts Thereof from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 76128 (December 6, 2011).
[8] *See Preliminary Results,* and accompanying Preliminary Decision Memorandum at 12-14.
[9] *See* section 771(18)(C)(1) of the Act.
[10] *See, e.g., LTFV Final*, 71 FR at 29307, and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006).
[11] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736 (January 7, 2016).

Neither the statute nor the Department's regulations addresses the establishment of a rate to be applied to companies not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Our practice in this regard has been to look to section 735(c)(5) of the Act for guidance which provides instructions for calculating the all-others rate in an investigation,[12] as a general rule, and assign this dumping margin to separate-rate companies that were not individually examined. Section 735(c)(5)(A) of the Act provides that the Department shall calculate the all-others rate equal to the weighted-average of the margins calculated for the individually examined respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available. In this administrative review, the final margin for Bosun is the only margin that is not zero, *de minimis*, or based entirely on facts available. Therefore, we assigned the final margin for Bosun to the non-selected respondents eligible for a separate rate. We continue to determine the Jiangsu Fengtai Single Entity to be eligible for a separate rate, although as discussed below, its margin continues to be based on total AFA.[13]

VI. Discussion of the Issues

a. Adverse Facts Available

Comment 1: Application of AFA to The Jiangsu Fengtai Single Entity

The Jiangsu Fengtai Single Entity disagrees with the Department's rationale for the Department's preliminary application of AFA to the company. Specifically, the Jiangsu Fengtai Single Entity disagrees with the Department's preliminary determination that the company failed to provide information requested by the Department in a timely manner or in the form requested by the Department with respect to why products with the same customer product codes had a control number in this review that was different than the control number reported in the last completed review. The Jiangsu Fengtai Single Entity argues that it timely responded to each and every information request issued by the Department, including detailed responses to sections A, C, and D of the Department's initial questionnaire, constituting 930 pages of narrative responses, documentation, and databases, and responses to the Department's two supplemental questionnaires, containing revised databases, revised reconciliations and narrative responses, comprising 1,321 pages and 1,744 pages respectively. The Jiangsu Fengtai Single Entity argues that it provided reasonably sufficient responses in the reporting of its control numbers in this review and to the Department's questions relating to the differences in the control numbers reported in this review from those reported in the last completed review and, therefore, the Department should calculate a company-specific margin for the Jiangsu Fengtai Single Entity based on the U.S. sales data, FOP data and SV information that the Jiangsu Fengtai Single Entity placed on the record. Significantly, the Jiangsu Fengtai Single Entity argues, the product codes it reported are used only by the U.S. customers in their purchase orders to identify their own products, and that most U.S. customers continue to use the same product code even if the specifications for that product produced by the Jiangsu Fengtai Single Entity has changed.

[12] *See* section 735(c)(5) of the Act. *See also Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012- 2013,* 79 FR 57872 (September 26, 2014).
[13] *See* Comment 1, *infra.*

The Jiangsu Fengtai Single Entity explains that the control numbers it assigned are based upon its own Material Requisition Sheets (MRSs) and technical drawings, which establish the material component of the steel core, as well as the diameters of the sawblades, segment lengths, number of segments, and thickness of the steel core and segment. The Jiangsu Fengtai Single Entity explains that its technical department issues MRSs and technical drawings for each product ordered by its customers, and that it translates the product code provided by the U.S. customer by designing an "ERP code" for each specific product, which represents each product's characteristics. The Jiangsu Fengtai Single Entity states that its control numbers are specific to a combination of an ERP code and a specific formula of metal and diamond powders used to produce specific types of subject merchandise. The Jiangsu Fengtai Single Entity explains that, on this basis, it reported selling products during the POR that constituted 156 U.S. customer product codes, having 121 control numbers, that were produced and sold during the POR, and that corresponded to 101 ERP codes and 31 diamond-metal powder mix formulas. The Jiangsu Fengtai Single Entity argues that it reported all the MRSs for products ordered by its customers, including those of certain products in which changes to the product specifications were agreed upon with its U.S. customers.[14]

The Jiangsu Fengtai Single Entity argues that, in response to the Department's two supplemental questionnaires asking why products with the same customer product code had a control number in this review that was different than the control number reported in the last completed review, it explained that the control numbers varied due to: (1) its own changes for purposes of decreasing production costs; (2) certain other changes in product specifications, which U.S. customers agreed to, as either upgraded specifications to enhance a product performance, or in an effort to lower prices; and (3) as a result of different reporting methods for certain control number fields used in this review as compared to those used and reported in the last completed review.

With respect to changes agreed to by its customers, the Jiangsu Fengtai Single Entity argues that it provided in its response to the Department's second supplemental questionnaire a "corrected and longer" version of the e-mail chain with one of its U.S. customers dated from May 2014 it had provided in its section D response to the Department's first supplemental questionnaire,[15] now dated 2014, and e-mail chains with three other U.S. customers dated later in calendar year 2014, that also applied to merchandise sold during the POR.[16] The Jiangsu Fengtai Single Entity argues that it also provided inventory-in and inventory-out records for the steel deliveries used in making the steel cores for certain ERP codes, which established that it manufactured these products in accordance with the changes in specifications requested by the U.S. customer[17] (for which it submitted a 2016 e-mail chain in the first section D supplemental response and corrected and longer 2014 e-mail chain in its second section D supplemental response). The

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[14] The Jiangsu Fengtai Single Entity cites to its November 3, 2017, response to section D of the Department's second supplemental questionnaire dated October 12, 2016 (2SDQR) at 7 and Exhibit S2-21.

[15] The Jiangsu Fengtai Single Entity cites to its September 2, 2016, response to section D of the Department's first supplemental questionnaire dated July 26, 2016 (1SDQR) at 2-3 and Exhibit S-24 (in which the Jiangsu Fengtai Single Entity provided an e-mail chain comprising three e-mails with one of its customers dated 2016).

[16] The Jiangsu Fengtai Single Entity cites to 2SDQR at Exhibit S2-15 (in which the Jiangsu Fengtai Single Entity provided e-mail chains with four customers, including the e-mail chain with the customer it had provided in its first supplemental response containing three e-mails dated 2016, amended to include three additional e-mails in the e-mail chain, all dated 2014).

[17] The Jiangsu Fengtai Single Entity cites to 2SDQR at 3 and Exhibit S2-14.

Jiangsu Fengtai Single Entity explains that for a fifth U.S. customer, where specification changes either remained within the customer's tolerances or the agreement to changes was made verbally, no documentation was provided.

Finally, the Jiangsu Fengtai Single Entity argues that it provided as an exhibit to its case brief a chart to assist the Department with understanding the differences between the control numbers reported in the last completed review and this review.[18] The Jiangsu Fengtai Single Entity explains that the chart includes all 156 U.S. customer product code items reported in this review (89 of which were not reported in the last completed review), which correspond to the 121 control numbers reported in its second supplemental response,[19] as well as each U.S. customer product code reported in the last completed review and specifies for each product code item whether there was a change or no change in the control number for each control number field. Of the 67 product codes reported in both reviews, the Jiangsu Fengtai Single Entity explains, 49 product codes had control numbers resulting from actual changes in specifications as agreed upon by the U.S. customers. Therefore, the Jiangsu Fengtai Single Entity argues, it fully explained in its questionnaire responses and provided sufficient documentation to establish the reasons for the differences in the reported control numbers between the last completed review and this review.

The petitioner argues that the Department properly applied AFA to the Jiangsu Fengtai Single Entity based on its failure to fully respond to the Department's questions regarding changes to its control numbers between the PORs for the last completed review and this review. Specifically, the petitioner argues that, while the Jiangsu Fengtai Single Entity describes the documentation that it did provide, it fails to address the shortcomings identified by the Department or to demonstrate that it fully responded to all the Department's requests. The petitioner argues that the fact that the Jiangsu Fengtai Single Entity submitted a response to the Department's questionnaires in no way demonstrates that it fully responded to the questions that the Department was asking. Nor does the submission of large questionnaire responses demonstrate that the Jiangsu Fengtai Single Entity provided the documentation requested by the Department, according to the petitioner. While the Jiangsu Fengtai Single Entity asserts in its brief that the documentation it provided applies to merchandise sold during this POR, the petitioner argues, the cited documentation does not support this assertion. Moreover, the petitioner argues, the Jiangsu Fengtai Single Entity does not provide a full explanation or accompany the explanation with supporting documentation, including documentation supporting its narrative responses, despite the Department's explicit requests that it do so. The petitioner contends that the Jiangsu Fengtai Single Entity's failure is particularly important given the scope, significance, and uniqueness of the underlying issues. Consequently, the petitioner argues, the Jiangsu Fengtai Single Entity has provided no basis for the Department to depart from the *Preliminary Results*.

Furthermore, the petitioner argues, as the Department noted in the *Preliminary Results*, the Jiangsu Fengtai Single Entity submitted unreliable information in support of its claim. Specifically, the petitioner claims, the Jiangsu Fengtai Single Entity submitted two essentially identical e-mail chains that had different dates on them. The petitioner contends that, as both documents cannot be correct, the Department is unable to rely on either document and, thus, this

[18] The Jiangsu Fengtai Single Entity cites to its case brief at Exhibit 1.
[19] The Jiangsu Fengtai Single Entity cites to 2SDQR at Exhibit S2-23.

documentation provided no support for the Jiangsu Fengtai Single Entity's reporting. Specifically, the petitioner claims that *Nippon Steel*[20] has made clear that the application of AFA requires no finding of intent or motivation and, even if that there is an entirely benign explanation as to why the Jiangsu Fengtai Single Entity submitted mutually incompatible documents, that does not excuse the Jiangsu Fengtai Single Entity from its submission of unreliable information. The petitioner contends that the fact is that the Jiangsu Fengtai Single Entity submitted the same document with different dates, without explanation, thus preventing the Department from determining whether the Jiangsu Fengtai Single Entity had submitted documentation that supported its reporting. The petitioner contends further that the submission of documentation that appears to be altered indicates that the Jiangsu Fengtai Single Entity failed to act to the best of its ability in responding to the Department's request for information and raises questions as to the validity of all of the Jiangsu Fengtai Single Entity's documentation. Considering this fact, according to the petitioner, regardless of the other shortcomings in the Jiangsu Fengtai Single Entity's responses, the Department appropriately applied AFA to the Jiangsu Fengtai Single Entity.

Department's Position: We disagree with the Jiangsu Fengtai Single Entity that the administrative record establishes that it was fully responsive to all our requests for information concerning the differences in reported control numbers between the last completed review and this review and, therefore, we continue to find that the application of AFA to the Jiangsu Fengtai Single Entity is appropriate for purposes of the final results. Between the last completed review and this review, control numbers changed for certain customer codes, which affects the Department's matching for its AD calculations, because matching is done, in large part, based on control numbers derived from product specifications. Therefore, the Department sought to understand what was behind the changes in control numbers, as the control numbers are critical to the Department's analysis. The Jiangsu Fengtai Single Entity explained that, in part, the changes were due to changes in certain product specifications requested by its customers. However, as described below, the Jiangsu Fengtai Single Entity was unable to support that claim with documentary evidence, despite being given many opportunities to do so. Because the Jiangsu Fengtai Single Entity was unable to support its claim that the changes in control numbers resulted from changes to product specifications requested by its customers, the Department is unable to rely on such control numbers for purposes of its calculations in this administrative review.

Specifically, as discussed in the Preliminary Decision Memorandum,[21] we requested in a supplemental questionnaire that the Jiangsu Fengtai Single Entity: (1) explain why, for the same customer product code, the control number reported in this review was different from the control number in the prior review; and (2) provide documentation that demonstrated the change(s) in physical characteristics that led to the change in the reported control number. This information was necessary to account for differences in reported production costs associated with the changes in the physical characteristics for such products. In response, the Jiangsu Fengtai Single Entity attributed the control number differences, in part, to changes to product specifications negotiated and agreed upon with the customer, and to support its explanation provided, inter alia, e-mail correspondence dated 2016 that it claims was exchanged between the Jiangsu Fengtai Single

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[20] *Nippon Steel Corp. v. United States*, 337 F.3d at 1373, 1383 (Fed. Cir. 2003) (*Nippon Steel)*.
[21] *See* Preliminary Decision Memorandum at 12-14.

Entity and one of its U.S. customers (Customer A)[22] agreeing to changes to product specifications in the products sold during the POR.[23] However, as noted in the Preliminary Decision Memorandum, the e-mail chain does not show that: (1) the Jiangsu Fengtai Single Entity's claimed specification changes were specific to the POR; or (2) these e-mails pertain to diamond sawblades that the Jiangsu Fengtai Single Entity sold to the United States during the POR. In addition, although one of the e-mails contains a product list, the Jiangsu Fengtai Single Entity did not provide any other documentation supporting these claims. Thus, the information provided does not demonstrate that, for the same customer product codes, the changes to the control numbers reported in this review for products sold during the POR compared to the control numbers reported in the prior review were a result of changes requested by the Jiangsu Fengtai Single Entity's customers.

Furthermore, as discussed in the Preliminary Decision Memorandum, we asked the Jiangsu Fengtai Single Entity in a second supplemental questionnaire to provide a detailed description with supporting documentation of the process undertaken when the specification of a product changes, including how often this occurs in the normal course of business, and how this is tracked in its normal books and records.[24] We also asked that it provide documentation to support its statement that customers agreed to and/or directed changes to product specifications and demonstrate that such changes affected the products sold during the POR.[25] In response, the Jiangsu Fengtai Single Entity provided a narrative explaining that the control numbers varied due to its own changes for purposes of decreasing production costs, certain other changes in product specifications, which U.S. customers agreed to, as either upgraded specifications to enhance a product performance, or in an effort to lower prices, and changes resulting from different reporting methods for certain control number fields used in this review as compared to those used and reported in the last completed review.[26] As support for changes agreed to by its customers, the Jiangsu Fengtai Single Entity provided a "corrected and longer" version of the e-mail chain with Customer A, which it provided in its first supplemental response and additional e-mail chains with three other U.S. customers (Customers B, C, and D),[27] all predating the POR. However, it did not respond to our requests for documents demonstrating that such changes to the specifications affected the products sold during the POR. Specifically, none of the e-mails provided in either supplemental response demonstrate that the e-mail communications were between the Jiangsu Fengtai Single Entity and its U.S. customers, *e.g.*, the e-mails do not show the name of the customer or the location of the customer.[28] Furthemore, as noted by the petitioner, because the Jiangsu Fengtai Single Entity submitted two essentially identical e-mail chains that had different dates on them, the Department is unable to rely on either document because both documents cannot be correct, and, thus, this documentation provided no support for the Jiangsu Fengtai Single Entity's reporting. Thus, these do not demonstrate that U.S. customers agreed to or directed changes to products sold to the United States during that POR, as the communications do not identify the customer or its location. Moreover, none of them show that the Jiangsu Fengtai Single Entity's claimed specification changes were to be implemented

[22] The Jiangsu Fengtai Single Entity requested business proprietary treatment of the names of its U.S. customers.
[23] *See* 1SDQR at 2-3 and Exhibit S-24.
[24] *See* the Department's second supplemental questionnaire dated October 12, 2016, at Question 9.
[25] *Id.*
[26] *See* 1SDQR at 2-3.
[27] *See* 1SDQR at Exhibit S-24, and 2SQR at Exhibit S2-15.
[28] *Id.*

for products sold to its customers to the United States during the POR.

In addition, as discussed below, the Jiangsu Fengtai Single Entity did provide one e-mail chain (with Customer A) with a product list and technical drawings attached, as well as an e-mail chain (with Customer B) with a signed and dated product specification table attached, but it did not demonstrate how the e-mail product list, technical drawings and product specification table provided in the e-mail chains specifically link to the changes claimed to have been requested by its customers and implemented for products sold to these customers during the POR. It also did not provide a narrative or any supporting production-related documentation which would demonstrate that the product specifications for products sold during the previous POR were changed for the same products sold in the current POR at the direction of Customer A's and Customer B's specific instructions. Moreover, the e-mail chain (with Customer A) with a product list and technical drawings attached appears altered. Specifically, a portion of this e-mail chain, which was provided in the first supplemental response as a stand-alone e-mail chain and again in a "corrected and longer" form in the second supplemental response, is identical in both supplemental responses except for the number of the year: 2016 in the first supplemental response and 2014 in the second supplemental response.[29] Therefore, this e-mail chain is unreliable and does not serve as support for the Jiangsu Fengtai Single Entity's arguments.

