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

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Investigation
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April 3, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Certain Tool Chests and Cabinets from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value

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I. SUMMARY

The Department of Commerce (Commerce) determines that imports of certain tool chests and cabinets (tool chests) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is October 1, 2016, through March 31, 2017.

As a result of our analysis, we made changes in the margin calculations for the final determination. We recommend that you approve the positions described in the *Discussion of the Issues* section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

a. Denial of Separate Rate Eligibility and the Application of an AFA Rate

Comment 1: Geelong Sales (Macao Commercial Offshore) Limited
Comment 2: Nine Separate Rate Applicants
Comment 3: The AFA Rate Applied to the Nine Separate Rate Applicants

b. The Tongrun Single Entity

Comment 4: VAT Methodology
Comment 5: Casters

II. BACKGROUND

On November 16, 2017, Commerce published its *Preliminary Determination* in the LTFV investigation of tool chests from China.[1] Commerce conducted the verification of U.S. sales and factors of production (FOPs) reported by the Tongrun Single Entity (Tongrun)[2] during the week of December 4, 2017, and on January 11 and 12, 2018.[3] We received case[4] and rebuttal[5] briefs from various parties to this antidumping duty (AD) investigation.

Commerce postponed the final determination of this investigation to March 31, 2018.[6] However, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018.[7] Accordingly, the revised deadline for the final determination in this investigation is April 3, 2018.[8]

Based on our analysis of the comments received, our verification findings, and consideration of the data on the record, for this final determination we have revised the dumping margins for the

[1] *See Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 53456 (November 16, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.
[2] The Tongrun Single Entity is comprised of Jiangsu Tongrun Equipment Technology Co., Ltd., Changshu Taron Machinery Equipment Manufacturing Co., Ltd., Changshu Tongrun Mechanical & Electrical Equipment Manufacture Co., Ltd., and Shanghai Tongrun Import and Export Co., Ltd. *See Preliminary Determination*, 82 FR at 53457, n.10, and accompanying Preliminary Decision Memorandum at 5-7.
[3] *See* the Reports, "Less-Than-Fair-Value Investigation of Certain Tool Chests and Cabinets from the People's Republic of China: Verification of the Export Price Sales and Factors of Production Response of the Tongrun Single Entity" (China Verification Report) and "Less-Than-Fair-Value Investigation of Certain Tool Chests and Cabinets from the People's Republic of China: Verification of the Constructed Export Price Sales Response of the Tongrun Single Entity" (CEP Verification Report) dated January 18, 2018.
[4] *See* the case briefs filed by various parties between January 29, 2018, and February 1, 2018. *See also* the case brief rejection letters dated January 30 and 31, 2018, in response to which certain parties resubmitted their revised case briefs on January 31, 2018, and February 1, 2018.
[5] *See* Rebuttal Briefs filed by various parties dated February 5, 2018.
[6] *See Preliminary Determination*, 82 FR at 53458-59.
[7] *See* Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.
[8] *Id.*

two individually investigated respondents, the non-selected separate rate respondents, and the China-wide entity.

III. SCOPE COMMENTS

We invited parties to comment on Commerce's Preliminary Scope Decision Memorandum.[9] Commerce reviewed the scope case and rebuttal briefs submitted by interested parties, considered the arguments therein, and made certain changes to the scope of the investigation. For further discussion, *see* Commerce's Final Scope Decision Memorandum.[10] For the revised scope of this investigation, *see* the *Federal Register* notice accompanying this memorandum.

IV. SURROGATE COUNTRY

In the *Preliminary Determination*, we treated China as a non-market economy (NME) country and calculated normal value in accordance with section 773(c)(1) of the Act. We selected Thailand as the primary surrogate country, pursuant to 19 CFR 351.408(c)(2), because it is at the same level of economic development as China, 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.[11] No parties commented on Commerce's selection of the primary surrogate country in this investigation. For the final determination of this investigation, we continue to treat China as an NME country and have continued to use Thailand as the primary surrogate country.

V. SEPARATE RATES

In proceedings involving NME countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single AD deposit rate.[12] It is Commerce's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate.[13]

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

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[9] *See* Memorandum, "Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam: Scope Comments Decision Memorandum for the Preliminary Determinations," dated September 8, 2017 (Preliminary Scope Decision Memorandum).

[10] *See* Memorandum, "Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam: Scope Comments Decision Memorandum for the Final Determinations," dated November 22, 2017 (Final Scope Decision Memorandum).

[11] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 8-11.

[12] *See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006), and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006).

[13] *See Certain Tool Chests and Cabinets from the People's Republic of China and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 21523 (May 9, 2017) (*Initiation Notice*).

received separate rates in the *Preliminary Determination* are eligible for separate rates, except for Geelong Sales (Macao Commercial Offshore) Limited (Geelong), which withdrew its participation from the scheduled verifications and thus failed to cooperate in this investigation.

Neither the statute nor Commerce's regulations address how we are to determine the dumping margin for separate rate companies not selected for individual examination. Our practice in this regard has been to assign to separate-rate companies that were not individually examined a dumping margin equal to the average of the margins calculated for the individually examined respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available. If all dumping margins for the individually examined respondents are zero, *de minimis*, or based entirely on facts available, then we will use any reasonable method, including averaging the dumping margins for the individually examined respondents. In the *Preliminary Determination*, we calculated margins for two individually investigated respondents. For the final determination of this investigation, we are able to calculate a rate only for Tongrun (one of the two individually investigated respondents) that is not zero, *de minimis*, or based entirely on facts available. Thus, we have assigned the separate-rate respondents that are not being individually examined Tongrun's calculated final margin.

VI. CHINA-WIDE RATE

For the final determination, we continue to base the China-wide rate on adverse facts available (AFA). In the *Preliminary Determination*, Commerce used the margin preliminarily calculated for Geelong as the AFA rate for the China-wide entity because it was higher than the highest petition rate.[14] After the *Preliminary Determination*, but prior to Commerce's verification, Geelong withdrew from participating in this investigation.[15] Therefore, as described in more detail in Comment 1 below, we were unable to verify Geelong's information submitted in support of its separate rate eligibility and, accordingly, Geelong has not demonstrated eligibility for a separate rate and is part of the China-wide entity. A statutory purpose of AFA is "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[16] To ensure that the China-wide entity, which includes Geelong, does not benefit from its lack of participation, and to select a sufficiently adverse rate to induce cooperation in the future, for the final determination, we have selected Geelong's highest control-number-specific rate of 244.29 percent to determine the AFA rate for the China-wide entity. Commerce is not required to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.[17]

[14] *See Preliminary Determination*.
[15] *See* Geelong's verification withdrawal letter dated December 5, 2017.
[16] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.
[17] *See* section 776(c) of the Act ("when {Commerce} relies on *secondary information rather than on information obtained in the course of an investigation* or review, {Commerce}, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal (emphasis added)."). *See also, e.g., Steel Concrete Reinforcing Bar from Taiwan: Final Determination of Sales at Less Than Fair Value*, 82 FR 34925 (July 27, 2017), and accompanying Issues and Decision Memorandum (I&D Memo) at 5-6 and Comment 4.

VII. ADJUSTMENTS TO CASH DEPOSIT RATES

Pursuant to section 772(c)(1)(C) of the Act, Commerce normally makes adjustments for countervailable export subsidies. Commerce is making no adjustments to any of the AD cash deposit rates in this investigation because Commerce has made no findings in the companion countervailing duty investigation that any of the programs are export subsidies.[18] While certain programs in the companion countervailing duty investigation were alleged to be export subsidies, as a result of certain non-cooperation, Commerce's final determination that the alleged programs were countervailable subsidies was based in part on facts available with adverse inferences.[19]

In relying on facts available with adverse inferences, Commerce did not determine that the subsidies in question were export subsidies. As such, Commerce finds that, without a determination in the companion countervailing duty investigation that a program is an export subsidy, it is not appropriate to make an offset to the cash deposit rates in this AD investigation pursuant to section 772(c)(1)(C) of the Act.[20] Accordingly, consistent with our recent practice,[21] we will not apply the export subsidy offset to the cash deposit rates for the final determination of this investigation. However, we continue to adjust the cash deposit rates for Tongrun, non-selected separate rate respondents, and the China-wide entity for domestic subsidy pass-through.

VIII. CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated U.S. price and normal value using the same methodology stated in the *Preliminary Determination*, except as follows:

- As discussed above, we found Geelong ineligible for a separate rate and treated it as part of the China-wide entity. We used Geelong's highest control-number-specific margin as the final AFA rate for the China-wide entity.
- We used the U.S. sales and FOP databases Tongrun submitted after the verification.
- We revised the valuation of Tongrun's electro coating and powder by using the average unit price (AUV) for Harmonized Tariff Schedule (HTS) subheading 3907.30.
- We revised the valuation of Tongrun's labels by relying on our verification findings regarding labels.
- We revised the use of the *Sigma* cap distances for certain inputs Tongrun reported.
- We offset other incomes from the selling, general, and administrative (SG&A) expenses in the surrogate financial ratio calculation.
- We treated financial costs as SG&A expenses.

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[18] *See Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 56582 (November 29, 2017) and accompanying I&D Memo, and *Certain Tool Chests and Cabinets from the People's Republic of China: Countervailing Duty Order*, 83 FR 3299 (Jan. 24, 2018).
[19] *Id.*
[20] *See, e.g., Circular Welded Carbon-Quality Steel Pipe from Pakistan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination and Extension of Provisional Measures*, 81 FR 36867 (June 8, 2016), and accompanying Preliminary Decision Memorandum at 13, unchanged in *Circular Welded Carbon-Quality Steel Pipe from Pakistan: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 75028 (October 28, 2016).
[21] *Id.*

- We excluded the opening and closing balances of raw materials from the calculation of the surrogate financial ratios.

IX. DISCUSSION OF THE ISSUES

a. Denial of Separate Rate Eligibility and the Application of an AFA Rate

Comment 1: Geelong Sales (Macao Commercial Offshore) Limited

The petitioner[22] argues that Geelong's decision to withdraw from participation in the sales and FOP verification demonstrates Geelong's failure to cooperate to the best of its ability and, therefore, warrants the application of AFA. The petitioner claims that Commerce may use an inference that is adverse to Geelong's interests in selecting from among the facts otherwise available, if Commerce finds that Geelong has failed to cooperate to the best of its ability. The petitioner contends that this standard for cooperation requires the respondent to do its maximum to respond to Commerce's request for information.

The petitioner argues that Commerce should assign Geelong the highest transaction or control-number-specific margin calculated in the *Preliminary Determination* as the total AFA rate. The petitioner requests that, in order to ensure that Geelong does not obtain a more favorable result by failing to cooperate than if it had cooperated fully, and to encourage Geelong's compliance in future administrative proceedings, Commerce should assign Geelong an AFA rate that is higher than its preliminary margin. The petitioner explains that an AFA rate from the record of this investigation is not secondary information and does not need to be corroborated.

Commerce's Position: Section 782(i) of the Act requires that we verify all information upon which we rely in making a final determination in an investigation. Section 776(a)(2)(D) of the Act provides that, if an interested party provides information we requested but the information cannot be verified as provided in section 782(i) of the Act, we shall use the facts otherwise available in reaching the applicable determination. Although Geelong provided requested information, we cannot verify this information in accordance with sections 782(i) of the Act. Specifically, Geelong withdrew from the verification on December 5, 2017, six days before the scheduled verification for Geelong, thereby preventing Commerce from verifying its information.[23] Section 782(i) of the Act requires the verification of information Geelong submitted for us to determine the separate rate eligibility and calculate a dumping margin. By denying us the opportunity to verify Geelong's submissions in this investigation, Geelong significantly impeded the investigation[24] and we are unable to rely on Geelong's submitted information in considering its eligibility for a separate rate and calculating a dumping margin for Geelong. Thus, we find it necessary, under sections 776(a)(2)(C)-(D) of the Act, to resort to the use of the facts otherwise available to determine the dumping margin for Geelong.

[22] The petitioner is Waterloo Industries Inc.
[23] *See* Geelong's verification withdrawal letter dated December 5, 2017. *See also* the verification agenda to Geelong dated November 30, 2017.
[24] *See* section 776(a)(2)(C) of the Act.

Geelong's withdrawal from the verification exempts it from qualifying for the provisions of sections 782(e) of the Act, which explains that we shall not decline to consider certain information submitted by an interested party if, *inter alia*, the information can be verified.[25]

Section 776(b) of the Act provides that, if we find that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, we may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the SAA establishes that we may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[26] It also instructs us to consider, in employing adverse inferences, "the extent to which a party may benefit from its own lack of cooperation."[27]

We find that Geelong failed to cooperate by not acting to the best of its ability because it withdrew from this investigation and failed to provide us with an opportunity to verify information in this investigation. Geelong had within its sole possession the books and records that would enable us to verify its data and it did not permit us to do so. Therefore, to ensure that Geelong will not benefit from its lack of cooperation, we find it appropriate to use an inference that is adverse to Geelong's interests in selecting from among the facts otherwise available. By doing so, we ensure that Geelong will not obtain a more favorable rate by failing to cooperate than had it cooperated fully.

Given that Geelong has withdrawn from participation in this investigation such that we cannot verify the information Geelong submitted to demonstrate its eligibility for separate rate status, we have denied Geelong separate rate eligibility and treated Geelong as part of the China-wide entity. In the *Preliminary Determination*, we assigned to the China-wide entity the calculated margin for Geelong as the AFA rate because it was higher than the petition rate.[28] For the final determination, as described more fully above, the AFA rate assigned to the China-wide entity is 244.29 percent, which is the highest preliminary control-number-specific margin for Geelong and continues to be higher than the petition rate.[29] The use of the highest preliminary control-number-specific margin from the individually investigated respondent that later became subject to AFA is consistent with our practice.[30] Because the petition rate is lower than the preliminary AFA rate, to ensure that the China-wide entity, which includes Geelong, will not obtain a more favorable rate as a result of its failure to cooperate, we applied the highest preliminary control-number-specific margin for Geelong to the China-wide entity as the final AFA rate. It is unnecessary to corroborate this rate because it was obtained in the course of this investigation and, therefore, is not secondary information.[31]

[25] *See* section 782(e)(2) of the Act.
[26] *See* SAA at 870.
[27] *Id.*
[28] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 20-21.
[29] *See* the Memorandum, "Certain Tool Chests and Cabinets from the People's Republic of China: Final AFA Rate for the China-Wide Entity" dated concurrently with this memorandum.
[30] *See, e.g., Polyethylene Retail Carrier Bags from Indonesia: Final Determination of Sales at Less Than Fair Value*, 75 FR 16431 (April 1, 2010), and accompanying I&D Memo at Comment 6.
[31] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 21, and section 776(c) of the Act ("when {Commerce} relies on *secondary information rather than on information obtained in the course of an investigation* or review, {Commerce}, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal (emphasis added).").

Comment 2: Nine Separate Rate Applicants

On June 8, 2017, the following nine separate rate applicants filed the public versions of their separate rate applications (SRAs) after the 5:00 p.m. Eastern Time deadline: Changshu Zhongcheng Tool Box Co., Ltd., Jinhua JG Tools Manufacturing Co., Ltd., Jinhua Yahu Tools Co., Ltd., Meridian International Co., Ltd., Shanghai ITPC Hardware Co., Ltd., Suzhou Xindadi Hardware Co., Ltd., Taixing Hutchin Mfg. Co., Ltd., Yangzhou Triple Harvest Power Tools Limited, and Zhejiang Limai Metal Products Co., Ltd. Of these nine companies, Jinhua JG Tools Manufacturing Co., Ltd., Meridian International Co., Ltd., and Taixing Hutchin Mfg. Co., Ltd., filed the business proprietary version of the SRAs after the deadline as well. On June 12, 2017, these nine separate rate applicants filed a letter claiming they encountered technical difficulties at the time of filing and requested that Commerce accept their SRAs as timely filed on June 8, 2017.[32]

On June 15, 2017, Commerce rejected these nine SRAs because they were untimely filed.[33] Furthermore, to the extent that their June 12, 2017, letter constituted an extension request, Commerce denied their request and declined to consider the claimed technical difficulties explaining that technical difficulties do not constitute "extraordinary circumstances" under 19 CFR 351.302(c) to consider late extension requests.[34] Although some of these nine separate rate applicants filed the business proprietary version of the SRAs within the deadline, because the public versions were not timely filed, Commerce rejected both the business proprietary and public versions of the nine SRAs.[35] On June 16, 2017, these nine separate rate applicants requested reconsideration of the rejection of their SRAs, claiming an existence of an extraordinary circumstance and the absence of prejudice to any parties if these nine SRAs were accepted.[36] In this reconsideration request, these nine separate rate applicants specified the technical difficulties as being a "404" error which was unfamiliar and had never been encountered before.[37] On July 7, 2017, Commerce denied these nine separate rate applicants' request for reconsideration.[38] On July 10, 2017, these nine separate rate applicants filed a second request for reconsideration of the rejection of their SRAs.[39] On August 9, 2017, Commerce denied these nine separate rate applicants' second request for reconsideration and provided an opportunity to respond to the factual information we placed in this denial under 19 CFR 351.304(c)(4).[40] On August 14, 2017, these nine separate rate applicants responded to Commerce's second denial of reconsideration request.[41] In the *Preliminary Determination*, Commerce denied the separate rate eligibility and treated these nine separate rate applicants as part of the China-wide entity.[42]

[32] *See* the nine separate rate applicants' letter to Commerce dated June 12, 2017.
[33] *See* Commerce's letter to the nine separate rate applicants dated June 15, 2017, rejecting their SRAs.
[34] *Id*.
[35] *Id*.
[36] *See* the nine separate rate applicants' first request for reconsideration dated June 16, 2017.
[37] *Id*.
[38] *See* Commerce's denial of the nine separate rate applicants' first request for reconsideration dated July 7, 2017.
[39] *See* the nine separate rate applicants' second request for reconsideration dated July 10, 2017.
[40] *See* Commerce's denial of the nine separate rate applicants' second request for reconsideration dated August 9, 2017.
[41] *See* the nine separate rate applicants' response to Commerce's second denial letter dated August 14, 2017.
[42] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 15.

These nine separate rate applicants claim that the ACCESS system did not properly relay any typical error message or information as to the cause of the error which precluded them from resolving the issue in a timely manner. The nine separate rate applicants noted that, after several attempts, the aforementioned error had ceased and they were able to upload all nine business proprietary and public versions of the SRAs to ACCESS by 7:42 p.m. These nine separate rate applicants maintain that the non-specific "404" error was allegedly caused by Commerce's own system and not a typical error having to do with file size, comments, *etc*. that an ACCESS user may normally encounter.

The nine separate rate applicants note that while technical failures of ACCESS are "generally" not considered to be an extraordinary circumstance, Commerce may exercise discretion in determining this meaning. These nine separate rate applicants contend that Commerce's rejection of their extension request and aversion to address the "404" error contradicts this flexibility, and that the aforementioned error falls into the category of an extraordinary circumstance. These nine separate rate applicants argue that a determination of good cause to qualify their error as an extraordinary circumstance should be made in this instance because counsel had prepared all business proprietary and public versions of their SRAs before the deadline while acting in good faith. The nine separate rate applicants contend that they diligently sought resolution of this issue through repeated correspondence and telephone calls with Commerce.

The nine separate rate applicants argue that, in *Diamond Sawblades 2012-2013 Final*, Commerce reconsidered its rejection of three SRAs filed late due to an ACCESS malfunction within an hour of the filing deadline.[43] The nine separate rate applicants maintain that reconsideration is similarly merited in this case, given the totality of the facts surrounding late filings supports a finding of an extraordinary circumstance.

The nine separate rate applicants argue that Commerce's acceptance of their SRAs would not result in prejudice to other interested parties because there is no advantage to be obtained in being able to review other parties' SRAs before the party files its own SRAs. To the extent that there is an arguable prejudice to Commerce's investigation, according to the nine separate rate applicants, Commerce's misapprehension of the facts and subsequent delay in deciding the disposition of their request are to blame. The nine separate rate applicants argue that there is no evidence of prejudice to any other parties in this investigation and many other parties also received extensions for submission of SRAs. The nine separate rate applicants contend that, even with their requested extension, they would have submitted their SRAs earlier than other SRAs for which the filing deadlines were extended. Therefore, these nine separate rate

[43] *See* the nine separate rate applicants' redacted case brief dated February 1, 2018, at 13, citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015) (*Diamond Sawblades 2012-2013 Final*), and accompanying I&D Memo at Comment 6, and *Calcium Hypochlorite from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 43393 (July 25, 2014), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Calcium Hypochlorite from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 74065 (December 15, 2014).

applicants insist, granting their request of accepting the SRAs as timely would not cause prejudice towards other interested parties or undue burden on Commerce.

Citing *Artisan*, the nine separate rate applicants argue that refusing to accept their SRAs is grossly disproportionate to the minimal delay in receiving the SRA, in light of the technical "404" error that prevented timely submission.[44] Citing *Grobest*, the nine separate rate applicants contend that Commerce's burden of accepting their SRAs filed within three hours after the deadline is minimal, while the harm to them from receiving the China-wide rate is substantial.[45] The nine separate rate applicants claim that the fair administration of Commerce's mandate to thoroughly investigate the facts and accurately determine dumping margins requires full consideration of their SRAs.

The petitioner requests the continued denial of a separate rate to these nine separate rate applicants. The petitioner explains that Commerce begins an NME proceeding with a rebuttable presumption that all companies within the NME are subject to government control and should be assessed a single AD rate. According to the petitioner, a Chinese entity may rebut this presumption by establishing *de jure* and *de facto* independence from government control. The petitioner explains that Commerce requires non-selected respondents to submit SRAs within a deadline established in the *Initiation Notice* and that companies which Commerce finds independent from government control will receive a separate rate.

The petitioner states that June 8, 2017, was the deadline for filing SRAs. The petitioner explains that the *Initiation Notice* and 19 CFR 351.302 direct interested parties to file extension requests within the established deadline. The petitioner explains further that Commerce does not consider an extension request filed after the deadline unless the party requesting an extension demonstrates an existence of an extraordinary circumstance, *i.e.*, "an unexpected event" that "{c}ould not have been prevented if reasonable measures had been taken" and "{p}recludes a party or its representative from timely filing an extension request through all reasonable means."[46]

The petitioner argues that the nine separate rate applicants did not file their SRAs within the clearly established deadline or request an extension of the deadline in a timely manner. The petitioner contends that technical issues involving the nine separate rate applicants' computers that they claim to have prevented them from timely requesting an extension do not constitute extraordinary circumstances.

<u>Commerce's Position</u>: For the final determination, we decline to reconsider the untimely filed nine SRAs and we continue to deny the separate rate eligibility for these nine separate rate applicants. For the reasons articulated below, we find that our decisions with respect to these nine separate rate applicants are supported by substantial evidence on the record.

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[44] *See* the nine separate rate applicants' case brief dated February 1, 2018, at 15, citing *Artisan Mfg. Corp. v. United States*, 978 F. Supp. 2d 1334, 1342 (CIT 2014) (*Artisan*).
[45] *See* the nine separate rate applicants' case brief dated February 1, 2018, at 15, citing *Grobest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1365-67 (CIT 2012) (*Grobest*).
[46] *See* the petitioner's rebuttal brief dated February 5, 2018, at 32, quoting 19 CFR 351.302(c)(2)(i)-(ii).

In this investigation, these nine separate rate applicants attribute the untimely filings of their SRAs to technical difficulties at the time of filing the SRAs. We do not find that these nine separate rate applicants provided evidence supporting their assertion that the technical difficulties at issue were Commerce's ACCESS error. As explained in our letter denying requests for reconsideration,[47] the "404" error message submitted by the nine separate rate applicants does not contain any evidence demonstrating an ACCESS malfunction on June 8, 2017, between 4:45 p.m. and 5:00 p.m. Eastern Time.[48] This "404" error message provided as evidence of technical difficulties in the reconsideration requests does not show the date or time of the error message.[49] The nine separate rate applicants provided no evidence supporting their claim that this "404" error occurred on June 8, 2017, between 4:45 p.m. and 5:00 p.m. Eastern Time.[50] As a result, we cannot determine that this "404" error message was generated at the time of the filing of these nine SRAs.[51] Therefore, unlike *Diamond Sawblades 2012-2013 Final* where we accepted documents untimely filed due to a proven ACCESS malfunction, we have no evidence demonstrating that ACCESS malfunctioned on June 8, 2017, between 4:45 p.m. and 5:00 p.m. Eastern Time, and caused the untimely filings of these nine SRAs.

Also, regardless of the source of the technical difficulties at issue, the nine separate rate applicants failed to contact us at the time they claim to have experienced the technical difficulties that led to the untimely filing of their SRAs.[52] These nine separate rate applicants telephoned a Commerce official on the day after the deadline and notified the official of the late filings of the nine SRAs but did not request an extension.[53] Four days after the deadline, these nine separate rate applicants submitted a letter explaining the situation surrounding the untimely filing of their SRAs and requested our acceptance. To the extent that this letter constitutes an extension request, it is untimely and did not explain extraordinary circumstances that led to the untimely filing of their SRAs.

The *Initiation Notice*, which provides a web address link to the separate rate application, listed a Commerce official and phone number to contact for further information.[54] The separate rate application for China also provides the contact information for the ACCESS Help Desk when encountering technical issues with electronically filing documents.[55] According to these nine separate rate applicants' requests for reconsideration, they began encountering technical difficulties with filing their SRAs before the deadline. Thus, these nine separate rate applicants

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[47] *See* Commerce's denial of the nine separate rate applicants' second reconsideration request dated August 9, 2017.
[48] *See* the nine separate rate applicants' second request for reconsideration dated July 10, 2017, at Exhibit 1.
[49] *See* Commerce's denial of the nine separate rate applicants' second reconsideration request dated August 9, 2017.
[50] *See* the nine separate rate applicants' letter dated June 12, 2017, first request for reconsideration dated June 16, 2017, and second request for reconsideration dated July 10, 2017, and response to Commerce's second denial letter dated August 14, 2017. *See also* Commerce's denial of the nine separate rate applicants' second reconsideration request dated August 9, 2017, as clarified in *Preliminary Determination* and accompanying Preliminary Decision Memorandum at 16, n.102.
[51] *See* Commerce's denial of the nine separate rate applicants' second reconsideration request dated August 9, 2017.
[52] *See Neo Solar Power Corp. v. United States*, 190 F. Supp. 3d 1255, 1258, n.1 (CIT 2016) (*Neo Solar*) ("It is unclear whether NSP's technical issues were the fault of NSP or Commerce. …. Regardless, as discussed below, who was to blame for the technical issue is irrelevant.").
[53] *See, e.g.*, the nine separate rate applicants' letter to Commerce dated June 12, 2017, at 2.
[54] *See Initiation Notice*, 82 FR at 21523.
[55] *See* the separate rate application for China at 24, available at https://enforcement.trade.gov/nme/sep-rate-files/app-20150323/prc-sr-app-20150323.pdf.

could have contacted Commerce before the filing deadline to request technical assistance and/or notify Commerce of their filing difficulties and request an extension of time to file their SRAs, but they did not do so.[56] Because these nine separate rate applicants did not contact us before the filing deadline about technical assistance and/or request an extension of the deadline, we were not able to provide technical or other filing assistance and/or, before the filing deadline, consider the circumstances the nine separate rate applicants allege.

Our determination to reject these nine SRAs is consistent with our past decisions in similar situations. For example, in one past administrative proceeding, two days after the deadline for requesting an administrative review, Commerce received a telephone call from a party explaining that it had technical difficulties to electronically file a request for an administrative review. Four days after the deadline, this party filed its review request. Commerce rejected this request for a review and U.S. Court of International Trade (CIT) sustained Commerce's rejection and held that technical issues with electronically filing did not constitute an "extraordinary circumstance" because the requestor could have taken reasonable measures, *e.g.*, contacting the ACCESS Help Line before the deadline to receive assistance, to ameliorate harm caused by technical problems.[57] Similarly, in *Silica Fabric*, we rejected a quantity and value (Q&V) response and denied the extension request for this Q&V response because the respondent filed both documents six days after the filing deadline and we did not find that the technical difficulties the respondent claimed to have experienced constituted an extraordinary circumstance.[58] Therefore, these nine separate rate applicants' technical difficulties in filing do not satisfy the definition of an extraordinary circumstance under 19 CFR 351.302(c)(2)(i) and (ii).

Parties' adherence to our administrative deadlines is necessary for us to provide all interested parties with a reasonable timeframe in which to submit information under 19 CFR 351.301(c) and for us to complete an investigation within the statutory deadlines specified in sections 733(b)(1) and (c) and 735(a)(1) and (2) of the Act.[59] If we allow these nine separate rate applicants to submit their SRAs in an untimely manner and accept their SRAs despite our regulatory requirements for timely filing, we run the risk of losing valuable time within the statutory timeframe, leaving us with inadequate time to analyze information on the record to complete this investigation.[60] Therefore, because we needed to timely begin the process of determining the separate rate eligibility, we continue to find our decision to reject these nine SRAs to be appropriate.[61]

[56] *See* the nine separate rate applicants' letter dated June 12, 2017.
[57] *See Neo Solar*, 190 F. Supp. 3d at 1261.
[58] *See Antidumping Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Final Affirmative Determination of Sales at Less-Than-Fair Value, and Final Affirmative Determination of Critical Circumstances*, 82 FR 8399 (January 25, 2017) (*Silica Fabric*) and accompanying I&D Memo at Comment 6.
[59] *See Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Rescission of Administrative Review in Part*, 75 FR 10207 (March 5, 2010), and accompanying I&D Memo at Comment 1, *aff'd Hyosung Corp. v. United States*, Court No. 10-00114, slip op. 11-34 (Ct. Int'l Trade Mar. 31, 2011) (*Hyosung*).
[60] *Id.*
[61] *See Neo Solar*, 190 F. Supp. 3d at 1263 ("Given the facts of this case and Commerce's need to timely begin the process of respondent selection without waiting for late review requests, the claim of abuse of discretion fails. Commerce, therefore, reasonably declined to grant NSP's extension request and reasonably refused to accept NSP's review request.").

Furthermore, we disagree with the nine separate rate applicants that our burden of accepting these untimely filed nine SRAs is minimal compared to the China-wide rate assigned to these nine separate rate applicants. As explained above, Commerce establishes deadlines so that it can conduct this investigation (and its numerous other trade remedy proceedings) in an efficient manner within its statutory and regulatory deadlines. Therefore, it is critical that parties file documents by the established deadline or timely request an extension of such a deadline. Timely filings and timely extension requests contribute to Commerce's efficient administration of the numerous cases before it and the AD laws. Conversely, untimely filings and untimely extension requests hinder the efficient and timely conduct of our proceedings and lead us to spend additional time and resources to address such untimely filings and requests. Additionally, although the burden associated with a single late-filed questionnaire response may be perceived as minimal, that burden is not minimal when aggregated across all proceedings. Accordingly, for the efficient conduct of Commerce's proceedings, it is critical that parties adhere to the deadlines established by Commerce.[62]

Neo Solar held in the context of considering "accuracy and fairness" that Commerce had not abused its discretion when it rejected the review request after considering the "general prejudice stemming from late filings because of the strict statutory deadlines governing its determinations.[63] For the same reasons, Commerce rejected an untimely filed Q&V response in *Silica Fabric*.[64] In this investigation, we rejected the nine SRAs because they were untimely filed. An SRA is much larger with more requested information than a Q&V response or a review request. For example, all SRAs that we accepted in this investigation are more than 100 pages each,[65] whereas none of the Q&V responses in this investigation is more than 12 pages long.[66] Because of the volume of information contained in a single SRA and the time needed to analyze and evaluate each SRA, accepting nine untimely filed SRAs is not minimal. Furthermore, to the extent that the nine separate rate applicants' June 12, 2017, letter constitutes an extension request, it was filed in an untimely manner and failed to demonstrate extraordinary circumstances.[67] Moreover, because Zhejiang Limai Metal Products Co., Ltd., did not file its Q&V response, this is another basis on which it is not eligible for a separate rate even if it filed its SRA in a timely manner because, as stated in the initiation notice, we require both documents to be timely filed to be eligible for consideration for a separate rate.[68]

The nine separate rate applicants' reliance on *Grobest* is misplaced. In *Grobest*, the CIT overturned our rejection of an untimely filed separate rate certification because the respondent at issue was eligible for a separate rate in all prior segments of the proceeding and would have been eligible again if it filed the separate rate certification in a timely manner and the burden of

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[62] *See Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 43991 (July 6, 2016) (*OBA*), and accompanying I&D Memo at Comment 2.
[63] *See Neo Solar*, 190 F. Supp. 3d at 1262-63.
[64] *See Silica Fabric* and accompanying I&D Memo at Comment 6.
[65] *See* all SRAs in this investigation.
[66] *See* all Q&V responses in this investigation.
[67] *See* the nine separate rate applicants' letter to Commerce dated June 12, 2017.
[68] *See Initiation Notice*, 82 FR at 21528 ("{Commerce} requires that respondents submit a response to both the Q&V questionnaire and the separate-rate application by their respective deadlines in order to receive consideration for separate-rate status.").