The Jiangsu Fengtai Single Entity argues that it provided in Exhibit S2-15 technical drawings of certain products demonstrating changes to the product specifications which were agreed upon with Company A.[30] However, these provide little support to the Jiangsu Fengtai Single Entity's argument. Included in Exhibit S2-15 is an e-mail chain with customer A containing a list of 21 customer product numbers with corresponding drawing numbers which appear to correlate to fourteen attached technical drawings.[31] Of the 14 technical drawings, only eight of them have product-identifying ERP codes which correspond to the customer's ERP codes reported in the U.S. sales database, and two of these are for control numbers which do not appear to have changed between the PORs. One of the 14 technical drawings has an ERP code reported in the U.S. sales database for a different customer. Six of the 14 technical drawings are in Chinese with no translation. Five of the 14 technical drawings cannot be linked to any customer because they do not have ERP codes. Finally, the drawing number on one of the technical drawings does not even correspond to the product list in the e-mail. So, for the 21 products listed in the e-mail, there are only six with corresponding technical drawings which identify an ERP code, have an English translation, were sold to Customer A, and the control number changed between the prior completed review and this review. The Jiangsu Fengtai Single Entity provided no explanation for these apparent discrepancies and/or deficiencies. Therefore, contrary to Jiangsu Fengtai Single Entity's argument, the technical drawings in Exhibit S2-15 contain multiple discrepancies, and thus, do not demonstrate that product specifications were agreed upon with a U.S. customer, because the Jiangsu Fengtai Single Entity does not identify for the products sold to Customer A the specific product codes which changed or how the supporting documentation

[29] *See* 1SDQR at 2-3 and Exhibit S-24 and 2SDQR at 2-6 and Exhibit S2-15. *See* Comment 2 below for further discussion of this matter.
[30] The Jiangsu Fengtai Single Entity cites to 2SDQR at Exhibit S2-15.
[31] The Jiangsu Fengtai Single Entity does not state how many of the forty-nine customer product codes it claimed had changes to control numbers resulting from changes in specifications as agreed upon by all of its U.S. customers pertain only to Customer A.

identifies the changes for each product and that the changes reflect the changes agreed upon by Customer A.

With respect to the e-mail chains the Jiangsu Fengtai Single Entity provided between the Jiangsu Fengtai Single Entity and Customers B, C, and D, the e-mail chain with Customer B, which has a signed and dated product specification table, does not identify the ERP codes which would link the products to control number changes resulting from changes to specifications agreed to upon by Customer B, while the e-mail chains with Customers C and D cite to no specific product information. With respect to the products of a fifth customer (Customer E) for which the Jiangsu Fengtai Single Entity claims an agreement was made to change the physical characteristics between PORs, the Jiangsu Fengtai Single Entity provided no documentation, stating that the process was done "verbally."[32] However, the Jiangsu Fengtai Single Entity's claims of a verbal process are insufficient evidence.

The Jiangsu Fengtai Single Entity further argues in its case brief that in Exhibit S2-21 it reported all of the MRSs for products ordered by its customers, including those of certain products in which changes to the product specifications were agreed upon with its U.S. customers.[33] The Jiangsu Fengtai Single Entity explained that the control numbers it assigned are based upon its own MRSs (and matching technical drawings) which are issued by the Jiangsu Fengtai Single Entity's technical department to establish the material component of the steel core, as well as the diameters of the sawblades, segment lengths, number of segments, and thickness of the steel core and segment for each product ordered by its customers, and are used to translate the customer product code into an "ERP code" for each specific product, and that its control numbers are specific to a combination of an ERP code and a specific formula of metal and diamond powders used to produce specific types of subject merchandise. However, the MRSs the Jiangsu Fengtai Single Entity provided are not dated, do not identify the product and/or control number to which they relate or how they are linked to the products reported in the U.S. sales database, and therefore, provide no support for the Jiangsu Fengtai Single Entity's argument that it provided documentation that demonstrates changes to specifications requested by its customers which were effective to products sold to the United States during the POR. Moreover, the Jiangsu Fengtai Single Entity provided no MRSs along with and linking to the technical drawings it provided in Exhibit S2-15 of its second supplemental response, nor did it make any reference in its second supplemental response to MRSs provided in any other of its responses. Therefore, without identifying the relevant MRSs and providing a link between the MRSs, the ERP code, the corresponding changes to control numbers, and changes requested by customers, the Department does not find that these MRS offer evidence of control number changes made pursuant to customer requests.

The Jiangsu Fengtai Single Entity also argues that it provided in Exhibit S2-14 inventory-in and inventory-out records and technical drawings for the steel deliver used in making the steel cores for products for two ERP codes which, the company claims, established that it manufactured these products in accordance with the changes in specifications requested by its U.S. customers.[34] However, these inventory-in and inventory-out records do not identify the product

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[32] *See* 2SDQR at 3.
[33] The Jiangsu Fengtai Single Entity cites to 2SDQR at Exhibit S2-21.
[34] The Jiangsu Fengtai Single Entity cites to 2SDQR at in Exhibit S2-14.

(by ERP code, customer product code, control number, *etc.*), are not accompanied with an explanation how they are linked to the technical drawings in the exhibit or how they pertain to changes to product specifications. Therefore, lacking information that would tie the steel delivery and consumption records to changes requested by customers, the Department does not find that these inventory-in and inventory-out records and technical drawings offer evidence of control number changes made pursuant to customer requests.

The Jiangsu Fengtai Single Entity further argues that it provided in Exhibit 1 of its case brief a chart to assist the Department with understanding the differences between the control numbers reported in the last completed review and this review, that includes all 156 U.S. customer product code items reported in this review (89 of which were not reported in the last completed review), which correspond to the 121 control numbers reported in its supplemental response, as well as each U.S. customer product code reported in the last completed review and specifies for each product code item whether there was a change or no change in the control number for each control number field. Of the 67 product codes reported in both reviews, the Jiangsu Fengtai Single Entity argues, 49 product codes had changes in control numbers resulting from actual changes in specifications as agreed upon by the U.S. customers. Therefore, the Jiangsu Fengtai Single Entity argues, it fully explained in its questionnaire responses and provided sufficient documentation to establish the reasons for the differences it reported control numbers between the last completed review and this review. However, although the chart the Jiangsu Fengtai Single Entity provided contains references to Exhibits S2-21 (regarding MRSs) and S-13 (regarding bills of material (BOMs)),[35] this documentation does not support its claims. As previously mentioned, the MRSs the Jiangsu Fengtai Single Entity provided in Exhibit S2-21 are not dated, do not identify the product and/or control number to which they relate or how they are linked to the products reported in the U.S. sales database. Similarly, the BOMs in Exhibit S-13 are not dated and, although they identify product types and control numbers, the Jiangsu Fengtai Single Entity does not identify what in the documentation concerns changes to control numbers requested by customers for the same products between the PORs. Therefore, the chart provides little to no support for the Jiangsu Fengtai Single Entity's case brief assertion that it provided documentation which demonstrates changes to specifications requested by its customers were applicable to products sold to the United States during the POR.

Finally, as noted in the Preliminary Decision Memorandum, the Jiangsu Fengtai Single Entity also failed to explain why it was unable to provide the requested information. Although the Jiangsu Fengtai Single Entity responded to portions of the Department's questionnaires, the Jiangsu Fengtai Single Entity withheld certain requested information, failed to provide such information in a timely manner or in the form or manner requested by the Department, and significantly impeded the proceeding. Given that the Jiangsu Fengtai Single Entity reported that products with the same customer product codes in the prior completed review as in this review were being sold to the same customers with the only difference between the prior and intant PORs being the control numbers, it is unclear on the record why the same product codes from the prior review are being reported, in this review, with different control numbers, *i.e.*, different physical characteristics, despite our two requests for information from the Jiangsu Fengtai Single Entity. Moreover, with respect to the missing information, no documents were filed indicating

[35] The Jiangsu Fengtai Single Entity cites to its August 24, 2016, sections A and C response to the Department's July 26, 2016, sections A-D supplemental questionnaire, at 10 and Exhibit S-13.

any difficulty providing the information, nor was there a request to allow the information to be submitted in an alternate form, pursuant to section 782(d) of the Act. Considering the Jiangsu Fengtai Single Entity's failure to provide responsive documents to our requests for information concerning 49 our of 67 control numbers, which amounts to a substantial portion by quantity and value of the Jiangsu Fengtai Single Entity's sales to the United States during the POR, we find the Jiangsu Fengtai Single Entity's databases unreliable overall.

The petitioner correctly notes that, simply because the Jiangsu Fengtai Single Entity submitted responses to our inquiries and the responses were voluminous, it does not mean that the Jiangsu Fengtai Single Entity fully explained or sufficiently demonstrated that certain changes in the physical characteristics (and, therefore, the control numbers) between the last completed review and this review for the same product codes were requested by customers and implemented in products sold during the POR, as the Jiangsu Fengtai Single Entity argues. As discussed above, the Jiangsu Fengtai Single Entity asserts in its case brief that the documentation it provided applies to merchandise sold during the POR, but the cited documentation does not support this assertion. The petitioner also correctly notes that the courts have made clear that the application of AFA requires no finding of intent or motivation,.[36] In other words, even if the Jiangsu Fengtai Single Entity did not intend to be non-responsive to certain of the Department's questions, it still, as described above and below, failed to cooperate by not acting to the best of its ability to respond to our requests for certain information. The fact is that the Jiangsu Fengtai Single Entity submitted the same document with different dates, which calls into question the reliability of those documents. Thus, we continue to find that Jiangsu Fengtai Single Entity did not provide full documentation supporting its narrative responses concerning the changes in control numbers from the prior to the instant POR.

Accordingly, we continue to find for the above reasons, the use of facts available is warranted in determining the margin rate of the Jiangsu Fengtai Single Entity, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act.[37] Furthermore, section 776(b) of the Act provides that in selecting from among the facts otherwise available, the Department may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Despite our two requests for information, the Jiangsu Fengtai Single Entity failed to submit documents demonstrating that product specifications were negotiated and changed pursuant to customers' requests as it claimed. For instance, the submitted e-mail correspondence failed to link the name and location of customers and/or products sold to the customers. As discussed above, in response to our requests for information, the Jiangsu Fengtai Single Entity submitted what appeared to be an altered e-mail chain, and failed to provide information to justify the control number differences between the last completed review and this review for the same product types. Thus, Jiangsu Fengtai Single Entity's failure to provide the requested information to demonstrate that product specifications were changed at the request of specific customers warrants the application of an adverse

[36] *See, e.g., Nippon Steel*, 337 F.3d at 1383 (noting that "…the statute does not contain an intent element.")
[37] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986, 4991 (January 31, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

inference. Under these circumstances, we continue to find that the Jiangsu Fengtai Single Entity failed to cooperate to the best of its ability to comply with our two requests for information.[38] Therefore, we continue to find that an adverse inference is warranted in selecting from among the facts otherwise available with respect to the Jiangsu Fengtai Single Entity in accordance with section 776(b) of the Act and 19 CFR 351.308(a).[39]

In applying an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[40] In selecting an AFA rate, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[41] Under the TPEA, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding,[42] and the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins.[43] The highest margin applied in a separate segment of this proceeding is 82.05 percent. Accordingly, we determine that the AFA rate is 82.05 percent[44] for purposes of this review. Pursuant to the TPEA,[45] this rate does not need to be corroborated because it is from a previous segment of this proceeding. Our decision to apply this AFA rate to the Jiangsu Fengtai Single Entity does not affect its separate rate eligibility.

Comment 2: Due Process Afforded to the Jiangsu Fengtai Entity in AFA Determination

The Jiangsu Fengtai Single Entity argues that: (1) the Department falsely accused the Jiangsu Fengtai Single Entity of submitting falsified e-mail chains as evidence to explain the different control numbers in the last completed review and this review; (2) the Department's background description does not reflect the administrative record; and (3) the Department violated the Jiangsu Fengtai Single Entity's fundamental right of due process when it failed to give the Jiangsu Fengtai Single Entity the opportunity to explain the alleged email discrepancy.

The Jiangsu Fengtai Single Entity explains that, in its first section D supplemental response, it

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[38] *See Nippon Steel*, 337 F.3d at 1383 (noting that the Department need not show intentional conduct existed on the part of the respondent, but merely that a "failure to cooperate to the best of a respondent's ability" existed (*i.e.*, information was not provided "under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.")).
[39] *See Nippon Steel*, 337 F.3d at 1382-83.
[40] *See* section 776(b) of the Act.
[41] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. 1 (SAA) at 870.
[42] *See* section 776(c)(2) of the Act; *See also* Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, *129 Stat. 362* (June 29, 2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade* TPEA, section 502.
[43] *See* section 776(d)(1)-(2) of the Act; TPEA, section 502(3).
[44] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Results of Review and Amended Final Results of the Antidumping Duty Administrative Review*, 81 FR 2843 (January 19, 2016). This rate is the PRC-wide rate for the preliminary results of this review.
[45] *See* section 776(c)(2) of the Act; TPEA, section 502

provided a five-page e-mail chain with one of its U.S. customers (Customer A) confirming their agreement to product specification changes, which was dated 2016. The Jiangsu Fengtai Single Entity further explains that, in its second section D supplemental response, it resubmitted these five pages of the e-mail chain, and added two additional e-mails to that e-mail chain along with printouts of the technical drawings referred to therein. This second e-mail chain, the Jiangsu Fengtai Single Entity explains, contained the correct period of the e-mail chain, which was between May and July 2014. The Jiangsu Fengtai Single Entity argues that it is evident from the administrative record that the e-mail exchange submitted in its first supplemental response was incorrectly dated as calendar year 2016, because its supplemental responses explained that it first approached this U.S. customer with the proposed change for the specifications of certain products in order to lower prices, and that once this customer approved the specification changes the Jiangsu Fengtai Single Entity then approached its other U.S. customers (Customers B, C, and D). Since the e-mail communications with the other three U.S. customers provided in its second supplemental response are dated in 2014 and were made after the acceptance of the specification changes by the first customer, the correct date of the first customer's e-mail change is necessarily 2014, rather than the initially reported 2016.

The Jiangsu Fengtai Single Entity argues that the Department's determination that the Jiangsu Fengtai Single Entity submitted falsified information is improper because it relied upon the petitioner's unsubstantiated allegation that the Jiangsu Fengtai Single Entity's second submission of the customer's e-mail chain was altered.[46] Moreover, the Jiangsu Fengtai Single Entity argues, the Department appears to have taken the petitioner's unsubstantiated allegations at face value without permitting the Jiangsu Fengtai Single Entity to meaningfully respond by filing new factual information to rebut the petitioner's allegation and to explain what actually occurred.

The Jiangsu Fengtai Single Entity argues that, because the Department's preliminary results do not acknowledge that the issue regarding the discrepancy in the dates of the e-mail exchanges was first raised in the record by the petitioner's November 15, 2016, submission,[47] the Department's second supplemental questionnaire would have undoubtedly questioned the relevancy of documentation dated well after the POR as support for specification changes made during the POR. The Jiangsu Fengtai Single Entity argues that, with the Department's decision to deny the Jiangsu Fengtai Single Entity a meaningful opportunity to rebut the petitioner's unsubstantiated allegation and explain to the Department the actual circumstances that led to the submission of substantially identical e-mails submitted with different dates, it appears that the Department drafted the preliminary results without reference to the petitioner's November 15, 2016, allegation so as to avoid the issue as to whether the Jiangsu Fengtai Single Entity was given the opportunity to effectively respond to the petitioner's allegation. The Jiangsu Fengtai Single Entity argues that, although it advised the Department that it intended to file a detailed explanation in response to the petitioner's allegation to establish that no fraudulent activity had occurred,[48] the Department denied the Jiangsu Fengtai Single Entity an opportunity to rebut the

[46] The Jiangsu Fengtai Single Entity cites to the petitioner's November 15, 2016 Pre-Preliminary Determination Comments Regarding Fengtai at pages 3-5.
[47] The Jiangsu Fengtai Single Entity cites to the petitioner's Letter to the Secretary of Commerce regarding, "Diamond Sawblades and Parts Thereof from the People's Republic of China: DSMC's Pre-Preliminary Determination Comments Regarding Fengtai," dated November 15, 2016.
[48] The Jiangsu Fengtai Single Entity cites to its Letter to the Secretary of Commerce regarding, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Request for Extension of Time," dated

petitioner's unsubstantiated allegation and to explain to the Department the actual circumstances that led to the submission of substantially identical emails submitted with different dates, such as a sworn statement detailing the technical explanation of what actually occurred and that resulted in the presence of an incorrect date on the submitted email correspondence.[49] By limiting the Jiangsu Fengtai Single Entity's response to the petitioner's allegation only to factual information already on the record, and not permitting any new factual information that would explain how the date discrepancy occurred, the Jiangsu Fengtai Single Entity argues, it was effectively precluded from responding to the petitioner's unsubstantiated allegation that the Jiangsu Fengtai Single Entity had engaged in fraudulent behavior. The Jiangsu Fengtai Single Entity argues that, as the ultimate decision-maker, the Department has the inherent authority to investigate the circumstances of such allegations in a fair and objective manner,[50] it would be a gross miscarriage of justice and denial of due process for the Department to act on the petitioner's speculative and unsubstantiated allegations without providing the Jiangsu Fengtai Single Entity the opportunity to present the facts as they occurred. The Jiangsu Fengtai Single Entity argues that the Department cannot adopt such allegations as legal findings in its administrative determination without conducting a fair and impartial investigation as to the veracity of the claimed fraudulent behavior. The Jiangsu Fengtai Single Entity argues that in other cases in which the petitioners have alleged fraud or wrongdoing during an administrative review, the Department has determined that further analysis is necessary to further develop the record, analyze the facts, and if necessary verify any provided information.[51] In Xanthan Gum, the Jiangsu Fengtai Single Entity argues, the Department believed that the allegations were of such a serious nature that it required the re-opening of the record because a resolution of the issue before the Department cannot be reached without further development of the record, analysis of the facts, and possible verification of the parties' responses.[52]

The Jiangsu Fengtai Single Entity argues that the Department should: (1) reconsider its determination that the Jiangsu Fengtai Single Entity did not adequately address the Department's questions concerning the difference in reported control numbers between the last completed review and this review; (2) investigate the petitioner's spurious allegations concerning the submission of falsified information and provide the Jiangsu Fengtai Single Entity the opportunity to present new factual information to rebut the petitioner's last minute allegation and to explain how the discrepancy between the two e-mail chains actually occurred; and (3) calculate a company-specific margin for the Jiangsu Fengtai Single Entity based on the U.S. sales data, FOP data and SV information that the Jiangsu Fengtai Single Entity placed on the record.