analysis of the separate rate certifications was minimal in the past.[69] In other words, in *Grobest*, the main issue was the continued eligibility for a separate rate and the amount of information that needed to be analyzed to renew the respondent's separate rate eligibility in an administrative review, not in an investigation where a separate rate eligibility would be determined for the first time in a proceeding. In this investigation, the nine separate rate applicants failed to file their SRAs in a timely manner. As explained above, the size of an SRA and the time needed to analyze and evaluate each SRA are reasons why the burden of accepting the nine untimely filed SRAs is not minuscule.[70] Also, we are not required to accept an untimely filed SRA on the basis that such untimely filed document would have contained information relevant to our determination.[71] For example, the CAFC held that evidence Commerce rejected in an administrative procedure was properly excluded, even if the Court believes that the excluded evidence, if accepted and considered, would have yielded a more accurate result.[72]

This investigation is distinguishable from *Artisan*, in which the late quantity and value response was accompanied by a separate one-day extension request at the same time.[73] Also in *Artisan*, the CIT, quoting *Nippon Steel*, held that "the statutory mandate that a respondent act to 'the best of its ability' requires the respondent to do the maximum it is able to do"[74] and that Commerce's discretion to "'use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available' applies when a party fails to meet this standard."[75] In this investigation, the nine separate rate applicants filed their SRAs late and did not file an extension request. On June 12, 2017, the nine separate rate applicants filed a letter requesting that we accept their untimely filed SRAs, but it was not an explicit extension request.[76] However, to the extent that this acceptance request constitutes an extension request, it was filed four days after the filing deadline with no extraordinary circumstance surrounding the late filings.[77]

A party may timely request an extension, and an untimely-filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists.[78] An "extraordinary circumstance" is an unexpected event that could not have been prevented if reasonable measures had been taken, and that precludes a party or its representative from timely

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[69] *See Grobest*, 815 F. Supp. 2d at 1366-67.
[70] *See Dongtai Peak Honey Industry Co., Ltd. v. United States*, 971 F. Supp. 2d 1234, 1241 (CIT 2014), in which the CIT held that the burden of accepting an untimely filed response to a nine-page supplemental questionnaire "would not have been 'minuscule'" as was in *Grobest*.
[71] *Id.* ("Although Peak's {supplemental response} would have contained information relevant to the dumping margin determination, Commerce was not required to place it on the record.").
[72] *Id*. *See also PSC VSMPO-Avisma Corp. v. United States*, 688 F.3d 751, 761 (Fed. Cir. 2014) ("A court cannot set aside application of a proper administrative procedure because it believes that properly excluded evidence would yield a more accurate result if the evidence were considered.").
[73] *See Artisan*, 978 F. Supp. 2d at 1336.
[74] *Id.* quoting *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).
[75] *Id.* at 1342.
[76] *See* the nine separate rate applicants' letter dated June 12, 2017.
[77] *Id.* *See also* Commerce's rejection letter dated June 15, 2017.
[78] *See* 19 CFR 351.302(c). *See also Hyosung* at 7 ("It is correct that Commerce may, for good cause, extend the time limit established for submission of the requested information. *See* 19 C.F.R. § 351.302(b). However, in order for Commerce to grant an extension of time, the party requesting an extension must do so in writing before the applicable time limit expires, including reasons for its request. *See* 19 C.F.R. § 351.302(c). Hyosung failed to request an extension.").

filing an extension request through all reasonable means.[79] Our current regulations concerning time limits for the submission of factual information and acceptance of untimely extension requests are designed to establish specific deadlines depending on the category of factual information being provided.[80] These regulations are intended to ensure that Commerce has sufficient time to review and analyze factual information "at the appropriate stage in the proceeding," and before "it is too late {for Commerce} to adequately examine, analyze, conduct follow-up inquiries regarding, and if necessary, verify the information."[81] To be consistent with the intent of our regulations and as we "may request any person to submit factual information at any time during a proceeding," we established that the deadline for the submission of SRAs is 30 days after publication of the *Initiation Notice.*[82] Also, 19 CFR 351.302(c) makes it clear that untimely filed extension requests would be accepted only in "extraordinary circumstances." Our current regulations demonstrate that Commerce intended to establish concrete deadlines, and that the deadlines must be observed. The nine separate rate applicants' submissions were subject to the current regulations concerning deadlines and extension requests and these regulations took effect after *Artisan* and *Grobest.*[83]

Comment 3: The AFA Rate Applied to the Nine Separate Rate Applicants

The nine separate rate applicants argue that the application of AFA is unwarranted because they were attempting to cooperate with Commerce's request for information. The nine separate rate applicants contend that there is no evidence showing that they were trying to circumvent Commerce's deadline or obtain some other advantage through a delay. The nine separate rate applicants claim that, despite their lack of experience in antidumping proceedings, they completed their SRAs within the time allotted. The nine separate rate applicants explain that, even with experienced counsel, they needed detailed guidance to accurately and completely prepare the SRAs. The nine separate rate applicants state that some of the information contained in their SRAs came from third parties, which demanded extra time to obtain, review, and translate. The nine separate rate applicants assert that the sheer volume of materials also took significant time to be translated and processed for business proprietary treatment and language barriers and time zone differences between them and their counsel exacerbated difficulties.

The nine separate rate applicants explain that six of their business proprietary SRAs were filed within the deadline and the rest of the versions of the SRAs were filed by 7:42 p.m. Eastern Time on the due date. The nine separate rate applicants reiterate that they did not fail to cooperate, as required by the statute to assign AFA, and the late filings in this case did not delay Commerce's investigation in any meaningful way. The nine separate rate applicants contend that *Artisan* overturned Commerce's rejection of a Q&V response that was filed one day late with a one-day extension request. According to the nine separate rate applicants, *Artisan* found no meaningful way in which such a brief period could have delayed an investigation in any meaningful way and how acceptance of the Q&V response could have interfered in any other way with Commerce's ability to conduct an investigation. Also, according to the nine separate rate applicants, *Artisan* found no evidence showing that the company could or would have gained an unfair advantage

[79] *See* 19 CFR 351.302(c)(2)(i) and (ii).
[80] *See Definition of Factual Information and Time Limits for Submission of Factual Information; Final Rule,* 78 FR 21246, 21247 (Apr. 10, 2013).
[81] *Id.*
[82] *See Initiation Notice*, 82 FR at 21528, n. 78, quoting 19 CFR 351.301(a).
[83] *See OBA* and accompanying I&D Memo at Comment 2.

were Commerce to accept the late submission. The nine separate rate applicants claim that the China-wide rate is disproportionate for them given the minimal delay in filing.

<u>Commerce's Position</u>: In the *Preliminary Determination*, we denied separate rate eligibility to the nine separate rate applicants because they did not file their SRAs in a timely manner. Because they were ineligible for a separate rate, they were treated as part of the China-wide entity. The China-wide entity received an AFA rate because the China-wide entity did not cooperate to the best of its ability, through failures of certain companies within the China-wide entity to respond to our Q&V questionnaire and withdrawal from a scheduled verification.[84] For the reasons explained in the *Preliminary Determination*,[85] and as supplemented above in Comment 1, we continue to find application of facts otherwise available with an adverse inference appropriate for the China-wide entity. As explained in Comment 2 above, *Artisan* is distinguishable from the nine separate rate applicants in this investigation.

b. The Tongrun Single Entity

Comment 4: VAT Methodology

Tongrun argues that Commerce's preliminary decision to reduce its reported U.S. prices for the unrefunded value-added tax (VAT) amount is both contrary to the plain language of the statute and unsupported by record evidence. Tongrun argues further that, consistent with judicial precedent, even if Commerce rejects Tongrun's argument that a VAT deduction is contrary to law, it must recalculate the applicable VAT adjustment based on the difference between the actual amount of input VAT paid by Tongrun, and the actual amount of input VAT paid by Tongrun and the amount of export VAT refund obtained by it.

According to Tongrun, exportation is "a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country."[86] Tongrun claims that the record confirms that no VAT was imposed on the subject merchandise at the point of (or due to) exportation. Tongrun argues that the Interim Regulations of the People's Republic of China on Value-Added Tax (2008) (Interim Regulations) unambiguously states at Article 2.3 that "{f}or taxpayers that export goods, the tax rate shall be zero."[87] Tongrun asserts that the only tax-related event triggered by exportation is that a company is potentially entitled to a refund of certain VAT amounts previously paid on input purchases.

Tongrun contends that it paid no VAT on subject merchandise in the course of exportation and, because there is no additional VAT liability for an export sale (because the export VAT rate is zero), there is no need to credit VAT paid on input purchases against VAT owed on the export sale. Tongrun argues that the only VAT it paid with respect to export sales is the VAT it paid for

[84] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 18-21. *See also, e.g., 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) (*Truck and Bus Tires*), and accompanying I&D Memo at Comment 4. *See also* Comment 1, *supra.*
[85] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 18-21.
[86] *See* Tongrun's case brief dated January 31, 2018, at 42, citing 19 CFR 101.1.
[87] *Id.* at 41, quoting Tongrun's section C response dated August 1, 2017, at Exhibit C-13.

its domestic purchases of inputs consumed in the production of subject merchandise. Tongrun describes it as an internal tax related to the cost of acquiring inputs to produce merchandise within China, not a tax that is imposed on exportation of the subject merchandise. According to Tongrun, *Globe Metallurgical Inc.* addressed this issue and held that Chinese VAT is a domestic tax related to production costs, rather than a "tax imposed on exportation."[88] According to Tongrun, *Bridgestone Ams., Inc.* also held that "{a}lthough Xugong paid VAT to acquire inputs in producing the subject goods, the Chinese VAT system is part of the 'cost or pricing structure' of China," which is disregarded under the NME methodology.[89]

Tongrun argues that it pays VAT in connection with its domestic purchases of material inputs, and it is at the time that Tongrun makes such purchases that it incurs this cost. According to Tongrun, if it makes a domestic sale, it can credit the "input VAT" paid on these material purchases against additional VAT owed on the sale of the subject merchandise, but it does not receive a refund of VAT paid for material inputs. Tongrun asserts that there are other situations in which it would receive no offset or credit for input VAT that it paid. For example, according to Tongrun, if it buys inputs and they are lost or damaged before it can use them in production, it will always incur the full cost of VAT paid for these inputs without any refund. Further, according to Tongrun, if it uses inputs to produce products that it cannot sell, or that are lost in inventory, it will also incur the full cost of VAT paid for these inputs without any potential refund. Tongrun asserts that, under these scenarios, the company bears that full cost of VAT paid on input regardless of whether there is an export sale involved. Thus, according to Tongrun, any cost associated with VAT is attributable to the initial purchase of the inputs, does not arise solely from, and is not specific to, export transactions. To the contrary, according to Tongrun, it is only through exportation that a potential refund of some VAT amounts previously paid on inputs would be triggered in the first place.

Tongrun explains that the computation of an adjustment based upon the difference between the VAT rates paid and refunded is not the same as the computation of the actual amount paid when the applicable input VAT rate and refund rate are applied to two different value bases. According to Tongrun, *Federal Mogul* held that VAT adjustments should be based on the amounts of VAT paid to prevent a multiplier effect if the rate is applied to a different value.[90] Tongrun contends that, in this investigation, the 17 percent of the VAT for the input purchased is applied to the value of inputs Tongrun purchased to produce subject merchandise, whereas the refund rates of nine percent and 15 percent relate to the much higher value of the finished merchandise sold by Tongrun. Thus, Tongrun claims, Commerce's deduction of the eight percent and two percent from the higher sales price of the finished merchandise results in an inaccurate result with the VAT refund amount exceeding the amount constituting the 17 percent VAT incurred on a significant lesser price of inputs.

Tongrun argues that Commerce's use of the rate of an irrecoverable VAT in the preliminary deduction of the irrecoverable VAT is inconsistent with section 772(c)(2)(b) of the Act, which provides that the U.S. price "shall be reduced by … the amount … of any export tax." Tongrun

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[88] *Id.* at 42-43, citing *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340, 1346-1347 (CIT 2011) (*Globe Metallurgical Inc*.).
[89] *Id.* at 43, citing *Bridgestone Ams., Inc. v. United States*, 33 CIT 1040, 1048-50 (2009) (*Bridgestone Ams., Inc.*).
[90] *Id.* at 45-46, citing *Federal Mogul Corp. v. United States*, 63 F.3d 1572 (Fed. Cir. 1995) (*Federal Mogul*).

insists that, because *Fine Furniture* directed Commerce to apply a methodology that achieves a result in accordance with "the amounts of irrecoverable Chinese VAT that actually were incurred," even assuming that the "irrecoverable VAT" is an "export tax," Commerce cannot simply determine the irrecoverable VAT amount by applying a convenient and simplistic formula, based on the difference between the standard VAT rate and the export refund VAT rate being applied to a common value bases, *i.e.*, free-on-board (FOB) price.[91] Tongrun claims that, to be consistent with the statute and *Fine Furniture*, the irrecoverable VAT amount should be the difference between the actual amount of input VAT paid and the amount of export rebate VAT received.

According to Tongrun, *China Manufacturers Alliance* also held that, in the absence of a finding that an irrecoverable VAT was imposed by the exporting country, Commerce may not find under the statute and as a matter of logic that the irrecoverable VAT has been included in the U.S. price.[92] Citing *China Manufacturers Alliance*, Tongrun contends that a presumption is different than a finding of fact and Commerce may not reduce the U.S. price by a fixed percentage that is not the actual amount of a tax that the exporting country is found in fact to have imposed. Tongrun states that Commerce simply applied a presumption without a finding of facts that the subject merchandise exported from China are subject to irrecoverable VAT in the amount of either eight percent or two percent of the FOB value of the exported subject merchandise. Tongrun argues that *Methodological Change* guides Commerce to deduct the amount of irrecoverable VAT from the U.S. price.[93] Finally, Tongrun contends that it is unclear why Commerce added a new field to the section C questionnaire entitled "Value Added Tax" while retaining the standard field for "Export Tax," when Commerce treats irrecoverable VAT as an export tax.

The petitioner argues that Commerce should continue to deduct the unrefunded VAT from the U.S. price. The petitioner explains that the CIT upheld Commerce's interpretation of section 772(c)(2)(B) of the Act as a permissible interpretation of the statute to deduct irrecoverable VAT from U.S. prices.[94] The petitioner contends that any changes to the deduction of the irrecoverable VAT would be contrary to Commerce's statutory interpretation and policy regarding this deduction and the positions it has taken in each appeal of this deduction. The petitioner explains that Commerce's methodology in the deduction of irrecoverable VAT in this investigation is reasonable and consistent with recent decisions in China cases.[95]

[91] *Id.* at 46-47, citing *Fine Furniture (Shanghai), Ltd. v. United States*, 182 F. Supp. 3d 1350 (CIT 2016) (*Fine Furniture*).
[92] *Id.* at 47-49, citing *China Manufacturers Alliance, LLC v. United States*, 205 F. Supp. 3d 1325 (CIT 2017) (*China Manufacturers Alliance*).
[93] *Id.* at 50-51, citing *Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481, 36482-83 (June 19, 2012) (*Methodological Change*).
[94] *See* the petitioner's rebuttal brief dated February 5, 2018, at 26-27, citing, *e.g., Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159, 1187-88 (CIT 2017) (*Jacobi Carbons*), and *Aristocraft of Am., LLC v. United States*, 269 F. Supp. 3d 1316, 1322-25 (CIT 2017) (*Aristocraft*).
[95] *See* the petitioner's case brief concerning Tongrun dated January 29, 2018, at 29, citing *Multilayered Wood Flooring from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission of Review, in Part; 2015-2016*, 83 FR 2137

Commerce's Position: For the reasons explained below, we continue to apply the un-refunded (*i.e.*, irrecoverable) VAT adjustment applied in the *Preliminary Determination.*

In 2012, we announced a change of methodology with respect to the calculation of export price (EP) or constructed export price (CEP) to include an adjustment of any (irrecoverable) VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.[96] In this announcement, Commerce stated that when an NME government has imposed an export tax, duty, or other charge on subject merchandise or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated.[97]

In a typical VAT system, companies do not incur VAT expenses for exports; they receive upon 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.[98] 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.[99] This amounts to a tax, duty, or other charge imposed on exports that is not imposed on domestic sales, and thus we disagree with Tongrun's assertions that irrecoverable VAT should not be deducted from its U.S. prices. Where the irrecoverable VAT is a fixed percentage of U.S. price, we explained that the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[100]

In addition, Tongrun incorrectly relies on the Interim Regulations to support its position that, for taxpayers that export goods, the tax rate is zero percent. The record contains Circular 39, which supplements the record by further explaining the formula in the Interim Regulations and, in so doing, clarifies how the Chinese government directed Tongrun to calculate the irrecoverable VAT for its exports of tool chests during the POI. Specifically, Circular 39 states, "For the purposes of making it easier for tax authorities and taxpayers to understand and implement the export taxation policies systemically and accurately, the Ministry of Finance and State Administration of Taxation has sorted out and classified the VAT policies and consumption tax policies on exported goods . . . and clarified the several problems reflected in the actual implementation. Relevant issues are hereby notified as follows."[101] Therefore, Circular 39 informs our irrecoverable VAT calculation and supersedes the Interim Regulations.