November 25, 2016 (Request for Extension).

[49] The Jiangsu Fengtai Single Entity cites to the Department's Letter to the Jiangsu Fengtai Single Entity dated November 28, 2016.

[50] The Jiangsu Fengtai Single Entity cites to *Home Products International, Inc. v. United States*, 633 F.3d 1369, 1377 (CAFC 2011) (*Home Products*); *Tokyo Kikai Seisakusho, Ltd. v. United States*, 529 F.3d. 1352, 1361 (CAFC 2008) (*Tokyo Kikai*).

[51] The Jiangsu Fengtai Single Entity cites to the Department's memorandum "Xanthan Gum from the People's Republic of China, A-570-895, Memorandum on Deferral of the Final Results of the First Antidumping Duty Administrative Review" dated February 9, 2016 (Xanthan Gum) at page 4 (in which the petitioner in that proceeding alleged that the respondent therein provided multiple conflicting certified statements regarding their role in the sales at issued and, as a result, the Department deferred the final results of that administrative review because the petitioner's allegations "raise[d] serious concerns which warrant further investigations for the Department to protect the integrity of its proceeding").

[52] The Jiangsu Fengtai Single Entity cites to Xanthan Gum at 6.

The petitioner argues that the Jiangsu Fengtai Single Entity incorrectly asserts that the Department has violated its fundamental due process rights by failing to permit it to respond effectively to the petitioner's unsubstantiated allegations. The petitioner contends that the Jiangsu Fengtai Single Entity had the opportunity to explain discrepancies in the record but chose not to do so. As an initial matter, the petitioner argues that its claims are not "unsubstantiated," as they are evident from the record, because the documents at issue appear to be fraudulent on their face. But regardless, the petitioner argues, the Jiangsu Fengtai Single Entity's argument lacks merit.

In the *Preliminary Results*, the petitioner argues, the Department based the application of AFA in part on the fact that the Jiangsu Fengtai Single Entity submitted two essentially identical e-mail chains that had different dates, stating that, "{t}herefore, it appears that at least nearly identical e-mail chains may have been altered or fabricated." The petitioner argues that the Jiangsu Fengtai Single Entity's claim that the Department improperly prohibited the Jiangsu Fengtai Single Entity from providing a meaningful response to the petitioner's comments because it was not able to submit new factual information to respond to the petitioner's comments, is without merit. The petitioner argues that, contrary to the Jiangsu Fengtai Single Entity's claims, it had an opportunity to fully explain the e-mails, including via the submission of new factual information, because the issue regarding the discrepancy in the dates of the e-mail exchanges with one of its U.S. customers was not first raised on the record by the petitioner's November 15, 2016 submission. The petitioner argues that in September 2016, in response to the Jiangsu Fengtai Single Entity's first supplemental response, the petitioner noted that the documentation the Jiangsu Fengtai Single Entity submitted to support the changes to its control number was problematic and, therefore, requested that the Department require the Jiangsu Fengtai Single Entity to submit documentation explaining its claimed product changes.[53] The petitioner argues that its comments should have alerted the Jiangsu Fengtai Single Entity to this issue. The petitioner argues that, contrary to the Jiangsu Fengtai Single Entity's further assertions, the Department did question the relevancy of documentation dated well after the POR as support for specification changes made during the POR. According to the petitioner, in its second supplemental questionnaire, following the petitioner's request, the Department requested that the Jiangsu Fengtai Single Entity provide documentation supporting the product changes. The petitioner claims that, at this point in the proceeding, the Jiangsu Fengtai Single Entity was aware, or should have been aware, that the Jiangsu Fengtai Single Entity had the opportunity to explain fully any problems with its documentation. The petitioner contends that, despite this opportunity to do so, the Jiangsu Fengtai Single Entity chose not to provide any explanation at that point.

Moreover, setting aside the problem of why the Jiangsu Fengtai Single Entity submitted two otherwise identical e-mail chains that differed only in the date (the most reasonable explanation, the petitioner argues, being that one or both documents have been fabricated or otherwise altered), the Department did not deprive the Jiangsu Fengtai Single Entity of its due process rights and the use of AFA is justified.

[53] The petitioner cites to its Letter to the Secretary of Commerce regarding, "Diamond Sawblades and Parts Thereof from the People's Republic of China: DSMC's Comments on Fengtai's Supplemental Section D Questionnaire Response," dated September 20, 2016.

Department's Position: We disagree with the Jiangsu Fengtai Single Entity that the Department violated Jiangsu Fengtai's fundamental due process rights. As an initial matter, the petitioner first identified the 2016 date in the e-mail chain in its September 20, 2016, comments,[54] and the Jiangsu Fengtai Single Entity does not deny or disagree that it placed on the record two e-mail chains that are nearly identical, save for the year of the chains (*i.e.*, the year in the first chain is 2016 and the year in the second chain is 2014). Subsequent to the petitioner's comments, the Department requested in its second supplemental questionnaire an explanation of the changes in control numbers between PORs with supporting documentation pertaining to products sold during the current POR.[55] The Jiangsu Fengtai Single Entity submitted its second supplemental response with a "corrected and longer" version of the e-mail chain from Customer A,[56] and the petitioner then pointed out in its November 15, 2016, comments the date discrepancy between the nearly identical e-mail texts in the Jiangsu Fengtai Single Entity's two supplemental responses.[57] Therefore, the record reflected that there were questions concerning the relevancy of the documentation (*i.e.*, whether the documentation dated 2016 established that customers requested for physical characteristics to be changed to products sold during the POR), thereby alerting Jiangsu Fengtai Single Entity to the existence of questions surrounding its documentation.

While we provided the Jiangsu Fengtai Single Entity an opportunity to respond to the petitioner's allegation in our November 28, 2016, letter,[58] we did not allow the Jiangsu Fengtai Single Entity to provide new factual information in response to the petitioner's allegation of fraud, because the petitioner's allegation contained no new factual information and the deadline for submitting new factual information on the record for this proceeding had expired. Granting this limitation, the Jiangsu Fengtai Single Entity's response still contained no substantive comment other than stating that it had a reasonable explanation, but it could not explain without new factual information. However, it did not explain why it could not explain without new factual information or what type of new factual information it sought to submit.[59] Thus, with two essentially identical e-mail chains that had conflicting dates, we concluded in the *Preliminary Results* that it appears that at least one of these two nearly identical e-mail chains may have been altered or fabricated and, therefore, both are unreliable.[60] It was not until the Jiangsu Fengtai Single Entity's case brief that it argued it is evident from the administrative record that the e-mail exchange submitted in its first supplemental response was incorrectly dated as calendar year 2016, because its supplemental responses explained that it first approached Customer A with the proposed change for the specifications of certain products in order to lower prices, and that once Customer A approved the specification changes, the Jiangsu Fengtai Single Entity then

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[54] *See* the petitioner's Letter to the Secretary of Commerce regarding, "Diamond Sawblades and Parts Thereof from the People's Republic of China: DSMC's Comments on Fengtai's Supplemental Section D Questionnaire Response," dated September 20, 2016, at 5.
[55] *See* the Department's second supplemental questionnaire dated October 12, 2016, at Question 9.
[56] *See* 2DQR at 3 and Exhibit S2-15.
[57] *See* the petitioner's Letter to the Secretary of Commerce regarding, "Diamond Sawblades and Parts Thereof from the People's Republic of China: DSMC's Pre-Preliminary Determination Comments Regarding Fengtai," dated September 20, 2016, at 4-5.
[58] *See* the Department's Letter to counsel for the Jiangsu Fengtai Single Entity dated November 28, 2016.
[59] *See* Request for Extension.
[60] *See* Preliminary Decision Memorandum at 13.

approached its other U.S. customers (Customers B, C and D, in e-mail chains 2014), the correct date of the first customer's e-mail change is necessarily 2014, rather than the initially reported 2016.[61] However, even if we accept the Jiangsu Fengtai Single Entity's logic and disregard the dates, we are still left with the problems that the e-mails present, *i.e.*, that they do not demonstrate that U.S. customers agreed to or directed changes to products sold to the United States during that POR, as the communications do not identify the customer or its location, none of them show that the Jiangsu Fengtai Single Entity's claimed specification changes were specifically to be implemented for products sold to its customers in the United States during the POR. It was not until the Jiangsu Fengtai Single Entity's case brief that it argued that had Department permitted it to submit new factual information, it would have submitted "a sworn statement detailing the technical explanation of what actually occurred and that resulted in the presence of an incorrect date on submitted email correspondence."[62] It did not provide this explanation to the Department prior to the *Preliminary Results* when it requested an extension of time to rebut the petitioner's allegation.[63]

The Jiangsu Fengtai Single Entity mistakenly relies on two CAFC decisions that do not speak to the situation before us in this administrative review. In *Home Products* and *Tokyo Kikai*, the CAFC held that the Department possesses the inherent authority to reconsider its decisions, particularly in situations of fraudulent activity.[64] However, the court also held in *Home Products* that, "{i}n deciding whether the proceeding should be re-opened, {the Department} may appropriately consider the interests in finality, the extent of the inaccuracies…whether fraud existed…the strength of the evidence of fraud, the level of materiality, and other appropriate factors."[65] In *Xanthan Gum* the Department reiterated that the court has recognized only "a small number of exceptions when {the court} allows supplementation of an agency record."[66] As discussed below, this case is not such an exception.

With respect to the Jiangsu Fengtai Single Entity's argument that the Department has determined in other cases, such as in *Xanthan Gum*, when fraud or wrongdoing was alleged during an administrative review and where the Department determined to re-open the record because further analysis was necessary to further develop the record, analyze the facts, and if necessary verify any provided information, we find this case is distinguishable. In *Xanthan Gum*, we found that the sequence of events left the Department with profound reservations about using the information provided by the respondents in that administrative review without further investigation due to the possible manipulation of the process and characterization of certain facts in the proceeding which supported further action to ensure the integrity of our proceeding.[67] The facts of that case justified further investigation because we found that the respondents "withheld details of their relationship and sales arrangement and provided misleading and inconsistent information and engaged in a scheme to evade application of the appropriate cash deposit rate . .

[61] *See* Jiangsu Fengtai Case Brief at 9-10.
[62] *See* Jiangsu Fengtai Case brief at 12.
[63] *See* Request for Extension.
[64] *See Home Products*, 633 F.3d at 1376-1377; *Tokyo Kikai*, 529 F.3d at 1360.
[65] *See Home Products*, 633 F.3d at 1381.
[66] *See Xanthan Gum from the People's Republic of China: Final Results of Antidumping Administrative Review; 2013-2014*, 82 FR 11428 (Feb. 23, 2017) (*Xanthan Gum*) and accompanying Issues and Decision Memorandum at Comment 1.
[67] *See Xanthan Gum* at 6.

. .”[68] Therefore, given the circumstances present in *Xanthan Gum*, the Department determined to further examine the situation to ensure the integrity of the proceeding.[69] In *Xanthan Gum*, the Department deferred the final results of the review and sought additional information to enable the Department to determine the appropriate dumping margin for the sales at issue.[70] This is not the case here because no new factual information from the Jiangsu Fengtai Single Entity concerning the e-mail discrepancy would assist us in determining the appropriate dumping margin and, therefore, we do not find it necessary re-open the record to investigate this matter further to allow the Jiangsu Fengtai Single Entity to submit new factual information concerning this matter. Namely, had the Jiangsu Fengtai Single Entity been given the opportunity to respond to the petitioner’s allegation of fraud with new factual information, this would not have changed its dumping margin due to its failure to fully respond to the Department’s requests for information and its failure to cooperate, as described above in Comment 1, which leads the Department to determine the Jiangsu Fengtai Single Entity’s antidumping margin in this administrative review be based on adverse facts available.

With respect to the Jiangsu Fengtai Single Entity’s case brief requests that the Department reconsider its determination that the Jiangsu Fengtai Single Entity did not adequately address the Department’s questions concerning the difference in reported control numbers between the last completed review and this review, and calculate a company-specific margin for the Jiangsu Fengtai Single Entity based on the U.S. sales data, FOP data and SV information that the Jiangsu Fengtai Single Entity placed on the record, *see* Comment 1.

Comment 3: Total AFA Request for Bosun

The petitioner requests that the Department apply total AFA to Bosun for the final results based on Bosun’s failure to cooperate to the best of its ability in its reporting of U.S. sales of subject merchandise made by its U.S. sales affiliates. The petitioner argues that the failure to cooperate to the best of its ability includes not only intentional conduct, such as deliberate concealment or inaccurate reporting, but also inattentiveness, carelessness, or inadequate record keeping.

According to the petitioner, Bosun: (1) reported Bosun USA and Pioneer USA as its two U.S. sales affiliates that sold the subject merchandise during the POR; (2) Bosun USA purchased diamond sawblades from both Bosun and Pioneer USA; and (3) Pioneer USA purchased diamond sawblades from both Bosun USA (which purchased diamond sawblades from Bosun) and Bosun Thailand. The petitioner alleges that Bosun did not maintain information in its records that allowed it to identify which sales by Bosun USA and Pioneer USA were of subject merchandise produced and exported from the PRC. Instead, the petitioner contends, Bosun adopted certain principles to identify which sales should be reported in the U.S. sales database without supporting documentation demonstrating the methodology used to identify its sales.

The petitioner states that, in response to the Department’s first supplemental questionnaire requesting additional information on how it identified the sales to be reported in its U.S. sales database, Bosun repeated an essentially identical response that it provided in its section C

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[68] *See Xanthan Gum* at Comment 1.
[69] *Id.*
[70] *Id.*

response. The petitioner argues that, in response to the Department's second supplemental questionnaire requesting demonstration of how Bosun identified products produced in the PRC and Thailand using sales traces in its first supplemental response and, if necessary, additional information, Bosun reiterated the same explanation that it had previously provided with two exhibits and referenced to specific product codes in one invoice that it identified at each step of its process. The petitioner contends that Bosun's narrative and exhibit responses provide no additional information or clarification on Bosun's identification of reported U.S. sales.

The petitioner claims that Bosun failed to cooperate to the best of its ability because it was unable to definitively identify its U.S. sales of subject merchandise made during the POR and because it relied on assumptions about its sales that have not been demonstrated to be: (1) accurate; or (2) an appropriate means for identifying U.S. sales. The petitioner argues that Bosun's sales identification process is based on Bosun's estimation as opposed to information confirming that they should or should not be included. The petitioner contends that Bosun's methodology on its two U.S. sales affiliates' purchases from affiliates during the POR does not necessarily correlate to the merchandise sold to unaffiliated customers during the POR. The petitioner explains that the relevant universe of sales is the merchandise under consideration produced in the PRC and sold to unaffiliated customers during the POR regardless of the time of the sale of the merchandise to the U.S. sales affiliate. The petitioner claims that Bosun's sales identification methodology is unable to ensure the accuracy and completeness of the universe of U.S. sales reported in its U.S. sales database.

The petitioner argues that Bosun provided no explanation or documentation supporting its assertion that certain product codes that Pioneer USA sold to an unaffiliated U.S. customer were not purchased from Bosun USA and, therefore, not produced in the PRC. The petitioner argues further that, because Bosun did not address the period in which it considered whether Pioneer USA had purchased the products from Bosun USA, Bosun may have improperly excluded sales of goods that Pioneer USA purchased from Bosun USA before the POR. The petitioner contends that, despite the presence of issues with respect to the way in which Bosun identified whether certain products were made in the PRC, Bosun has provided only an extremely basic narrative and no documentation supporting or verifying the accuracy of its sales identification methodology. Specifically, according to the petitioner, Bosun provided no documentation or explanation demonstrating how it was able to tie a unit cost for a product code to a particular invoice. The petitioner claims that, even if the identified unit costs are correct, Bosun has not explained how it was able to tie a particular unit cost to a specific invoice to an unaffiliated customer.

The petitioner calls Bosun's reliance on unit costs in its sales identification methodology troubling because of Bosun's statements that: (1) it was unable to report entered value due to its inability to trace the goods entered in its warehouse to the goods sold to unaffiliated customers; and (2) it had to conduct an allocation to report a unit amount of irrecoverable VAT because it could not tie the goods shipped into its warehouse to the goods sold out of its warehouse. The petitioner contends that Bosun's sales identification methodology purports to do exactly what Bosun explained it was unable to do, *i.e.*, tie a sale to an unaffiliated customer to a purchase between Bosun and its U.S. sales affiliate.

The petitioner argues that, because Bosun's reconciliation documents do not support its reporting with no narrative discussion concerning how it identified and separated non-subject sales, despite the Department's explicit request that it do so, its reconciliation documentation does not confirm the accuracy of its reporting.