(January 16, 2018), and accompanying Preliminary Decision Memorandum at 20-21, and Final Results of Redetermination Pursuant to Court Remand in *Jacobi Carbons* dated August 7, 2017, at 26-28, 41-42, available at https://enforcement.trade.gov/remands/17-39.pdf.

[96] *See Methodological Change*, 77 FR at 36483-84.

[97] *Id*. *See* also *Chlorinate Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying I&D Memo at Comment 5.A.

[98] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) (*Diamond Sawblades 2011-2012*) and accompanying I&D Memo at Comment 6. *See also Methodological Change*, 77 FR at 36483.

[99] *See* Tongrun's section C response dated August 1, 2017, at Exhibit C-13 for Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services (Circular 39), promulgated in 2012.

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

[101] *See* Tongrun's section C response dated August 1, 2017, at Exhibit C-13.

Circular 39 provides detailed information on irrecoverable VAT and the formula applicable to calculating the irrecoverable VAT incurred by companies engaged in export activities.[102] Circular 39 describes the un-refunded or irrecoverable VAT and it provides the standard formula that Commerce then uses in adjusting U.S. prices.[103] In addition, Article 5 of Circular 39 explains how un-refunded or irrecoverable VAT should be accounted for by companies in their books and records.[104] Specifically, Article 5 of Circular 39 indicates that, "{w}here the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of the exported goods and services."[105] While companies may still deduct input VAT from output VAT similar to companies in a typical VAT system, in the Chinese VAT system, they do not receive a full rebate of the VAT for exports when the VAT refund rate for a particular product is less than the standard VAT levy rate. Circular 39 also states that: (1) the basis for determining the VAT refund of goods and services exported by manufacturing enterprises is the actual FOB price of exported goods and services on the export invoices (Article 4.1); (2) the VAT refund amount is equal to the "FOB price of exported goods for the current period x RMB conversion rate x tax refund rate of exported goods" (Article 5.1(2)); and, as discussed above, (3) irrecoverable VAT is included "{w}here the tax refund rate is lower than the applicable tax rate, the amount of tax calculated according to the difference in rates shall be included in the costs of the exported goods and services" (Article 5.3).[106]

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. Although Tongrun argues that it pays no VAT upon export, it misstates the issue before Commerce. The issue is the irrecoverable VAT on inputs, not VAT *per se*. Irrecoverable VAT, as defined in Chinese law, which is supported by evidence on the record, is a net VAT burden that arises solely from, and is specific to, exports.[107] 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.[108]

The statute does not define the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise. The statute considers whether U.S. price includes "any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States."[109] Our reading of section 772(c)(2)(B) of the Act is whether there exists "any export tax, duty, or other charge imposed by the exporting country" included in the U.S. price at the time of exportation; we do not interpret the phrase "on the

[102] *Id*.
[103] *Id*. at Article 5.
[104] *Id*.
[105] *Id*. at Article 5.3.
[106] *Id.* at Articles 4 and 5.
[107] *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) and accompanying I&D Memo at Comment 7.
[108] *See Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014) and accompanying I&D Memo at Comment 5.
[109] *See Diamond Sawblades Manufacturers' Coalition v. United States*, Consol. Court No. 16-00124, slip op. 18-28, at 10-11 (Ct. Int'l Trade Mar. 22, 2018) (*Diamond Sawblades Manufactures' Coalition*).

exportation of the subject merchandise to the United States" to be limited to "by reason of the exportation of the subject merchandise to the United States."[110] To "impose" means to "{t}o charge; impute;" "{t}o subject (one) to a charge, penalty or the like;" "{t}o lay as a charge, burden, tax, duty, obligation, command, penalty, *etc*."[111] The "imposition" in the case of China's irrecoverable VAT occurs as a result of exportation, which is a permissible interpretation of the statute.[112]

We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.[113] The CIT upheld our interpretation as permissible interpretation of the statute.[114] Additionally, it is set forth in Chinese law,[115] and, therefore, can be considered to be "imposed" by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT falls under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax neutral net U.S. price received by the seller. This deduction is consistent with our longstanding policy, which is in turn consistent with the intent of the statute, that dumping margin calculations be tax-neutral.[116]

We do not find that *China Manufacturers Alliance* is applicable as a binding precedent in this investigation. The CIT has recently addressed the issue of the irrecoverable VAT within the *Chevron* framework in several cases.[117] Unlike *China Manufacturers Alliance*, the *Chevron* analysis in *Fushun Jinly* and *Juancheng* does not interpret the statute to prevent Commerce from finding irrecoverable VAT in U.S. prices in the absence of a finding of an actual imposition of an irrecoverable VAT.[118] *Fushun Jinly* and *Juancheng* held that section 772(c)(2)(B) of the Act affords Commerce broad discretion to calculate deductions for an export tax, duty, or other charge and sustained Commerce's deductions of irrecoverable VAT.[119] Even after *China Manufacturers Alliance*, *Jacobi Carbons* followed *Fushin Jinly* and held that Commerce reasonably interpreted section 772(c)(2)(B) of the Act to deduct irrecoverable VAT from respondents' CEP as a charge imposed by the exporting country on the exportation of subject merchandise.[120] *Diamond Sawblades Manufacturers' Coalition* upheld

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[110] *See Diamond Sawblades Manufacturers' Coalition*, slip op. 18-28, at 10-11.
[111] *Id.* at 11 citing Webster's New International Dictionary of the English Language Unabridged, at 1251 (2nd ed. 1956).
[112] *Id.* at 11 ("The satisfaction of any such imposition is not necessarily concurrent with the act of imposition, which may occur at any time, and the vagueness of the statutory language neither precludes nor requires such interpretation.")
[113] *Id*.
[114] *See Jacobi Carbons* and *Aristocraft.*
[115] *See* Tongrun's section C response dated August 1, 2017, at 37-39 and Exhibits C-13, C-14, and C-15, Tongrun's section C supplemental response dated September 22, 2017, at 20-21, and Exhibits SC-40 and SC-41, and Tongrun's section C supplemental response dated October 18, 2017, at 5 and Exhibit S2-C5.
[116] *See Methodological Change*, 77 FR at 36483.
[117] In the chronological order, those cases are *Fushun Jinly Petrochemical Carbon Co. v. United States*, Court No. 14-00287, slip op. 16-25 (Ct. Int'l Trade Mar. 23, 2016) (*Fushun Jinly*), *Juancheng Kangtai Chem. Co. v. United States*, Consol. Court No. 14-00056, slip op. 17-3 (Ct. Int'l Trade Jan. 19, 2017) (*Juancheng*), *China Manufacturers Alliance*, *Jacobi Carbons*, *Aristocraft*, and *Diamond Sawblades Manufacturers' Coalition.*
[118] *See Aristocraft*, 269 F. Supp. 3d at 1323-24.
[119] *Id.* at 1324.
[120] *Id.*

our deduction of irrecoverable VAT, notwithstanding *China Manufacturers Alliance.*[121] Our interpretation of the Chinese law to the effect that (1) exportation itself "gives rise to the irrecoverable VAT 'imposed' by {China} on the process of manufacture and on the sale of subject merchandise" and (2) "the 'irrecoverable' amount of VAT is to be calculated by reference to the full FOB export value of subject merchandise" is reasonable and sustained in *Diamond Sawblades Manufacturers Coalition*.[122]

As explained above, where the irrecoverable VAT is a fixed percentage of 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.[123] *Jacobi Carbons* held that this methodology reasonably interpreted vague language in section 772(c)(2)(B) of the Act, including the requirement that such taxes or other charges be imposed by the exporting country.[124] *Aristocraft* described the differences of the *Chevron* analyses between *Juancheng*, *China Manufacturers Alliance*, and *Jacobi Carbons* and stated that "{t}his Court is persuaded by the *Chevron* analysis of *Jacobi Carbons* and *Juancheng*."[125]

We also do not find that *Fine Furniture* is applicable to this investigation. The sole issue in *Fine Furniture* regarding irrecoverable VAT is the appropriate FOB export value to which to apply the irrecoverable VAT rate. In the underlying administrative review of *Fine Furniture*, Commerce did not consider the transfer price between the respondent and the respondent's affiliate headquartered in Singapore to be an appropriate basis for calculating the FOB export value because Commerce treated them as a single entity and their internal transactions as intra-company transactions, not export sales.[126] On remand, Commerce found it more appropriate to calculated the irrecoverable VAT using the transfer price between the respondent and the affiliate in Singapore as the FOB export value.[127] We do not have a similar situation in this investigation. For Tongrun's U.S. sales, Tongrun used the FOB China invoice price directly in the calculation of the irrecoverable VAT amounts.[128]

Moreover, *Diamond Sawblades Manufacturers Coalition* sustained our use of VAT rates to calculate the VAT amounts and held that *Federal Mogul* is irrelevant in a non-market economy proceeding, as explained in *Methodological Change*.[129] Our application of the VAT rates is in accordance with Tongrun's reporting, the applicable Chinese regulations, our methodology in *Methodological Change*, and the judicial precedent.[130] Our finding of the irrecoverable VAT

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[121] *See Diamond Sawblades Manufacturers' Coalition*, slip op. 18-28, at 11-12.
[122] *Id.* at 12.
[123] *See Methodological Change*, 77 FR at 36483.
[124] *See Aristocraft*, 269 F. Supp. 3d at 1324, and *Jacobi Carbons*, 222 F. Supp. 3d at 1187-88 ("To understand the parameters of what it means for something to be 'imposed,' and, thus, to determine whether Commerce's statutory construction is permissible, the court considers the term's plain meaning. …. The ordinary meaning of the term 'imposed' demonstrates the reasonableness of Commerce's interpretation.").
[125] *See Aristocraft*, 269 F. Supp. 3d at 1322.
[126] *See Fine Furniture*, 182 F. Supp. 3d at 1359. *See also* Final Results of Redetermination Pursuant to Court Order in *Fine Furniture* dated August 28, 2017, at 6 for the location of the affiliate's headquarters.
[127] *See* Final Results of Redetermination Pursuant to Court Order in *Fine Furniture* dated August 28, 2017, at 8-9.
[128] *See* Tongrun's section C supplemental response dated September 22, 2017, at 20.
[129] *See Diamond Sawblades Manufacturers Coalition*, slip op. 18-28, at 14-16, citing *Methodological Change*, 77 FR at 36483.
[130] *Id.* at 15, citing *Methodological Change*, 77 FR at 36483.

imposed on the exportation of the subject merchandise is based on the Chinese regulations on the record, not based on presumption.[131]

Further, we rely on price adjustments that are "reasonably attributable to the subject merchandise."[132] The Chinese VAT regime is product-specific,[133] with VAT schedules that vary by industry and even across products within the same industry. Consistent with the Chinese VAT regime and our regulation, our methodology, as applied in this investigation, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise; and (2) reducing U.S. price by the amount determined in step one. Irrecoverable VAT is: (1) the FOB 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. 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 regulations.[134]

In this investigation, in step one, we determined the irrecoverable VAT on subject merchandise by first determining the tax rate levied on inputs and raw materials (used in the production of exports). In this investigation, information placed on the record of this investigation by respondents indicates that, according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rates for subject merchandise are nine percent for subject merchandise entered under HTS subheading 7326 and 15 percent for subject merchandise entered under HTS subheadings 8716 and 9403.[135] Therefore, we removed from U.S. price the difference between the VAT rate and the VAT rebate rate (*i.e.*, eight percent and two percent, respectively), which is the irrecoverable VAT as defined under Chinese tax law and regulation.[136] As such, we have not altered our irrecoverable VAT adjustment methodology for the final determination of this investigation. Finally, it is within our discretion to create separate fields for various expense and export taxes in the section C questionnaire.

Comment 5: Casters

In the *Preliminary Determination*, Commerce valued casters at 533.88 Baht/kg based on the HTS

[131] *Id.* at 15-16.
[132] *See* 19 CFR 351.401(c).
[133] *See* Tongrun's section C response dated August 1, 2017, at Exhibit C-13.
[134] *See* Tongrun's section C response dated August 1, 2017.
[135] *See* Tongrun's section C response dated August 1, 2017, at 37-39 and Exhibits C-13, C-14, and C-15, Tongrun's section C supplemental response dated September 22, 2017, at 20-21, and Exhibits SC-40 and SC-41, and Tongrun's section C supplemental response dated October 18, 2017, at 5 and Exhibit S2-C5.
[136] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 26. *See also Diamond Sawblades Manufacturers Coalition*, slip op. 18-28, at 17-18 ("Commerce's methodological resolution of these types of VAT problems has been held to require at least further clarity of late, but as articulated here by the defendant, Commerce's methodological approach is based directly on {China's} own law and regulation. In this matter, Commerce's application thereof appears reasonable and permissible, it has apparently been applied consistently, it is not unreasonable per se, and it furthers the aim of the antidumping statute. In arguing for this court to conclude otherwise, the respondents are essentially asking for substitution of judgment on a conclusion or finding from the record that is within Commerce's domain, which is outside the standard of judicial review. Commerce requests deference to its reasonable interpretation of the statute and of the record and its methodology, and current law on the subject supports that request. (Internal citations omitted.)).

subheading 8302.20 (casters, and parts thereof, from base metal).[137] Tongrun requests the use of the AUVs for HTS subheadings 3926.30.00000 (other articles of plastics – fittings for furniture, coachwork or the like) and 4016.99.99090 (other articles of rubber) to respectively value plastic and rubber casters. Tongrun argues that these two AUVs provide more specific and reliable AUVs to value Tongrun's plastic and rubber casters. Tongrun contends that, because casters are commercially traded based on the material description of their wheels and advertised and sold as parts of furniture, valuing plastic and rubber casters with the AUVs for these two respective HTS subheadings is more appropriate. Specifically, Tongrun argues that HTS subheading 3926.30.00000 covers, *inter alia*, tool boxes and plastic casters are sold as furniture fittings and accessories. Moreover, Tongrun claims that the fact that the AUVs for these two HTS subheadings are generally higher than the AUVs for Tongrun's basic steel inputs applied in the *Preliminary Determination* is consistent with Commerce's rationale to value casters based on the price of casters' steel components. As such, according to Tongrun, these two AUVs are not only more specific to the wheel material but also commercially more reasonable.

Tongrun argues that Commerce erred by solely relying on the caster's supporting wheel stand's material composition, *i.e.*, steel, in the preliminary valuation of casters. Tongrun describes the supporting wheel stands as a mere accessory to a caster and asserts that Commerce ignores record evidence establishing that casters are valued based on the caster wheel's material type, *e.g.*, plastic and rubber, not the material of their supporting wheel stand. Tongrun contends that Commerce's preliminary valuation of casters disproportionately relies on the supporting steel stand and is inconsistent with its precedent to value an input based on the value of its main component.

Tongrun asserts that casters are advertised and categorized by the types of wheel materials. Tongrun explains that the types of wheel materials impart to a caster its most essential functional character and commercial value. Consequently, according to Tongrun, it is reasonable to infer a direct correlation of the caster price to the wheel material price, which Commerce ignored in the preliminary valuation of casters.

Tongrun contends that Commerce's preliminary valuation of casters is not specific to Tongrun's specific caster grades or reliable. Tongrun claims that the scope of HTS subheading 8302.20 does not cover plastic or rubber caster wheels because this HTS subheading covers only caster wheels made of base metals. Tongrun argues that a caster's wheel, not supporting stand, imparts casters to its essential functional character and commercial value but HTS subheading 8302.20 covers only those casters with wheels made of base metals and is not specific to Tongrun's casters with plastic or rubber wheels.

Tongrun argues that the highest quantities of imports under HTS subheading 8302.20 were exported from Germany at an AUV of 632.17 Baht/kg ($18.05/kg), which does not mirror the prices of plastic or rubber casters sold in the German domestic market, according to German price

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[137] *See* the Memorandum, "Certain Tool Chests and Cabinets from the People's Republic of China: Surrogate Values for the Preliminary Affirmative Determination of Sales at Less Than Fair Value" dated November 7, 2017, at Exhibit 2, "Surrogate Value" tab (Prelim SV Memo). *See also* the Memorandum, "Less-Than-Fair-Value Investigation of Certain tool chests and cabinets from the People's Republic of China: Preliminary Determination Analysis Memorandum for the Tongrun Single Entity" dated November 7, 2017, at 3-4 (Tongrun Preliminary Analysis Memorandum).

quotes on the record of this investigation. Tongrun contends that, contrary to the Global Trade Atlas (GTA) data showing the Philippine exports under HTS subheading 8302.20, the Descartes Datamyne Philippine export data, which provide entry-wise particulars of exports from the Philippines under HTS 8302.20, show that there was no export from the Philippines to Thailand under HTS subheading 8302.20. Tongrun claims that this suggests that the goods exported from the Philippines to Thailand and reported in the GTA data were non-caster products misclassified as casters during the importation. Tongrun also claims that the Descartes Datamyne Philippines export data show that the Philippines exported base metal casters to other countries at the prices lower than the AUV of casters the Philippines exported to Thailand under HTS subheading 8302.20. According to Tongrun, under Commerce's precedents,[138] record evidence impeaches the quantities of imports from Germany and the Philippines under HTS subheading 8302.20, which comprise 40 percent of the preliminary AUV used to value casters. In addition, Tongrun argues that Thai price quotes for plastic casters impeach the preliminary AUV used to value casters.

Tongrun argues that two U.S. Customs and Border Protection (CBP) rulings the petitioner submitted in support of the preliminary valuation of casters are irrelevant and unpersuasive because they were not issued with regard to plastic and rubber casters that Tongrun used. Tongrun claims that, even if these CBP rulings supported the tariff classification of Tongrun's casters in HTS subheading 8302.20, that, by itself, would not be dispositive about the reliability of their valuation based on the GTA data reported under HTS subheading 8302.20. Also, Tongrun argues that Commerce did not explain how the preliminary AUV for casters is probative of the price of a steel component when it is aberrationally high compared to other steel inputs that Commerce valued in the *Preliminary Determination.*

The petitioner requests that Commerce continue to value casters using the AUV for HTS subheading 8302.20. The petitioner explains that, according to CBP rulings, HTS subheading 8302.20 covers casters with mountings of base metal regardless of the material composition of the wheel. The petitioner argues that, the wheel material's effect on the caster's overall value should not lead Commerce to rely on HTS subheadings for products that do not include the relevant casters that are made of the same materials as the wheel. The petitioner insists that Commerce must value casters based on an HTS category that actually includes the factor to be valued, *i.e.*, casters. The petitioner contends that, with a more specific HTS subheading available, Commerce cannot select an HTS subheading that does not include the factor being valued merely because it contains products made from a similar material as that factor.

The petitioner disputes Tongrun's claim that selecting an HTS subheading that includes other articles made from the same wheel material results in a more accurate valuation of inputs due to the similarity of those materials. The petitioner argues that Tongrun's own surrogate value (SV) submission indicates that, in addition to the wheel material, a number of other factors such as size, weight, type, and component materials are taken into account in setting the caster price.

The petitioner disputes Tongrun's claim that the preliminary valuation of casters was aberrational. The petitioner explains that Commerce normally compares an AUV to other AUVs for the same

[138] *See* Tongrun's case brief dated January 31, 2018, at 15, citing *Calgon Carbon Corp. v. United States*, Consol. Court No. 09-00518, slip op. 11-21 (Ct. Int'l Trade Feb. 17, 2011), and *Zhengzhou Harmoni Spice Co. v. United States*, 617 F. Supp. 2d 1281, 1325 (CIT 2009).

input during the relevant period from all potential surrogate countries listed in the surrogate country memorandum issued by the Office of Policy or compares the AUVs of the input from a surrogate country at issue during the relevant period and prior years. The petitioner claims that, because Tongrun provided no information for Commerce to conduct this type of analysis, there is no evidentiary support for Tongrun's claim that the preliminary valuation of casters was based on an aberrational AUV.

The petitioner points to distortions in the price quotes Tongrun provided as a benchmark. Specifically, the petitioner explains that, for two reasons, Commerce does not use price quotes either to value inputs or as a benchmark if other suitable data are publicly available and on the record: (1) prices quotes do not represent actual prices or broad ranges of data, and (2) Commerce does not know the conditions under which price quotes are solicited and whether or not they are self-selected from a broader range of price quotes. The petitioner contends that the German AUV within the AUV used in the preliminary valuation of casters is within the range of the AUVs of casters imported to Thailand from other countries, including Japan, which is the second largest source with the AUV of 661.61 Baht/kg. The petitioner argues that, because the AUVs are calculated by taking into account both high and low prices within a range, there is no basis to allege that the German AUV is aberrational or otherwise unreliable, particularly when the price quotes are unreliable as a benchmark.

Commerce's Position: For the final determination, we continue to apply the preliminary valuation of casters. As explained in the *Preliminary Determination*, the preliminary valuation of casters is consistent with the description of casters and its components in Tongrun's responses,[139] which we also verified during the verification in China.[140] Also, the casters advertisements on the record are advertisements for casters, not caster wheels, and they do not indicate that casters' non-wheel components were ignored in pricing the casters.[141] We did not value casters with the two AUVs Tongrun proposes because they are AUVs for plastic fittings for furniture and rubber products.[142] We also do not find it appropriate to value casters that include various components as plastic fittings for tool boxes, when an AUV for metal casters is available. We continue to find that the use of these two AUVs that are not for casters and do not take into account Tongrun's casters' non-wheel components, which are part of casters, would undervalue Tongrun's casters that include, *inter alia*, steel wheel stands.[143]

We do not find that the price quotes Tongrun placed on the record of this investigation undermines the reliability of the preliminary AUV for casters. We generally do not use price quotes as benchmarks because (1) price quotes do not represent actual prices or broad ranges of data, (2) we do not know the conditions under which they are solicited and whether or not they are self-selected from a broader range of quotes, and (3) individual prices are not representative

[139] *See* Tongrun Preliminary Analysis Memorandum at 3-4 for our explanation which contains Tongrun's business proprietary information. *See also* Tongrun's section D supplemental response dated September 26, 2017, at Exhibit SD-1.
[140] *See* the China Verification Report at 10.
[141] *See* Tongrun's SV comments dated October 10, 2017, at Exhibit 3A.
[142] *Id.* at Exhibit 1.
[143] *See* Tongrun Preliminary Analysis Memorandum at 4.

of a broad market average.[144] We find that Tongrun's price quotes do not represent actual prices or broad ranges of data and the individual prices in the price quotes are not representative of a broad market average. The e-mail communications showing discussions between Tongrun and either price consultants or sellers that provided Tongrun with the price quotes do not explain whether or not these price quotes are self-selected from a broader range of price quotes.[145] Moreover, we find that prices and price quotes from a limited number of suppliers that can only be obtained through direct inquiry are inappropriate as benchmarks due to potential biases.[146] These e-mail communications clearly prove that Tongrun obtained the price quotes from a limited number of suppliers through direct inquiries.[147] Finally, these price quotes are not contemporaneous with the POI; they all postdate the POI by five months at least.[148]

We do not find it appropriate to rely on the Descartes Datamyne Philippines export data to find the preliminary AUV for casters unreliable. The Descartes Datamyne Philippines export data at issue cover three exports from one Philippine exporter to Indonesia and Malaysia and nothing on the record indicates in any way whether or not these three exports list are self-selected from a broader range of export data at the same period.[149] In this respect, the Descartes Datamyne Philippines export data at issue are similar in nature to price quotes, which we decided not to use even as a benchmark, because they are not representative of a broad range of data. Therefore, we do not find that the Descartes Datamyne Philippines export data at issue undermine the reliability of the preliminary AUV for casters. Also, given the limited information in the Descartes Datamyne Philippines export data at issue as explained and because there is no other information describing how these data were extracted from the source, we are unable to rely on them to determine that there was no export of casters from the Philippines to Thailand during the POI.

Comment 6: Drawer Slides, Customized Drawer Slides, Customized Clothes Hanger Bars, and Customized Frame Bottoms

In the *Preliminary Determination*, Commerce valued drawer slides, customized drawer slides, and customized frame bottoms using the AUV for HTS subheading 7216.91 (angles, shapes and sections, iron or nonalloy steel, other cold-formed or cold-finished from flat-rolled products) and customized clothes hanger bars using the AUV for HTS subheading 7215.50.99090 (other bars and rods of iron or non-alloy steel, not further worked than cold-formed or cold-finished, not elsewhere specified or included).[150] The petitioner requests that Commerce value these four inputs using the AUV for HTS subheading 8302.42 (mountings, fittings and similar articles not elsewhere specified or included (except hinges and castors), and parts thereof, suitable for furniture, of base metal). The petitioner contends that Commerce's preliminary valuations of

[144] *See, e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017), and accompanying I&D Memo at Comment 13.
[145] *See* Tongrun's SV comments dated October 10, 2017, at Exhibits 3C and 3D.
[146] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016), and accompanying I&D Memo at Comment 21, *aff'd, remanded on other grounds*, *Solarworld Ams., Inc. v. United States*, 273 F. Supp. 3d 1254, 1272-73 (CIT 2017) (*Solarworld*).
[147] *See* Tongrun's SV comments dated October 10, 2017, at Exhibits 3C and 3D.
[148] *Id.*
[149] *Id.* at Exhibit 3F.
[150] *See* Prelim SV Memo at Exhibit 2, "Surrogate Value" tab.

these four inputs relied on tariff classifications for simple pieces of metal in their basic steel mold form that need to be further processed for use, which do not resemble the finished, and often customized, parts used in the production of tool chests. For example, the petitioner describes drawer slides as finished products with complex units of weight bearings and multiple moving parts that are highly processed and refined. Similarly, according to the petitioner, customized frame bottoms and customized clothes hanger bars are finished parts mounted or fit to the base metal of the unit, not unfinished metal shapes or bars. The petitioner asserts that a CBP ruling found that the applicable Harmonized Tariff Schedule of the United States (HTSUS) subheading for steel drawer slides is HTSUS subheading 8302.42.3015, "which provides for base metal mountings, fitting and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like, other mountings, fittings and similar articles, other suitable for furniture, of iron or steel, of aluminum or of zinc."[151]

Tongrun requests that Commerce continue the preliminary valuation of these four inputs. Tongrun argues that HTS subheading 8302.42 is distortive because it covers a broad basket category that covers not only steel products but also other base metal products, *e.g.*, aluminum and zinc. According to Tongrun, the Petition explains that coils are slit into various widths and the slit steel pieces are cut to size, punched and bent into various shapes, and welded together to form various components of the chest and cabinets. As such, Tongrun claims, the values of frame bottoms and drawer slides are closely related to the value of underlying basic steel inputs. Tongrun states that drawer slides, customized drawer slides, and customized frame bottoms are produced from steel angles, shapes, and sections with minimal operations and produced from the same basic steel inputs. Tongrun contends that the petitioner did not justify the use of its proposed AUV, when its proposed AUV is more than 10 times of the average basic steel input prices.

Tongrun argues that HTS subheading 7216.91 provides a relatively more specific and reliable SV for its drawer slides, customized drawer slides, and customized frame bottoms. Tongrun claims that this HTS subheading covers a higher level of manufactured products – myriads of angles, shapes, and sections – produced from basic cold-rolled steel plates or sheets and that its drawer slides, customized drawer slides, and customized frame bottoms are produced from these angles, shapes, and sections, with minimal processing steps, *i.e.*, cutting, punching, bending, and welding. Tongrun denies that bearings and plastic parts in drawer slides would change the essential character of the steel sheets, sections, and shapes and transform it into an entirely different commodity. Tongrun argues that, for similar reasons, the preliminary AUV for customized clothes hanger bar is more specific and reliable because the underlying material of this input is cold-rolled steel bar.

Tongrun explains that, because the processing cost involved in the production of these four inputs is also captured in the calculation of the surrogate financial ratios, there is no undervaluation when Commerce continues the preliminary valuation of these four inputs, as the preliminary AUVs value the main underlying cold-rolled steel materials comprising these four

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[151] *See* the petitioner's case brief concerning Tongrun dated January 29, 2018, at 5, quoting the petitioner's SV rebuttal dated October 20, 2017, at 5 and Attachment 4.

inputs.

<u>Commerce's Position</u>: For the final determination, we continue to use the preliminary valuation for these four inputs. We find that HTS subheading 8302.42 is distortive because it covers a broad basket category that covers an unspecified variety of mountings, fittings, and other similar products made of unspecified variety of base metals for furniture. Because HTS subheading 8302.42 does not identify and describe the types and shapes of mountings, fittings, and other similar products that it covers, we do not know the extent to which HTS subheading 8302.42 covers products that are dissimilar to these four inputs. For example, we do not know whether HTS subheading 8303.42 covers mountings, fittings, or other similar products that are flat-shaped functional items similar to drawer slides and customized drawer slides or round-shaped items with additional decorative designs that are mounted or fitted to furniture. The petitioner describes drawer slides as finished products with complex units of weight bearings and multiple moving parts that are highly processed and refined but the product description of HTS subheading 8302.42 does not appear to capture even the complexity of drawer slides as described by the petitioner.

We find that HTS subheading 7216.91 provides a description of the products that are more comparable to drawer slides and customized drawer slides than HTS subheading 8302.42 does. HTS subheading 7216.91 covers, *inter alia*, angles and shapes from flat-rolled steel products. All drawer slides and customized drawer slides are in flat metal shapes and only some of them are made with a small amount of additional components.[152] HTS subheading 8302.42 does not describe whether it covers mountings, fittings, or similar products that are in flat metal shapes and performs similar functions as drawer slides or customized drawer slides. Also, HTSUS 8302.42.3015 covers a broad basket category of a variety of base metal mountings, fittings, and similar articles suitable for various purposes. For these reasons, we do not find that the CBP ruling that categorized specific types of steel drawer slide under HTSUS 8302.42.3015 is instructive for us to rely on HTS subheading 8302.42 to value drawer slides and customized drawer slides, as well as customized frame bottom and customized clothes hanger bars.

We find that the descriptions of the products covered by HTS subheadings 7216.91 and 7215.50.99090 are more specific to customized frame bottoms and customized clothes hanger bars, respectively, than the description of the products covered by HTS subheading 8303.42. A customized frame bottom is a frame in angles and shapes[153] and a customized clothes hanger bar is a bar. HTS subheadings 7216.91 and 7215.50.99090 cover products similar to these two inputs, *e.g.*, angles and shapes from flat-rolled steel products and steel bars, respectively, whereas, as explained above, HTS subheading 8303.42 does not. The petitioner's only reason for its requested reliance on HTS subheading 8303.42 to value these two inputs is that these two inputs are finished parts mounted or fit to the base metal of the unit, not unfinished metal shapes or bars. However, when the product description of HTS subheading 8303.42 appears to cover a

[152] *See* the Memorandum, "Less-Than-Fair-Value Investigation of Certain Tool Chests and Cabinets from the People's Republic of China: Final Determination Analysis Memorandum for the Tongrun Single Entity" (Tongrun Final Analysis Memorandum). at 4 for more details containing Tongrun's business proprietary information. *See also* the China Verification Report at Exhibits VE-6 and VE-8.
[153] *See* the Tongrun Final Analysis Memorandum at 4 for more details containing Tongrun's business proprietary information. *See also* the China Verification Report at Exhibit VE-8 and Tongrun's section D supplemental response dated September 26, 2017, at Exhibit SD-3.

broad basket category of mountings or fittings that may be vastly different from these two inputs, and when we have HTS subheadings 7216.91 and 7215.50.99090, which provide product descriptions closer to these two inputs, we have no basis to revise our valuation of these two inputs.

We disagree with the petitioner's assertion that products covered by HTS subheading 7216.91 are pieces of metal in their basic steel mold form that need to be further processed. Nothing in the product description of HTS subheading 7216.91 supports the petitioner's assertion and the petitioner points to no other information on the record to support its assertion. As explained above, we find that the product description for HTS subheading 7216.91 is more specific to the drawer slides, customized drawer slides, and customized frame bottoms than the product description for HTS subheading 8303.42 is.