Bosun argues application of total AFA is unwarranted because it has cooperated fully with the Department's request for information concerning how it segregated U.S. sales made by Pioneer USA according to their country of origin. Bosun denies any allegation that it withheld, or otherwise failed to provide, information from the Department in a timely manner, impeded the proceeding, or provided unverifiable information.

Bosun explains that it made CEP sales to the United States through its two U.S. affiliates, Bosun USA and Pioneer USA, and that Pioneer USA maintained inventory of diamond sawblades purchased from Bosun USA and Bosun Thailand. Bosun claims that, although it has no means to directly match each U.S. sales transaction from inventory with the corresponding individual purchase, it used its books and records to identify the source of each sales transaction by applying the methodology as described in its responses.

Bosun contends that its application of the stated principles to accurately identify and report its U.S. sales is consistent with the dictionary definition of the word "principles" as defined in the Oxford Online Dictionary. Bosun contends further that its reporting methodology is based entirely on the records that Bosun maintained in its normal business operations, including records for sales, purchases, and cost calculations on a first-purchase, first sale basis. Bosun argues that the petitioner's allegations of general defects in Bosun's reporting does not specify any single instances of defect.

Bosun explains that while responding to the Department's questions concerning its reporting methodology, Bosun did not change its sales identification methodology because the methodology accurately identified its U.S. sales. Bosun states that, in response to the Department's first supplemental questionnaire requesting an elaboration on the methodology used to separate Pioneer USA's sales into those imported from Bosun and Bosun Thailand, Bosun provided a complete and thorough explanation. Bosun also states that, in response to the Department's second supplemental questionnaire requesting the use of sales traces for Pioneer USA in the first supplemental response to demonstrate the sales identification methodology, Bosun used specific product codes of subject and non-subject products in those sales traces and provided details for each step in the sales identification process. Bosun reiterates that its responses to the Department's request for information are based on its own business records and the petitioner has no justification for arguing that Bosun does not maintain such records in its normal business operations.

Bosun claims that, because diamond sawblades that Pioneer USA did not purchase from Bosun USA were purchased from Bosun Thailand, Pioneer USA's sales of those diamond sawblades not purchased from Bosun USA were sourced from Bosun Thailand, not from Bosun. Bosun contends that its purchase and sales analysis in the sales identification methodology covers all purchases regardless of time. Bosun argues that its inability to connect each U.S. sales transaction of subject merchandise to unaffiliated customers on a one-to-one basis with the initial purchase of the merchandise has no bearing on the fact that Bosun has every invoice from the initial purchases showing the unit value of each purchased diamond sawblade. Bosun explains that, if it were able to match each U.S. sales transaction with the initial purchase documents on a one-to-one basis, it would not have needed to apply the sales identification methodology to analyze which product codes were purchased at what time at a specific unit value from the PRC and Thailand. Bosun calls the petitioner's argument that Bosun's sales identification methodology purports to do exactly what Bosun states it was unable to do baseless.

Bosun argues that its sales reconciliation ties directly to its affiliated trading companies' income statements, which Bosun submitted in its first supplemental response. Bosun explains that it provided a monthly breakout of sales of Bosun USA and Pioneer USA, beginning with total sales, then separating the sales to other countries from the total sales to the United States. Bosun explains further that it then provided a monthly breakout of sales into in-scope and non-scope merchandise. Bosun claims that it then segregated the in-scope merchandise between the subject merchandise produced in the PRC and the non-subject merchandise produced in Thailand.

In response to the arguments from the petitioner and Bosun described above, the Department extended the deadline for the final results of this review[71] and conducted a U.S. sales verification of Bosun on May 7, 2017, through May 9, 2017, and released the verification report on May 17, 2017.[72] The Department invited parties to submit case briefs limited to Bosun's sales identification methodology and quantity and value reconciliation and rebuttal briefs limited to the issues raised in the post-verification case briefs.[73] The petitioner filed its case brief and Bosun followed with its rebuttal brief.[74]

The petitioner explains that the Department applies facts otherwise available when, *inter alia*, a respondent (1) withholds information that the Department requested, (2) fails to provide information in a timely manner or in the form requested, (3) significantly impedes a proceeding, or (4) provides unverifiable information. The petitioner states that, in relying on the facts otherwise available, the Department may use an inference that is adverse to the interests of the party providing deficient information if the party has failed to cooperate to the best of its ability to comply with a request for information. The petitioner argues that the Department's ability to resort to AFA is critical in the administration of the AD laws. The petitioner contends that the "best of its ability" standard assumes the respondent's familiarity with the rules and regulations and requires no finding of motivation or intent. The petitioner claims that the Department must only find that, although a reasonable and responsible respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations, the respondent failed to keep or maintain all required records, and did not put forth its maximum efforts to investigate and obtain the information from its records that refer or relate to the imports in question to the full extent of the respondent's ability to do so.

The petitioner states that the Department has discretion to apply AFA to ensure that the

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[71] *See* Final Results Extension Memorandum.
[72] *See* the Verification Report.
[73] *See* the Letter to All Interested Parties dated May 18, 2017.
[74] *See* the petitioner's Posts-Verification Case Brief dated May 23, 2017, and Bosun' Post-Verification Rebuttal Brief dated May 25, 2017.

respondent does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. The petitioner argues that the Department should consider the extent to which a respondent may benefit from its own lack of cooperation. The petitioner asserts that the Department, not the respondent, determines what information is necessary and relevant and must be provided. The petitioner contends that AFA is appropriate if information is missing from the record because of the respondent's failure to act to the best of its ability, which includes its failure to maintain adequate records of information that it should reasonably know may be requested by the Department and providing unverifiable information.

The petitioner claims that the verification report justifies the application of AFA to Bosun. Specifically, the petitioner contends that Bosun did not maintain adequate country of origin records and left it unable to accurately determine which of its U.S. sales affiliates' sales were of subject merchandise and non-subject merchandise. The petitioner contends that, because the margin calculation fundamentally depends on accurate and complete identification of U.S. sales, Bosun's entire U.S. sales database is therefore unusable. The petitioner contends further that Bosun reported both countries of origin and physical characteristics that were inconsistent with its supposed methodologies and otherwise inaccurate.

The petitioner faults Bosun for not implementing recordkeeping methods to identify accurately the country of origin of goods sold in the United States, although it could have easily done so and despite being selected as a mandatory respondent in the original investigation and in the 2012-13 administrative review. The petitioner argues that, as an experienced respondent, Bosun knew or should have known the expectation to be able to report accurately and completely its sales of subject merchandise in the United States and to document the accuracy and completeness of its reporting. The petitioner explains that, since Bosun stored merchandise in the boxes in which they were shipped and those boxes were clearly marked with the country of origin, Bosun merely needed to segregate the products by the country of origin and record the country of origin information on inventory-out slips or picking sheets and then in its computer system. Although recording the country of origin was easy, according to the petitioner, Bosun did not record the country of origin in its computer system and disregarded the fact that such critical information would be required in the Department's AD reviews.

The petitioner argues that, because Bosun's inventory is commingled and the country of origin is not recorded when goods are either sold or returned, the Department cannot have confidence in Bosun's identification of the country of origin of its U.S. sales. The petitioner argues that, in the normal course of business, Bosun's warehouse staff simply removes purchased merchandise from the boxes in which it was shipped and then ships it off to the U.S. customer, without accounting for the cost of the inventory or the sales price of the merchandise, or otherwise recording any data that would allow Bosun to accurately determine the country of origin. Instead, according to the petitioner, Bosun's warehouse staff filled the order from the on-site inventory without regard for origin. The petitioner argues that Bosun's failure to implement inventory tracking system allowed Bosun to manipulate its reporting to its advantage. The petitioner alleges that Bosun cherry-picked certain subject merchandise to report in its U.S. sales database.

The petitioner questions the accuracy of the FIFO methodology Bosun used to segregate the

Chinese subject merchandise from Thai products. Specifically, the petitioner claims that, with respect to on-site sales trace 6 in the verification report, Bosun's reported country of origin identification diverged from the results indicated by Bosun's own FIFO analysis. The petitioner contends that, besides the inaccuracy and unreliability of the FIFO methodology in the identification of the country of origin, it is uncertain whether Bosun used the FIFO methodology that it said it did in its reporting. The petitioner argues that, for this reason and given the quantity of the subject merchandise Bosun claims to have identified using the FIFO methodology, Bosun's U.S. sales database is unusable.

Finally, the petitioner argues that Bosun's treatment of returned merchandise demonstrates the unreliability of its reported U.S. sales. The petitioner explains that, when Bosun receives defective product returns, Bosun retains the returned merchandise without tracking its country of origin and reorders the same product from either the PRC or Thailand, depending on availability.

Bosun argues that there is no statutory justification for the use of facts available or the application of AFA because Bosun has cooperated to the best of its ability in its original and supplemental responses to comply with the Department's requests for information. Bosun contends that the "best of its ability" standard "requires the respondent to do the maximum it is able to do," as the CAFC held in *Nippon Steel.*

Bosun claims that the Department confirmed that, in its normal course of business, Bosun did not maintain the record of the country of origin for its sales to unaffiliated customers in its computer system, sales documents, or inventory movement records. According to Bosun, because there is no requirement in normal business operations to differentiate between country of origin on U.S. sales, Bosun did not maintain the country of origin information in its system and documents. Thus, Bosun claims, it did not withhold any information on the country of origin of its sales. In the alternative, Bosun contends, it created a reasonable, logical, and verifiable method to segregate the sales based on the country of origin. Bosun states that it reported this sales identification methodology to the Department from the beginning and the Department has verified this methodology.

Bosun argues that the Department accepted this sales identification methodology in the *Preliminary Results* and should continue to do so for the final results. Bosun contends that the petitioner provides no case examples justifying the application of AFA to Bosun for not maintaining the country of origin information in the normal course of business when Bosun should have known that such information was needed for purposes of AD reviews. Bosun states that a respondent's inability to provide non-existent data requested is not the scenario where the Department applies AFA. Bosun explains that, in several cases, the Department applies AFA when parties fail to provide information that it could have provided or fails to keep documentation it is required by law to keep. Bosun explains that, in this case, it kept all records it is required to keep under U.S. law and sales to U.S. customers do not require invoice and accounting records indicating country of origin. Bosun states that it could not provide the country of origin information to the Department but it cooperated to the best of its ability with an alternative methodology to identify the country of origin. Bosun explains that its U.S. sales database compiled using its alternative sales identification methodology satisfies the statutory requirements in section 782(e) of the Act and the Department must consider them for the final results. Bosun argues that it submitted a complete sales reconciliation in a timely manner and the Department verified the sales reconciliation. Bosun claims that its sales information can be relied on without undue difficulties.

Bosun explains that it developed a logical methodology that involved several stages to ascertain which sales were of Chinese origin based on the inventory records from 2012 through the POR. According to Bosun, the first stage involved the use of unique product codes, *i.e.*, the product codes that only Pioneer USA bought or only Bosun USA bought, to assign the country of origin. Bosun explains that the second stage involved the identification of the country of origin based on the unique product codes with matching unit purchase prices. Bosun contends that the petitioner's argument omits the second stage and jumps from the first stage to the FIFO stage. Bosun argues that they were logical steps assigning the country of origin to the vast majority of products, not assumptions. Bosun explains that the Department extensively replicated and tested these stages in the database of all sales for Bosun USA and Pioneer USA and found no discrepancies. Specifically, according to Bosun, the Department selected several transactions at each step, reviewed the purchase and inventory records that substantiate the claims, and confirmed that there were no discrepancies. Bosun contends that there is no basis for the petitioner to allege that Bosun blatantly attempted to manipulate the Department and game the system by cherry-picking the higher priced U.S. sales for Chinese origin.

Bosun contends that the FIFO stage determined the country of origin for a very small percentage of Bosun's sales. Bosun claims that the Department reviewed the sales identification methodology at the FIFO stage, as well as other earlier stages, and selected several transactions to substantiate the record. Bosun argues that one minor discrepancy in one sales transaction identified by the FIFO methodology does not invalidate the FIFO methodology in its entirety and render Bosun's U.S. sales database unusable. Bosun contends that this one sales transaction is the only instance and constitutes a minor discrepancy inherent in the complexities of responses. Bosun explains that the Department checked numerous transactions and there were no discrepancies in any other instances. Bosun argues that it is not the law or the Department's practice to treat a slight discrepancy in one transaction discovered during a verification as evidence that would render the entire sales database unusable.

<u>Department's Position</u>: We agree with Bosun and calculated the final margin for Bosun. Sections 776(a)(1) and (2) of the Act provide that, if necessary information is not available on the record or if an interested party or any other person (A) withholds information that has been requested by the administering authority, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to sections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use, subject to section 782(d) of the Act, the facts otherwise available in reaching the applicable determination.[75]

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) of the Act if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified;

[75] *See* sections 776(a)(1) and (2) of the Act.

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; (5) the information can be used without undue difficulties.

Although Bosun reported that it is unable to tie the U.S. sales of the subject merchandise to the corresponding purchase of the subject merchandise, we find that the necessary requirements for us to apply AFA have not been met pursuant to sections 776(a)(1) and (2) and (b) of the Act and thus AFA is not warranted in this review. Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall inform the person submitting the response of the nature of the deficiency promptly and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency considering the time limits established for the completion of the administrative review. Section 782(d) of the Act is designed to prevent the unrestrained use of facts available against a company that cooperates with our request for information to the best of its ability.[76] Consistent with section 782(d) of the Act, we issued two supplemental questionnaires requesting Bosun to explain more in detail its sales identification methodology and we received timely responses from Bosun explaining its sales identification methodology with exhibits demonstrating how it identified sales of the subject merchandise.[77]

Bosun has explained in numerous instances that it is unable to tie the subject merchandise sold to its unaffiliated U.S. customers to the corresponding exportation and/or entries of the subject merchandise. In response to our request to report entered value, Bosun explained that it could not report entered value because it was unable to "trace goods entered in its warehouse to the goods sold to the unaffiliated customers."[78] In response to our request to report irrecoverable input VAT, Bosun also explained that it "cannot tie the goods shipped into its warehouse to the goods sold out of its warehouse…."[79] Likewise, Bosun explained that it was unable to directly tie Bosun's U.S. affiliates' U.S. sales of subject merchandise to the corresponding purchase of subject merchandise from Bosun.[80] Bosun's sales documentation also does not ostensibly identify the country of origin of the products sold in the United States.[81]

In the first supplemental questionnaire, we asked Bosun to describe in detail how Pioneer USA "segregated subject merchandise from diamond sawblades that it purchased from Thailand" and "segregated diamond sawblades imported from Bosun in the PRC and" Bosun Thailand.[82] Bosun fully responded to these questions but provided no supporting exhibits.[83] In the second supplemental questionnaire, we asked Bosun to demonstrate the segregation of products

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[76] *See Coalition for Preservation of American Brake Drum and Rotor Aftermarket Mfrs. v. United States*, 44 F.Supp.2d 229, 234 (CIT 1999) (*Coalition*) (internal citations omitted).
[77] *See* Bosun's First Supplemental Response dated September 7, 2016, at 2-3, 15-17, and Bosun's Second Supplemental Response dated November 10, 2016, at 1-3 and Exhibits S2-2 and S2-3.
[78] *See* Bosun's Section C Response dated July 1, 2016, at 50. *See also* Bosun's First Supplemental Response dated September 7, 2016, at 17.
[79] *See* Bosun's Section C Response dated July 1, 2016, at 47.
[80] *See* Bosun's Section C Response dated July 1, 2016, at 1-3, Bosun's First Supplemental Response dated September 7, 2016, at 2-3, 15-17, and Bosun's Second Supplemental Response dated November 10, 2016, at 1-3 and Exhibits S2-2 and S2-3.
[81] *See* Bosun's First Supplemental Response dated September 7, 2016, at Exhibits S1-8 through S1-21.
[82] *See* the First Supplemental Questionnaire to Bosun dated August 3, 2016, at 1, 5.
[83] *See* Bosun's First Supplemental Response dated September 7, 2016, at 2-3 and 15-17.

produced in the PRC and products produced in Thailand using the sales traces reported in the first supplemental response for sales made by Pioneer USA.[84] In this question, we asked Bosun to provide, if necessary, additional documents to support its response to this question.[85] Bosun fully responded to this question with a narrative explanation and two exhibits.[86] After Bosun responded to the second supplemental questionnaire, the petitioner submitted pre-preliminary comments requesting that we calculate a margin for Bosun with certain calculation adjustments with respect to billing adjustments, credit expenses, inventory carrying costs, irrecoverable VAT, scrap offset, and FOPs for all control numbers.[87] We took into account the petitioner's pre-preliminary comments in our calculation of the preliminary margin for Bosun.[88]

After we evaluated the petitioners case brief requesting an application of AFA to Bosun, we extended the deadline for the final results of this review[89] and conducted the U.S. sales verification of Bosun, which was limited to the sales identification methodology and the quantity and value reconciliation of Bosun's reported U.S. sales. Bosun did not withhold information that we requested, fail to provide requested information by the deadlines for the submission of the information or in the form and manner requested, or significantly impede a proceeding. As explained above, we verified Bosun's U.S. sales identification methodology and quantity and value reconciliations.