Comment 7: Locking Components and Customized Locking Components

In the *Preliminary Determination*, Commerce valued locking components and customized locking components using the AUV for HTS subheading 7216.91 (angles, shapes and sections, iron or nonalloy steel, other cold-formed or cold-finished from flat-rolled products).[154] The petitioner requests that Commerce value locking components and customized locking components using the AUV for HTS subheading 8301.30 (locks of a kind used for furniture). The petitioner argues that, unlike angles, shapes, and sections that need further manufacturing, locks are highly processed complex machines refined with multiple moving parts. The petitioner argues further that locks are a complete finished product and should be valued accordingly.

Tongrun contends that the petitioner conflates locking components with finished locks with no supporting evidence on the record. Tongrun explains that locking components are components used for locks, instead of being finished locks. Tongrun asserts that, because its locking components comprise simple unfinished cold-rolled steel plates and parts, the preliminary valuation of its locking components is based on a more specific HTS subheading for these components. Tongrun states that the preliminary AUV for locking components and customized locking components represents a significant mark-up over the price of underlying basic steel inputs.

Commerce's Position: For the final determination, we continue to use the preliminary valuation for locking components and customized locking components. Tongrun's description of locking components and customized locking components is consistent with the locking components and customized locking components that we examined during the verification in China.[155] Also, as the petitioner explains, locks are highly processed complex machines refined with multiple moving parts, whereas, as Tongrun explains, locking components, whether customized or not, comprise of simple steel parts.[156] Therefore, we find it unreasonable to equally value one

[154] *See* Prelim SV Memo at Exhibit 2, "Surrogate Value" tab.
[155] *See* the Tongrun Final Analysis Memorandum at 5 for more details containing Tongrun's business proprietary information. *See also* Tongrun's section D supplemental response dated September 26, 2017, at 7, and Exhibit SD-18, and the China Verification Report at 21 and Exhibit VE-6.
[156] *See* the Tongrun Final Analysis Memorandum at 5 for more details containing Tongrun's business proprietary information. *See also* Tongrun's section D supplemental response dated September 26, 2017, at 7, and Exhibit SD-18, and the China Verification Report at 21 and Exhibit VE-6.

kilogram of a simple steel part used as a locking component or a customized locking component and one kilogram of a lock composed of complex parts.

Comment 8: Other Customized Inputs

In the *Preliminary Determination*, Commerce valued Tongrun's customized connection plate, customized drawer body, customized drawer front, customized lid, customized lid side cover, customized pillar, customized reinforced plate, customized side tray, customized side mounting plate, customized steel divider, customized steel pegboard, customized supporting plate, and customized tray body using the AUV for HTS subheading 7216.91 (angles, shapes and sections, iron or nonalloy steel, other cold-formed or cold-finished from flat-rolled products).[157] In addition, in the *Preliminary Determination*, Commerce valued Tongrun's customized clothes hanger and customized side handles steel using the AUV for HTS subheading 7323.99.90000 (table, kitchen or other household articles and parts thereof, of iron (not cast) and steel (not stainless), not enameled: Other).[158]

The petitioner requests that Commerce value these inputs using the AUV for HTS 7326.90 (other articles of iron or steel). The petitioner explains that HTS subheading 7216.91 covers unfinished metal shapes, not parts or components that can be incorporated into a finished product without further manufacturing. The petitioner contends that Tongrun's customized inputs are not simple angles and shapes but specifically designed and manufactured pieces for use by a specific customer. According to the petitioner, this customization process requires that they be treated differently from the simple angles and shapes.

The petitioner claims that customized clothes hangers and customized side handles steel and are not used in kitchen or other household articles but they are specifically designed to be used in the tool chests Tongrun produced upon orders from its customers. As a result, according to the petitioner, these customized parts must be designed to withstand significant wear and tear in different work environments. The petitioner argues that these customized inputs are not comparable to standard table, kitchen, and other household items designed for a completely different environment and under less stringent standard of durability. The petitioner asserts that, because these inputs cannot be classified as simple shapes or angles and are not designed for use in kitchen or other household articles, they are properly classified under HTS subheading 7326.90.

Tongrun denies that these customized inputs are designed parts involving inherently different and higher levels of the manufacturing process. Tongrun states that these customized inputs are parts and components that were produced based upon its designs and specification. Tongrun states further that these customized inputs are allocated the same way as regular inputs. Tongrun contends that the petitioner does not explain how Tongrun's mere labeling of certain customer-specific or product-code-specific components as customized implies that these components are inherently different than regular components.

Tongrun argues that there is no evidence on the record indicating essential differences of physical characteristics between regular components and customized components. Tongrun explains that

[157] *See* Prelim SV Memo at Exhibit 2, "Surrogate Value" tab.
[158] *Id.*

its coding of certain components as customized components is mainly for accounting convenience. Tongrun claims that the petitioner does not offer any record evidence justifying a valuation of customized components differently from the simple angles and shapes.

Tongrun contends that, because HTS subheading 7326.90 is a residuary, catch-all, and overbroad basket category that encompasses myriad types of finished steel products and articles, this HTS subheading is not product-specific to Tongrun's customized components. More importantly, according to Tongrun, the AUV for HTS subheading 7326.90 is aberrationally high because it is more than 10 times those of cold-rolled angles, shapes, and sections covered by HTS subheading 7216.91 and about 25 times of the average of the preliminary AUVs of basic cold-rolled steel inputs. Tongrun claims that the petitioner did not justify the reliance of a basket category such as HTS subheading 7326.90 and *Solarworld* sustained Commerce's decision not to use a broad basket category. Tongrun states that the petitioner merely surmises that the production of customized components involves additional processing costs not captured in the AUV for HTS subheading 7216.91.

In response to the petitioner's request to revise the valuation of customized clothes hanger and customized side handles steel, Tongrun argues that the petitioner does not explain how a broad basket category covered by HTS subheading 7326.90 is specific to these inputs. Tongrun calls the AUV for HTS subheading 7326.90 aberrational and unreasonable to values these two inputs. Tongrun also argues that the petitioner's request is not based on an alleged distinction between components designed for kitchen and households versus components designed for tool chests. Finally, Tongrun claims that the preliminary valuation of these two inputs is not only more specific as compared to the AUV for HTS subheading 7326.90 but also yields a SV sufficiently marked up from the SVs of cold-rolled basic steel inputs.

<u>Commerce's Position</u>: For the final determination, we continue to use the preliminary valuations of these inputs. For the inputs in question that we preliminarily valued using the AUV for HTS subheading 7216.91, we find that this HTS subheading provides a more specific description of the covered products than HTS subheading 7326.90 does.

Customized parts and components are parts and components designed specifically for particular product codes. Tongrun's use of customized components depended on the different sizes and structures of the products in order to meet the customers' requirements.[159] For some of these customized inputs, we obtained and analyzed their diagrams and pictures.[160] For some others, during the verification in China, we examined the pictures of them and also physically examined some of them.[161] Based on our overall analysis, we find that the customized inputs at issue that we valued using the AUV for HTS subheading 7216.91 are similar to the products covered by HTS subheading 7216.91, which covers flat steel products.[162] HTS subheading 7326.90 covers a

[159] *See* the China Verification Report at 19.
[160] *See* Tongrun's section A response dated July 11, 2017, at Exhibit A-20, and Tongrun's section D supplemental response dated September 26, 2017, at 2, 7, and Exhibits SD-13, SD-17, and SD-18.
[161] *See* the China Verification Report at 19 and Exhibit VE-6.
[162] *See* the Tongrun Final Analysis Memorandum at 5-7 for more details containing Tongrun's business proprietary information. *See also* Tongrun's section D supplemental response dated September 26, 2017, at 2, 7, and Exhibits SD-13, SD-17, and SD-18, the China Verification Report at 19 and Exhibit VE-6, and the Petition dated April 11, 2017, Volume I, at 14 ("All subject merchandise is made from flat-rolled steel, typically cold-rolled and/or stainless steel coils….").

broad basket category of articles of iron or steel not elsewhere specified or included and it does not explain whether it covers products similar to the inputs at issue. Therefore, we find it more reasonable to continue to value these inputs at issue using the AUV for HTS subheading 7216.91 than value these inputs at issue using the AUV for HTS subheading 7326.90. Also, as explained above in Comment 6, there is no evidence substantiating that HTS subheading 7216.91 covers metal shapes that are unfinished.

We also find it reasonable to continue to use the preliminary valuation of customized clothes hanger and customized side handles steel. HTS subheading 7323.99.90000 covers table, kitchen or other household articles and parts thereof, of iron (not cast) and steel (not stainless), not enameled. The petitioner stated in the Petition that all tool chests are "used primarily for tool and equipment storage by consumers in homes and garages."[163] Therefore, for purposes of valuing customized clothes hanger and customized side handles steel, we find it more reasonable to categorize tool chests as household articles and value these two inputs as parts attached to household articles under HTS subheading 7323.99.90000 than rely on HTS subheading 7326.90. As explained above, HTS subheading 7326.90 covers a broad basket category of articles of iron or steel not elsewhere specified or included and, thus, does not specify details of the products covered as HTS subheading 7323.99.90000 does.

Comment 9: Preformed Plastic Parts

In the *Preliminary Determination*, Commerce valued work surface plastic using the AUV for HTS subheading 3921.90 (plates, sheets, film, foil and strip of plastics, not elsewhere specified or included, non-cellular plastics not elsewhere specified or included).[164] Also in the *Preliminary Determination*, Commerce valued drawer trim plastic, plastic molded parts – sponge, plastic molded parts – PE, plastic molded parts – POM, plastic molded parts – PP, and plastic molded parts – PU using the AUV for HTS subheading 3924.90.90090 (household articles not elsewhere specified or included (other than tableware and kitchenware) and toilet articles, of plastics: other).[165] The petitioner requests that Commerce value these plastic inputs using the AUV for HTS subheading 3926.90, which the petitioner describes as "other articles of plastics and articles of other materials of headings 3901 to 3914: other."

The petitioner argues that the plastic inputs at issue are not: (1) simple pre-formed plastic inputs and (2) designed for use in household articles. The petitioner explains that these plastic inputs are pre-formed to an exact specification for use in heavy duty tool chests. The petitioner explains further that these plastic inputs are comprised of several different plastic materials and perform various functions. The petitioner notes that Tongrun did not provide the specific end use and chemical composition of these plastic parts. The petitioner contends that HTS subheading 3926.90 provides the most specific classification to cover all plastic inputs at issue, whereas Tongrun's proposed AUVs are narrowly defined and less specific.

Tongrun argues that HTS subheading 3926.90 covers a basket category of various residual types of plastic products and would not be a reliable basis to value the plastic inputs at issue. Tongrun explains that HTS subheading 3921.90 specifically covers work surface plastic because it is a

[163] *See* the Petition dated April 11, 2017, Volume I, at 14.
[164] *See* Prelim SV Memo at Exhibit 2, "Surrogate Value" tab.
[165] *Id.*

plastic sheet, whereas HTS subheading 3926.90 is a basket category encompassing several different types of finished plastic articles and products that are not related or specific to work surface plastic. Tongrun claims that its plastic molded parts at issue are in the same class of goods as household plastic articles and tool chests are used in households, whereas HTS subheading 3926.90 covers a wide range of finished plastic articles with industrial and non-industrial applications. Citing *Solarworld*, Tongrun contends that administrative and judicial precedents favor the reliance on a comparatively more specific HTS subheading category over a reliance on a broad basket HTS subheading category to value an input.

Commerce's Position: For the final determination, we continue to use the preliminary valuation for these plastic inputs. As the petitioner explains, HTS subheading 3926.90 covers articles of plastics that are not specified or included elsewhere. Tongrun's work surface plastic is one type of work surface liners like drawer liners and, thus, is a plastic sheet[166] and HTS subheading 3921.90 specifically covers plastic sheets. Also, as explained in Comment 8 above, the petitioner stated in the Petition that all tool chests are "used primarily for tool and equipment storage by consumers in homes and garages."[167] For the other plastic parts in question, Tongrun reported that it purchased and used them as parts to the completed subject merchandise.[168] During the verification in China, we selected some of these plastic parts by material codes and reviewed the purchase traces and pictures of them.[169] These plastic inputs are parts of the completed subject merchandise "used primarily for tool and equipment storage by consumers in homes and garages."[170] Therefore, for purposes of valuation of all other plastic inputs at issue, we find it reasonable to rely on HTS subheading 3924.90.90090, which covers, *inter alia*, household articles of plastics, than to rely on HTS subheading 3926.90, which covers a broad basket category of articles of plastics not specified or included elsewhere and does not provide different specifications, material types, and functions of plastics covered.

Comment 10: Electro Coating and Powder

In the *Preliminary Determination*, Commerce valued electro coating and powder using the AUV for HTS subheading 2909.43 (monobutyl ethers of ethylene glycol or of diethylene glycol).[171] The petitioner requests that Commerce value these inputs using the AUV for HTS subheading 3907.30 (polyacetals, other polyethers and epoxide resins, in primary forms; polycarbonates,

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[166] *See* Tongrun's section D response dated August 7, 2017, at 12, and Exhibit D-4, as amended for bracketing in Tongrun's section D supplemental public information dated August 10, 2017, at Exhibit 1, and Tongrun's section D supplemental response dated September 26, 2017, at Exhibit SD-8, for different types of work surface liners, *e.g.*, work surface plastic, work surface plywood, and work surface rubber, and the China Verification Report at Exhibit VE-6.
[167] *See* the Petition dated April 11, 2017, Volume I, at 14.
[168] *See* Tongrun's section D response dated August 7, 2017, at 12, and Exhibit D-4, as amended for bracketing in Tongrun's section D supplemental public information dated August 10, 2017, at Exhibit 1, Tongrun's section D supplemental response dated September 26, 2017, at Exhibits SD-3 and SD-8, and the China Verification Report at 22 and Exhibits VE-6 and VE-8.
[169] *See* the Tongrun Final Analysis Memorandum at 7 for more details containing Tongrun's business proprietary information. *See also* Tongrun's section D supplemental response dated September 26, 2017, at Exhibit SD-3, and the China Verification Report at 22 and Exhibits VE-6 and VE-8.
[170] *See* the Petition dated April 11, 2017, Volume I, at 14.
[171] *See* Prelim SV Memo at Exhibit 2, "Surrogate Value" tab.

alkyd resins, polyallyl esters, and other polyesters, in primary forms: epoxide resins). The petitioner claims that a CBP ruling indicates that anti-corrosion coatings applied with or without static electricity should be classified under HTS subheading 3907.30. The petitioner contends that Tongrun did not provide any evidence indicating that these inputs have a chemical composition under HTS subheading 2909.43. Moreover, according to the petitioner, because Commerce verified that the main coating material for Tongrun's products is a polyester-based auto-body putty, it would be inappropriate to rely on an HTS subheading for monobutyl ethers of ethylene glycol or diethylene glycol to value polyester-based electro coating and powder.

Tongrun did not respond to the petitioner's argument.

Commerce's Position: For the final determination, we valued electro coating and powder using the AUV for HTS subheading 3907.30. We find that this revision to the valuation of electro coating and powder is consistent with Tongrun's use of polyester epoxy powders and epoxy powders for coating.[172] However, the "main coating material" that we identified as a polyester-based auto-body putty in the China verification report is in fact the material Tongrun separately reported as repair chemicals,[173] for which the petitioner raised another valuation issue and we address in Comment 11 below.[174]

Comment 11: Repair Chemicals

In the *Preliminary Determination*, Commerce valued repair chemicals using the AUV for HTS subheading 3906.90 (acrylic polymers not elsewhere specified or included, in primary form).[175] The petitioner requests that Commerce value repair chemicals using the AUV for HTS subheading 3815.90 (reaction initiators, reaction accelerators and catalytic preparations, not elsewhere specified or included). The petitioner claims that the classification for HTS subheading 3906.90 is not specific to the inputs Tongrun purchased and incorporated into final products. The petitioner contends that the record does not support the preliminary valuation of repair chemicals because Tongrun did not provide the chemical composition or any other description of repair chemicals. The petitioner explains that, according to a CBP ruling, the applicable HTS subheading for separately imported BPO catalysts is 3815.90.5000, which provides for reaction initiators, reaction accelerators, and catalytic preparations, not elsewhere specified or included.

The petitioner states that the BPO catalyst subject to this CBP ruling was used to initiate polymerization of polyester-based putties and Commerce's verification indicates that Tongrun's repair chemicals are a catalytic preparation for polyesters, not acrylic polymers, and should be valued accordingly for the final determination.

Tongrun did not respond to the petitioner's argument.

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[172] *See* Tongrun's section D supplemental response dated September 26, 2017, at 6 and Exhibit SD-15, and Tongrun's section D supplemental response dated October 18, 2017, at Exhibit S2-D2.
[173] *Id. See also* the China Verification Report at 19-20, and Exhibit VE-5.
[174] *See* Comment 11, *infra*.
[175] *See* Prelim SV Memo at Exhibit 2, "Surrogate Value" tab.

Commerce's Position: For the final determination, we continue to use the preliminary valuation for repair chemicals. Tongrun reported that repair chemicals are polyester-based auto-body putty with different color coatings that are used to repair parts and components.[176] During the verification in China, we found that Tongrun's repair chemicals are the mixture of polyester-based auto-body putty and a hardener. The auto-body putties are the main coating materials that become repair chemicals when mixed with the hardener, which is a catalyst.[177] Based on the mix ratio and quantity of polyester-based auto-body putties and the hardener that we examined during the verification in China,[178] we do not find that the repair chemicals in question can be valued as catalysts or any other types of reaction initiators, reaction accelerators, or catalytic preparations. The BPO catalyst in the CBP ruling the petitioner relies on is the hardener mixed with polyester-based auto-body putties to create polymerized repair chemicals.[179] The CBP ruling in this regard is not reliable for us to revise the valuation of repair chemicals.

Comment 12: Labor

Tongrun disagrees with Commerce's preliminary valuation of labor based on the quarter-specific POI data from the Thai National Statistics Office's (NSO) Labor Force Survey (POI Labor Force Survey data). Tongrun describes the POI Labor Force Survey data as overly broad with one manufacturing sector category that represents an average of labor cost data covering different manufacturing sectors. Tongrun argues that the 2011 Thai Industrial Census data (2011 Industrial Census data), which were released in 2012, provide labor cost data specific to the manufacture of fabricated metal products, which specifically includes manufacturing establishments engaged in producing the subject merchandise, which is fabricated from metal sheets. Tongrun explains that the 2011 Industrial Census data contain specific details Commerce can rely on to value labor for the final determination.

Tongrun explains that Commerce used the 2011 Industrial Census data in *Activated Carbon 2012-2013*[180] because of the industry-specific nature of the 2011 Industrial Census data. Tongrun explains further that Commerce inflated the 2006 NSO data to value labor in *Diamond Sawblades 2012-2013 Prelim.*[181] Citing*, e.g.*, *Taian Ziyang Food Co., Ltd. v. United States*, 98 F. Supp. 2d 1345, 1357 (CIT 2013), Tongrun claims that Commerce's preference to use industry-specific labor data over the broader general manufacturing labor data is consistent with how Commerce values all other FOPs.

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[176] *See* Tongrun's section D supplemental response dated September 26, 2017, at 6, and Tongrun's section D supplemental response dated October 18, 2017, at Exhibit S2-D2.
[177] *See* the China Verification Report at 19-20 and Exhibit VE-5, which contains the business proprietary mix ratio and the weights of these two materials.
[178] *Id.*
[179] *See* the petitioner's SV comments dated October 11, 2017, at Attachment 2, and the petitioner's SV rebuttals dated October 20, 2017, at Attachment 2.
[180] *See* Tongrun's case brief dated January 31, 2018, at 24 and 28, citing *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (November 7, 2017) (*Activated Carbon 2012-2013*), and accompanying I&D Memo at Comment 7.
[181] *Id.* at 24, citing *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71980, 71982 (December 4, 2014) (*Diamond Sawblades 2012-2013 Prelim*).

Tongrun distinguishes this investigation from *PVLT Tires*,[182] in which Commerce valued labor using the NSO's Labor Force Survey data contemporaneous with the period of that investigation. Tongrun notes that *Activated Carbon 2012-2013* did not follow *PVLT Tires* and used the 2011 Industrial Census data. Tongrun argues that, contrary to Commerce's finding in *PVLT Tires* that an Industrial Census report does not contain certain indirect labor costs (*i.e.*, vocational training, welfare services, recruitment, and other miscellaneous items), Commerce found in *Activated Carbon 2012-2013* that the 2011 Industrial Census data encompass all elements of indirect labor costs covered by the ILO Chapter 6A data (*e.g.*, work clothes, food, housing, vocational training, welfare services, employee recruiting, medical care, transportation, *etc.*) as miscellaneous items and fringe benefits. Tongrun also argues that the 2011 Industrial Census data includes employer's contribution to social security. Tongrun explains that an official letter from the NSO clarified that: (1) the 2011 Industrial Census data were based on employers' reports of not only wages, overtime, bonus, medical care, and other benefits provided to individual employees, but also employers' contribution to social security, which was not directly provided to the employees but still a part of total labor cost; (2) whereas the quarterly Labor Force Survey reports do not include employers' contribution to social security.

Tongrun also claims that the 2011 Industrial Census data are based on survey responses from a large number of employers who would have access to indirect labor costs from their accounting records and the POI Labor Force Survey data are based on survey responses from a small sample of employees who are unlikely to have access to indirect labor costs of their employers. For this reason, Tongrun explains, the 2011 Industrial Census data contain full direct and indirect labor costs, whereas the POI Labor Force Survey data may not contain full direct and indirect labor costs and thus provide less accurate data than the 2011 Industrial Census data do. Tongrun states that the NSO official clarification confirms that the 2011 Industrial Census data are verified, whereas the POI Labor Force Survey data are not.

Tongrun requests that Commerce inflate the 2011 Industrial Census data with the consumer price index (CPI) to value labor for the final determination of this investigation. Tongrun explains that Commerce prefers using the CPI to inflate labor costs even in instances where any other measure of inflation does not correspond with the CPI data. Tongrun explains that Commerce stated in *Steel Hangers*[183] and *Activated Carbon 2008-2009*[184] its preference to value labor by inflating pre-POI labor data that specifically cover the manufacturing of the subject merchandise when there is a relationship between the average increase in a country's CPI and its average wage rate. Tongrun claims that the NSO official clarification letter also supports the inflation of the 2011 Industrial Census data with the CPI to value labor.

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[182] *Id.* at 25 and 29, citing *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) (*PVLT Tires*), and accompanying I&D Memo at Comment 13.

[183] *Id.* at 30, citing *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553, 12555 (March 1, 2012) (*Steel Hanger*).

[184] *Id.* at 31, citing *Certain Activated Carbon from the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208, 70211 (November 17, 2010) (*Activated Carbon 2008-2009*).

The petitioner requests that Commerce continue to value labor using the POI Labor Force Survey data. The petitioner asserts that, although the 2011 Industrial Census data contain somewhat more specific details than the POI Labor Force Survey data do, Commerce properly relied on contemporaneity to select the POI Labor Force Survey data to value labor. The petitioner argues that Commerce's practices is to rely on more contemporaneous data over more specific data when there is a significant lag time between the more specific data and the POI contemporaneous data. According to the petitioner, labor supply and labor demand affect labor costs and these factors are outside the general inflation accounted for in the CPI adjustment. The petitioner claims that the five-year lag in this investigation presents an even longer lag and a greater distortion than in *Tapered Roller Bearings*,[185] in which Commerce determined that a two-year lag is a significant lag time not to use the 2011 Industrial Census data to value labor.

The petitioner distinguishes *Activated Carbon 2012-2013* from this investigation. The petitioner contends that, unlike *Activated Carbon 2012-2013* where the 2011 Industrial Census data contained a labor category that explicitly includes the production of activated carbon, the 2011 Industrial Census data in this investigation do not contain a labor category that explicitly includes tool chests. For this reason, the petitioner argues, both the 2011 Industrial Census data and the POI Labor Force Survey data do not have a category specifically covering the labor in the tool chests production. The petitioner claims that the category of the manufacture of other fabricated metal products in the 2011 Industrial Census data covers a broad basket category of products that may or may not include metal tool chests and, even if it includes tool chests, it would not be as specific as it was in *Activated Carbon 2012-2013*.

The petitioner contends that the POI Labor Force Survey data provide Commerce with a fully loaded labor costs, including social security contribution as a part of the fringe benefits, whereas the 2011 Industrial Census data do not capture vocational training, welfare services, recruitment, and other miscellaneous items. The petitioner claims that the official letter from the NSO does not dispute that the POI Labor Force Survey data contain social security contribution as a part of the fringe benefits. The petitioner explains that the number of interviewees for the compilation of the POI Labor Force Survey data does not invalidate the use of the POI Labor Force Survey data because the Thai government finds them to be sufficiently probative of Thai labor wages. The petitioner claims that the number of interviewees provides no basis to find the POI Labor Force Survey data to be deficient or inferior.

<u>Commerce's Position</u>: We find that the record evidence supports our continued reliance on the POI Labor Force Survey data to value labor for the final determination of this investigation. In this investigation, the POI Labor Force Survey provides superior data, even if the 2011 Industrial Census is adjusted for inflation.

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.[186] We did not, however, preclude all other sources for evaluating

[185] *See* the petitioner's case brief concerning Tongrun dated January 29, 2018, at 18, citing *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) (*Tapered Roller Bearings*), and accompanying I&D Memo at Comment 4.
[186] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of*

labor costs in NME AD proceedings. Rather, we continue to select the best available information to determine SVs for inputs such as labor.[187]

The POI 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.[188] Our reliance on the contemporaneity of the POI Labor Force Survey data to value labor is appropriate to fulfill our statutory directive[189] but we did not rely on the contemporaneity alone in our valuation of labor.[190] A closer examination of record evidence for these two data sources reveals that the POI 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 POI Labor Force Survey data are preferable.[191]

In *Labor Methodologies*, Commerce found that the ILO Chapter 6A is the primary source of labor cost data, in that these data best account for all direct and indirect labor costs.[192] Since ILO Chapter 6A data for Thailand are not on the record of this investigation, we compared the direct and indirect labor cost elements in the 2011 Industrial Census data and the POI Labor Force Survey data to the same elements described in the ILO Chapter 6A definition.[193]

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.[194] The POI 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.[195] The 2011 Industrial Census data include wages, salaries, overtime bonus, fringe benefits (medical care, others), and employer's contribution to social security.[196]

We find that the POI 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 POI Labor Force Survey data provide compensation of

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Production: Labor, 76 FR 36092, 36093 (June 21, 2011) (*Labor Methodologies*).

[187] *See Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying I&D Memo at Comment 3, and *Tapered Roller Bearings* and accompanying I&D Memo at Comment 4.

[188] *See Tapered Roller Bearings* and accompanying I&D Memo at Comment 4.

[189] *See Diamond Sawblades Manufacturers' Coalition*, slip op. 18-28, at 27, citing and quoting *Shakeproof Assembly Components Div. of Ill. Tool Works, Inc. v. United States*, 30 CIT 1173, 1177-78 (2006) ("Commerce's reliance on valuation information from within that specific time period is clearly an appropriate means of fulfilling {its} statutory directive.").

[190] *Id.* ("In any event, Commerce's determination did not rest upon contemporaneity alone, ….").

[191] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 38673 (June 14, 2016) (*Diamond Sawblades 2013-2014*), and accompanying I&D Memo at Comment 16, *aff'd, remanded on other grounds, Diamond Sawblades Manufacturers' Coalition*, slip op. 18-28, at 21-32.

[192] *See Labor Methodologies*, 76 FR at 36092-93.

[193] *See PVLT Tires* at Comment 13, where Commerce discusses the ILO Chapter 6A data.

[194] *Id.*

[195] *See* the petitioner's SV comments dated August 18, 2017, at Attachment 4.

[196] *See* Tongrun's SV comments dated August 18, 2017, at Exhibit 3A.

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). Although Appendix B of the 2011 Industrial Census data explains 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.,"[197] the 2011 Industrial Census data categorize fringe benefits only as "Medical care" and "Others" and do not specify whether work clothes, food, and housing are in fact included in the "Others" category of fringe benefits.[198] 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 POI Labor Force Survey data.[199] While the 2011 Industrial Census data are specific to the relevant industry, they are neither contemporaneous with the POI nor as or more detailed than the POI Labor Force Survey in terms of matching categories of labor costs specified in the ILO Chapter 6A labor data.[200] Therefore, we find that the general manufacturing labor data in the POI Labor Force Survey provide the best available information for purposes of the final determination of this investigation.[201]

We did not rely on the NSO clarification letter because it does not describe the methodology the NSO used to compile labor data for the POI. The NSO clarification was issued in September 2015 (more than a year prior to the beginning of the POI) and it explains only the difference in methodology between the 2011 Labor Force Survey and the 2011 Industrial Census data, not the difference in methodology between the POI Labor Force Survey and the 2011 Industrial Census data.[202] The NSO clarification letter is merely an "opinion, albeit an official one, and it is not dispositive as to which of the two sets of data Commerce could choose as the best information available on the record."[203] In any event, because we have reliable surrogate labor data, which are contemporaneous with the POI, we do not find it necessary to rely on labor data that predate the POI by adjusting the data for inflation.

We do not find that *Activated Carbon 2012-2013* is applicable to this investigation because the 2011 Industrial Census data in that case contained a labor category that explicitly includes the production of activated carbon, whereas the 2011 Industrial Census data in this investigation do not contain a labor category that explicitly includes tool chests. Therefore, the 2011 Industrial Census data in this investigation are not as specific as they were in *Activated Carbon 2012-2013*. We also do not find that *Diamond Sawblades 2012-2013 Prelim* is applicable to this investigation. In the subsequent administrative reviews of the AD order on diamond sawblades and parts thereof from China, we selected the Labor Force Survey data over the 2011 Industrial Census data for the same reasons we explained above and because the 2011 Industrial Census

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[197] *Id.* at Exhibit 3A, "Appendix B: Definitions."
[198] *Id.* at Exhibit 3A.
[199] *See Diamond Sawblades 2013-2014* and accompanying I&D Memo at Comment 16, *aff'd, remanded on other grounds*, *Diamond Sawblades Manufacturers' Coalition*, slip op. 18-28, at 21-32.
[200] *Id.*
[201] *Id.*
[202] *See* Tongrun's SV comments dated August 18, 2017, at Exhibit 3C. *See also Diamond Sawblades Manufacturers' Coalition*, slip op. 18-28, at 27-28.
[203] *See Diamond Sawblades Manufacturers' Coalition*, slip op. 18-28, at 27.

data could not reasonably reflect the labor cost, even after the adjustment for inflation, whereas the POR-contemporaneous Labor Force Survey data did so without any adjustment.[204] The CIT sustained our decision to select the Labor Force Survey data over the 2011 Industrial Census data.[205]

Comment 13: Selection of Financial Statements

In the *Preliminary Determination*, Commerce used the financial statements of Bangkok Sheet Metal Public Co., Ltd. (Bangkok Sheet) to calculate the surrogate financial ratios.[206] Tongrun requests that Commerce use the financial statements of Pattarapong Engineering Limited Partnership (Pattarapong) to calculate the surrogate financial ratios for the final determination. Tongrun disagrees with Commerce's preliminary determination that the absence of the cost of production in Pattarapong's financial statements indicates that Pattarapong is not a producer of comparable merchandise.

Tongrun asserts that the cost of raw materials utilized and reported in Pattarapong's financial statements indicate that Pattarapong is a producer of goods. Tongrun argues that, if Pattarapong were a trader of goods, its financial statements would not have reported the cost of raw materials utilized during the fiscal year. Tongrun claims that additional costs in Pattarapong's financial statements indicate Pattarapong's production activities, *e.g.*, labor costs, subcontractor labor costs, and electricity bill fee. With respect to the electricity bill fee, which is itemized under administrative expenses, Tongrun believes that it is a production-related energy cost because Pattarapong's financial statements provide no other line items for the cost of energy. In this regard, Tongrun argues, it is a settled proposition that a party's manner of accounting for a certain line-item expense (whether under cost of manufacture or administrative expense) is not dispositive and Commerce has the flexibility and discretion to reallocate the same expense under a different and more suitable accounting category for the calculation of the surrogate financial ratios. Tongrun contends that, because Pattarapong's financial statements show that Pattarapong is engaged in a business of metal sheets, Pattarapong is a producer of metal sheets, which is the primary constituent material of the subject merchandise. As such, according to Tongrun, Pattarapong is a producer of comparable merchandise.

In addition, Tongrun argues that Pattarapong's financial statements provide a better data quality than Bangkok Sheet's financial statements do. Tongrun explains that Bangkok Sheet's financial statements provide a basket category line item for "Raw materials and consumables used and subcontracting works," although consumables used and subcontracting works are overhead expenses. Tongrun contends that Bangkok Sheet's financial statements provide no option except allocating them under raw materials and distorting overhead ratios, whereas Pattarapong's financial statements do not cause such a distortion.