Bosun was an individually examined respondent in *LTFV Final*, *Diamond Sawblades 3*, and *Diamond Sawblades 4.* Although Bosun did not maintain the country of origin information of the products that its U.S. sales affiliates sold in its computer inventory, we permitted Bosun to identify sales using its proposed methodology, verified its methodology, and did not find the methodology to be inaccurate. Accordingly, we do not find the application of AFA to be appropriate and have permitted Bosun's sales identification methodology in this administrative review. With this decision, we anticipate that Bosun and its U.S. sales affiliates have knowledge that they need to maintain in their inventory and sales record system the clearly identifiable country of origin information for the merchandise that they sell to unaffiliated U.S. customers for future antidumping duty proceedings in which Bosun may be selected for individual examination.

Bosun has information that allowed the company to identify the country of origin and segregate sales of subject merchandise to U.S. customers using the sales identification methodology. Compliance with the "best of its ability" standard is determined by assessing whether a respondent has given its maximum effort to provide the Department with full and complete answers to all inquiries in a proceeding.[90] While the "best of its ability" standard does not condone inattentiveness, carelessness, or inadequate record keeping, it does not require perfection.[91] Because Bosun was able to segregate the sales of subject merchandise using its

[84] *See* the Second Supplemental Questionnaire to Bosun dated October 17, 2016, at 1.
[85] *Id.*
[86] *See* Bosun's Second Supplemental Response dated November 10, 2016, at 2-3 and Exhibits S2-2 and S2-3.
[87] *See* the petitioner's pre-preliminary comments for Bosun dated November 28, 2016.
[88] *Id. See also* the Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Analysis Memorandum for Bosun Tools Co., Ltd." dated December 5, 2016, at 2-5.
[89] *See* Final Results Extension Memorandum.
[90] *See Nippon Steel*, 337 F.3d at 1382.
[91] *Id. See also* section 782(d) and (e) of the Act.

sales identification methodology, we do not find that Bosun was inattentive, careless, or inadequate in keeping the country of origin record enough to warrant AFA.

Following the statutory requirements in section 782(d) of the Act, we provided Bosun with opportunities to respond to our requests for additional information and Bosun fully complied with our requests.

Bosun identified U.S. sales of subject merchandise using an alternative sales identification methodology that satisfied the statutory requirements in section 782(e) of the Act and we verified that methodology and found it to be acceptable. The sales identification methodology Bosun employed for Bosun USA and Pioneer USA included three common stages that involved the use of product codes, the combination of product codes and unit purchase costs, and the FIFO methodology.[92] We selected numerous sales traces of subject and non-subject merchandise and extensively examined the sales identification methodology in each stage of the sales identification methodology.[93] With the exception of one on-site selected sales trace for which Bosun used the FIFO methodology but reported an incorrect quantity, we found no discrepancies.[94] Also, during the verification, Bosun officials presented evidence that Pioneer USA was established in 2012[95] and explained that it used the sales identification methodology with the inventory record starting from 2012 through the POR.[96]

The petitioner's claim of inconsistency in the country of origin information pertains specifically to its claim of inaccuracy of the FIFO methodology that Bosun used to segregate the Chinese subject merchandise from Thai product and is based on one on-site selected sales trace in which we found discrepancies in the quantity of sales reported.[97] We find that this minor error is limited to this sales trace only.[98] Our verification of the FIFO methodology with other sales traces did not raise the question of the overall reliability of the FIFO methodology.[99] Also, as explained in Comment 5 below, errors in the reporting of control numbers and physical characteristics are isolated, as such, they do not form a basis for total AFA.

In the absence of the country of origin information of the products that its U.S. sales affiliates sold to U.S. customers, Bosun has "acted to the best of its ability" to cooperate with our request for information throughout this review by using its sales identification methodology. Bosun reported and explained the sales identification methodology and related quantity and value reconciliation in its section C response, subsequent supplemental responses, and other related documents, *e.g.*, verification exhibits, within the applicable deadlines. During the verification of Bosun's sales identification methodology, we found only a few minor discrepancies that are isolated to one individual sales transaction that we selected on-site for a sales trace. We did not

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[92] *See* Verification Report at 9-11. Unlike Bosun USA, Pioneer USA had one additional stage at the beginning of the sales identification methodology, which segregates in-scope merchandise from China and Thailand from non-scope products sold to third countries.
[93] *Id.*
[94] *Id.*
[95] *See* Verification Report at 2 and Exhibit 12, at 38, for the Pioneer USA's Articles of Incorporation.
[96] *See* Verification Report at 9-10.
[97] *See* Verification Report at 10-11.
[98] *See* Verification Report at 11.
[99] *See* Verification Report at 9-11

find any evidence that Bosun's sales identification methodology was overall "so incomplete that it cannot serve as a reliable basis for" the calculation of the final margin for Bosun in this review. Specifically, we did not find any evidence of additional discrepancies or a consistent pattern of reporting manipulation by cherry-picking certain sales as U.S. sales.[100] Moreover, Bosun's U.S. sales database can be used with only a few minor modifications to reflect our findings and Bosun's minor correction in this verification.

With respect to the petitioner's claim that Bosun did not support its quantity and value reconciliation with narrative explanations, we verified the quantity and value reconciliations for both Bosun USA and Pioneer USA and described our procedure for verifying the quantity and value reconciliation in the verification report.[101] We provided interested parties with an opportunity to submit case briefs, limited to issues pertaining to the sales identification methodology and quantity and value reconciliation described in the verification report.[102] The petitioner's post-verification case brief does not raise the same issue alleging a lack of narrative explanation for the quantity and value reconciliation.[103] Therefore, we find that the issue pertaining to the lack of explanation for the quantity and value reconciliation raised in the petitioner's first case brief is moot.

Therefore, we find it reasonable for Bosun to rely on an alternative sales identification methodology to report the U.S. sales of subject merchandise.

Comment 4: Partial AFA Request for Bosun's Sales Identified Using the FIFO Methodology

The petitioner requests that, if the Department decides not to apply total AFA, the Department should apply partial AFA to Bosun's U.S. sales allegedly reported based on the FIFO methodology. The petitioner reiterates that Bosun's failure to correctly report the quantity of Chinese products and Thai products using the FIFO methodology in on-site selected sales trace 6 proves the unreliability of Bosun's FIFO methodology. The petitioner argues that the FIFO methodology cannot accurately identify U.S. sales of subject merchandise and Bosun did not apparently adhere to the FIFO methodology because Bosun was unable to explain the discrepancy between its reporting and the results of the FIFO methodology Bosun supposedly used in that reporting. The petitioner contends that the failure of the FIFO methodology affects a certain percentage of Bosun's reported U.S. sales.

Bosun claims that the Department verified the accuracy of the FIFO methodology and one small discrepancy in Bosun's reporting among numerous transactions based on the FIFO methodology does not warrant AFA. Bosun also claims that the petitioner overestimates the universe of U.S. sales identified using the FIFO methodology.

<u>Department's Position</u>: For the final results, we have determined not to apply partial AFA with respect to Bosun's sales identified using the FIFO methodology. The discrepancies in the quantities reported using the FIFO methodology are limited only to on-site selected sales trace 6

[100] *See* Verification Report at 10-11.
[101] *See* Verification Report at 8-11.
[102] *See* the Letter to All Interested Parties dated May 18, 2017.
[103] *See* the petitioner's Posts-Verification Case Brief dated May 23, 2017.

and the petitioner's claim that Bosun did not apparently adhere to the FIFO methodology is solely based on this discrepancy, which is an error isolated to this particular sales trace and, as explained above in Comment 3, does not put into question the overall reliability of the FIFO methodology. We examined several sales transactions, including 10 preselected sales traces and six on-site selected sales traces, for the sales identification methodology and found no other discrepancies.[104] We also specifically explained in the verification report that, for certain sales traces, Bosun reported smaller quantities than the original quantities invoiced as a result of the FIFO methodology Bosun used to identify the country of origin. For the on-site selected sales trace 6, following our verification finding we have adjusted the quantity in the final margin calculation program for Bosun.[105] Because we are not applying partial AFA to Bosun's U.S. sales identified using the FIFO methodology, the issue concerning the universe of the U.S. sales identified by the FIFO methodology is moot.

Comment 5: Partial AFA Request for Bosun's Sales Reported with Incorrect Control Numbers

The petitioner argues that Bosun did not report accurate product characteristics for a portion of its U.S. sales database. Specifically, the petitioner explains that Bosun reported incorrect physical characteristics codes for cutting edge, segment height, segment length, number of segments, and core thickness for preselected sales traces 6 and 7. In addition, the petitioner states, Bosun reported incorrect diamond grade for another sales trace and fixed it in the pre-verification minor correction. The petitioner contends that, despite Bosun's explanation that the incorrect reporting of physical characteristics is limited to certain aspects included in pre-selected sales traces 6 and 7, there is no way of knowing that to be true and, based on these incorrectly reported physical characteristics, the incorrect reporting of physical characteristics appears to be pervasive throughout Bosun's U.S. sales database. The petitioner claims that the significant errors contained in the pre-selected sales traces undermine the accuracy of the non-examined sales reported in Bosun's U.S. sales database. The petitioner argues that Bosun's reporting of physical characteristics will cause improper matchings of sales and result in an inaccurate margin calculation. The petitioner requests that, to the extent that total AFA is not applied, the Department apply partial AFA to account for likely misreported control numbers for non-selected sales in Bosun's U.S. sales database.

Bosun argues that preselected sales traces 6 and 7 involved an identical product code and the inadvertent reporting of incorrect physical characteristics did not affect the Department's analysis. Bosun explains that, because the incorrect control number was unique to one product code and the corrected control number was also unique to the same product code, there is no possibility that the sale would be improperly matched in the margin calculation. Bosun contends that incorrectly reported control numbers discovered during a verification are not grounds for AFA. Bosun claims that the Department did not find incorrect control numbers in all other preselected and on-site selected sales traces during the verification.

[104] *See* Verification Report at 10-11.
[105] *See* the Memorandum, "Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Analysis Memorandum for Bosun Tools Co., Ltd." (Bosun final analysis memorandum) dated concurrently with this Issues and Decision Memorandum.

Department's Position: During verification, we reviewed the physical characteristics for 10 preselected sales traces and six on-site selected sales traces. The reporting errors to the physical characteristics and control numbers Bosun reported are limited to preselected sales traces 6, 7, and 10 and they do not evidence any widespread discrepancies in Bosun's reporting of physical characteristics and construction of control numbers.[106] Because preselected sales traces 6 and 7 involved an identical control number, there are only two incorrectly reported control numbers that were corrected as a result of this verification.[107] Also, because each of these two control numbers is unique to one particular product code, which was not reported under any other control numbers, these errors to the control numbers are limited with no widespread effect to warrant partial AFA.[108] Therefore, no partial AFA is warranted for only two inaccurately reported control numbers that were discovered at the pre-verification stage and during the verification. For the final results, we revised the incorrectly reported control numbers.[109]

Comment 6: Partial AFA Request for Bosun's Sales Later Deleted from Sales Database

The petitioner requests that, if the Department does not apply the total AFA to Bosun, then the Department should apply a partial AFA to certain U.S. sales transactions Bosun initially reported but later deleted from its revised U.S. sales database. The petitioner explains that Bosun included these U.S. sales transactions in its first U.S. sales database, but subsequently deleted them without any explanation from its revised U.S. sales database. The petitioner states that these deleted U.S. sales transactions are not the same U.S. sales transactions that Bosun deleted from the revised U.S. sales database and explained in Bosun's first supplemental response dated September 7, 2016, at 4-5 and 7-8.

Bosun contends that it explained the deletion of the U.S. sales transactions at issue in its direct response to the Department's first supplemental questionnaire. Bosun reiterates that the deleted U.S. sales transactions at issue were sales made to outside the United States.

Department's Position: In response to our first supplemental questionnaire, Bosun explained the deletion of certain U.S. sales transactions from its revised U.S. sales database. Bosun reported that it deleted two of the U.S. sales transactions that we selected for our request for sales traces.[110] Bosun also deleted from its revised U.S. sales database the sales returns and incorrectly issued credit notes that it erroneously identified as U.S. sales transactions in its first U.S. sales database.[111] Finally, all of the deleted U.S. sales transactions at issue that the petitioner identified in its case brief are the U.S. sales transactions that Bosun deleted from the revised U.S. sales database in response to a specific question in the first supplemental questionnaire.[112] In its response to our specific question in the first supplemental questionnaire, Bosun explained that the deleted U.S. sales transactions at issue were sales made to countries

[106] *See* Verification Report at 2, 7-8.
[107] *Id.*
[108] *Id.*
[109] *See* the Bosun final analysis memorandum.
[110] *See* Bosun's supplemental response dated September 7, 2016, at 4-5 and Exhibits S1-8 and S1-12.
[111] *Id.* at 7-8.
[112] *See* the petitioner's case brief dated January 17, 2017, at Attachment 1, Bosun's section C response dated July 1, 2016, at U.S. sales database, and Bosun's supplemental response dated September 7, 2016, at 13.

other than the United States.[113] Therefore, we find that Bosun provided the explanations for all U.S. sales transactions that it reported in its first U.S. sales database and later deleted from its revised U.S. sales database. We find no basis to apply a partial AFA to the deleted U.S. sales transactions at issue.

Comment 7: Separate Rate for Non-Selected Respondents

The petitioner requests that, if the Department assigns the AFA rate to both Bosun and the Jiangsu Fengtai Single Entity, the Department should assign the separate rates for Weihai and non-selected respondents in the last review, *Diamond Sawblades 5*, to Weihai and other non-selected separate rate respondents in this review.

Department's Position: Because the Department is not applying an AFA rate to both Bosun and the Jiangsu Fengtai Single Entity, but only to the latter, this issue is moot.

b. Differential Pricing

Comment 8: WTO Obligations

Bosun contends that the Department should abandon the DP analysis as it is in violation of the WTO obligations. According to Bosun, the WTO has found that several aspects of the DP methodology are inconsistent with Agreement on Implementation of Article VI of the GATT.[114]

The petitioner argues that this recent WTO decision in and of itself has no effect on the Department's DP methodology in the final results of this review. The petitioner contends that Bosun has provided no reason for the Department to follow a WTO decision that does not affect U.S. law.

Department's Position: Findings in WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[115] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to trump automatically the exercise of the Department's discretion in applying the statute.[116] Moreover, as part of the URAA process, Congress has provided a procedure through which we may change a regulation or practice in response to WTO reports, but we have not so far employed this procedure in response to the WTO report in question on this issue.[117]

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[113] *Id.*
[114] *See United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, WT/DS464/R (Mar. 11, 2016), together with the Report of the Appellate Body, WT/DS464/AB/R (Sept. 7, 2016).
[115] *See Corus Staal BV v. United States*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *accord Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).
[116] *See* 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).
[117] *See* 19 USC 3533(g). *See also 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), and accompanying Issues and Decision Memorandum at Comment 7, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Changed Circumstances Review and Reinstatement of Shanghai General Bearing Co., Ltd. in the Antidumping Duty Order*, 82 FR 4853 (January 17, 2017), and accompanying Issues and Decision Memorandum at 29, and *Hydrofluorocarbon Blends and Components*

Comment 9: Cohen's d Test

Bosun argues that the Department did not disclose the DP analysis methodology. Specifically, Bosun argues that the Department did not disclose: (1) the historical context and purpose of the DP analysis; and (2) the related mathematical formulas or how and where the DP analysis diverged from such original mathematical formulas. Bosun requests that the Department disclose them and invite comments from parties. Bosun states that this request is reasonable because the Department gathered factual information from mandatory respondents even as the case brief deadline approached.

According to Bosun, the Cohen's *d* test is a statistical measure developed to express and evaluate the difference between the means of two independent samples drawn from populations with a common standard deviation or as a measure of effect size. Bosun explains that the Cohen's *d* statistics are calculated by finding the difference between the means of two samples and dividing this number by an estimator for the common standard deviation. Bosun explains further that the use of the "pooled" standard deviation for two samples as an estimator for the common standard deviation is a currently accepted practice. Bosun states that the pooled standard deviation is calculated by taking the square root of the weighted average of the two sample variances in which the weight-averaging is by the number of observations in each sample.

Bosun explains that the Department calculated the pooled standard deviation for the Cohen's *d* statistics by adding the sample variances of the test group and the base group, dividing the sum of this addition by two, and then taking the square root. Bosun contends that this calculation does not weigh each sample variance by the number of transactions in each group, misses a crucial aspect of the formula for calculating the pooled standard deviation, and produces an inaccurate result unless the test and base groups have an equal number of transactions. Bosun claims that more unequal sample sizes produce a greater difference in the sample standard deviation. Thus, Bosun argues, the Cohen's *d* coefficient over the DP analysis threshold of 0.8 is a product of the use of an incorrect formula.

Bosun claims that the Department uses too few transactions in the test and base groups in the Cohen's *d* test. Bosun argues that applying the Cohen's *d* test when there are at least two transactions in both the test and base groups is unsound because the Cohen's *d* test is: (1) a biased estimator for the true effect size; and (2) even more biased when the total number of transactions in the samples being compared is less than 20. Bosun contends that, as a result, the calculated Cohen's *d* coefficient will be larger than the true effect size in terms of absolute value and its use could potentially result in producing a coefficient greater than the DP threshold of 0.8 when the true effect size is less than 0.8, particularly when the total number of transactions in both samples is less than 20. Bosun suggests an alternative methodology, *e.g.*, Hedges' *g*, to estimate effect size accurately in such an instance.

Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 81 FR 42314 (June 29, 2016), and accompanying Issues and Decision Memorandum at Comment 9.

Bosun argues that the Department should not use the Cohen's *d* test as a test of statistical significance because it is simply a standardized measure of the difference between two means. Bosun explains that the Cohen's *d* test can produce the coefficient over 0.8 even when the difference between the means of two groups is not statistically significant. Bosun states that it is unreasonable to rely on the Cohen's *d* coefficient to find a statistically significant difference between the means of two groups. Bosun requests that the Department discontinue the use of the current DP analysis until it can be fully evaluated and revised to meet the bare minimum reasonable statistical method.

Bosun argues that counting sales at prices above the mean as passing the Cohen's *d* test does not unmask TD because sales at above average prices cannot reasonably be characterized as targeted. Bosun requests that the Department exclude targeted sales that are not dumped because there is no unmasking of dumping when there is no dumping.

With respect to Bosun's claim that the Department did not disclose the DP analysis methodology, the petitioner states that the Department rejected similar arguments in *Citric Acid*[118] and *Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 5. The petitioner explains that the Department fully explained the DP analysis in the *Preliminary Results* and accompanying Preliminary Decision Memorandum at 15-16 and disclosed the margin calculation programs, which include all calculations, including the DP analysis, for the *Preliminary Results.*

The petitioner argues that the Department's use of the simple average in the calculation of the Cohen's *d* statistics is correct. The petitioner also argues that the Cohen's *d* test is not biased for the true effect size. With respect to these issues, the petitioner states that, in *Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 5 and *Citric Acid* and accompanying Issues and Decision Memorandum at Comment 1-D, the Department explained in detail the reasons it rejected the arguments that are identical with Bosun's in this review. Citing, *e.g.*, *Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 5 and *Certain Steel Nails,*[119] the petitioner contends that, as a generally recognized statistical measure of effect size, the Cohen's *d* test does not need to measure a statistically significant difference because the statute does not require the difference be statistically significant. Finally, citing, *e.g.*, *Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 5 and *Wood Flooring*[120] and accompanying Issues and Decision Memorandum at Comment 1.C, the petitioner supports the Department's use of both low-priced and high-priced sales in the DP analysis to determine whether a pattern of prices that differ significantly exists and whether masking of dumping is occurring.

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[118] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65182 (November 3, 2014) (*Citric Acid*), and accompanying Issues and Decision Memorandum at Comment 1-D.
[119] *See Certain Steel Nails from the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) (*Certain Steel Nails*), and accompanying Issues and Decision Memorandum at Comment 7.
[120] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) (*Wood Flooring*).

Department's Position: Bosun does not argue that our Cohen's *d* test violates the statute. Rather, Bosun puts forth several reasons unrelated to the statute why it believes that the DP analysis should be modified from the *Preliminary Results.* The statute does not direct how we measure whether there is a pattern of prices that differ significantly or how we calculate the pooled standard deviation of the Cohen's *d* coefficient. On the contrary, we have exercised our discretion in a reasonable manner as conferred by Congress on this matter.[121]

In the *Preliminary Results*, we fully described our DP analysis for examining the two requirements under section 777A(d)(1)(B) of the Act.[122] Also, our preliminary margin programs for the two selected respondents include the calculations we used for the *Preliminary Results*, including our examination of whether there exists a pattern of prices that differ significantly and whether or not the A-A method can account for such differences.[123] We made available to interested parties under the administrative protective order in this review the preliminary margin calculation programs as well as other preliminary results documents and data for the two selected respondents on ACCESS after the *Preliminary Results* was signed and issued, consistent with 19 CFR 351.224(b).

With respect to Bosun's argument that our use of a simple average of the sample variances of the test and base groups, when calculating the pooled standard deviation, creates inaccurate results, Bosun has provided no support to substantiate its argument. Furthermore, the statute does not direct how we should determine whether a pattern of prices that differ significantly exists, let alone how to calculate the pooled standard deviation of the Cohen's *d* coefficient. Our intent is to rely on a reasonable approach that affords predictability and we find that a simple average (*i.e.*, giving equal weight to the test and comparison groups) is the best way to accomplish this goal when we determine the pooled standard deviation. The use of a simple average equally weighs a respondent's pricing practices to each group and the magnitude of the sales to one group does not skew the outcome. This approach is reasonable and consistent with section 777A(d)(1)(B)(i) of the Act.[124]

Our use of the Cohen's *d* test is based on the entire population of the U.S. sales of the two selected respondents and, therefore, there are no estimates involved in the results and "statistical significance" is not a relevant consideration. Moreover, for our application of the Cohen's *d* test, it is unnecessary to consider sampling size, randomness of the sample, or to include a measure of the statistical significance of its results, as this analysis includes all the two selected respondents' sales in the U.S. market. The Cohen's *d* "coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group

[121] *See, e.g.*, *Citric Acid* and accompanying Issues and Decision Memorandum at Comment 1.D, and *Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 5. *See Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1323-28 (CIT 2016) (*Apex*).
[122] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 14-16. *See also Apex*, 144 F. Supp. 3d at 1323-28.
[123] *See* Memorandum to the File entitled "Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Analysis Memorandum for Bosun Tools Co., Ltd." dated December 5, 2016, and the attached preliminary margin calculation program, log, and output.
[124] *See Citric Acid* and accompanying Issues and Decision Memorandum at Comment 1.D and *Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 5.

and the mean (*i.e.*, weighted-average price) of a comparison group."[125] Within the Cohen's *d* test, the Cohen's *d* coefficient is calculated based on the means and variances of the test group and the comparison group. The test and comparison groups include all the U.S. sales of comparable merchandise reported by the respondent. As such, the means and variances calculated for these two groups are the actual values for both the test and comparison groups, and are not estimates which include sampling errors. Statistical significance is used to evaluate whether the results of an analysis rise above sampling error (*i.e.*, noise) present in the analysis and is dependent on the sampling technique and sample size. Our application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of the two selected respondents' sales in the U.S. market and, therefore, these values contain no sampling error. Accordingly, sampling technique, sample size, and statistical significance are not relevant considerations in this context.

If Congress intended to require a particular result be obtained, with a level of "statistical significance" of price differences as a condition for finding that there exists a pattern of prices that differ significantly, then Congress presumably would have used language beyond the stated requirement and more precise than "differ significantly." This is what Congress did, for example, with respect to enacting the sampling provision for respondent selection in section 777A(c)(2)(A) of the Act. But it did not do so with respect to the determination of the existence of a pattern in section 777A(d)(1)(B)(i) of the Act. As the executive agency tasked with implementing the antidumping law, resolving statutory ambiguities, and filling gaps in the statute, we do not agree with Bosun's opinion that the term "significantly" in the statute can mean only "statistically significant." The law includes no such directive.[126]

Our analysis, including the use of the Cohen's *d* test, reasonably fills the statutory gap as to how to determine whether a pattern of prices "differ significantly."[127] Further, the consideration of "statistical significance" is to determine, from a sample of a larger population, an estimate of what the actual values (*e.g.*, the mean or variance) of the larger population may be with a "statistical significance" attached to that estimate. As discussed above, our use of the Cohen's *d* test is based on the entire population of the two selected respondents' U.S. sales, and, therefore, there are no estimates involved in the results and accordingly "statistical significance" is not a relevant consideration. Our application of the Cohen's *d* test is based on the mean and variance calculated using the entire population of a respondent's sales in the U.S. market, and, therefore, these values contain no sampling error. All the two selected respondents' U.S. sales in their U.S. sales databases make Bosun's "statistical significance" argument inapposite.[128]

With respect to Bosun's argument that sales at above average prices cannot reasonably be characterized as targeted, the statute does not require that we consider only lower priced sales in the DP analysis. We have the discretion to consider sales information on the record in our analysis and to draw reasonable inferences as to what the data show. It is reasonable for us to consider both lower-priced and higher-priced sales in the Cohen's *d* analysis because higher-priced sales are equally likely as lower-priced sales to create a pattern of prices that differ

[125] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 16.
[126] *See*, *e.g.*, *CTL Plate* and accompanying Issues and Decision Memorandum at Comment 1.
[127] *Id.*
[128] *See Citric Acid* and accompanying Issues and Decision Memorandum at Comment 1.D.

significantly. Further, higher-priced sales will offset lower-priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets for non-dumped sales that can mask dumping. The statute states that we may apply the A-T method if "there is a pattern of export prices . . . for comparable merchandise that differ significantly among purchasers, regions, or periods of time," and we explain "why such differences cannot be taken into account" using the A-A method.[129] Further, the SAA states with reference to section 777A(d) of the Act and TD that:

> In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.[130]

The SAA further states that

> New section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods, *i.e.*, where targeted dumping may be occurring.[131]

Therefore, the concept of the pattern of prices that differ significantly is linked to prices that are higher than other prices that may be dumped (*i.e.*, lower prices) as well as to lower prices.[132]

The statute directs us to consider whether there exists a pattern of prices that differ significantly. The statutory language references prices that "differ" and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute does not require that we consider only higher-priced sales or only lower-priced sales when conducting its analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. We have explained that higher-priced sales and lower-priced sales do not operate independently; all sales are relevant to the analysis.[133] By considering all sales, higher priced sales and lower priced sales, we are able to analyze an exporter's pricing practice and to identify whether there is a pattern of prices that differ significantly. Moreover, if we find that such a pattern of prices that differ significantly among purchasers, regions, or periods of time does exist, then this signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in discriminatory pricing behavior, there is cause to continue with the DP analysis to determine

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[129] *See* section 777A(d)(1)(B) of the Act.
[130] *See* SAA at 842.
[131] *Id.* at 843.
[132] *See Citric Acid* and accompanying Issues and Decision Memorandum at Comment 1.D, and *Diamond Sawblades 4* and accompanying Issues and Decision Memorandum at Comment 10. *See also Apex*, 144 F. Supp. 3d at 1330 ("Therefore, the SAA also supports the view that consideration of both lower and higher-priced sales may be appropriate in determining whether application of A-T is necessary to unmask dumping. For the reasons discussed above, Plaintiffs are unable to demonstrate that Commerce's decision to consider all sales in the ratio test was unreasonable.").
[133] *See Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 1.C, and *Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 5.

whether the A-A method or the T-T method can account for such pricing behavior. Accordingly, both higher and lower priced sales are relevant to our analysis of the exporter's pricing behavior when examining the requirement under section 777A(d)(1)(B)(i) of the Act.[134]

In our DP analysis, we include non-dumped U.S. sales that are priced below the average prices. Lower or higher priced sales could be dumped or could be masking other dumped sales. This is not relevant in answering the question of whether there exists a pattern of prices that differ significantly because our DP analysis includes no comparisons with normal values and section 777A(d)(1)(B)(i) of the Act contemplates no such comparisons. Section 777A(d)(1)(B)(i) of the Act specifies a "pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions or periods of time." Such a pattern is strictly between the sale prices in the U.S. market, and has no relationship with the comparable normal values for these U.S. sales. Accordingly, consideration of whether these U.S. sales are dumped is not part of fulfilling this requirement.[135] Indeed, the lower-priced U.S. sales could be below their normal value, the high-priced U.S. sales could also be below their normal value, or none of the U.S. sales could be below their normal value. Such a determination is not part of this statutory requirement. Therefore, the Cohen's *d* test, in its application to determine whether there exists a pattern of prices that differ significantly, is not required to consider whether these sales are also "dumped" as asserted by Bosun.[136]

Comment 10: Denial of Offsets for Non-Dumped Sales When Using the A-T Method

Bosun claims that, even if it continues to use the DP analysis in the final results of this review, the Department should not use zeroing in NME proceedings. Bosun argues that *Union Steel v. United States*, 713 F.3d 1101, 1106 (Fed. Cir. 2013) (*Union Steel*), which affirmed the Department's use of zeroing in *Corrosion-Resistant Carbon Steel Korea*,[137] applies to market economy proceedings only, and does not apply to NME proceedings because of the statutory difference between market economy proceedings and NME proceedings in calculating normal values. According to Bosun, the Department calculates the average normal value on a yearly basis in NME proceedings as opposed to a monthly basis in market economy proceedings, which is central to the CAFC decision in *Union Steel*, 731 F.3d at 1108.

Bosun explains that, in this review, the Department valued each raw material input using the one single annual POR average SV. Bosun explains further that the Department calculated financial ratios based on K.M. & A.A. Co., Ltd.'s financial statements covering the fiscal year that overlaps the POR by two months. For these reasons, according to Bosun, even with the increases of the costs of the FOPs and the corresponding increase of the U.S. prices, the

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[134] *See Citric Acid* and accompanying Issues and Decision Memorandum at Comment 1.D and *Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 5.
[135] *See Apex*, 144 F. Supp. 3d at 1330 ("All sales are subject to the differential pricing analysis because its purpose is to determine to what extent a respondent's U.S. sales are differentially priced, not to identify dumped sales. (Citation omitted.) Commerce is not restricted in what type of sales it may consider in assessing the existence of such a pattern so long as its methodological choice enables Commerce to reasonably determine whether application of A-T is appropriate. *See* 19 C.F.R. § 351.414(c)(1).").
[136] *Id.*
[137] *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Sixteenth Administrative Review*, 76 FR 15291 (March 21, 2011) (*Corrosion-Resistant Carbon Steel Korea*).

respondents are stuck with the "mid-point cost" based on the Department's NME methodology. Bosun claims that this methodology results in driving some U.S. sales above, and some other U.S. sales below, normal value in a way that is indistinguishable from the A-A method in investigations. Bosun contends that, under such circumstances, it is not reasonable to remove non-dumped sales that could potentially offset artificially created dumping margins. Bosun also states that the information the Department uses to calculate SVs and financial ratios is not available to the NME exporters when they price U.S. sales, even if they can correctly guess which sources the Department would ultimately select.

The petitioner states that the Department rejected Bosun's argument in the last three reviews on the basis that market economy cases, including the underlying case in *Union Steel*, use constructed value as normal value. The petitioner contends that *Union Steel* does not limit the use of the A-T method only to market economy cases. Citing, *e.g.*, *Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 6, the petitioner claims that there is no difference between market economy and NME proceedings, in that in both proceedings, the Department calculates normal values using period-wide averages.

<u>Department's Position</u>: In *Union Steel*, the CAFC affirmed the Department's explanation that it may interpret the statute to permit the denial of offsets for non-dumped sales with respect to the A-T comparison method in administrative reviews, while permitting the Department to grant offsets for non-dumped transactions when applying the A-A comparison method in investigations.[138] The CAFC also affirmed the Department's explanation that it may interpret the same statutory provision differently because there are inherent differences between the comparison methods used in investigations and reviews.[139] Indeed, the court noted that although the Department recently modified its practice "to allow for offsets when making A-A comparisons in administrative reviews . . . {t}his modification does not foreclose the possibility of using the zeroing methodology when {the Department} employs a different comparison method to address masked dumping concerns."[140]

Likewise, in *U.S. Steel Corp*, the CAFC sustained the Department's decision to no longer apply zeroing when employing the A-A comparison method in investigations while recognizing the Department's intent to continue to apply zeroing in other circumstances. Specifically, the court recognized that the Department may use zeroing when applying the A-T comparison method where patterns of significant price differences are found.[141]

We also disagree with Bosun's contention that the CAFC's decision in *Union Steel* is limited to market economy reviews. Bosun asserts that the A-T method used in market economy reviews differs from the methodology employed in administrative reviews of antidumping duty orders for an NME. While Bosun suggests that the "average" normal value is a monthly average in market-economy reviews, but a yearly value covering the entire review period in NME reviews, this is only true where normal value is based on comparison market sale prices; Bosun ignores market economy reviews where normal value is based on constructed value. Therefore, the argument

[138] *See Union Steel*, 731 F.3d at 1106.
[139] *Id.*
[140] *Id.*
[141] *See U.S. Steel Corp.*, 621 F.3d at 1355 n.2, 1362-63.

that *Union Steel* applies only to market economy reviews where normal value was based on comparison market sales overlooks the fact that even the review underlying the *Union Steel* decision involved the use of constructed value.[142] Although the Department modified its cost-calculation methodology in that review, the Department's normal practice is to calculate an annual weighted-average cost for the POR.[143]

> Cost of production is calculated according to a statutory formula by adding together several costs and expenses, including the cost of materials, fabrication, containers, coverings, and other processing costs, and selling, general, and administrative expenses. . . . The constructed value of merchandise, which is the basis for normal value when there are insufficient sales in the exporting country or a third country, is the sum of the same costs and expenses used to calculate cost of production, plus realized profits. . . . Under its standard methodology, Commerce determines cost of production by calculating a single weighted-average cost for the period of review.[144]

Section 773(e) of the Act discusses the use of constructed value as the basis for normal value, and contains no limits regarding the time period for production costs used to calculate constructed value as the basis for normal value. In fact, the Department's practice, as explained above, is to calculate a single, weighted-average control number-specific cost for the review period. We generally use annual average costs to even out swings in production costs experienced by respondents over short periods of time. In this manner, we smooth out the effect of fluctuating raw material costs.[145] Likewise, in NME reviews, such as this one, pursuant to section 773(c)(1) of the Act, the Department calculates a single control number-specific weighted-average normal value for the review period in a manner similar to how it calculates constructed value, except that it values the FOPs utilizing, to the extent possible, the prices or costs of FOPs in one or more market economy countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Notwithstanding Bosun's claims to the contrary, the court's decision in *Union Steel* was not restricted to market economy reviews in which normal value was based on comparison market sale prices. Therefore, consistent with the Department's normal practice in reviews involving NME countries, we properly applied the A-T method to respondents' sales. Further, in doing so, we properly denied offsets for non-dumped transactions as part of the A-T method.

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142 *See Corrosion-Resistant Carbon Steel Korea*.
143 *See, e.g., Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006) (*Wire Rod Canada*), and accompanying Issues and Decision Memorandum at Comment 5, which explains our practice of computing a single weighted-average cost for the entire period.
144 *Thai Pineapple Canning Indus. Corp. v. United States*, 273 F.3d 1077, 1084 (Fed. Cir. 2001).
145 *See Wire Rod Canada* and accompanying Issues and Decision Memorandum at Comment 5.

c. Value-Added Tax

Comment 11: *Deduction of Irrecoverable Value-Added Tax*

Bosun argues that the Department's preliminary deduction of unrefunded VAT from U.S. price is a violation of section 772(c)(2)(B) of the Act and *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Bosun claims that the unrefunded VAT at issue is the tax for the imports of raw materials from other countries into the PRC, not the export tax specifically mentioned in section 772(c)(2)(B) of the Act. Bosun contends that categorizing the VAT that is not fully refunded upon exportation as an export tax pursuant to section 772(c)(2)(B) of the Act is a violation of *Chevron*'s first prong, which requires the Department to comply with the clear intent of Congress when Congress has spoken directly to the precise question at issue. Bosun claims that, because section 772(c)(2)(B) of the Act is clear and unambiguous with respect to export tax, the Department has no discretion to construe it otherwise to deduct unrefunded VAT as an export tax from U.S. price.

Bosun states that they did not pay VAT or any export tax upon exportation of the subject merchandise because the Chinese authorities exempt the exports of finished goods from VAT. Bosun insists that the unrefunded VAT is a result of the purchase and importation of raw materials, not the exportation of the subject merchandise, and that the payment of VAT does not originate with the exportation of subject merchandise.

Citing *Magnesium Corp.*[146] and *Globe Metallurgical Inc.*,[147] Bosun argues that the CAFC upheld the Department's decision not to capture domestic taxes imposed upon the purchase of raw materials in the PRC because there is no reliable way to determine whether an export tax has been included in the price of a product from an NME. Bosun contends that this rationale has not changed despite the Department's recent decision to deduct the unrefunded VAT. Bosun claims that the Department's methodology in the deduction of unrefunded VAT is based on pure speculation, not substantial evidence on the record. Even if the Department is concerned about respondents receiving some benefits from the NME methodology in the form of tax on production not fully rebated, according to Bosun, the Department's deduction of unrefunded VAT is an inappropriate way to address the concern.

The petitioner argues that the Department should continue to deduct the unrefunded VAT from the U.S. price. According to the petitioner, Bosun reported that the VAT was 17 percent during the POR with the VAT rebate of nine percent applicable to exports of the subject merchandise. The petitioner explains that Bosun offered no new arguments that would justify reconsidering the Department's position concerning this issue as explained in, *e.g.*, *Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 2. The petitioner states that *Juancheng Kangtai*,[148] held that the Department's interpretation of section 772(c)(2)(B) of the Act is reasonable with respect to the deduction of the irrecoverable VAT. Citing *Electrodes from*

[146] *Magnesium Corp. v United States*, 166 F.3d 1364, 1370-71 (Fed. Cir. 1999) (*Magnesium Corp.)*.
[147] *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340, 1346-47 (CIT 2011) (*Globe Metallurgical Inc.)*.
[148] *See Juancheng Kangtai Chemical Co., Ltd. v. United States*, Consol. Court No. 14-00056, Slip Op. 17-3, 2017 Ct. Intl. Trade LEXIS 3, 2017 WL 218910 (Ct. Int'l Trade January 19, 2017) (*Juancheng Kangtai*).

the PRC,[149] the petitioner argues that *Magnesium Corp.* and *Globe Metallurgical Inc.* do not reject the Department's deduction of unrebated VAT. The petitioner explains that those cases simply agreed with the Department's decision not to do so back at the time when the PRC economy was different from today's PRC economy. The petitioner also explains that *Juancheng Kangtai* also held that *Magnesium Corp.* and *Globe Metallurgical Inc.* involve judicial affirmance of the Department's prior methodology and the change to the prior methodology presents no separate basis for disregarding the Department's present information.

Department's Position: For the reasons explained below, we continue to apply our preliminary formula to adjust the VAT to deduct from the reported U.S. prices an amount for irrecoverable VAT.

In 2012, we announced a change of methodology with respect to the calculation of the EP or CEP to include an adjustment of any irrecoverable VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[150] In this announcement, we stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise from which the respondent was not exempted, we will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty, or charge paid, but not rebated.[151] In a typical VAT system, companies do not incur any VAT expense; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports (input VAT), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.[152] That stands in contrast to China's VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.[153] This amounts to a tax, duty, or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of the U.S. price, the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[154] *Magnesium Corp.* and *Globe Metallurgical Inc.* affirmed our prior methodology, which has since changed with the publication of *Methodological Change*.[155]

In response to the claims that we do not have the statutory authority to adjust for VAT, section 772(c)(2)(B) of the Act authorizes us to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Bosun argues that Chinese VAT is not an export tax, duty or charge, but they misstate what is at issue. The issue is the irrecoverable VAT, not VAT

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[149] *See Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 57508 (September 25, 2014) (*Electrodes from the PRC*) and accompanying Issues and Decision Memorandum at Comment 7.
[150] *See Methodological Change*, 77 FR at 36482.
[151] *Id.*, 77 FR at 36483. *See also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) (*Chlorinated Isocyanurates*), and accompanying Issues and Decision Memorandum at Comment 5.
[152] *See, e.g., Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 2, *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 3, and *Methodological Change*, 77 FR at 36483.
[153] *See* Bosun's section C response dated July 1, 2016, at 45-48 and Exhibits C-6 and C-7.
[154] *See Methodological Change*, 77 FR at 36483.
[155] *See Juancheng Kangtai*, 2017 Ct. Intl. Trade LEXIS 3, at *35, 2017 WL 218910, at *12.

per se. In this context, irrecoverable VAT, as defined in Chinese law, is a net VAT burden that arises solely from, and is specific to, exports.[156] It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost. Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States. Neither the statute nor its legislative history defines the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise. The CIT has upheld our interpretation of these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.[157] The CIT also held that we receive deference in our interpretation of the term(s) "export tax, duty, or other charge imposed" in section 772(c)(2)(B) of the Act, which does not define any of these terms, and our interpretation is reasonable in the context of the deduction of the irrecoverable VAT.[158] The irrecoverable VAT is set forth in Chinese law and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[159]

Our methodology, as explained above, essentially amounts to performing two basic steps: (1) determining the irrecoverable VAT tax on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Bosun reported that the standard VAT levy on the subject merchandise is 17 percent and the VAT rebate rate for the subject merchandise is nine percent.[160] For the final results, therefore, we removed from U.S. price an amount calculated based on the difference between these rates (*i.e.*, eight percent) applied to the export sales value (*i.e.*, U.S. price net of international movement expenses), consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.[161]

Irrecoverable VAT is defined as: (1) the free-on-board value of the exported good, applied to the difference between; (2) the standard VAT levy rate; and (3) the VAT rebate rate applicable to exported goods.[162] The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulation.[163]

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[156] *See, e.g., Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 2. *See also* Bosun's section C response dated July 1, 2016, at 45 and Exhibit C-6.
[157] *See Fushun Jinly Petrochemical Carbon Co., Ltd. v. United States*, Court No. 14-00287, 2016 Ct. Intl. Trade LEXIS 25, at *36-37 (Ct. Int'l Trade Mar. 23, 2016) (*Fushun Jinly*).
[158] *See Juancheng Kangtai*, 2017 Ct. Intl. Trade LEXIS 3, at *31-40, 2017 WL 218910, at *11-13.
[159] *See Methodological Change*, 77 FR at 36483, and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) (citing SAA accompanying the URAA, H.R. Doc. No. 103-106, vol. 1, 827, reprinted in 1995 U.S.C.C.A.N. 3773, 4172).
[160] *See* Bosun's section C response dated July 1, 2016, at 45-48 and Exhibits C-6 and C-7.
[161] *See Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Prestressed Wire*), and accompanying Issues and Decision Memorandum at Comment 1, and *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 3.
[162] *See Prestressed Wire* and accompanying Issues and Decision Memorandum at Comment 1, n. 35, and *Wood Flooring*, and accompanying Issues and Decision Memorandum at Comment 3.
[163] *See Prestressed Wire* and accompanying Issues and Decision Memorandum at Comment 1, n. 36, and *Wood*

Our methodology is based on removing irrecoverable VAT on exports, which is product-specific and is explicitly defined in Chinese tax regulations.[164] Our deduction of product-specific irrecoverable VAT from the price of the subject merchandise is a reasonable and appropriate methodology because the export tax, duty, or other charge is a product-specific expense that is directly linked with the exportation of the subject merchandise. Our method of relying on the standard formula provided for under Chinese tax law and regulation is straightforward, consistent, and a verifiable method to make this adjustment under section 772(c)(2)(B) of the Act. In that respect, the irrecoverable VAT formula for taxation purposes is a function of the rates under Chinese regulation and the respondent-specific export value of subject merchandise.

Our analysis is consistent with our current VAT policy and our treatment of VAT in recently completed cases involving the PRC.[165]

d. Surrogate Values

Comment 12: *Container Weight in Brokerage and Handling and Inland Freight Expenses*

Bosun disagrees with the Department's use of the weight of 15,000kg as the denominator in the calculation of the surrogate B&H and truck freight expenses in the *Preliminary Results*. Bosun requests that the Department recalculate these two surrogate expenses to reflect shipping reality by using the actual maximum cargo load as the denominator. Bosun argues that *Doing Business* does not indicate that the weight of 15,000kg is the maximum or even standard cargo weight of a 20-foot container. Bosun explains that the World Bank established an assumption for contributors to *Doing Business* that the information they provide is for a 20-foot container weighing 15,000kg without explaining the reason for setting this assumption and suggesting that the cost of transport is dependent on the container weight. According to Bosun, the Department relies on only a small portion of *Doing Business.* Bosun contends that the majority of *Doing Business* reports the time it takes to import and export into and out of Thailand and the weight parameter at issue, *i.e.*, 15,000kg, could relate to any number of other issues in *Doing Business.* Bosun explains that no evidence suggests that the price of transportation depends on the container weight, while other facts on the record suggest that the container weight is not indicative of the cost of transporting the container.

According to Bosun, record evidence suggests that the B&H and truck freight expenses are based on an entire container or truck, not weight. Citing *Since Hardware*,[166] Bosun contends that the B&H and truck freight expenses are not dependent on and not relevant to the container weight or

Flooring and accompanying Issues and Decision Memorandum at Comment 3.

[164] *See Prestressed Wire* and accompanying Issues and Decision Memorandum at Comment 1 and *Wood Flooring* and accompanying Issues and Decision Memorandum at Comment 3.

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

[166] *Since Hardware (Guangzhou) Co. v. United States*, 977 F. Supp. 2d 1347 (CIT 2014) (*Since Hardware).*

volume. Bosun claims that Maerskline, a well-known international freight forwarder, provides the same B&H rate for a 15,000kg container and a 28,200kg container and demonstrates that the B&H pricing is not dependent on the specific kilograms or volume loaded in a container. Bosun argues that, because the price quotations in *Doing Business* were dependent on the container size, but not the container weight, the only relevant figure in *Doing Business* is the numerator cost for B&H and truck freight expenses. Bosun also argues that many of the charges should not increase when the 20-foot container fees are compared to the 40-foot container fees and for the same 20-foot container, the B&H fees would be the same regardless of weight or maximum capacity. Bosun requests that the Department "use the actual reported cost of the numerator and then use other record information to reasonably assign the denominator weight or volume to derive the unit cost; namely the maximum weight of a 20-foot container (footnote omitted)."

The petitioner explains that the Department declined to accept an essentially identical argument Bosun raised in the last administrative review. The petitioner explains that the Department appropriately used a cargo weight of 15,000kg because: (1) the data in *Doing Business* were compiled based on the assumption that the cargo for which costs are reported weigh 15,000kg; and (2) doing so maintains the relationship between cost and quantity from the same source used to compile the data in *Doing Business.* The petitioner claims that the Department described such calculation methodology as a long-standing, consistent practice and rejected Bosun's arguments in *Uncoated Paper PRC.*[167] The petitioner contends that using any weight other than 15,000kg, which is not based on the costs reported in *Doing Business*, would disrupt the integrity of the calculation of these two surrogate expenses. According to the petitioner, *Since Hardware* is a case-specific decision and does not undermine the Department's use of 15,000kg in the calculation of the surrogate B&H expense using *Doing Business*, which the Department did in several cases before and after *Since Hardware* was decided. Finally, the petitioner argues that, even if the B&H cost in *Doing Business* are per-container costs unaffected by the cargo weight, because there are no relations between the costs in *Doing Business* and the maximum weight of a 20-foot container, Bosun suggests (28,200kg), using the maximum weight of a 20-foot container would be just as distortive as using 15,000kg.

Department's Position: We disagree that a change is needed to the denominator of the calculation of the surrogate B&H and truck freight expenses. The *Doing Business* data on this record represent a broad market average and are, thus, commercially representative. Moreover, the data are publicly available and contemporaneous with the POR. In the last review, we addressed the same issue and decided to use the weight specified in *Doing Business 2015 – Trading Across Borders in Thailand* which we relied on to value the B&H and truck freight expenses.[168] In other recent cases, we have determined that the weight of 15,000kg is the appropriate quantity for deriving per-unit values from *Doing Business*, which assumes the weight 15,000kg for purposes of calculating the B&H and truck freight expenses.[169]

[167] *See Certain Uncoated Paper from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 3112 (January 20, 2016), and accompanying Issues and Decision Memorandum at 35-37.
[168] *See Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 10, in which the weight specified in *Doing Business 2015 – Trading Across Borders in Thailand* was 10,000kg.
[169] *See, e.g.*, *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62088 (September 8, 2016), and accompanying Issues and Decision Memorandum at Comment 9.

We do not agree with Bosun's claim that no evidence suggests that the price of transportation depends on the container weight, while other facts on the record suggest that the container weight is not indicative of the cost of transporting the container. Because *Doing Business* calculated the B&H and truck freight expenses based on a shipment of 15,000kg, the weight of 15,000 kg is indicative of the cost of transportation (*i.e.*, the surrogate B&H and truck freight expenses based on *Doing Business*) and it would be inconsistent and distortive to use an alternative quantity such as the container weights proposed by Bosun.[170] Because an alternative weight other than the weight specified in *Doing Business*: (1) is a weight not related to the costs reported in *Doing Business*; and (2) would result in a distortive per-unit cost, we find it appropriate to continue to calculate the surrogate B&H and truck freight expenses using 15,000kg as the denominator, based on *Doing Business*.[171] Also, because our valuation of B&H and truck freight expenses is based on *Doing Business*, any suggestion from other unrelated sources such as Maerskline that the container weight is not indicative of the cost of transporting the container is irrelevant to our surrogate valuation.

Using the weight specified in *Doing Business* in the per-unit calculation maintains the relationship between costs and quantity from the survey (which is important because the numerator and the denominator of the calculation are dependent upon one another), and makes use of data from the same source.[172] Therefore, we continued to use 15,000kg to calculate the surrogate B&H and truck freight expenses to maintain the internal consistency of the calculation, *i.e.*, the numerator and the denominator of the calculation are from the same source and dependent upon one another.

Bosun's argument that B&H and truck freight expenses do not vary based upon weight is irrelevant to the *Doing Business* survey, which was conducted based on the assumption of 15,000kg of products, and, thus, bears no relationship with the B&H and truck freight expenses in *Doing Business*. Because *Doing Business* does not provide information showing how this assumption was developed, we are not able to go behind *Doing Business* to analyze their assumption further.[173] Additionally, unlike in *Since Hardware*, which involves a complex case-

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[170] *Id.*

[171] *See Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 10, and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015), and accompanying Issues and Decision Memorandum at Comment 6. *See also*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1396 (January 12, 2016), and accompanying Issues and Decision Memorandum at Comment 3, and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review; 2012-2013*, 80 FR 4244 (January 27, 2015), and accompanying Issues and Decision Memorandum at Comment 1, *Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 13331 (March 14, 2016), and accompanying Issues and Decision Memorandum at Comment 3, and *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36721 (June 30, 2014), and accompanying Issues and Decision Memorandum at Comment 7.

[172] *Id.*

[173] Similarly, in prior cases, we decided not to take certain actions because we were not able to "go behind the Doing Business data" in making a determination. *See*, *e.g.*, *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2013-2014*, 80 FR 69942 (November 12, 2015), and accompanying Issues and Decision Memorandum at Comment 5. *Doing Business 2016 – Data Notes* and *Doing*

specific calculation based on respondent-specific data that are not relevant to Bosun in this review, we have no reason in this review to question the weight of 15,000kg used as the basis for the fee in the *Doing Business* survey or to find that the weight and fee in the *Doing Business* survey are independent of one another such that the fee is not based on the 15,000kg weight.

Our record does not substantiate Bosun's claim that *Doing Business* provides B&H and truck freight expenses based on an entire container or truck, not weight. *Doing Business* and *Doing Business*-related documents submitted on the record of this review clearly indicate that B&H and truck freight costs in Thailand are for a shipment assumed to weigh 15,000kg.[174] Bosun's argument is that the container weight should come from another source of information on the record of this review. As explained above, for consistency purposes, the weight relevant in the calculations of these two SVs is 15,000kg, because *Doing Business* bases its data on a shipment assumed to weigh 15,000kg. Other container weights are irrelevant to *Doing Business*' reported data. Accordingly, we continue to use 15,000kg, the quantity upon which the costs in *Doing Business* are based, in conjunction with the per-shipment expense identified in *Doing Business*, to calculate the appropriate per unit B&H and truck freight expenses.

Comment 13: Copper Powder and Copper Iron Clab

The petitioner requests the revision to the valuation of copper powder and copper iron clab using the South African AUV for HTS code 7406.10. The petitioner argues that the Thai AUV for the preliminary valuation of these two inputs is unusually low compared to the AUVs for the same HTS code for all five other potential surrogate countries in this review, with the next lowest AUV almost four times larger than the Thai AUV. The petitioner claims that the South African AUV is well within the range calculated for other countries and demonstrates that these data are not aberrational. The petitioner states that the AUV per kilogram from the U.S. import statistics also confirms the reasonableness of the South African AUV. The petitioner explains that, because the Department's broad discretion in the selection of surrogate values is limited by the statutory objective of calculating the most accurate dumping margin possible, the Department should not use an aberrational AUV to value an input.

Bosun argues that the Thai AUV used in the preliminary valuation of the two copper inputs is not aberrational. Bosun explains that the Department has a long-standing policy to value all inputs using data from the primary surrogate country and resort to data from a second surrogate country if data from the primary surrogate country are unavailable or unreliable. Bosun contends that an AUV on the low scale of the values compared to the AUVs for imports of the same input into other potential surrogate countries does not make the AUV on the low scale aberrational or unusable. Bosun claims that, because the petitioner provided no historical data to substantiate the aberrational nature of this Thai AUV, the petitioner has not satisfied its minimum burden of showing that this Thai AUV is aberrational.

Department's Position: For the final results, we continued to use the same Thai AUV to value

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Business 2016 – Trading Across Borders Questionnaire, which Bosun provided in its SV rebuttal, support the assumption of 15,000kg per shipment. *See* Bosun's SV rebuttal dated May 31, 2016, at Exhibits SV2-3 and SV2-4.

[174] *See* the petitioner's SV comments dated May 18, 2016, at Exhibits 7 and 8, and Bosun's SV rebuttal dated May 31, 2016, at Exhibits SV2-2, SV2-3, SV2-5, and SV2-6.

Bosun's copper powder and copper iron clab that we used in the *Preliminary Results*. Other than the differences between the AUVs for HTS code 7406.10 between the six potential surrogate countries in this review, the petitioner provided no evidence to support its claim that the Thai AUV is aberrational. It is our practice to value inputs using data from the primary surrogate country in accordance with 19 CFR 351.408(c)(2) and resort to data from a secondary surrogate country only if data from the primary surrogate country are unavailable or unreliable.[175] The party arguing against particular surrogate data bears the burden of proving the inaccuracy or unreliability of the surrogate data with specific evidence showing that the AUV derived from the surrogate data is aberrational.[176] A mere appearance of an AUV on the high or low end of a range of AUVs is not generally sufficient to determine that an AUV at one end is aberrational.[177] Moreover, the record of this review does not contain historical data for HTS code 7406.10 from Thailand and the other five potential surrogate countries in this review, which would permit us to evaluate whether this Thai AUV is aberrational.[178] Therefore, we do not find that the petitioner substantiated its claim that this Thai AUV is aberrational for our valuation of copper powder and copper iron clab in this review.

Comment 14: Labor

Bosun disagrees with the Department's preliminary valuation of labor based on the quarter-specific POR data from the Thai National Statistics Office's 2014 and 2015 Labor Force Survey (POR Labor Force Survey data). Bosun describes the POR Labor Force Survey data as overly broad with one manufacturing sector category that represents an average of labor cost data covering different manufacturing sectors, whereas the 2011 Thai Industrial Census data (2011 Industrial Census data), which were released in 2012, provide labor cost data specific to the manufacture of hand tools and general hardware, which specifically includes "manufacture of saws and saw blades, including circular saw blades and chainsaw blades." Bosun explains that the 2011 Industrial Census data contain specific details on working hours per day that the Department can rely on to value labor more accurately for the final results. Bosun also explains that the 2011 Industrial Census data are the most contemporaneous industry-specific data that the Department has relied on in the past to value labor. Bosun contends that the Department has used the 2011 Industrial Census data in other cases, *e.g.*, *Steel Sinks*.[179]

[175] *See, e.g.*, *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61172 (October 9, 2015) (*Activated Carbon 2013-2014*), and accompanying Issues and Decision Memorandum at Comments 2 and 5.
[176] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying Issues and Decision Memorandum at Comment 3.
[177] *See, e.g.*, *Activated Carbon 2013-2014*, and accompanying Issues and Decision Memorandum at Comment 10, and *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016), and accompanying Issues and decision Memorandum at Comment 10 ("When determining whether data are aberrational, the Department has found that evidence of a high or low average unit value ('AUV') does not necessarily establish that GTA data for the suspect countries are unreliable, distorted or misrepresentative.").
[178] *Id.*
[179] *Drawn Stainless Steel Sinks From the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 69644 (November 10, 2015) (*Steel Sinks*) and accompanying Issues and Decision Memorandum at Comment 12.

The petitioner argues that, given the substantial increase in the Thai labor cost for manufacturing between 2011 and the POR, the 2011 Industrial Census data adjusted for inflation would not accurately represent Thai labor costs during the POR. The petitioner explains that the 2011 Industrial Census data predate the POR and the 2011 Industrial Census data adjusted for inflation fall short of representing the rise of manufacturing labor costs between 2011 and the POR, which was 39.2 percent and higher than the inflation rate (approximately six percent) during the same period. Specifically, the petitioner claims the increase by 39.2 percent was similar in almost all occupational categories, *e.g.*, "Craftsmen and related trade workers" and "Plant and machine operators and assemblers" with increases in average wage of 43.99 percent and 39.6 percent, respectively, during the same period. The petitioner contends that Bosun does not explain why the information pertaining to working hours per day supersedes the significant deficiency in the 2011 Industrial Census data at issues and elevates it above the POR Labor Force Survey data used in the preliminary valuation of labor.

<u>Department's Position</u>: We find that the record evidence supports our continued reliance on the POR Labor Force Survey data to value labor for the final results of this review. In this case, the POR Labor Force Survey provides superior data, even if the 2011 Industrial Census is adjusted for inflation. In the last review, Bosun raised the same argument concerning labor valuation and we declined to use the 2011 Industrial Census data.[180]

In *Labor Methodologies*, we decided to change to the use of ILO Chapter 6A from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.[181] We did not, however, preclude all other sources for evaluating labor costs in NME antidumping duty proceedings. Rather, we continue to select the best available information to determine SVs for inputs such as labor.[182]

The POR Labor Force Survey data that we preliminarily used are publicly available, representative of a broad market average, tax-and duty-exclusive, specific to the industry in question, and more contemporaneous than 2011 Industrial Census data.[183] Also, a closer examination of record evidence for these two data sources reveals that the POR Labor Force Survey data better reflect the full spectrum of labor (*i.e.*, fully loaded, direct and indirect) costs expressed within ILO Chapter 6A data and, in this sense, the POR Labor Force Survey data are preferable.

In *Labor Methodologies*, the Department found that the ILO Chapter 6A is the primary source of

[180] *See Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 16.
[181] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36093 (June 21, 2011) (*Labor Methodologies*).
[182] *See Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying Issues and Decision Memorandum at Comment 3, and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014,* 81 FR 1396 (January 12, 2016), and accompanying Issues and Decision Memorandum at Comment 4.
[183] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014,* 81 FR 1396 (January 12, 2016), and accompanying Issues and Decision Memorandum at Comment 4.

labor cost data, in that these data best account for all direct and indirect labor costs.[184] Since ILO Chapter 6A data for Thailand are not on the record of this review, we compared the direct and indirect labor cost elements in the 2011 Industrial Census data and the POR Labor Force Survey data to the same elements described in the ILO Chapter 6A definition.[185]

Specifically, the ILO Chapter 6A data comprise compensation of employees, employers' expenditure for vocational training and welfare services (*e.g.*, training), the cost of recruitment and other miscellaneous items (*e.g.*, work clothes, food, housing), and taxes.[186] The POR Labor Force Survey data include cash for average wage, bonus, overtime, and other income, as well as in kind compensation for food, clothes, housing, and others.[187] The 2011 Industrial Census data include wages, salaries, overtime bonus, fringe benefits (medical care, others), and employer's contribution to social security.[188]

We find that the POR Labor Force Survey data provide categories of direct and indirect labor costs that match more closely to costs covered by the ILO Chapter 6A labor data than the 2011 Industrial Census data do. The POR Labor Force Survey data provide compensation of employees (cash for average wage, bonus, overtime, and other income), work clothes, food, and housing. The 2011 Industrial Census data provide compensation of employees (wages, salaries, overtime bonus) and taxes (employer's contribution to social security). The 2011 Industrial Census data categorize fringe benefits only as "Medical care" and "Others" without specifying whether work clothes, food, and housing are in fact included in the "Others" category of fringe benefits.[189] Therefore, the uncertainty over whether work clothes, food, and housing are in fact included in fringe benefits of the 2011 Industrial Census data makes the 2011 Industrial Census data less detailed and potentially less similar to the ILO Chapter 6A labor data than the POR Labor Force Survey data.[190] While the 2011 Industrial Census data are specific to the relevant industry, they are neither contemporaneous with the POR nor as or more detailed than the POR Labor Force Survey in terms of matching categories of labor costs specified in the ILO Chapter 6A labor data. Therefore, we find that the general manufacturing labor data in the POR Labor Force Survey provide the best available information for purposes of these final results.

Even if the POR Labor Force Survey and the 2011 Industrial Census data equally match to all costs covered by the ILO Chapter 6A labor data, we would not select the 2011 Industrial Census data over the POR Labor Force Survey data because the pre-POR 2011 Industrial Census data do

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[184] *See Labor Methodologies*, 76 FR at 36092-93.
[185] *See Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 16 and *PVLT Tires* and accompanying Issues and Decision Memorandum at Comment 13, where the Department discusses the ILO Chapter 6A data.
[186] *Id.*
[187] *See* the petitioner's SV comments dated May 18, 2016, at Exhibit 5, and the Bosun final analysis memorandum at Exhibit 1.
[188] *See* Bosun's SV comments dated May 18, 2016, at Exhibit SV-5, "Part 2 Operation Information of Manufacturing Establishments by Category of Industry."
[189] *See* Bosun's SV comments dated May 18, 2016, at Exhibit SV-5.
[190] In the last review, we made the same conclusion despite the existence of the Appendix B of the 2011 Industrial Census data on the record of that review, which stated that fringe benefits "{r}efer to all payments in addition to wages or salaries paid to employees such as food, beverages, lodgings, rent, medical care, transportation recreational and entertainment services, *etc.*" *See Diamond Sawblades 5* and accompanying Issues and Decision Memorandum at Comment 16, quoting Appendix B of the 2011 Industrial Census data.

not reasonably reflect the labor cost, even after the adjustment for inflation, whereas the POR Labor Force Survey data do so without any adjustment.[191] We do not find that inflating the 2011 Industrial Census data would provide the best available information to value labor costs for the POR of this review.

Based on our comparison of the Labor Force Survey data for 2011 and the POR, the average labor cost per hour, which includes not just wages but also benefits, rose by 39.18 percent.[192] We inflated the 2011 average labor cost per hour from the Labor Force Survey using the CPI provided by Bosun and compared the resulting figure to the POR average labor cost per hour from the Labor Force Survey. The POR average labor cost per hour was 31.30 percent higher than the inflated 2011 average labor cost per hour.[193]

We also compared the POR average labor cost per hour based on the POR Labor Force Survey data against the inflation-adjusted 2011 average labor cost per hour from the 2011 Industrial Census data. The POR average labor cost per hour based on the POR Labor Force Survey data was 62.63 percent higher than the inflation-adjusted 2011 average labor cost per hour based on the 2011 Industrial Census data.[194]

We find that, even with the adjustment for inflation, the 2011 average labor costs per hour from both sources – Industrial Census and Labor Force Survey – do not reasonably reflect the average labor cost per hour based on the Labor Force Survey during the POR. In other words, even if we adjust the 2011 labor data from either source for inflation, the inflation-adjusted labor costs would not reflect the labor cost during the POR because the labor cost increase was higher than the inflation based on the CPI between 2011 and the POR, according to the sources on the record of this review.

For these reasons, we find that *Steel Sinks* is inapposite to this review. In *Steel Sinks,* the issue was whether to value labor based on Table 5 of the 2011 Industrial Census data or Table 6 of the 2011 Industrial Census data.[195] There was no labor data that were more contemporaneous with the period of that review covering October 4, 2012, through March 31, 2014, at issue in *Steel Sinks*.[196] In this review, we have the Labor Force Survey data contemporaneous with the POR covering November 1, 2014, through October 31, 2015.

[191] *See Blue Field (Sichuan) Food Indus. Co. v. United States,* 949 F. Supp. 2d 1311, 1331 (CIT 2013) ("Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets.").
[192] *See* the petitioner's SV comments dated May 18, 2016, at Exhibit 5, the petitioner's SV rebuttal dated May 31, 2016, at Exhibit 2C, and the Bosun final analysis memorandum at Exhibit 1.
[193] *Id. See also* Bosun's SV comments dated May 18, 2016, at Exhibit SV-4 for the CPI used in this analysis.
[194] *See* the petitioner's SV comments dated May 18, 2016, at Exhibit 5, Bosun's SV comments dated May 18, 2016, at Exhibit SV-4, and the Bosun final analysis memorandum at Exhibit 1.
[195] *See Steel Sinks* and accompanying Issues and Decision Memorandum at Comment 12.
[196] *Id.*

VII. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review and the final dumping margins for all of the reviewed companies in the *Federal Register*.

☒ ☐

Agree __________ Disagree __________

6/6/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

Appendix

Company Abbreviations

Bosun – Bosun Tools Co., Ltd.
Bosun Thailand – Bosun Tools (Thailand) Co., Ltd.
Bosun USA – Bosun Tools, Inc.
Jiangsu Fengtai Single Entity – Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd., Jiangsu Fengtai Tools Co., Ltd., and Jiangsu Fengtai Sawing Industry Co., Ltd., as a single entity[197]
Pioneer USA – Pioneer Tools, Inc.
The petitioner – Diamond Sawblades Manufacturers Coalition
Weihai – Weihai Xiangguang Mechanical Industrial Co., Ltd.

Other Abbreviations

A-A – average-to-average
A-T – average-to-transaction
AFA – adverse facts available
ACCESS – Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System
AUV – average unit value
B&H – brokerage and handling
CAFC – Court of Appeals for the Federal Circuit
CBP – U.S. Customs and Border Protection
CEP – constructed export price
CIT – U.S. Court of International Trade
CPI – Consumer Price Index
Doing Business – Doing Business 2016 – Trading Across Borders in Thailand
DP – differential pricing
EP – export price
FIFO – first-in, first-out
FOPs – factors of production
GATT – General Agreement on Tariff and Trade
GTA – Global Trade Atlas
HTS – Harmonized Tariff Schedule
NME – non-market economy
POR – period of review
SAA – Statement of Administrative Action accompanying the URAA
SV – surrogate value
TD – targeted dumping
The Act – The Tariff Act of 1930, as amended
T-T – transaction-to-transaction
URAA - Uruguay Round Agreements Act
VAT – value-added tax
WTO – World Trade Organization

[197] *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 2, n.4.

Diamond Sawblades Administrative Determinations and Results

LTFV Final – *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances*, 71 FR 29303 (May 22, 2006), as amended in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 35864 (June 22, 2006).

Section 129 and Partial Revocation – *Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders*, 78 FR 18958 (March 28, 2013).

Diamond Sawblades 1 – *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009-2010*, 78 FR 11143 (February 15, 2013).

Diamond Sawblades 2 – *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36166 (June 17, 2013), as amended in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 42930 (July 18, 2013).

Diamond Sawblades 3 – *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).

Diamond Sawblades 4 – *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015).

Diamond Sawblades 5 – *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 38673 (June 14, 2016).