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[204] *See Diamond Sawblades 2013-2014* and accompanying I&D Memo at Comment 16, *aff'd, remanded on other grounds*, *Diamond Sawblades Manufacturers' Coalition*, slip op. 18-28, at 21-32, and *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912 (June 12, 2017), and accompanying I&D Memo at Comment 14.
[205] *See Diamond Sawblades 2013-2014* and accompanying I&D Memo at Comment 16, *aff'd, remanded on other grounds*, *Diamond Sawblades Manufacturers' Coalition*, slip op. 18-28, at 21-32.
[206] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 30.

Tongrun also points out that, unlike Bangkok Sheet's financial statements, Pattarapong's financial statements provide electricity costs, which it claims is an important consideration in the selection of financial statements. Citing *Solar Wind Towers*[207] and *Diamond Sawblades 2011-2012*,[208] Tongrun argues that Commerce does not prefer financial statements that do not separately itemize energy expenses, when the record provides suitable alternatives. Tongrun also points out that Bangkok Sheet's financial statements do not provide a line-item expense for the transportation costs, which are excluded from the calculation of the surrogate financial ratios to avoid double counting of the same cost. Tongrun believes that Bangkok Sheet's transportation costs are included in either selling expenses or administrative expenses and distorts the SG&A expense ratio. Tongrun claims that, because Pattarapong's financial statements provide a separate line item for the transportation costs, there can be no such distortions. Citing *Diamond Sawblades 2011-2012*, Tongrun argues that Commerce prefers financial statements with comparable products and usable details over financial statements with identical and/or more comparable products but lacking necessary details.

The petitioner requests that Commerce continue to use Bangkok Sheet's financial statements for the calculation of the surrogate financial ratios. The petitioner states that Bangkok Sheet is a producer of a comparable merchandise, *i.e.*, metal cabinets, and Bangkok Sheet's financial statements are contemporaneous with the POI and sufficiently detailed for the calculation of the surrogate financial ratios. The petitioner argues that Pattarapong is not a producer and Commerce does not use financial statements of trading companies and distributors for the calculation of surrogate financial ratios.

The petitioner claims that Pattarapong's financial statements explicitly identify the company as a distributor of metal sheet, equipment, and construction materials for all kinds. The petitioner contends that a reference to raw materials in Pattarapong's financial statements does not establish that the company is a producer of merchandise. The petitioner explains that, because all companies, including distributors like Pattarapong, incur labor and electricity costs, these costs do not establish that the company is a producer of merchandise. Moreover, according to the petitioner, Pattarapong does not even use the word "production" in its financial statements.

The petitioner explains that office equipment and vehicles comprise 97 percent of Pattarapong's costs and 96 percent of Pattarapong's accumulated depreciations, which indicates that Pattarapong is a company with a distribution network with no production capacity. The petitioner contends that, even assuming *arguendo* that the "raw materials utilized" in Pattarapong's financial statements indicate that Pattarapong does indeed produce some merchandise, Tongrun has not identified the merchandise or established that the merchandise is comparable to the subject merchandise.

The petitioner argues that, because Pattarapong is not a producer of comparable merchandise, the quality of data in Pattarapong's financial statements is irrelevant. Moreover, the petitioner disputes Tongrun's claim of distortion in the calculation of the surrogate overhead ratio due to the inclusion of raw materials with consumables and subcontracting works. The petitioner explains that the inventory notes in Bangkok Sheet's financial statements provide specific line

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[207] *See* Tongrun's case brief at 36, citing *Utility Scale Wind Towers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992, 75997 (December 26, 2012).
[208] *Id.* citing *Diamond Sawblades 2011-2012*, 79 FR at 35725.

items for the costs of finished goods, work in process, and raw materials, each of which is added to the denominator in the preliminary calculation of the surrogate financial ratios. The petitioner explains further that Bangkok Sheet's financial statements individually itemize the transportation costs. The petitioner asserts that, even though Bangkok Sheet's financial statements do not individually itemize its electricity costs, Pattarapong's financial statements are not a viable alternative and there are no other viable alternatives to Bangkok Sheet's financial statements.

<u>Commerce's Position</u>: For the final determination, we continue to use Bangkok Sheet's financial statements for the reasons stated in the *Preliminary Determination*.[209] We did not use Pattarapong's financial statements because Pattarapong is a distributor, not a producer.[210] Although Pattarapong reports raw materials costs in its financial statements, Pattarapong's financial statements do not identify the type of products that Pattarapong produces.[211] Therefore, we have no information to determine that Pattarapong is a producer of identical or comparable merchandise.

We find that Tongrun's reliance on *Diamond Sawblades 2011-2012* is misplaced because in *Diamond Sawblades 2011-2012*, the financial statements of two companies at issue were producers of identical and/or comparable merchandise.[212] In this investigation, Bangkok Sheet is a producer of a comparable merchandise and the record evidence does not support a finding that Pattarapong is a producer. Although Pattarapong reports raw material costs in its financial statements, if a company explicitly states in its financial statements that the company is not a producer of a comparable merchandise, we do not use the company's financial statements for the calculation of surrogate financial ratios.[213] Pattarapong's financial statements identify Pattarapong as a distributor, not a producer of any type of merchandise. Therefore, we have no reason to use Pattarapong's financial statements to revise our preliminary calculation of the surrogate financial ratios. Despite few deficiencies alleged by Tongrun, Bangkok Sheet's financial statements are the only viable financial statements on the record of this investigation for us to calculate the surrogate financial ratios.

Comment 14: Use of Financial Statements

Tongrun requests that, if Commerce continues to use Bangkok Sheet's financial statements, Commerce should also use Pattarapong's financial statements. Tongrun argues that Pattarapong's financial statements provide comparable production experience, usable data, and superiority over Bangkok Sheet's financial statements in data quality. Tongrun also argues that the use of the financial statements of these two companies is consistent with Commerce's

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[209] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 30-31.
[210] *See* Tongrun's SV comments dated October 10, 2017, at Exhibit 4E ("The partnership operates business of distribution metal sheet, equipment and construction materials for all kinds.").
[211] *Id.*
[212] *See Diamond Sawblades 2011-2012* and accompanying I&D Memo at Comment 16.
[213] *See Diamond Sawblades 2012-2013 Final* and accompanying I&D Memo at Comment 16, *aff'd, remanded on other grounds*, *Diamond Sawblades Manufacturers' Coalition v. United States*, 219 F. Supp. 3d 1368, 1378-79 (CIT 2017).

longstanding practice of calculating surrogate financial ratios using multiple financial statements that represent a broader industry.

Tongrun requests that, if Commerce continues to use Bangkok Sheet's financial statements, Commerce make two revisions to the calculation of the surrogate financial ratios. First, Tongrun requests that Commerce offset the amount of "Other Income" from the SG&A expenses, instead of excluding it from the calculation of the surrogate financial ratio like Commerce did in the *Preliminary Determination.* Citing *Boltless Steel Shelving Units*,[214] Tongrun explains that Commerce has a policy to consider other incomes as part of the company's general operations and offset this amount from the SG&A expenses. Second, Tongrun requests that Commerce exclude the amounts reported in "Raw Materials Open" and "Raw Materials Closed" instead of treating them as raw materials because the amount of raw materials consumed is already accounted for in the line item "Raw materials and consumables used." Tongrun argues that the inclusion of the opening and closing balance of raw materials distorted the cost of raw materials and, as a result, the surrogate financial ratios. Tongrun explains that, if there were a line item described as raw materials purchased, not raw materials and consumables used, Commerce would have been correct to include the opening and closing balances of raw materials in the calculation of the surrogate financial ratios.

The petitioner reiterates that Pattarapong is not a producer of comparable merchandise. The petitioner opposes the use of the Pattarapong's financial statements along with Bangkok Sheet's financial statements. The petitioner states that Commerce's preliminary calculation of the surrogate financial ratios is supported by substantial evidence, consistent with Commerce's practice, and should not be revised for the final determination.

Commerce's Position: As explained above, because Pattarapong is not a producer of comparable merchandise, we did not use Pattarapong's financial statements to calculate the surrogate financial ratios. For the final determination, we have offset other incomes from the SG&A expenses. Our general practice is to treat other income as related to the general operations of the company and, therefore, include other income as an offset to SG&A expenses.[215] The exception is when the reported information and the information in the surrogate financial statements indicate otherwise, if, for example, the income has been reported as an FOP, the income relates to a separate line of business, or the income relates to the disposal of non-routine assets.[216] We have not found any information in Bangkok Sheet's financial statements or other information on the record of this investigation to indicate that the other income is not related to the general operations of the company.

We also excluded the opening and closing balances of raw materials from the calculation of the surrogate financial ratios. If Bangkok Sheet's financial statements provide the cost for the raw materials purchased, we would have used the costs for the raw materials purchased and the opening and closing balances of raw materials. Because Bangkok Sheet's financial statements provide the cost for the raw materials and consumables used, not the cost for the raw materials

[214] *See* Tongrun's case brief dated January 31, 2018, at 38, citing *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779 (August 26, 2015) (*Boltless Steel Shelving Units*), and accompanying I&D Memo at Comment 8a.
[215] *See, e.g.*, *Boltless Steel Shelving Units* and accompanying I&D Memo at Comment 8a.
[216] *Id.*

purchased, we do not need to include the opening and closing balances of the raw materials in the calculation of the surrogate financial ratios.

Comment 15: Double Remedy – Domestic Pass-Through Rate

For the preliminary calculation of the domestic pass-through subsidy rate, Commerce applied a documented ratio of cost-price changes for the relevant manufacturing sector as a whole, which is based on data provided by Bloomberg, as the estimate of the extent of subsidy pass-through.[217] Tongrun requests that Commerce calculate the domestic pass-through subsidy rate without the use of the Bloomberg data. Tongrun states that Commerce's sole basis for adjusting the total of program-specific countervailing duty rates that reduced Tongrun's U.S. sales prices was Tongrun's general observation that prevailing market prices for the merchandise and expected profit influenced prices to customers. For this reason, Tongrun contends, the use of the Bloomberg data to apply a pass-through adjustment is inappropriate. Tongrun claims that Commerce did not explain how a generic pass-through rate of 91.98 percent, based on Chinese domestic market prices, ensures a more accurate cash deposit rate.

Specifically, Tongrun argues that Commerce did not describe, even on a generalized level, the relevance of the Bloomberg data to the computation of a ratio between price change to export goods with the corresponding change in the cost of underlying raw materials. Tongrun claims that Commerce did not explain the meaning and relevance of "CHEFTYOY Index" and "CNPPIY Index" reported in the Bloomberg data.

Tongrun also argues that, assuming that the Bloomberg data captures a ratio of changes in ex-factory domestic sales prices to the changes in the production input costs for the manufacturing sector in China, it is not relevant to Tongrun's production of subject merchandise or exportation experience. Tongrun explains that the Bloomberg data encompasses the full manufacturing sector and is not specific to the production of subject merchandise by respondents receiving countervailable subsidies in question. Tongrun explains further that there is no support from the record of this investigation that changes in domestic prices in China are a reasonable substitute for changes in export prices of the subject merchandise. Tongrun contends that the use of this manufacturing sector-wide data in China's domestic market contrasts with Commerce's practice of requiring respondents to provide information specific to their production and export pricing of subject merchandise to determine if the subsidies-to-cost and cost-to-price links are shown.

Tongrun claims that the Bloomberg data do not measure the pass-through specifically for the subject merchandise. As such, Tongrun argues, this data is, at best, only a surrogate and the use of the Bloomberg data unrelated to the production or exportation of subject merchandise amounts to an unsubstantiated decision. Tongrun explains that Commerce is not required to calculate the pass-through rate in this investigation based on surrogate data unrelated to the production or exportation of the subject merchandise.

Tongrun asserts that its analysis of the full Bloomberg data available on the record shows a wide range of the pass-through index between June 2016 and July 2017. Tongrun points to two particular data points showing a jump from a negative pass-through rate in September 2016 to a

[217] *See Preliminary Determination* and accompanying Preliminary Decision Memorandum at 33.

positive pass-through rate in October 2016. Tongrun contends that this inexplicable variation impeaches the reliability of the Bloomberg data. Tongrun believes that, had the Bloomberg data for the remaining five months of the POI mirrored the October 2016 data and resulted in a pass-through rate above 1.00, Commerce would have used the unadjusted countervailing duty rates based on less than adequate remuneration to adjust the cash deposit rates.

The petitioner argues that Commerce reasonably determined that factors other than the cost of steel coils impact the prices Tongrun received from its customers. Based on this finding, according to the petitioner, Commerce correctly calculated a pass-through adjustment using Bloomberg data for the relevant manufacturing sector as a whole. The petitioner notes that, despite its request for the use of a more specific pass-through factor, Tongrun does not propose an alternative to the Bloomberg data.

<u>Commerce's Position:</u> For the final determination, we continue to rely on the Bloomberg data to calculate the domestic pass-through rate. The Bloomberg data provides the only evidence to estimate the extent to which subsidies passed through to prices during the POI.[218] The use of the Bloomberg data is consistent with our statutory task to identify "double remedies" and to reasonably estimate the extent to which the subsidy has increased the weighted average dumping margin for the class or kind of merchandise.[219]

The pass-through concept relates total variable cost to price and concerns how changes in the former affect the latter; it is not a concept that relates individual variable cost components to price.[220] That is not to say that changes in the cost of certain cost components do not affect total variable cost; only that the actual calculation of the pass-through rate must be based on (changes in) a total variable cost measure (or some reasonable proxy thereof).[221]

Therefore, even if the Bloomberg data is not specific to Tongrun's production and exportation of subject merchandise, the Bloomberg pass-through rate is the best and the only rate publicly available for purposes of double remedy analysis and we consistently used the Bloomberg pass-through rate in past cases to estimate the extent to which subsidies pass through to prices.[222] In a real sense, we use the Bloomberg ratio to measure the extent to which: (1) factors in addition to variable cost changes, such as global demand, affect price, and (2) these conditions would likely affect the domestic and export markets.[223] Therefore, the inclusion of sales unrelated to Tongrun's production and exportation of subject merchandise does not make the Bloomberg data irrelevant or distorted for purposes of section 777A(f) of the Act. Further, because the term "estimate" means "a tentative evaluation or rough calculation," the statute does not contemplate

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[218] *See 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 Sink*), and accompanying I&D Memo at Comment 3.
[219] *Id.*
[220] *See, e.g., Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016) (*OTR Tires Final Results 2013-2014*), and accompanying I&D Memo at Comment 2.
[221] *Id.*
[222] *See Steel Sink* and accompanying I&D Memo at Comment 3.
[223] *Id.*

a precise pass-through rate.[224] Although it may not be as precise as Tongrun would prefer, the Bloomberg data reflects how Chinese companies respond to industry-wide changes in variable costs, which: (1) is consistent with our analytical focus on relationship between subsidies and costs to ascertain whether there is any overlap in remedies, and (2) provides a sufficient basis upon which to draw reasonable estimates consistent with section 777A(f) of the Act.[225]

The Bloomberg data was calculated as a ratio of changes in a production price index to changes in a purchasing price index of raw materials, fuels, and power (purchasing price index).[226] The purchasing price index is a broad measure of variable cost, and the production price index measures changes in ex-factory prices, *i.e.*, prices that are not specific to any market, but common to all markets (foreign and domestic), and set by the producer before any market specific add-ons.[227] The broad cost measure that the purchasing price index represents and the "matched" or "paired" nature of the Bloomberg cost and price data – the same (surveyed) enterprises report both the cost and price data – are necessary features of any data that we would use for the pass-through calculation.[228] Although the Bloomberg data is aggregated, it exhibits these features.[229] Thus, for the final determination, we continue to use a pass-through ratio constructed from the Bloomberg data.[230]

[224] *Id.*
[225] *Id.*
[226] CHEFTYOY is the Bloomberg symbol for the producer price index in China and CNPPIY is the Bloomberg symbol for the purchasing price index. *See* Memorandum, "Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Double Remedy Memorandum," dated November 7, 2017, at Attachments 1 and 2.
[227] *See*, *e.g.*, *PVLT Tires* and accompanying I&D Memo at Comment 7.
[228] *Id.*
[229] *See*, *e.g.*, *Truck and Bus Tires* and accompanying I&D Memo at Comment 26.
[230] *See*, *e.g.*, *OTR Tires Final Results 2013-2014* and accompanying I&D Memo at Comment 2.

X. RECOMMENDATION

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

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Agree Disagree

4/3/2018

X 

Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance