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DATE: February 19, 2019

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: Issues and Decision Memorandum for the Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; 2016-2017

Summary

We analyzed the case and rebuttal briefs of interested parties in the 2016-2017 administrative review of the antidumping duty (AD) order covering tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the People's Republic of China (China). Based on these comments, we have made adjustments to the margin calculation for the sole mandatory respondent participating in the administrative review, GGB Bearing Technology (Suzhou) Co., Ltd. (GGB). We continue to find that GGB made sales at prices below normal value (NV) and we are applying this rate to seven companies not selected for individual examination.[1]

We continue to find from the *Preliminary Results*[2] that 10 companies,[3] in addition to mandatory respondent Luoyang Bearing Corp. Group (Luoyang), did not qualify for a separate rate, and,

[1] These companies are: CNH Industrial Italia SpA (CNH); GSP Automotive Group Wenzhou Co. Ltd. (GSP); Hangzhou Hanji Auto Parts Co., Ltd. (Hanji Auto Parts); Hangzhou Radical Energy-Saving Technology Co., Ltd (Hangzhou Radical); Ningbo Xinglun Bearings Import & Export Co., Ltd. (Xinglun Bearings); Zhejiang Sihe Machine Co., Ltd. (Sihe Machine); and Zhejiang Zhaofeng Mechanical & Electronic Co., Ltd (Zhaofeng).

[2] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results and Intent to Rescind the Review in Part; 2016-2017*, 83 FR 32263 (July 12, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

[3] These companies are: Apex Maritime Shanghai Co., Ltd.; Crossroads Global Trading Co., Ltd.; Honour Lane Shipping Ltd.; Kinetsu World Express China Co., Ltd.; Pacific Link Intl Freight Forwarding Co., Ltd.; Shanghai Dizhao Industrial Trading Co., Ltd.; Thi Group Shanghai Ltd.; Weifang Haoxin-Conmet Mechanical Products Co.,

therefore, we find these companies to be part of the China-wide entity. Finally, one company, Hangzhou Xiaoshan Dingli Machinery Co., Ltd. (Dingli), did not establish that it had a suspended entry of subject merchandise during the POR; therefore, we find that Dingli is ineligible for a separate rate, and thus continues to be part of the China-wide entity.[4]

Below is the complete list of the issues in this review for which we received comments from parties:

1. Zhejiang Machinery's Separate Rate Status
2. Zhaofeng's Separate Rate Status
3. Irrecoverable Value Added Taxes (VAT)
4. Alleged Ministerial Error
5. GGB's "Supplier Quality Issue" Parts
6. "Forgings" Purchased from GGB's Suppliers
7. Rollers from GGB's Suppliers
8. Surrogate Values for Steel Plate
9. Surrogate Values for Packing Materials
10. Surrogate Financial Ratios

Background

On July 12, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* of the 2016-2017 administrative review of the AD duty order on TRBs from China. The administrative review preliminarily covered 20 exporters, of which Commerce selected two as mandatory respondents for individual examination (*i.e.*, GGB and Luoyang). The period of review (POR) is June 1, 2016, through May 31, 2017.[5]

Ltd.; Yantai Huilong Machinery Parts Co., Ltd.; and Zhejiang Machinery Import & Export Corp. (Zhejiang Machinery).

[4] In the *Preliminary Results*, we erroneously stated that we were preliminarily rescinding the review with respect to Dingli because it failed to provide evidence of a suspended entry during the POR. *See Preliminary Results* and accompanying PDM. In these final results, however, rather than rescind the review with respect to Dingli, we have determined that it is ineligible for a separate rate, and thus is part of the China-wide entity. This determination is consistent with past determinations regarding the necessity of a suspended entry to be granted a separate rate. *See*, *e.g., Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission, in Part, 2010/12*, 79 FR 96 (January 2, 2014), and accompanying Issues and Decision Memorandum (IDM) at Comment 8.

[5] *See* 19 CFR 351.213(e)(1)(i).

We invited parties to comment on the *Preliminary Results*. On August 23, 2018, we received case briefs from The Timken Company (the petitioner), GGB, Zhaofeng, and Zhejiang Machinery, as well as a letter in support of the arguments made by GGB from Sihe Machine, a foreign producer and exporter of subject merchandise receiving a separate rate.[6,7] On August 28, 2018, we received rebuttal briefs from the petitioner and GGB.[8]

On October 2, 2018, Commerce held a public hearing. On October 16, 2018, Commerce postponed the final determination by 60 days, to January 8, 2019.[9] On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from December 22, 2018 through January 29, 2019.[10] Accordingly, Commerce postponed the final determination by 40 days, to February 19, 2019.

Scope of the Order

Imports covered by the order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from China; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS item numbers are provided for

[6] *See* Petitioner's Case Brief, "Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China (06/01/16 - 05/31/17): The Timken Company's Case Brief," dated August 23, 2018 (Petitioner's Case Brief); GGB's Case Brief, "GGB Case Brief: Administrative Review of the Antidumping Duty Order Tapered Roller Bearings from the People's Republic of China, A-570-601 (6/1/2016- 5/31/2017)," dated August 23, 2018 (GGB Case Brief); Zhaofeng's Case Brief, "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Case Brief," dated August 23, 2018 (Zhaofeng Case Brief); and Zhejiang Machinery's Case Brief, "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Case Brief," dated August 23, 2018. *See also* Sihe Machine's Letter, "Tapered Roller Bearings from China: Letter in Lieu of Case Brief," dated August 23, 2018.

[7] On December 6, 2018, at our request, Zhejiang Machinery refiled its case brief without untimely new factual information. *See* Commerce Letter re: Rejection of Untimely-Filed New Factual Information, dated December 3, 2018 and Zhejiang Machinery's Case Brief, "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Resubmission of Case Brief," dated December 6, 2018 (Zhejiang Machinery Case Brief).

[8] *See* Petitioner's Rebuttal Brief, "Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China (06/01/16-05/31/17): The Timken Company's Rebuttal Brief," dated August 28, 2018 (Petitioner's Rebuttal Brief); and GGB's Rebuttal Brief, "GGB Rebuttal Case Brief: Administrative Review of the Antidumping Duty Order Tapered Roller Bearings from the People's Republic of China, A-570-601 (6/1/2016-5/31/2017)," dated August 28, 2018 (GGB Rebuttal Brief).

[9] *See* Memorandum, "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Extension of Deadline for the Final Results of Antidumping Duty Administrative {Review}," dated October 16, 2018.

[10] *See* Memorandum, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

convenience and customs purposes, the written description of the scope of the order is dispositive.

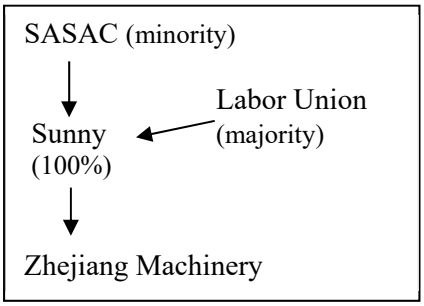
Calculation Changes Since the *Preliminary Results*

We calculated constructed export price and NV using the same methodology stated in the *Preliminary Results*, except as follows:

- We corrected our calculation of U.S. rebates to rely on our findings at verification.[11]
- We adjusted GGB's factors of production (FOPs) to include the total consumption of raw materials, inclusive of "supplier quality issue" parts (*i.e.*, defective merchandise).[12]
- We calculated the surrogate value (SV) for individual boxes (*i.e.*, INBOX) using the Thai HS subheading for corrugated paperboard.[13]

Discussion of the Issues

Comment 1: Zhejiang Machinery's Separate Rate Status



Zhejiang Machinery is a separate rate respondent in this administrative review. In its separate rate application, Zhejiang Machinery reported that it is owned by a company named Zhejiang Sunny I/E Corporation (Sunny), which is, in turn, owned by its labor union and by Zhejiang Province Metal & Minerals Import and Export Co., Ltd. (Zhejiang MMI&E), a State-owned Assets Supervision and Administration Commission (SASAC).[14] In the *Preliminary Results,* we determined that Zhejiang Machinery is ineligible for a separate rate in this review because of the level of government ownership/control established over it via its ultimate owners (*i.e.*, a Chinese labor union and a SASAC).[15]

Zhejiang Machinery's Arguments

- Commerce erred in denying Zhejiang Machinery a separate rate because Zhejiang Machinery is not *de facto* controlled by the Chinese government. Consistent with Commerce's practice of focusing on which party controls shareholder decisions, especially the selection of board members and management, Commerce should disregard the fact that the employee stock

[11] *See* Comment 4 below.

[12] *See* Comment 5 below.

[13] *See* Comment 9 below.

[14] *See* Zhejiang Machinery's May 4, 2018 Supplemental Questionnaire Response Separate Rate Application (Zhejiang Machinery Supp SRA) at Exhibit 2.

[15] *See* PDM at 11.

ownership committee (ESOC) shares are registered under the name of the company's labor union because the labor union has no *de jure* or *de facto* authority to make shareholder decisions.

- Zhejiang Machinery is wholly-owned by Sunny, which is majority-owned by its private employees through its ESOC.[16] Although the rest of Sunny is owned by Zhejiang MMI&E, a company ultimately owned by the Zhejiang provincial government through its SASAC,[17] Sunny's ESOC selects three out of the five members of Sunny's board and is the only entity that has authority to exercise all shareholder rights associated with its majority shareholding.

- Commerce should find Sunny's labor union, which nominally holds a majority of shares on behalf of the ESOC, has no authority to, and does not, exercise any shareholder rights. The ESOC is organized and controlled by private employees who have no government affiliation, do not hold union positions, and act independently from all labor unions in China as well as the Chinese government.[18] The nominal role of the labor union is irrelevant to Commerce's separate rate analysis because it registers shares with the Chinese authorities on behalf of the ESOC only in a ministerial capacity since the ESOC is not a formal legal entity authorized to register shares in China.

- The laws and regulations in China do not allow an ESOC to register as a legal person; therefore, the shares held by the ESOC must be registered under the name of the company's labor union.[19] Nevertheless, the labor union has no authority to, nor is it involved in, making decisions for Sunny and, other than registration purposes, the labor union has no authority to exercise the ESOC's shareholder rights.[20] Rather, Sunny's ESOC is organized as an independent, self-regulated employee shareholding entity designed to protect and promote the interests of Sunny's private employees. Zhejiang Machinery is governed by Sunny's Audit Department and not the labor union, which proves the ESOC's independence.

- Sunny's ESOC is controlled by its members who meet annually to elect three leaders of the ESOC Council; review, approve, and amend the ESOC's Articles of Association (AOAs); and {"*exercise the rights of shareholders*"} through ESOC resolutions. General meeting resolutions are approved based on simple majority voting, with each member holding an equal vote. None of the individual owners of Sunny is employed by, or affiliated with, the Chinese government, including any SASAC or the All-China Federation of Trade Unions (ACFTU).

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[16] *See* Zhejiang Machinery Case Brief at 1-2.

[17] *Id.*

[18] *Id.* at 7-8 (citing Zhejiang Machinery Supp SRA at 5-6 and Exhibits 6 and 7, which comprise a list of the ESOC owners and the ESOC's Articles of Association).

[19] *See* Zhejiang Machinery Case Brief at 2-3 (citing Zhejiang Machinery Supp SRA at 4-5).

[20] *See* Zhejiang Machinery Case Brief at 3 (citing Zhejiang Machinery Supp SRA at Exhibit 7 and Zhejiang Machinery's Letter, "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Factual Information regarding Zhejiang Machinery," dated June 4, 2018, at Exhibit 1).

- The General Meeting resolution on the record demonstrates that the shareholder meeting was well-attended and the ESOC members present legally-elected Council members, including the chairman, through a binding resolution. The resolution demonstrates that neither the company's labor union nor the Chinese government is involved in the business of Sunny's ESOC.

- According to Commerce's China NME Status Memorandum, the Chinese government favors management over ordinary workers and management dominates and controls trade unions.[21] If Sunny's ESOC were controlled by management, then it would be expected that employees with union positions would dominate the ESOC membership as well as ESOC Council. However, the Chair of the ESOC Council holds no position with any labor union and is not affiliated with any level of Chinese government, and 19 of 20 ESOC members do not hold any position in Sunny's labor union.

- There is no evidence that the Chinese government has any influence on Sunny's ESOC, either on its own or through the labor union. Commerce's preliminary finding of ineligibility is premised on its conclusion that the company is majority-owned by its labor union but, according to court and Commerce precedent, the focus has been on which party has control over shareholder decisions.[22] Since the *Diamond Sawblades I* litigation, Commerce has taken the position that "majority ownership holding in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally.[23] This may include control over the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate."[24] Further, Commerce's focus in its separate rate inquiry is on whether the government ownership in an exporter is sufficient to result in control over shareholder decisions, especially the selection of board members and management.

The Petitioner's Rebuttal Arguments

- Commerce should continue to find Zhejiang Machinery ineligible for a separate rate. Zhejiang Machinery's claim is unsubstantiated by the record; in Zhejiang Machinery's October 2017 submission, Zhejiang Machinery explained that Sunny is majority owned by its

[21] *Id*. at 9 (citing Memorandum, "Aluminum Foil from the People's Republic of China: China's Status as a Non-Market Economy," dated October 26, 2017 (China NME Status Memorandum) at 26).

[22] *Id*. (citing *Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 9716 (February 8, 2017) (*Stainless Steel Sheet and Strip*): the state-owned shareholder "ha{d} majority control over any and all shareholder decisions of {the exporter}" and "exert{ed} influence over the board of directors (and, thus, the management and operations of the company)," due to its right to select board members; and *Jiangsu Jiasheng Photovoltaic Tech. Co. v. United States*, 121 F. Supp. 3d 1263: The CIT upheld Commerce's decision to find the exporter qualified for a separate rate, based on evidence that the state-owned shareholder "neither controlled a majority of {the exporter}'s shares nor appointed a majority of its board members.").

[23] *Id*. at 6 (citing *Diamond Sawblades Redetermination in Advanced Tech I*, 885 F. Supp. 2d 1343, 1353 (CIT 2012) (*Diamond Sawblades I*)).

[24] *Id*. (citing PDM at 7-8).

labor union and based on the AOAs, Sunny's labor union takes majority members of the board of directors and majority voting rights over all important decisions of Sunny within the board of directors.[25]

- Several articles from the AOAs that Zhejiang Machinery placed on the record demonstrate that the labor union does exercise control as the majority shareholder.[26] Since Commerce has found that Chinese labor unions are under the control of the Chinese government, there is no basis for Commerce to determine that those owning shares on behalf of the union would somehow act independently of their obligations as union members.

Commerce's Position

Commerce considers China to be an NME.[27] In accordance with section 771(18)(C)(i) of the Act, a determination that a country is an NME shall remain in effect until revoked by the administering authority. Further, no party submitted a request to reconsider China's NME status as part of this administrative review. Therefore, we continue to treat China as an NME for purposes of these results. In evaluating whether to grant separate rate status to a company in an NME, Commerce has a rebuttable presumption that the export activities of all firms operating within the country are subject to government control and influence.[28] It is Commerce's policy to assign all exporters in an NME a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.[29] To establish that a company is independent of government control and, therefore, entitled to a separate rate, Commerce analyzes each exporting entity in an NME under the test

[25] *See* Petitioner's Rebuttal Brief at 15 (citing Zhejiang Machinery's Letter, "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Factual Information regarding Zhejiang Machinery," dated October 2, 2017 (Zhejiang Machinery Rebuttal Facts) at 2 and Exhibit 1).

[26] *See* Petitioner's Rebuttal Brief at 15-16 (citing Zhejiang Machinery Rebuttal Facts at Exhibit 1).

[27] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017) (citing China NME Status Memorandum), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

[28] *See 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, 53082 (September 8, 2006); *see also 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). *See also* PDM at 6-8.

[29] *See*, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 at 63793 (October 17, 2012) and accompanying IDM.

established in *Sparklers*,[30] as further developed in *Silicon Carbide*.[31] Together, these tests require a respondent to demonstrate an absence of both *de jure* and *de facto* government control with respect to exports.[32] The consequences of failing to do so mean the exporter will be assigned the single rate given to the NME-wide entity.[33] In sum, Commerce determines whether an exporter has demonstrated an ability to control its own commercial decision-making concerning exportation of the subject merchandise, *i.e.*, whether decisions at the firm level are separate and apart from decisions made at the central government level with respect to exports.

As we explained in the *Preliminary Results*, Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from China proceeding, and its determinations therein.[34] In recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, the majority ownership holding, in and of itself, means that the government exercises, or has the potential to exercise, control over the company's operations.[35] This may

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[30] *See Sparklers from the People's Republic of China: Final Determination of Sales at Less Than Fair Valu*e, 56 FR 20588 (May 6, 1991) and accompanying IDM at Comment 1. (*Sparklers*) ("We have determined that exports in nonmarket economy countries are entitled to separate, company-specific margins when they can demonstrate an absence of central government control, both in law and in fact, with respect to export activities).

[31] *See Silicon Carbide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 59 FR 22,585 (May 2, 1994) (*Silicon Carbide*) (Companies for which the record of this investigation demonstrates a *de jure* and *de facto* absence of government control over export activities are eligible for separate rates).

[32] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review*; 2014-2015, 82 FR 4844 (January 17, 2017) (*TRBs AR28 Final*) and accompanying IDM at Comment 3.

[33] The Court of Appeals for the Federal Circuit (CAFC) has upheld the application of the "NME presumption," in *Sigma Corp. v. United States*, 117 F.3d 1401, 1405-06 (CAFC 1997). In setting forth its NME policy, "Commerce made clear the consequences to an exporter of not rebutting the presumption of state control and establishing its independence: the exporter would be assigned the single rate given to the NME entity. Shortly thereafter, the Court of International Trade acknowledged and sustained Commerce's NME policy." *Transcom Inc. v. United States*, 294 F.3d 1371, 1381-82 (Fed. Cir. 2002) (citation omitted).

[34] *See Diamond Sawblades I*, 885 F. Supp. 2d at 1343, sustained in *Advanced Tech II*, 938 F. Supp. 2d at 1342, affirmed in *Advanced Tech III*; *see also 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 11-12*), and accompanying IDM at Comment 1.

[35] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission; 2015-2016*, 83 FR 35461 (July 26, 2018) (*Wood Flooring*) and accompanying IDM at Comment 2; *see also Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances* 81 FR 42314 (June 29, 2016) (*HFC Blends China Final*) and accompanying IDM at Comment 8; *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016) and accompanying PDM at 15; unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316 (June 2, 2016); *1,1,1,2 Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part*, 82 FR 12192 (March 1, 2017) and accompanying IDM at Comment 1; and *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 Final*) and accompanying IDM at Comment 2.

include control over, for example, the selection of board members and management, which are key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate.[36] Consistent with our normal separate rate practice, any ability to control, or possess an interest in controlling, the operations of the company (including the selection of board members, management, and the profit distribution of the company) by a government entity is subject to Commerce's rebuttable presumption that all companies within the NME are subject to government control.[37] In assessing the degree of government control over Zhejiang Machinery, as performed in the *Preliminary Results*,[38] we analyzed the level of government ownership, by which we found a chain of majority ownership sufficient to determine that Zhejiang Machinery has not rebutted the presumption of government control.[39]

The record supports that Zhejiang Machinery is entirely under control of the Chinese government, and thus ineligible for a separate rate because it has not met the criteria for *de facto* independence.[40] Zhejiang Machinery reported that during the POR it was a wholly-owned subsidiary of Sunny, which was owned by Zhejiang MMI&E, a SASAC-controlled entity, and by Sunny's labor union, which is under control of the ACFTU.[41] Sunny's labor union is governed by the Labor Union Law of the People's Republic of China and is registered before the Zhejiang Federation of Trade Unions, a local branch of the AFCTU.[42] In the China NME Status Memorandum, we determined that "{l}abor unions are under the control and direction of the {ACFTU}, a government affiliated and {Chinese Communist Party (CCP)} organ" and that "{a}ll trade unions are affiliates of the government-controlled ACFTU and its branches at the local and enterprise level."[43] Because Sunny, which owns Zhejiang Machinery, is in turn owned by Zhejiang MMI&E, a SASAC-controlled entity, and its labor union, under the control of the ACFTU, Commerce finds that both Zhejiang Machinery and Sunny are controlled by the SASAC and the ACFTU, and thus are ultimately under the control of the Chinese government. The following diagram illustrates this connection:

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[36] *See*, *e.g.*, *HFC Blends China Final*, and accompanying IDM at Comment 8, (citing *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9, unchanged in *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstance*s, in Part, 79 FR 68860 (November 19, 2014)); *see also* PDM at 6-8 (discussing the four factors Commerce uses to evaluate whether a respondent is subject to de facto government control over its export functions).

[37] *See*, *e.g.*, *1,1,1,2-Tetrafluroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014) (*Tetrafluoroethane Final*) at Comment 1.

[38] *See* PDM at 7.

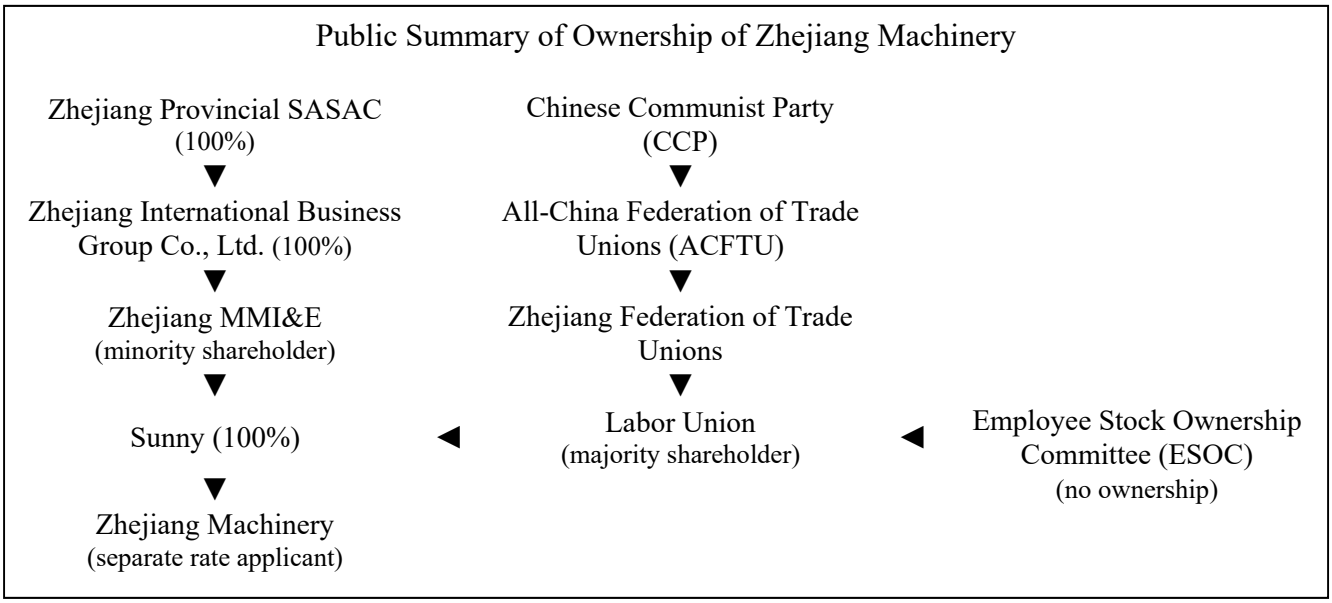
[39] The CAFC has held that Commerce has the authority to place the burden on the exporter to establish an absence of government control. *See Sigma*, 117 F.3d at 1405-06.

[40] *See* Zhejiang Machinery Supp SRA at 7, 8, Exhibits SRA-5, and SRA-7.

[41] The actual ownership percentages constitute business proprietary information, but are discussed on the record; *see e.g.*, Zhejiang Machinery Case Brief at 2. *See also* Zhejiang Machinery October 2, 2017, Rebuttal Factual Submission (Zhejiang Machinery's October 2, 2017 RFI) at 2 and Zhejiang Machinery Supp SRA at 4, 7, and 11.

[42] *See* Zhejiang Machinery Supp SRA at 7.

[43] *See* China NME Status Memorandum at 5, 21-22, and 31.



Zhejiang Machinery reported that its shareholders appoint the board of directors and the board of directors, in turn, appoints its management.[44] Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management.[45] This is consistent with the Court's reasoning in *Diamond Sawblades I*, where the Court stated that "'governmental control' in the context of the separate rate test… can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."[46] Similarly, Zhejiang Machinery's shareholders' resolutions document that Sunny exercises controlling power to elect Zhejiang Machinery's board of directors.[47] Thus, we continue to conclude that the Zhejiang SASAC-owned entity (Zhejiang MMI&E) and Sunny's labor union, which is under control of the ACFTU, exercise, or have the potential to exercise, control over Zhejiang Machinery's export operations *via* its ownership of Sunny, which owns Zhejiang Machinery.

We find none of Zhejiang Machinery's arguments regarding its (or Sunny's) purported autonomy from the government in selecting management compelling, because these arguments do not alter our conclusion that Zhejiang MMI&E and the labor union have the ability to control the selection of management as controlling shareholders in Sunny, and, through their ownership in Sunny, have the ability to control the selection of management for Zhejiang Machinery, since

[44] *See* Zhejiang Machinery Supp SRA at 3-4.

[45] *See Antidumping Duty Investigation of Stainless Steel Sheet and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 9716 (February 8, 2017) (*Stainless Steel Sheet and Strip Final*) and accompanying IDM at 27-29. *See also Wood Flooring* IDM at Comment 2.

[46] *See Diamond Sawblades I* at 1357.

[47] *See* Zhejiang Machinery Supp SRA at Exhibit SRA-7.

Sunny is the sole shareholder of Zhejiang Machinery. Therefore, we continue to find that Zhejiang Machinery has failed to rebut the presumption of control factor of the *de facto* analysis.

Zhejiang Machinery argues that the labor union's shareholder status is irrelevant to Commerce's separate rate analysis, because the labor union merely registers shares with the Chinese authorities on behalf of the ESOC in a "ministerial capacity." According to Zhejiang Machinery, the labor union undertakes this action because the ESOC is not a formal legal entity authorized to register shares in China. Further, Zhejiang Machinery argues that it is the ESOC, and not the labor union, that controls Sunny, and neither the ESOC, nor its members, are under government control. However, we disagree with Zhejiang Machinery that Commerce should disregard the labor union's place in Sunny's ownership structure or the control of that labor union by the Chinese Community Party (CCP).

As an initial matter, we disagree that evidence on the record supports Zhejiang Machinery's argument that the labor union and the ESOC are unconnected. In making this argument, Zhejiang Machinery relies on the fact that Sunny's directors do not hold positions in the labor union[48]; however, it disregards the inconvenient fact that 1) the labor union is the controlling shareholder in Sunny; and 2) the individual owners of Sunny's ESOC are all labor union members.[49] We find it relevant that the owners of Sunny's ESOC are all members of Sunny's labor union, even if they do not all currently hold official positions in it. Further, as labor union members, all of the owners of Sunny's ESOC are beholden to Chinese laws regarding the exercise of labor union rights in China.[50] Indeed, Sunny's AOAs confirm the accuracy of these conclusions and further support them.[51]

Zhejiang Machinery also argues that Sunny's labor union has no authority to exercise its rights as the majority shareholder.[52] This assertion ignores the reality that, as the majority shareholder, Sunny's labor union has the inherent ability to 1) appoint board members (who in turn control Zhejiang Machinery, including company operations and price setting); 2) to vote on shareholder resolutions; and 3) to determine the disposition of profits.[53] Further, if Sunny's labor union has no authority to exercise rights as a shareholder of Sunny, then the only party which would have the authority to exercise control of Sunny would be the "minority" owner, Zhejiang MMI&E, a state-owned entity.

In its supplemental questionnaire response, Zhejiang Machinery affirmed the connection between Sunny's labor union and the ACFTU. Zhejiang Machinery, in its response, stated that "Sunny's labor union is registered before Zhejiang Federation of Trade Unions, a local branch of

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[48] *See* Zhejiang Machinery's Case Brief at 5.

[49] *Id.* at 2 and Exhibit 1.

[50] *See* Zhejiang Machinery Supp SRA at 7 and Exhibit 8 for the Labor Union Law of China.

[51] *See* Zhejiang Machinery Supp SRA at Exhibit 7, Article 1. Because Zhejiang Machinery has claimed business proprietary treatment for its AOAs, we are unable to include the salient language here; however, the relevant language is contained in Article 1, after the parenthetical.

[52] *See* Zhejiang Machinery's Case Brief at 3.

[53] *See* Zhejiang Machinery's October 2, 2017 RFI at Exhibit 1.

the ACFTU, according to the Labor Union Law of the People's Republic of China" and that "Sunny's labor union (aka., trade union) is governed by Labor Union Law of the People's Republic of China and the Civil Law of the People's Republic of China."[54] Under Chinese law, as stated by Zhejiang Machinery, Sunny's ESOC is not permitted to be registered as a legal person or as a shareholder; therefore, Sunny's ESOC was registered under Sunny's labor union,[55] which is subject to CCP control, as Commerce explained in the China NME Status Memorandum.[56]

Pursuant to section 771(18)(C)(ii) of the Act, Commerce conducted an inquiry into China's status as an NME in connection with the less-than-fair-value investigation of aluminum foil from China.[57] In evaluating the extent to which wage rates in China are determined by free bargaining between labor and management, we concluded that "{l}abor unions are under the control and direction of the All-China Federation of Trade Unions (ACFTU), a government-affiliated and CCP organ."[58] In the China NME Status Memorandum, we further explained that:

> ACFTU's legal monopoly on all trade union activities is codified in the Trade Union Law of the People's Republic of China ("Trade Union Law") adopted in 1992, and remains unchanged after amendments to the law in 2001 and 2009. The Chinese government prohibits independent unions and has systemically and, in some cases, forcibly repressed efforts to organize independent unions. The Trade Union Law provides for ACFTU to preside over a network of subordinate trade unions that are related to one another in terms of the Leninist concept of "democratic centralism," which subordinates lower-ranking unions to higher-ranking ones. ACFTU is subject to CCP control, and trade union leaders concurrently hold office at a corresponding rank in the CCP or the government. The current ACFTU chairman is a member of the CCP Politburo.[59]

Commerce's China NME Status Memorandum provides the following additional summary of the role of China's trade unions, as part of the institutions of the Chinese state:

> ACFTU must organize and approve all union activity, but ACFTU is not required to reflect solely, or even primarily, the interests of workers in disputes. Unions are nominally required to safeguard the legitimate rights and interests of the Chinese worker, while simultaneously playing their proper role in China's social

[54] *See* Zhejiang Machinery Supp SRA at 7.

[55] *Id.* at 4-5.

[56] *See* China NME Status Memorandum at 5 and 21.

[57] *See Certain Aluminum Foil from the People's Republic of China: Notice of Initiation of Inquiry Into the Status of the People's Republic of China as a Nonmarket Economy Country Under the Antidumping and Countervailing Duty Laws*, 82 FR 16162 (April 3, 2017) (*NME Inquiry Initiation*); *see also Certain Aluminum Foil from the People's Republic of China: Notice of Extension of Time for Public Comment Regarding Status of the People's Republic of China as a Nonmarket Economy Country Under the Antidumping and Countervailing Duty Laws*, 82 FR 20559 (May 3, 2017).

[58] *See* China NME Status Memorandum at 5.

[59] *See* China NME Status Memorandum at 21 (citations omitted).

> modernization and safeguarding the State power under the people's democratic dictatorship. Because China's trade unions are a part of the Chinese government's institutional framework, with a responsibility to preserve harmony and stability in industrial relations, there is an inherent tension in the dual functions they serve.[60]

Zhejiang Machinery does not undermine this determination with its excerpts from the AOAs of the ESOC and assertions that the labor union is not under government ownership.[61] Indeed, as affirmed by Zhejiang Machinery in its questionnaire response, Sunny's labor union is registered with the local branch of the ACFTU, as required by law, and Chinese law does not allow the ESOC to organize and represent itself as a legal person and owner.[62] Therefore, Zhejiang Machinery's reliance on the ESOC's control over the selection of management does not rebut the finding of government control, because, by Zhejiang Machinery's own admission, Sunny's labor union is subject to the Labor Union Law of China,[63] and, as explained above, Chinese labor unions are all subject to ACFTU (and ultimately CCP) control.[64]

Further supporting the conclusion that Sunny, and in turn Zhejiang Machinery, are not independent from Chinese government control is information provided in Sunny's AOAs, which show that Zhejiang MMI&E not only has two out of five seats on Sunny's board, but it also has the ability block certain corporate actions.[65] Thus, the level of government control over Sunny's business activities is also significant, based upon the direct control exerted by Zhejiang MMI&E, a SASAC-controlled entity.

Finally, we note that evidence placed on the record by Zhejiang Machinery appears to belie Zhejiang Machinery's argument that the ESOC controls Sunny. In particular, the ESOC's own AOAs indicate that Sunny's Audit Department governs the ESOC,[66] indicating that the ESOC is, in turn, controlled by another entity within Sunny itself. Zhejiang Machinery's responses are silent as to composition of the Audit Department or its connection with any of the other entities at play in this issue. Thus, there is insufficient information on the record showing that Sunny's ESOC controls the company, even were we to agree that it is appropriate to undertake such an analysis of control.

In sum, Zhejiang Machinery's arguments, and the corporate documentation upon which Zhejiang Machinery relies, fail to rebut Commerce's presumption of government control in China, as part

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[60] *Id.* at 22 (citations omitted). *See also* Zhejiang Machinery Supp SRA at Exhibit 8 for the Labor Union Law of China, at Articles 4 through 6.

[61] *See*, *e.g.*, Zhejiang Machinery Supp SRA at 7 and Exhibit 7.

[62] *Id.* at 4-5.

[63] *Id.* at 7.

[64] *See* China NME Status Memorandum at 5 and 21.

[65] *See* Zhejiang Machinery's October 2, 2017 RFI, at Exhibit 1 (*e.g.*, at Article 16).

[66] *See* Zhejiang Machinery's Case Brief at 3 and Zhejiang Machinery's Supp SRA at Exhibit 7, Article 4 of the ESOC's Articles of Association.

of Commerce's NME methodology, and we therefore continue to find that Zhejiang Machinery is not eligible for a separate rate.

Comment 2: Zhaofeng's Separate Rate Status

Like Zhejiang Machinery, Zhaofeng is a separate rate respondent in this administrative review. Zhaofeng was also a respondent in the immediately-preceding administrative review; in that segment of the proceeding, we denied Zhaofeng a separate rate, based on our finding that the company deliberately provided false data to Commerce at verification and then attempted to mislead us about these data in its case brief.[67]

In the *Preliminary Results*, we preliminarily determined that Zhaofeng continues to be ineligible for a separate rate in this review, based on our finding in the prior segment and the fact that Zhaofeng's attempts to mislead Commerce occurred in May 2017 (*i.e.*, during this POR). In making this decision, we noted that there is no record evidence that the circumstances prompting Commerce's earlier denial of Zhaofeng's separate rate have changed.

Zhaofeng's Arguments

- Commerce's determination to deny it a separate rate cannot be sustained because there is no record evidence to support that it is not entitled to a separate rate in the current POR. Commerce and the Court of International Trade (CIT) have consistently held that each administrative review period is a separate segment of a proceeding and that findings from one period cannot be presumed to apply to the next POR.[68]

- Commerce cannot identify any record evidence in this review that would warrant denial of Zhaofeng's separate rate status. The available submissions on the record for this POR are the separate rate certification (SRC) submitted on August 31, 2017; Commerce's letter to Zhaofeng on April 13, 2018, notifying Zhaofeng that it was found not eligible for a separate rate and is now considered part of the China-wide entity and would be required to submit a separate rate application (SRA) for the current administrative review; and Zhaofeng's SRA, which was submitted on April 27, 2018.[69]

- Commerce's denial of Zhaofeng's separate rate status in this review relies on its finding in the prior 2015-2016 review that Zhaofeng's separate rate status should be denied because of its determination that Zhaofeng's responses lacked "accurate and truthful recordkeeping." Commerce's preliminary finding in this review cited to submissions that were made in the prior administrative review of 2015-2016 and not on this record, including the petitioner's

[67] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review; 2015–2016*, 83 FR 1238 (January 10, 2018) and accompanying IDM at Comment 1.

[68] *See* Zhaofeng Case Brief at 1-4 (citing *Peer Bearing Co. Changshan v. United States*, 587 F. Supp. 2d 1319 (CIT 2008) (quoting *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (2005) (*Shandong Huarong*)).

[69] *Id*. at 2-4.

September 12, 2017 Rebuttal Factual Information submission as well as the verification report from the last review of Zhaofeng.[70]

- The record of this administrative review has no factual evidence demonstrating Zhaofeng's SRC and SRA responses, in this review, were inaccurate or untruthful in any way. Further, even if the factual record regarding Zhaofeng's separate rate status from the prior review period were placed on the record of this review, it still would not be legally permissible for Commerce to deny Zhaofeng its separate rate status in this review just because it did so in the last review.

- In the last administrative review, Commerce found issue with certain alleged inconsistencies and inaccuracies in how Zhaofeng reported one of several hundred sales as the basis for its determination to deny Zhaofeng a separate rate. Zhaofeng contests Commerce's findings and has appealed Commerce's decision to deny its separate rate status in the 2015-2016 review to the CIT. Even if the CIT upholds Commerce's decision to deny Zhaofeng of its separate rate status in the prior review period, there is no legal basis for Commerce to presume that those factual findings from the prior period apply to the current period.

- Commerce baselessly asserts that the verification of Zhaofeng for the last review, which occurred in May 2017, somehow covered sales made during the current review period of June 1, 2016 to May 31, 2017. Further, Commerce concludes, without record evidence, that Zhaofeng's record keeping for its sales was the same in this administrative review as it was in the last. Commerce merely assumes that, because it had previously concluded that Zhaofeng had lied and cheated in the prior review, it was entitled to conclude in the current review that Zhaofeng was still lying and cheating without any supporting evidence.

- Commerce's decision to deny Zhaofeng its separate rate by claiming an SRA or SRC must be applied in each administrative review. Zhaofeng complied with the separate rate requirement by submitting an SRA at Commerce's behest after it had submitted an SRC and that Commerce did not raise any questions regarding the business license, shareholders, directors, managers, corporate documents, or if Zhaofeng's record keeping process had changed from the previous review to the current POR. Therefore, it is unlawful for Commerce to deny Zhaofeng's separate rate status in this review period based on its factual findings made in the prior review period.

The Petitioner's Rebuttal Arguments

- Commerce has broad authority to interpret the antidumping statute and has relied on information from prior reviews in other proceedings in order to make an accurate finding.[71] Commerce reasonably relied on information from the current proceeding as well as

[70] *Id*.

[71] *See* Petitioner's Rebuttal Brief at 18 (citing *Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997) (stating that Commerce has broad authority to interpret the antidumping statute and devise procedures to carry out the statutory mandate).

Zhaofeng's actions in the previous administrative review and denied its separate rate status after reviewing information it supplied during this current administrative review.

- Although each review is a separate segment with its own facts, this does not preclude Commerce from relying on information obtained in a previous segment of a proceeding and, in fact, Commerce often does rely on such information.[72] For example, when Commerce determines a company's separate rate status solely based on a separate rate certification, its determination necessarily incorporates information the requesting company submitted in a prior proceeding.[73]

- Additionally, for example, prior to the recent statutory changes, domestic parties had to allege the existence of sales below cost. However, Commerce would automatically initiate an investigation of such sales in an administrative review when "some or all of a specific company's comparison market sales were determined to be below cost of production, and therefore, disregarded in the determination of normal value in the most recently completed segment of the proceeding."[74]

- Thus, Commerce has acted reasonably in this current proceeding in finding that Zhaofeng has not demonstrated it is entitled to a separate rate and it should maintain its position in the final results.

Commerce's Position

After examining the information on the record of this review, we have determined that, pursuant to Zhaofeng's complete and timely filed separate rate application,[75] Zhaofeng meets both the *de jure* and the *de facto* criteria for a separate rate in this administrative review.[76] Therefore, because Zhaofeng demonstrated the absence of *de jure* and *de facto* government control, we are reversing our preliminary separate rate determination for Zhaofeng, and are granting Zhaofeng a separate rate in this administrative review.

While the petitioner is correct that certain facts, barring evidence to the contrary, may be presumed to carry over from one proceeding to the next (*e.g.*, collapsing determinations made in an earlier segment of a case), each review is nevertheless separate and based on the record

[72] *See* Petitioner's Rebuttal Brief at 18 (citing *Shandong Huarong*, 29 CIT 484, 491 (2005)).

[73] *Id.* at 19 (citing *Enforcement and Compliance Antidumping Manual*, Chapter 10: Non-Market Economies at 6: "{Commerce} allows respondents who have already applied for and received a separate rate in a previous proceeding to submit a certification that their status has not changed, and they continue to meet the *de jure* and *de facto* criteria to qualify for a separate rate.")

[74] *Id.* (citing *Enforcement and Compliance Antidumping Manual*, Chapter 9: Cost of Production and Constructed Value at 3).

[75] *See* Zhaofeng's Letter, "Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Separate Rate Application," dated April 27, 2018.

[76] *See* PDM at 6-10 discussing the *de jure* and *de facto* criteria we analyzed in this review.

developed before the agency in the review.[77] Therefore, we have examined the record evidence in this review and find that Zhaofeng is entitled to a separate rate because it timely submitted a separate rate application and demonstrated an absence of *de jure* and *de facto* government control (*see* above).

Comment 3: Irrecoverable VAT

In the *Preliminary Results*, Commerce found that GGB paid a Chinese VAT of 17 percent on its inputs during the POR, 15 percent of which was recovered upon exportation of subject merchandise. In the *Preliminary Results*, we adjusted GGB's export price of subject merchandise by the irrecoverable VAT of two percent.

GGB's Arguments

- Commerce should make no adjustment for irrecoverable VAT in the final results. Commerce has historically held that section 772(c)(2)(B) of the Act should not apply to NME proceedings because there is no reliable way to determine whether an export tax has been included in the price of a product.[78] This practice changed with the implementation of *Section 772(c)(2)(B) Methodological Change*.[79]

- GGB is exempt from the payment of VAT for subject merchandise exported to the United States, pursuant to applicable Chinese law and according to the language of section 772(c)(2)(B) of the Act.[80] The term "exportation" is defined as the point in the chain of commerce when a good is physically transported between two sovereign countries,[81] and that the *2008 Chinese VAT Regulation*[82] affirms that no VAT is imposed on the subject merchandise at the point of exportation.

- GGB paid no VAT on exportation of subject merchandise because export sales are exempt from the VAT scheme; or, rather, since there was no additional VAT liability on exports, there was no need to credit VAT paid on inputs against VAT owed on the sale.

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[77] *See*, *e.g.*, *Hyundai Heavy Indus., Co. v. United States,* 332 F. Supp. 3d 1331, 1342 (CIT 2018) (citing *Jiaxing Bro. Fastener Co., Ltd. v. United States*, 822 F.3d 1289, 1299 (Fed. Cir. 2016); *Shandong Huarong*, 29 CIT 484, 491 (2005)).

[78] *See* GGB Case Brief at 20-21 (citing *Magnesium Corp. of Am. v. United States,* 166 F.3d 1364, 1370-71 (Fed. Cir. 1999) (*Magnesium*)).

[79] *Id*. at 21 (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 (June 19, 2012) *(Section 772(c)(2)(B) Methodological Change*))).

[80] *Id*. at 21-22 (citing GGB's October 16, 2017 Section C Questionnaire Response (GGB October 16, 2017 CQR) at 33 and Exhibit C-12).

[81] *Id*. at 23 (citing *Swan & Finch Co. v. United States,* 190 U.S. 143, 145 (1903) (*Swan & Finch Co. v. United States)*).

[82] *Id*. at 21-23 (citing GGB October 16, 2017 CQR at 33 and Exhibit C-12, *Interim Regulations of the People's Republic of China on Value-added Tax* (November 10, 2008) (*2008 Chinese VAT Regulation*) (English translation provided by GGB)) "{f}or taxpayers that export goods, the tax rate shall be zero."

- GGB did pay "input VAT" (*i.e.*, the amount of VAT assessed on production inputs) on domestic purchases for inputs related to the production of subject merchandise; however, this is an internal tax associated with the cost of acquiring inputs within China, as it was not imposed on exportation of subject merchandise.[83]

- China's *2012 VAT Circular*[84] provides that "exported goods were eligible for a refund of VAT" and that GGB "demonstrated that since its total input VAT allocated to export sales was less than its total VAT refund for export sales during the POR, GGB's export of goods did not result in any irrecoverable VAT."[85]

- Court precedent prohibits Commerce from deducting an amount of allegedly irrecoverable input VAT from the U.S. price.[86] Further, the methodology Commerce used by applying a flat rate of two percent to "free on board" (FOB) prices is contrary to section 772(c)(2)(B) of the Act; Commerce's interpretation of the antidumping law cannot be contrary to the plain language of the statute or conflict with plain Congressional intent.[87]

- Commerce presumed, without providing evidence, that China imposed a two percent VAT on exports of subject merchandise. Additionally, the facts in the instant case are virtually identical to the facts in *China Mfrs. Alliance*[88] in that Commerce removed the difference of the domestic purchases VAT and the VAT rebate (*i.e.*, 17 percent minus 15 percent) from the U.S. price.

- Irrecoverable VAT is linked to the cost of production of goods instead of their sales price under Article 5.3 of China's Circular no. 39,[89] which enables exporters to add an amount equivalent to the irrecoverable VAT to their cost of production for exported goods.

- The record shows that, in line with this circular, irrecoverable VAT is recorded in GGB's monthly subledgers as a cost of goods sold and is not related to GGB's export prices, which

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[83] *Id*. at 23 (citing *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340, 1346-1347 (CIT 2011) (*Globe Metallurgical*); and *Bridgestone Ams., Inc. v. United States*, 33 C.I.T. 1040, 1048-50 (2009) (*Bridgestone)*).

[84] *Id.* at exhibit C-12, *Circular on VAT and Consumption Tax Policies on Exported Goods and Services (2012)* (*2012 VAT Circular*) (English translation provided by GGB).

[85] *Id.* at 22.

[86] *Id*. at 27-29 (citing *China Mfrs. Alliance, LLC v. United States*, 205 F. Supp. 3d 1325, 1346-1351 (2017) (*China Mfrs. Alliance*) and *Qingdao Qihang Tyre Co. v. United States,* 308 F. Supp. 3d 1329 (*Qingdao Qihang Tyre Co.*)).

[87] *Id*. at 25 (citing *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1371-72 (Fed. Cir. 2010) (*Dorbest 2010)* and *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 81 L. Ed. 2d 694, 104 S. Ct. 2778 (1984) (*Chevron*)).

[88] *Id*. at 27-29 (citing *China Mfrs. Alliance*, 205 F. Supp. 3d at 1346-1351).

[89] *See* GGB October 16, 2017 CQR at Exhibit C-12 (Government of China Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services, Cai Shui {2012} No. 39 (May 25, 2012) (*2012 VAT Circular*)).

GGB set independently of the amount of irrecoverable VAT.[90] Therefore, Commerce cannot offset GGB's export prices by a legally-presumed amount of irrecoverable VAT.

- Computing a VAT adjustment based on the "irrecoverable" VAT rate (*i.e.*, two percent) rather than the actual VAT amount (*i.e.*, 17 percent) does not equate to calculating the actual amount paid since the applicable input VAT rate and VAT refund rate (*i.e.*, 15 percent) are being applied to two different values (*i.e.*, the price of inputs purchased, and the price of goods exported, respectively). Further, case precedent shows that an adjustment to U.S. price for VAT should be based upon the amount of VAT paid to prevent distortion arising from collecting VAT on the basis of input cost and refunding it based on FOB value.[91]

- GGB fully responded to Commerce's questions concerning VAT and that Commerce did not request additional information to calculate the allegedly unrefunded VAT incurred on inputs. Commerce is obligated to promptly inform a party if it believes information is deficient and to provide the party with an opportunity for explanation.[92]

- Commerce's VAT methodology is unsupported by record evidence and court precedent. In several court decisions, the court found that China's Circular No. 39 failed to provide evidentiary support for the {agency's} irrecoverable VAT calculation; it also found a disconnect between the *Section 772(c)(2)(B) Methodological Change* and Commerce's methodology based on Circular No. 39 with respect to both the rationale behind irrecoverable VAT and the formula used to compute it.[93]

The Petitioner's Rebuttal Arguments

- Commerce correctly adjusted GGB's U.S. prices to account for irrecoverable VAT, as explained in the *Preliminary Results* as well as the *Section 772(c)(2)(B) Methodological Change*.

- While GGB relied on several CIT opinions that have found Commerce's current irrecoverable VAT practice contrary to the law, there are far more opinions that have found Commerce's practice consistent with the law.[94]

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[90] *See* GGB Case Brief at 30-31 (citing GGB's April 19, 2018 Supplemental Questionnaire Response (GGB April 19, 2018 SQR) at Exhibits SC-27 and SC-29).

[91] *Id.* at 31-32 (citing *Federal Mogul Corp. v. United States*, 63 F.3d 1572 (*Federal Mogul*); *E. I. DuPont De Nemours & Co. v. United States*, 20 C.I.T. 373, *381* (*E. I. DuPont De Nemours*); and *Fine Furniture (Shanghai), Ltd. v. United States*, 182 F. Supp. 3d 1350 (*Fine Furniture*)).

[92] *Id*. at 31-32 (citing *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 28 C.I.T. 1185, 1193-95 (*Hebei Metals*)).

[93] *Id*. at 34-39 (citing *Jacobi Carbons AB v. United States*, 313 F. Supp. 3d 1344, 1373 (CIT 2018) (*Jacobi Carbons 2018*); *Aristocraft of Am., LLC v. United States*, 331 F. Supp. 3d 1372, 1376 (CIT 2018) (*Aristocraft 2018*); and *China Mfrs. Alliance*).

[94] *See* Petitioner's Rebuttal Brief at 9-10 (citing *Diamond Sawblades Mfrs. Coal. V. United States*, Slip Op. 18-28 at 4-12 (CIT 2018); *Aristocraft of Am., LLC v. United States*, 269 F. Supp. 3d 1316, 1321-1326 (CIT 2017) (*Aristocraft 2017*); *Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159, 1186-88 (*Jacobi Carbons 2017*); *Juancheng Kangtai Chem. Co. v. United States*, Consol. Court No. 14-00056, slip op. 17-3 (CIT 2017)

- The Chinese government credits the producer for taxes that it would have collected had the sale been a domestic one. In the situation of the merchandise at issue in this review, the credit was 15 percent of the sales price instead of the 17 percent that would have been collected for domestic sales, thereby reducing the VAT collected by GGB on exports when compared with what GGB recaptures for domestic sales.[95]

- The Chinese government has explained the purpose of the "VAT rebate system" is to accommodate "the request for environmental protection, energy saving and emission reduction" and "to discourage the production and export of environmental polluting products."[96] If the credit system did not reduce the return to the exporting company, then the Chinese government's stated purpose in implementing the system (to reduce production for export) would not be achieved.

- GGB's accounting records confirm the accuracy of Commerce's calculations in that irrecoverable VAT affects GGB's revenues since GGB records the amount of the irrecoverable VAT on exported sales in its cost of goods sold,[97] using the formula employed by Commerce (*i.e.*, the difference between the VAT rate and recoverable rate and applying that difference to the sale values on its export invoices).[98]

Commerce's Position

For the reasons explained below, we continue to adjust GGB's U.S. price for irrecoverable VAT using the same methodology relied upon in the *Preliminary Results*.

Commerce's current methodology has been in place since 2012, when Commerce announced it would begin adjusting U.S. price for irrecoverable VAT in an NME proceeding in accordance with section 772(c)(2)(B) of the Act.[99] In this announcement, Commerce stated that the statute provides for when an NME government imposes an export tax, duty, or other charge on subject merchandise or on inputs used to produce it, from which the respondent was not exempted, Commerce will reduce the respondent's U.S. price by the amount of the tax, duty or charge paid, but not rebated.[100]

(*Juancheng*), at 25-31; and *Fushun Jinly Petrochemical Carbon Co. v. United States*, Court No. 14-00287, slip op. 16-25 (CIT 2016) (*Fushun Jinly*), at 20-25).

[95] *Id.* at 10-12 (citing GGB October 16, 2017 CQR at Exhibit C-15).

[96] *Id.* at 11 (citing WTO Secretariat, *Trade Policy Review, China*, WT/TPR/S/342 (June15, 2016)).

[97] *Id.* at 11-12 (citing GGB April 19, 2018 SQR at 24-25 and Exhibits SC-28 and SC-29).

[98] *Id.* (citing GGB April 19, 2018 SQR at 24 and Exhibit SC-29).

[99] *See Section 772(c)(2)(B) Methodological Change*, 77 FR at 36482.

[100] *Id.*, 77 FR at 36483; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014) and accompanying IDM at Comment 5.

VAT is an indirect, *ad valorem*, consumption tax imposed on the purchase or sale of goods. It is levied on the purchase or sale price of the good, *i.e.*, it is paid by the buyer and collected by the seller for remittance to the government. For example, if the purchase price is $100 and the VAT rate is 15%, the buyer pays $115 to the seller, which consists of $100 paid for the goods and $15 paid in VAT. VAT is typically imposed at each step in the chain of commerce. Thus, a party (1) pays VAT on its purchases of inputs and raw materials (*i.e.*, input VAT) as well as (2) collects VAT on its sales of their output products (*i.e.*, output VAT). Thus, this indirect consumption tax is passed through each party in the chain of commerce and paid by the ultimate consumer of the goods. This ultimate consumer is the party which ends, or breaks, the repetitive chain of (1) pay the (input) VAT, (2) pass through the VAT to the next party in the chain of commerce, and (3) collect the (output) VAT on behalf of the government. Further, in a typical VAT system, output VAT is fully refunded or not collected by reason of exportation of the merchandise.

A company calculates input VAT and output VAT for "net VAT liability" purposes, *i.e.*, to determine the total amount of money which the company must remit to the government. This calculation is done on a company-wide, not on a transaction-specific, basis, *i.e.*, in the case of input VAT, on the basis of all input purchases regardless of whether used in the production of all goods for export or domestic consumption, and in the case of output VAT, on the basis of all sales, of all products, in-scope and not, to all markets, foreign and domestic. For example, a company might pay the equivalent of $60 million in total input VAT across all input purchases and collect $100 million in total output VAT across all sales. In this example, the company will remit to the government $40 million of the $100 million in output VAT that it collected on behalf of the government because the company can claim the $60 million payment for input VAT as a credit against the collected output VAT. In other words, the company recovers the $60 million in input VAT that it paid to its suppliers through its collection of $100 million in output VAT, and the supplier is responsible for remitting the $60 million to the government. The $40 million remittance to the government (*i.e.*, net VAT liability) is the tax on the value added by the company and is the transfer to the government of this VAT paid by and collected from the company's customers. Thus, both the $60 million and $40 million are passed through by the company to the company's customers, and these costs burden the company's customers, not the company itself.

As noted by GGB, the Chinese VAT system is governed by the *2008 Chinese VAT Regulation* and *2012 VAT Circular*. In its GGB October 16, 2017 CQR submission, GGB summarized the basic tenets of the *2008 Chinese VAT Regulation* as follows:

> Article 1 of the {*2008 Chinese VAT Regulation*} explains that "All units and individuals engaged in the sales of goods, the provision of processing, repairs and replacement services, and the importation of goods within the territory of the People's Republic of China are taxpayers for value-added tax and shall pay value added tax in accordance with these Regulations." Article 5 states that "For taxpayers that engage in the sales of goods or taxable services, the output tax shall be the value-added tax payable calculated on the basis of the sales amount involved and the tax rates prescribed in Article 2." Article 2.3

> confirms that "For taxpayers that export goods, the tax rate shall be zero, unless otherwise provided by the State Council."[101]

This is consistent with the general description of the VAT tax system above – All units and individuals …. within the territory of the People's Republic of China …. shall pay value added tax …. on the basis of the sales amount {as} prescribed in Article 2. Article 5 further provides that the amount of the VAT shall be

> Output tax = Sales amount * Tax rate[102]

This formula is also consistent with the general description of a VAT tax system above. The term "output tax" in this formula refers to any transaction between a "taxpayer" (*i.e.*, a company) and its customer, and represents an amount of VAT collected by the taxpayer from the customer on behalf of the government. This "output tax" is identical with the "output VAT" included in the generic description of a VAT system above. The tax amount for the transaction between a supplier and a company (*i.e.*, input VAT) represents the amount of VAT paid by the company to its supplier, as also calculated by this formula (in other words, it is the "output tax" for the supplier). Input VAT is similar to the term "input tax" used in the Chinese regulations, where "input tax" includes all VAT-related amounts which a party must pay. This includes the input VAT that a company would pay a supplier (as part of the repetitive chain of paying, passing through and collecting VAT) as well as the amount of irrecoverable VAT which a company must bear as a cost as a result of the exportation of goods. As noted above, the input VAT is not born as a cost by the company because the company generally passes through the amount of the input VAT to the next party in the chain of commerce.[103] As discussed below, the amount of irrecoverable VAT must be born by the company as a cost in its books and records.

These definitions are used in Article 4 of the *2008 Chinese VAT Regulation*:

> Except as provided in Article 13 of these Regulations, for taxpayers engaged in the sales of goods or the provision of taxable services (hereinafter referred to as "the sales of goods or taxable services"), the tax payable shall be the balance of output tax for the current period subtracted by the input tax for current the period. The formula for computing the tax payable is as follows:
>
> Tax payable=Output tax for the current period-Input tax for the current period[104]

Thus, for the current period, the "output tax" is the amount of VAT that a company collects for the benefit of the government; the "input tax" is the amount of VAT that a company must pay to

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[101] *See* GGB October 16, 2017 CQR at 33-34 (internal citations omitted).

[102] *See 2008 Chinese VAT Regulation* at Article 5.

[103] Input VAT is borne as a cost by the party that ultimately consumes the goods.

[104] *See 2008 Chinese VAT Regulation* at Article 4. Article 4 also provides that if the net VAT liability is negative, then the company may carry over that negative amount to the next tax period. Article 13 recognizes the requirements for a party's registration as a taxpayer.

the government (*e.g.*, the VAT tax included in the purchases of inputs); and the "tax payable" is the net VAT liability that a company must remit to the Chinese government.

As noted above in Article 5, Article 2 of the *2008 Chinese VAT Regulation* provides for the rates for calculating VAT. Article 2.1 provides that the normal VAT rate will be 17%, and Article 2.2 provides for an exceptional VAT rate for the prescribed products in Article 2.2 or as otherwise provided for by the State Council.[105] As noted by GGB, Article 2.3 provides that for "export goods, the tax rate shall be zero, unless otherwise provided by the State Council."[106] Further, Article 25 provides for the refund of VAT for exported goods.

> Taxpayers that export goods to which provisions relating to tax refund (exemption) are applicable shall, upon completion of export procedures with customs authorities, apply for tax refund (exemption) for such goods to the competent taxation authorities on a monthly basis on the strength of export declaration forms and other relevant evidence.[107]

Commerce reasonably concludes based on Articles 2.3 and 25, that a company within China which exports goods is liable for VAT as with domestic sales, and then that amount of VAT is refunded "upon completion of export procedures." The net result of this "tax refund" is that the VAT rate for exported goods is zero. However, as provided for in Article 2.3, this result may still be altered by the State Council.

On May 25, 2012, the Chinese government promulgated the *2012 VAT Circular*.

> 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 foreign-oriented processing, repair and fitting services (hereafter referred to as the "exported goods and services", including the "goods deemed as exported goods") which were enacted successively In the recent years, and clarified the several problems reflected in the actual implementation.[108]

Article 1 defines the "export enterprises," "manufacturing enterprises" and "export goods" that "the policies concerning the exemption and refund of Value-added Tax (hereafter referred to as the 'VAT refund (exemption)') shall be applied."[109] Article 2 provides for the "exemption, offset and refund" of VAT and Article 3 defines the VAT refund rate for exported goods. Article 3.1, consistent with Article 2.3 of the *2008 Chinese VAT Regulation*, states

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[105] Numerous other provisions in the *2008 Chinese VAT Regulation* provide for exceptions to the general VAT rate provided for in Article 2.1, none of which are relevant in this proceeding.

[106] *See 2008 Chinese VAT Regulation* at Article 2.3.

[107] *See 2008 Chinese VAT Regulation* at Article 25.

[108] *See 2012 VAT Circular.*

[109] *See 2012 VAT Circular* at Article 1.

> Except for the export VAT refund rate (hereafter referred to as the "tax refund rate") otherwise provided for by the Ministry of Finance and the State Administration of Taxation according to the decision of the State Council, the tax refund rate for exported goods shall be the applicable tax rate. The State Administration of Taxation shall promulgate the tax refund rate through the Tax Refund Rate Catalogue of Exported Goods and Services according to the aforesaid provisions for the implementation of the tax authorities and taxpayers.[110]

Thus, unless otherwise defined, the VAT refund rate will be the applicable VAT rate for the exported goods, and, consequently, as stated in Article 2.3 of the *2008 Chinese VAT Regulation*, "the {net} tax rate shall be zero." Further, the Chinese tax authorities will publish the applicable VAT refund rates in the "Tax Refund Rate Catalogue of Exported Goods and Services."

Articles 4 provides for the calculation of the amount of the VAT refund because of exportation and the basis on which this amount is calculated. As noted by GGB and relevant to this proceeding, the basis for the VAT refund "shall be the actual FOB price, of exported goods and services"[111] or "shall be determined based on the FOB price of the exported goods after having deducted the amount of customs bonded imported materials and parts as included in the exported goods."[112] Consistent with Article 4, Article 5.1 then provides the following formula for the amount of the "Tax which may not be exempted or offset", *i.e.*, the irrecoverable VAT.[113]

$$\textbf{Irrecoverable VAT} = (P - c) \times (T_1 - T_2),$$

where,

> P = "FOB Price {*i.e.*, value} of exported goods;"
> c = "Price {*i.e.*, value} of tax-free purchased raw materials;"
> T_1 = "Applicable tax rate of exported good;" and
> T_2 = "Tax refund rate of exported goods."

This formula can be applied on a shipment-specific basis as well as to accumulated values over a defined period of time. This amount, the irrecoverable VAT, cannot be exempted or offset by reason of exportation of the goods, and thus must be passed on by the company exporting the goods to its customer. It represents the amount of input VAT paid by the exporter to its supplier and which must be borne by the exporter's customer, *i.e.*, implicitly embedded in the export price charged to the exporter's customer.

Lastly, Article 5.3 provides that "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." The amount of irrecoverable VAT must be borne by the exporter just as the VAT must be borne by the ultimate consumer of the goods. In essence, the exporter is the ultimate

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[110] *See 2012 VAT Circular* at Article 3.1.

[111] *See 2012 VAT Circular* at Article 4.1.

[112] *See 2012 VAT Circular* at Article 4.2.

[113] *See 2012 VAT Circular* at Article 5.1(1).

consumer of the goods in the chain of pay, pass on, and collect the VAT. The exporter breaks that chain of commerce along which the indirect consumption tax is passed through to the ultimate consumer, but unlike an ultimate consumer inside the domestic market, the exporter has the benefit that some or all of the VAT is refunded or exempted by the Chinese government.

Continuing the example from above, when the accumulated export sales amount to P = $200 million, c = 0, T_1 = 17% and T_2 = 10%, the amount of irrecoverable VAT will be ($200 million - $0) x (17% - 10%) = $200 million x 7% = $14 million. This amount, $14 million, must also be remitted to Chinese government, and be recorded as a cost of the export sales in the company's books and records. This cost would not be incurred but for the exportation of the goods. Thus, the exporter incurs a cost equal to $14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of $T_1 – T_2$. This cost would not be incurred but for the exportation of the goods, and, therefore, functions as an "export tax, duty, or other charge" and is covered by the price of the exported goods. It is for this "export tax, duty, or other charge" that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act.[114]

It is important to note that Commerce, in its analysis, has viewed the amount of irrecoverable VAT as a reduction in the amount of creditable input VAT. This amount of creditable VAT is offset against the amount of output VAT collected by the company to reduce the net VAT liability which the company must remit to the Chinese government. Thus, reducing the offset for input VAT will increase the amount which the company must remit. Under Chinese law the reduction in creditable input VAT and determination of the net VAT liability is defined in terms of, and applies to, the company as a whole across all purchases and sales.[115] This company-wide accounting of VAT does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint, not specific products, markets or sales.

We have reviewed our determination and the record evidence, and further explain our determination with respect to the amount of the deduction from U.S. price for irrecoverable VAT. Although the link between the amount of VAT remitted to the Chinese government (*i.e.*, net VAT liability) and our irrecoverable VAT adjustment is evident in GGB's monthly VAT statements and relevant to the Chinese VAT scheme, it is not relevant to the calculation of the adjustment to U.S. price for irrecoverable VAT. The monthly VAT statements summarizes GGB's payments and collections of VAT for the company as a whole to determine GGB's net VAT liability, i.e., required remittance to the government. These statements include the amount for irrecoverable VAT, but do not relate to the recordation of the export-specific actual cost for

[114] Because the $14 million is the amount of input VAT that is not refunded to the company and increases the company's net VAT liability, it is sometimes referred to as "irrecoverable input VAT." However, that phrase is perhaps misleading because the $14 million is not a fraction or percentage of the VAT that the company paid on purchases of inputs used in the production of exports. If that were the situation, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Circular* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the $14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula's reliance on the FOB export value as the basis for the calculation. Thus, "irrecoverable input VAT" is in fact, despite its name, an export tax within the meaning of section 772(c)(2)(B) of the Act.

[115] *See*, *e.g.*, Article 5(1) of the *2012 VAT Circular*.

irrecoverable VAT, which is one of many accounts summarized in the monthly VAT reports. In other words, the sum total of GGB's required VAT remittance does not impact the export-specific actual cost of irrecoverable VAT.

Commerce disagrees with GGB's assertion that it paid no VAT on subject merchandise "because the VAT rate is zero."[116] GGB reported that the appropriate VAT rate is 17 percent,[117] and that the VAT refund rate is 15 percent.[118] Further, GGB reported that "{n}o input was imported under a bonded warehouse scheme."[119] Therefore, as provided for in Article 5.1 of the *2012 VAT Circular*, GGB was liable for irrecoverable VAT equal to 2 percent of the FOB value of the subject merchandise.

Commerce disagrees with GGB's characterization that a VAT is an "internal tax" that is not "imposed on exportation of the subject merchandise," and that it is "related to the cost of production within China."[120] As discussed above, VAT is an indirect consumption tax which is borne (*i.e.*, paid) by the ultimate consumer of the goods and consists of repeated steps of pay, pass through and collect the VAT from a party's purchase of inputs through to the sale of goods. As such, each party completing these three steps incurs no VAT cost, including as a cost of production as asserted by GGB. However, the ultimate consumer ends or breaks this chain by not selling the goods to another party (*i.e.*, a taxpayer as defined in the 2008 VAT Regulation) and thus that party must recognize the VAT as a cost which is not passed on. The exception is when a party exports goods, where the Chinese government provides for the refund of the VAT which would have been assessed on the exported goods. As quoted by GGB:

> For taxpayers that export goods, the tax rate shall be zero, unless otherwise provided by the State Council.[121]

Thus, in general, no VAT is collected on exported goods because that VAT is refunded by the Chinese government. However, for TRBs, as GGB has reported, the refund rate is not the full VAT rate of 17 percent, but rather 15 percent. Thus, GGB must pay to the Chinese government two percent of the FOB value of the subject merchandise because of the exportation of that merchandise, and GGB must also recognize this as a cost of the export sales. Accordingly, this amount must be recovered within the price of the subject merchandise and constitutes "an export tax, duty or other charge" as discussed above.

Commerce also rejects GGB's claim that the VAT adjustment is a "deduction for VAT paid on the purchase of material inputs." The amount of irrecoverable VAT for which Commerce has adjusted GGB's U.S. prices is not related to the VAT paid by GGB for its purchases of material inputs. This amount is calculated based on (1) the FOB value of the subject merchandise and (2)

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[116] *See* GGB's Case Brief at 23 (emphasis in original).

[117] *See* GGB October 16, 2017 CQR at 34. *See also 2008 Chinese VAT Regulation* at Article 2.1.

[118] *See* GGB October 16, 2017 CQR at 34.

[119] *See* GGB October 16, 2017 CQR at 34.

[120] *See* GGB's Case Brief at 24.

[121] *See* GGB October 16, 2017 CQR at 34 (quoting from 2008 Chinese VAT Regulation at Article 2.3).

the difference between the assessed VAT rate and the VAT refund rate stipulated by the Chinese government. The amount of irrecoverable VAT is only "related" to the amount of VAT paid for inputs (*i.e.*, input VAT) in that both amounts are used with other accounts to determine the net amount which GGB must remit to the Chinese government. Nonetheless, the amount of irrecoverable VAT is neither impacted by the amount of input VAT nor does the amount of irrecoverable VAT impact the amount of input VAT.

This relationship can also be seen in GGB's monthly VAT statements. As explained above, the irrecoverable VAT expense is a liability calculated based on the VAT rate and the refund rate specific to the exported good, in this situation two percent, and the FOB value of the subject merchandise.[122] GGB's monthly VAT statements provide step-by-step guidance on the calculations, described in the *2012 VAT Circular*, that exporters are to carry out in order to arrive at their net VAT liability.[123] For example, if a firm sells goods that are not subject to the irrecoverable VAT expense (*e.g.*, Company A), it is able to credit the total amount of input VAT paid as a deduction from the amount of output VAT collected from its downstream customers, the difference being its net VAT liability. If a firm sells some goods that are exported and thus subject to the irrecoverable VAT expense (*e.g.*, Company B), then it must deduct the irrecoverable VAT amount (*e.g.*, $1.2 million) from the amount of the creditable input VAT before it is permitted to deduct that amount from the amount of output VAT collected from downstream customers. In this example, Company A's output VAT is reduced (*i.e.*, offset) by the full amount of its input VAT paid (*e.g.*, $10 million), and Company B's output VAT is only partially reduced by its input VAT after deducting an amount corresponding to the value of its irrecoverable VAT (*i.e.*, $10 million - $1.2 million = $8.8 million). It is important to note that, but for the deduction of irrecoverable VAT from its input VAT credit, Company B would have been granted a credit equal to its total input VAT paid, effectively recovering 100 percent of its input VAT paid; instead that credit was reduced by $1.2 million to $8.8 million, rendering $1.2 million of its input VAT paid unrecovered and increasing Company B's net VAT liability to the government by $1.2 million. This example illustrates how a firm's irrecoverable VAT results in a payment to the government in the amount of the FOB value of the exported goods times the difference between the VAT rate and the refund rate specific to the exported good.[124] Chinese VAT law instructs firms to record this irrecoverable expense as a cost of goods sold so that the exporter may recover that portion of the input VAT that is forgone as a result of the exportation of the products and the generation of irrecoverable VAT that otherwise would have been fully credited against their output VAT if the product had not been exported.[125] The record demonstrates that GGB booked approximately two percent of its exported TRB export value to its accounting records as irrecoverable VAT and considered it as a cost of its sales of TRBs.[126]

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[122] *Id*. at 24-25 and Exhibits SC-27 through SC-35. *See also* GGB Verification Report at 11 and verification exhibits 7 and 16.

[123] *See e.g.,* GGB April 19, 2018 SQR at 24-25 and Exhibits SC-27 through SC-35.

[124] *See* Article 5.1(1) of the *2012 VAT Circular.*

[125] *See* Article 5(3) of the *2012 VAT Circular*.

[126] *See e.g.,* GGB April 19, 2018 SQR at Exhibits SC-27 and SC-28.

As described above, the impact of irrecoverable VAT is plainly evident in the amount of "total deductible tax" available to Company B in the single-month scenario presented. However, GGB's VAT statements underscore how China's complex system of liabilities, deductions, offsets, and exemptions, with carryover amounts between periods and adjustments reflecting calculations from prior periods, can obscure the impact of irrecoverable VAT on the input VAT credit. Furthermore, it demonstrates that input VAT credits and reductions for irrecoverable VAT are not forgiven in any single month because input VAT credits are carried over from month to month. Notwithstanding these company-wide accounting procedures regarding the net VAT liability to the Government of China, the record demonstrates that GGB's irrecoverable VAT results in an increased net VAT liability to the government based on a percentage of the value of its FOB sales, and that the existence of this increased net VAT liability is due to the exportation of subject merchandise.[127]

Although, as stated above, input VAT is not a factor included in the calculation of the adjustment to U.S. price for irrecoverable VAT, we further explain the function of input VAT. The input VAT and irrecoverable VAT, along with output VAT, all relate to overall net VAT liability, but input VAT is not relevant to our calculation of a transaction-specific irrecoverable VAT expense, which is based on the calculation required of exporters by Chinese law and uses the variables with which exporters are required by Chinese law to calculate the amount of their irrecoverable VAT expense. Moreover, in this context, input VAT is not relevant to the calculation of export price because it is a credit to an exporter's output VAT, not a cost incurred but rather passed through to the next customer. The important point is that the amount of VAT that is irrecoverable, in essence, becomes an export-contingent tax and, therefore, is properly considered an "export tax, duty, or other charge" described in section 772(c)(2)(B) of the Act that must be deducted from export price.

As illustrated by GGB's monthly VAT statements, if a firm's "total deductible tax" (which is equal to the amount of its input VAT paid plus an amount of its deductible VAT paid carried over from a prior month, minus the amount of its irrecoverable VAT) is greater than the amount of the output VAT collected from its customers, then the amount of its "actual tax deductible" becomes its output VAT and the difference between its output VAT and total deductible tax, *i.e.*, its "Tax retained end of this month," can be credited forward to the next month as its tax "Retained last month."[128] Thus, for an exporter such as GGB, the difference between its "total deductible tax" and its "actual tax deductible" is transferred to the next month as its tax "retained last month," and the firm's deductible tax is serially transferred from one month to the next, and is continually reduced by the amount of irrecoverable VAT incurred in each period.[129] Thus, the effect of the irrecoverable VAT expense is not isolated to a single month but, rather, continues to affect the offsetting of the input VAT credit in subsequent months. This relationship underscores

[127] *See* GGB April 19, 2018 SQR at 24-25 and Exhibits SC-27 through SC-35. *See also* GGB Verification Report at 11 and verification exhibits 7 and 16.

[128] *See also* Article 5.1(3) of the 2012 VAT Circular.

[129] A firm's "deductible tax" is the sum of its creditable input VAT plus an amount retained and carried forward from the previous month, minus its irrecoverable VAT; *see e.g.,* GGB October 16, 2017 CQR at Exhibit C13 at box 17 (although the formula in box 17 also includes adjustments for "Refundable tax for exemption, offset, refund of goods" and "Overdue tax payable," the record provides no detail indicating that these variables have an effect on the amount of irrecoverable VAT incurred).

another reason why the input VAT that GGB paid is not relevant to the irrecoverable VAT calculation during the POR; not only is irrecoverable VAT calculated on a different basis than input VAT, but the effect of the irrecoverable VAT expense is not tied to input VAT paid in any particular month. Thus, to the extent that Commerce may not be able to link the input VAT to the deduction for irrecoverable VAT on any given record, the input VAT paid is not relevant to the calculation of irrecoverable VAT, consistent with Chinese law. In addition, the amount of irrecoverable VAT is not dependent on either the amount of output VAT or the amount of net VAT liability, but net VAT liability is dependent on the amount of the irrecoverable VAT.

It is important to note that while the interplay between irrecoverable VAT and input VAT has a direct effect on the overall net VAT liability of a firm, we must emphasize that it is not the overall net VAT liability of GGB with which we are concerned, but the effect of the irrecoverable VAT expense on the exporter's ability to offset its tax liability by its input VAT credit, and the recording of the irrecoverable VAT expense as a cost of goods sold. Most importantly, the effect of the irrecoverable VAT expense on the exporter's ability to offset its net VAT liability by its input VAT credit is not a function of the VAT rate paid on inputs, the value of those inputs, or the aggregate amount of input VAT paid, but is a function of the FOB selling price of the exported goods and the difference in the VAT rate and the VAT refund rate for those exported goods.[130] The Act requires that Commerce reduce the export price or constructed export price used in the antidumping margin calculation by "the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C) . . . ." of the Act.[131] Commerce's irrecoverable VAT adjustment deducts the amount of irrecoverable VAT that was included in the selling price of TRBs sold to the United States and is calculated on the same basis (*i.e.*, percentage of FOB price) that Chinese law requires.[132]

Section 772(c)(2)(B) of the Act authorizes Commerce to deduct from U.S. price 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 GGB argues that it pays no VAT upon export, it misstates the issue before Commerce. Despite acknowledging in its response that it does record irrecoverable VAT as a cost of goods sold,[133] GGB refuses to acknowledge that the irrecoverable VAT is truly a cost. This demonstrates either intentional misleading on GGB's part or a misunderstanding of its own costs under Chinese law. If, for example, the Chinese government were to determine that it wanted to either extract higher taxes from TRB exporters or restrict the export of TRBs, it could reduce the rebated VAT amount upon export; a reduction of the rebate from 15 percent to five percent would result in an increased cost to GGB of 10 percent of FOB value that it would have to book as a cost and recover though its pricing of export sales. That would equate to a real cost increase to GGB of 10 percent of FOB value. Under Chinese law, the cost increase would only apply to exports, since only exports incur

[130] *See* Article 5.1(1) of the *2012 VAT Circular.*

[131] *See* section 772(c)(2)(B) of the Act.

[132] *See* GGB April 19, 2018 SQR at 24-25.

[133] *Id*. *See also* GGB Verification Report at 11 and verification exhibit 7.

irrecoverable VAT 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.[134] Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[135]

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."[136] 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 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."[137] 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*."[138] The "imposition" in the case of China's irrecoverable VAT occurs as a result of exportation, which is a permissible interpretation of the statute.[139]

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.[140] The CIT upheld our interpretation as permissible interpretation of the statute.[141] Additionally, it is set forth in Chinese law,[142] 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.[143]

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[134] *See, e.g., 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 IDM at Comment 7.

[135] *See e.g., 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 IDM at Comment 5.

[136] *See Diamond Sawblades Manufacturers' Coalition v. United States*, 301 F. Supp. 3d 1326, 1335 (CIT 2018) (*Diamond Sawblades Manufacturers' Coalition*).

[137] *See Diamond Sawblades Manufacturers' Coalition*, 301 F. Supp. 3d at 1335.

[138] *Id.* (citing Webster's New International Dictionary of the English Language Unabridged, at 1251 (2nd ed. 1956)).

[139] *Id.* ("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.")

[140] *Id*.

[141] *See Jacobi Carbons 2017* and *Aristocraft 2017*. Note that, as discussed below, the Court did not agree with Commerce's interpretation of the statute in *China Mfrs. Alliance* and *Qingdao Qihang Tyre Co.*

[142] *See* GGB October 16, 2017 CQR at Exhibit C-12.

[143] *See Section 772(c)(2)(B) Methodological Change*, 77 FR at 36483.

Commerce disagrees with GGB's contention that "irrecoverable VAT is linked to the cost of production of goods instead of their sale prices" consistent with Article 5.3 of the *2012 VAT Circular*.[144] Article 5.3 states that the irrecoverable VAT "shall be included into the cost of the exported goods and services." Article 5.3 does not specify production costs, and clearly such an expense is caused by the exportation of the subject merchandise and not its production, yet both are reasonably seen as costs of goods sold. GGB's claim is inapposite.

Commerce rejects GGB's claim that the method to calculate the adjustment for irrecoverable VAT is unreasonable.[145] GGB asserts that the 17 percent VAT rate is only applicable to purchased inputs, and that the VAT adjustment calculated simply as two percent of the FOB value of the subject merchandise. Article 5.1(1) of the *2012 VAT Circular* clearly provides for the formula for the amount of irrecoverable VAT as discussed above. This amount is based on the difference of the VAT rate and the VAT refund rate for the exported goods (i.e., subject merchandise) and the FOB of the exported goods. Further, it is this amount that Article 5.3 stipulates must be recorded as a cost of the goods sold in the exporter's books and records. There is no factual evidence on the record to support GGB's claim that the amount of irrecoverable VAT is dependent on the purchase value of material inputs.

Commerce rejects GGB's concept that the only VAT is not levied on exported subject merchandise and is only levied on domestically purchased inputs.[146] Article 1 of the *2008 Chinese VAT Regulations* states:

> All units and individuals engaged in the sales of goods, provision of processing, repairs and replacement services, and the importation of goods within the territory of the People's Republic of China are taxpayers of value-added tax and shall pay value-added tax in accordance with these Regulations.

Further, Article 2.1 of the the *2008 Chinese VAT Regulations* states:

> For taxpayers that sell or import goods, other than those specified in items (2) and (3) of this Article, the tax rate shall be 17%.

Thus, all parties that sell or import goods within China shall pay VAT in accordance with the regulations and that generally the VAT rate is 17 percent. There are no provisions, either here or elsewhere in the *2008 Chinese VAT Regulation* or the *2012 VAT Circular* which exempts sales by an individual within China from VAT simply because the goods are exported. Exported goods are subject to VAT just as goods sold to a customer with China. Nonetheless, the VAT paid on exported goods may be eligible for exemption or refund consistent with these regulations. GGB has failed to demonstrate that its sales of subject merchandise are not subject to this requirement to pay VAT on subject merchandise. Rather, GGB may claim a refund of VAT consistent with these regulations, as discussed herein.

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[144] *See* GGB's Case Brief at 30.

[145] *Id*. at 31-32.

[146] *Id*. at 32-33.

We do not find *China Mfrs. Alliance* or *Qingdao Qihang Tyre Co.* to be applicable as binding precedent in this review. In both cases, Commerce issued remand redeterminations disagreeing with the Court's opinion.[147] Further, the CIT has recently addressed the issue of the irrecoverable VAT within the *Chevron*[148] framework in several cases.[149] Unlike *China Mfrs. Alliance* and *Qingdao Qihang Tyre Co.*, 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.[150] *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.[151] Even after *China Mfrs. Alliance*, *Jacobi Carbons 2017* 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.[152] *Diamond Sawblades Manufacturers' Coalition* upheld our deduction of irrecoverable VAT, notwithstanding *China Mfrs. Alliance.*[153] 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*.[154]

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.[155] *Jacobi Carbons 2017* 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.[156] *Aristocraft 2017* described the differences of the *Chevron* analyses between *Juancheng*, *China Mfrs. Alliance*, and *Jacobi Carbons 2017*

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[147] *See* Commerce's Remand Redeterminations, *China Manufacturing Alliance, LLC, et al. v. United States*, Consol. Court No. 15-00124; Slip Op. 17-12 (CIT 2017), Final Results of Redetermination Pursuant to Court Remand, dated June 21, 2017; and *Qingdao Qihang Tyre Co., Ltd., et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-35 (CIT 2018), Final Results of Redetermination Pursuant to Court Remand, dated July 24, 2018.

[148] *See Chevron* (holding that, in the context of agency rulemaking, and assuming the statute is silent or ambiguous, courts should defer to agency understanding of the statute pursuant to which the agency promulgates regulations).

[149] In the chronological order, those cases are *Fushun Jinly*, *Juancheng*, *China Mfrs. Alliance*, *Jacobi Carbons 2017*, *Aristocraft 2017*, and *Diamond Sawblades Manufacturers' Coalition.*

[150] *See Aristocraft 2017*, 269 F. Supp. 3d at 1323-24.

[151] *Id.* at 1324.

[152] *Id.*

[153] *See Diamond Sawblades Manufacturers' Coalition*, 301 F. Supp. 3d at 1335-39.

[154] *Id.* at 12.

[155] *Id*.

[156] *See Aristocraft 2017*, 269 F. Supp. 3d at 1324, and *Jacobi Carbons 2017*, 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.").

and stated that "{t}his Court is persuaded by the *Chevron* analysis of *Jacobi Carbons 2017* and *Juancheng*."[157]

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.[158] On remand, Commerce found it more appropriate to calculate the irrecoverable VAT using the transfer price between the respondent and the affiliate in Singapore as the FOB export value.[159] We do not have a similar situation in this review. For GGB's U.S. sales, GGB used the FOB China invoice price directly in the calculation of the irrecoverable VAT amounts, and no party has contested which value the irrecoverable VAT should be applied to.[160]

GGB and the CIT (*e.g.*, in *Qingdao Qihang Tyre Co.*) both misread the CAFC's decision in *Federal Mogul*.[161] As an initial matter, the law under review in *Federal Mogul* was a prior version of the antidumping statute, and so the nuances of the ruling are not transferrable to the current version of the statute. Additionally, the ruling in *Federal Mogul* addressed adjustments for price-to-price comparisons in a market economy context (*i.e.*, appropriate adjustments for home market prices), rather than adjustments that are appropriate in the NME context which is based upon FOPs. The Court's decision in *Diamond Sawblades Manufacturers' Coalition* sustained our use of VAT rates to calculate the VAT amounts and distinguished *Federal Mogul* on the basis that *Federal Mogul* was in the context of a market economy's VAT, as explained in *Section 772(c)(2)(B) Methodological Change*.[162] Contrary to GGB's argument, in *Federal Mogul*, the CAFC's decision regarding how to treat certain taxes provided deference to Commerce's interpretation of the Act ("Commerce's understanding of its duty under the Act, as well as under our international agreements, and the expertise it brings to the administration of the Act, lends support to the position it has taken").[163]

We also disagree with GGB that the Court's finding in *Dorbest 2010* is relevant here. The statute is ambiguous as to whether unrefunded VAT which would otherwise be refunded or repaid might be an export tax under section 772(c)(2)(B) of the Act. Thus, in the *Federal*

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[157] *See Aristocraft 2017*, 269 F. Supp. 3d at 1322.

[158] *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.

[159] *See* Final Results of Redetermination Pursuant to Court Order in *Fine Furniture* dated August 28, 2017, at 8-9.

[160] Moreover, it is clear from the documentation provided by GGB which price the VAT is applied to. *See, e.g.,* GGB Verification Report at 11 and verification exhibit 16.

[161] This includes *E. I. DuPont De Nemours*.

[162] *See Diamond Sawblades Manufacturers' Coalition*, 301 F. Supp. 3d at 1336-39 (citing *Section 772(c)(2)(B) Methodological Change*, 77 FR at 36483).

[163] *See Federal Mogul* at 1582.

Register notice *Section 772(c)(2)(B) Methodological Change*, Commerce provided public notification of a clear change in its methodology with regard to unrefunded VAT on export sales from certain NME countries, pursuant to its interpretation of section 772(c)(2)(B) of the Act, and Commerce has implemented the change consistently in all applicable cases initiated after the publication of the notice in the *Federal Register*.[164] Thus, our application of the VAT rates is in accordance with GGB's reporting, the applicable Chinese regulations, our methodology in *Section 772(c)(2)(B) Methodological Change*, and the judicial precedent.[165] Our finding of the irrecoverable VAT imposed on the exportation of the subject merchandise is based on the Chinese regulations on the record, not based on presumption.[166]

We disagree with GGB's notion that *Magnesium, Globe Metallurgical*, and *Bridgestone* have any precedent in this administrative review in regard to our treatment of VAT in an NME; Commerce's methodology regarding irrecoverable VAT related to export sales, in the NME context, has changed and was publicly announced in the *Section 772(c)(2)(B) Methodological Change*. We also disagree that GGB's citation to *Hebei Metals* is relevant; in that case, the Court held that Commerce has, to the extent practicable, an obligation to provide parties with an opportunity to remedy or explain a deficiency.[167] In this review, we afforded GGB the opportunity to provide information regarding the Chinese VAT system and the irrecoverable VAT it incurs upon export on three separate occasions, in the initial, and two supplemental, questionnaires.[168] Thus, consistent with the Court's finding in *Hebei Metals*, and to the extent practicable, we provided GGB with multiple opportunities to explain the Chinese VAT system and the irrecoverable VAT it incurred upon export.

Thus, we are making no changes to the *Preliminary Results* with respect to our calculation of the of irrecoverable VAT deducted from GGB's export price.

Comment 4: Alleged Ministerial Error

GGB's Arguments

- Commerce made a calculation error when implementing verification changes to GGB's reported U.S. rebates.[169] Commerce should correct this error in the final results.

[164] *See Section 772(c)(2)(B) Methodological Change*, 77 FR at 36483.

[165] *Id.* at 15, citing *Section 772(c)(2)(B) Methodological Change*, 77 FR at 36483.

[166] *Id.* at 15-16.

[167] *See* GGB Case Brief at 32-33 (citing *Hebei Metals*).

[168] *See* GGB October 16, 2017 CQR at 33-36 and Exhibits C-12 through C-15; GGB April 19, 2018 SQR at 23-27 and Exhibits SC-27 through SC-36; and GGB's May 10, 2018 Second Supplemental Questionnaire Response (GGB May 10, 2018 SSQR) at 5.

[169] *See* GGB Case Brief at 6 (citing Memorandum, "30th Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China: Calculations for GGB Bearing Technology (Suzhou) Co., Ltd. for the Preliminary Results," dated July 3, 2018 (GGB Prelim Calc Memo) at 3).

The Petitioner's Rebuttal Arguments

- The petitioner did not comment on this issue.

Commerce's Position

We agree with GGB and have corrected this error for the final results.

Comment 5: GGB's "Supplier Quality Issue" Parts

In its initial factors of production (FOP) database, GGB adjusted the denominator of its reported FOP calculations for cups, cones, and assemblies to account for "supplier quality issue parts[170] (*i.e.*, parts with manufacturing defects which were returned to the supplier for a credit).[171] In its subsequent supplemental questionnaire responses, GGB revised its FOP reporting to not deduct these pieces. At verification, we observed that these parts appear to be included in the input FOPs, but not in the output quantities (as they were returned).[172] As a result, we requested that GGB modify its FOP database to return to its original reporting methodology.

The Petitioner's Arguments

- Commerce's request that GGB revise its FOP database to adjust for "supplier quality issue" parts[173] was not appropriate and should be reversed in the final results. Commerce's methodology understates GGB's FOPs.

- The FOP data reported by these suppliers shows no adjustments for returned parts. Thus, there is no evidence on the record that the material inputs used to produce the faulty parts is reflected in the suppliers' FOPs. Commerce should adjust GGB's FOPs to reflect the input material attributable to these quality issue parts.[174]

GGB's Rebuttal Comments

- GGB complied with Commerce's request to revise the FOP database to adjust for "supplier quality issue" parts, based on Commerce's review of its methodology at verification.[175]

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[170] *See* GGB's October 20, 2017 Section D Questionnaire Response (GGB October 20, 2017 DQR) at Exhibits D-25.2 and D-26.2.

[171] *See* GGB Verification Report at 2.

[172] *Id.* at 2 and 11.

[173] *See* Petitioner's Case Brief at 1 (citing Commerce Letter re: Request for Revised Factors of Production Database for GGB Bearing Technology (Suzhou) Co., Ltd. in the 30th Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from the People's Republic of China, dated June 7, 2018 (Commerce FOP Request) at 2).

[174] *See* Petitioner's Case Brief at 2 (citing *Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 Fed. Reg. 41973 (July 18, 2014) (*Vietnam OCTG Final Determination*) and accompanying IDM at Comment 9).

[175] *See* GGB Rebuttal Brief at 2 (citing GGB Verification Report at 11 and Exhibit VE-43).

Because Commerce has accepted this methodology, there is no need to make further adjustments.[176]

- If Commerce disagrees, it should limit any adjustment to those noted in Exhibits 1 and 2 of the petitioner's case brief, as those adjustments both account for the minimal effect these small quantities impart on the FOPs and limit any additional risk of double-counting.

Commerce's Position

Upon further analysis of the record, we agree with the petitioner in that our requested methodology likely understates GGB's FOPs. Therefore, we have returned to the methodology adopted by GGB in its supplemental questionnaire responses, as proposed by the petitioner (but adjusted as noted below).

As the petitioner notes, GGB provided no record evidence showing that the suppliers accounted for the damaged parts at issue as yield loss in their FOP calculations. Absent such evidence, we find that adjusting the FOP calculation for these parts is distortive, because it effectively treats the parts as first-quality goods – instead of treating them as part of the yield loss that should have, been, but apparently was not, included in the suppliers' own calculations.[177] Thus, we find that the petitioner's proposed calculation is appropriate (except as noted below) and consistent with our practice.[178]

In particular, we have not adopted the portion of the petitioner's revised calculation which includes an offset for "supplier quality issue parts" which were subsequently re-used.[179] Because this offset reduces the total quantity of "supplier quality issue parts," it would be contrary to our intention of capturing all raw material consumption (*i.e.*, including the yield loss).[180]

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[176] *Id*.

[177] *See* GGB's Letter, "Revised FOP Database: Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings from the People's Republic of China, A-570-601 (POR: 6/1/16-5/31/17)," dated June 11, 2018 at Exhibit V-4.

[178] *See*, *e.g.*, *Vietnam OCTG Final Determination* and accompanying IDM at Comment 9 ("{t}he correct yield loss calculation must account for any loss that occurs prior to shipment to the ultimate customer in order for the normal value calculation to correctly capture all costs").

[179] *See* Petitioner's Case Brief at Exhibit 1. *See also* GGB April 19, 2018 SQR at Exhibit SD-6.1. In its supplemental FOP calculations, GGB in fact added the supplier quality issue parts re-used back to raw material consumption, while the petitioner, in its calculations (*see* Petitioner's Case Brief at Exhibit 1), subtracted the parts re-used from the initial consumption total. In order to neither overstate, nor understate, the total quantity consumed, we have made no further adjustment to the initial consumption quantities for those few instances where GGB reported additional supplier quality issue parts as "re-used."

[180] *See* Memorandum "Calculations for GGB Bearing Technology (Suzhou) Co., Ltd. for the Final Results," dated concurrently with this memorandum (GGB Final Calc Memo).

Comment 6: "Forgings" Purchased from GGB's Suppliers

During the POR, GGB purchased further processed forgings from unaffiliated suppliers in China. Where GGB's suppliers refused to provide FOP data for these inputs, we included the completed forgings (*i.e.*, cups and cones) in our preliminary analysis, as facts available pursuant to section 776(a) of the Act.[181] We valued these forgings using Thai import data for parts of bearings not elsewhere specified,[182] using the descriptions of these parts contained in GGBs responses.[183] We reduced GGB's reported labor and overhead expenses to account for any additional labor and overhead amounts incurred to turn the semi-finished parts into finished parts.[184]

GGB's Arguments

- For the final results, GGB requests that Commerce value its forged parts using Thai HS 7326.19.[185] The imports under this HS category are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.[186] Further, the petitioner recommended that Commerce rely on this HS category in its SV comments to value forgings.[187]

- Commerce failed to explain why the HS category it selected is superior to the category proposed by the petitioner and GGB, both of whom are well versed in the inputs at issue. Commerce should explain its decision.

- It is Commerce's practice to use the best information available[188] to value FOPs, and there is no information on the record which supports the use of Commerce's selected HS category to value GGB's forged parts.

The Petitioner's Rebuttal Arguments

- If Commerce were valuing forgings, GGB's arguments would be reasonable. However, the parts at issue are not strictly forgings, but rather cups and cones which were forged and then

[181] *See* PDM at 22.

[182] Specifically, we used Thai Harmonized Schedule (HS) Subheading 8482.99, which covers "Ball or roller bearings, and parts thereof: parts of bearings, Nesoi."

[183] *See* PDM at 22. *See also* GGB October 20, 2017 DQR at Exhibits D-6 and D-7.

[184] For the details of this calculation, s*ee* GGB Final Calc Memo.

[185] Thai HS Subheading 7326.19.00 covers "Articles of Iron or Steel, Nesoi: Other articles of iron or steel: Forged or stamped, but not further worked: Other."

[186] *See* GGB Case Brief at 3 (citing Petitioner's January 16, 2018 Surrogate Value Submission (Petitioner First SVS) at 1 and Attachment 1).

[187] *See* GGB Case Brief at 1-2 (Petitioner's Letter, "Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China (06/01/16-05/31/17): The Timken Company's Pre-Preliminary Determination Comments," dated June 11, 2018 (Petitioner Pre-Preliminary Comments) at 3-4; and Petitioner First SVS at Exhibit 1).

[188] *See* GGB Case Brief at 2 (citing PDM at 22).

significantly further worked.[189] Therefore, accepting GGB's proposed SV would undervalue the cost of processing the inputs by a substantial amount.

- Because the selected SV represents the cost of a finished part, Commerce conservatively reduced labor and manufacturing overhead to avoid double counting. Although this undervalued the cost of production for these parts by removing GGB's own labor, Commerce's methodology should not be modified for the final results.

Commerce's Position

We continued to rely upon Thai GTA import data under HS category 8482.99 to calculate the SV for GGB's forged parts. We believe that data in this HS category represent the best available information on the record to value this FOP. As stated in our *Preliminary Results*, Commerce's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POI, and exclusive of taxes and duties.[190] In this review, the Thai GTA data in HS category 8482.99 meet all of these criteria. Further, we find that the data in this HS category are preferable to the data in HS category 7326.19 because they are more specific to the FOPs at issue.

In this review, the record shows that GGB's suppliers provided GGB with forged cups and cones which are nearly finished bearing parts; these parts require only minimal further processing at GGB's factory.[191] Because the suppliers significantly further processed these parts after the forging stage, we disagree with GGB that use of import data for steel products which are "forged or stamped, but not further worked" is appropriate here.[192]

The CIT has held that, when faced with a choice between two imperfect options, it is within Commerce's discretion to determine which choice represents the best available information.[193] Consequently, when presented with these two choices, we find it appropriate to select the more product-specific option, which is HS category 8482.99 (*i.e.*, the category comprised only of TRB parts). As a result, we have continued to rely on this information in our final results.

[189] *See* Petitioner's Rebuttal Brief at 3 (citing GGB October 20, 2017 DQR at Exhibits D-6 and D-7).

[190] *See Preliminary Results* and accompanying PDM at 22.

[191] *See* GGB October 20, 2017 DQR at Exhibits D-6 and D-7. In this submission, GGB claimed business proprietary treatment for its own, and the suppliers', production processes. Therefore, we are unable to provide a more specific description here. *See also* GGB Verification report at 9 and 11-12, confirming GGB's description.

[192] As noted above, in order to avoid double-counting any additional labor and overhead costs associated with turning semi-finished TRB parts into finished ones, we adjusted GGB's reported labor and overhead expenses downward. *See* GGB Prelim Calc Memo at 3 and GGB Final Calc Memo at 3-4 and Attachment III.

[193] *See CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States*, Slip Op. 14-33 at 26 (CIT 2014) (citing *Dorbest Ltd. v. United States*, 30 CIT 1671, 1687, 462 F. Supp. 2d 1262, 1277 (CIT 2006)).

Comment 7: Rollers from GGB's Suppliers

During the POR, GGB purchased TRB rollers from unaffiliated suppliers in China. Like the forged parts discussed above, where GGB's suppliers failed to provide FOP data for these inputs, we included the finished TRB rollers in our preliminary analysis as facts available, pursuant to section 776(a) of the Act.[194] Because we selected Thailand as the primary surrogate country, we valued these rollers using Thai import data under HS category 8482.91 (*i.e.*, balls, needles, and rollers for bearings).

GGB's Arguments

- Commerce should value the TRB rollers in question using Romanian HS 8482.91.10,[195] which is specific to the rollers covered by this order. In the alternative, Commerce should use the petitioner's recommended HS code, Thai HS 8482.99.[196] Commerce failed to disclose why it did not choose either of these proposed categories.

- No interested party argued that Commerce's selected HS category, Thai HS 8482.91, represents the best available information to value GGB's rollers in question, nor did any party allege that the petitioner's recommended selection, Thai HS 8482.99, was deficient or inaccurately reflected the cost of GGB's rollers.[197] Indeed, Commerce's self-selected SV is less representative of cost of the rollers used by GGB than either of the other SVs proposed in this review.[198]

- GGB's proposed SV represents the best information on the record because: 1) it is the only SV on the record of this review which is specific to rollers; and 2) Romania is economically comparable to China and a net exporter of TRBs.[199] Selecting this SV would be consistent with Commerce's own arguments in *Solarworld*, where Commerce maintained that it is not

[194] *See* PDM at 22.

[195] The subheading for Romanian HS 8482.91.10 covers, "tapered rollers for bearings."

[196] The subheading for Thai HS 8482.99 covers, "Ball or roller bearings, and parts thereof: parts of bearings, Nesoi."

[197] *See* GGB Case Brief at 4.

[198] *Id*. (noting that GGB's and the petitioner's proposed SVs are of similar magnitude (*i.e.*, $7,189.49/ metric ton (MT) vs. $7,527 per MT, respectively), and asserting that, as a result, GGB's proposed SV corroborates the petitioner's proposed SV).

[199] *See* GGB Case Brief at 4-5 (citing Commerce Letter re: 30th Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information, dated December 5, 2017 (Surrogate Country Letter); and GGB's Letter, "GGB's Surrogate Country Comments: Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings from the People's Republic of China, A-570-601 (POR: 6/1/16-5/31/17)," dated December 29, 2017 (GGB Surrogate Country Comments) at Exhibit 1).

Commerce's task to classify SVs for customs purposes, but rather to select the best available data.[200]

The Petitioner's Rebuttal Arguments

- Commerce should use the best available information to value GGB's rollers.

Commerce's Position

We continued to rely upon Thai GTA import data under HS category 8482.91 to calculate the SV for rollers for GGB's unreported suppliers because the data in this HS category represent the best available information to value this FOP. As noted above, Commerce's practice when selecting the best available information for valuing FOPs, in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, tax and duty exclusive, and from a single surrogate country, as prescribed under 19 CFR 351.408(c)(2).[201] In this case, the Thai GTA data in HS subheading 8482.91 meet all of these criteria and no party is arguing that we should pick Romania as the primary surrogate country.

With respect to GGB's request that we value rollers using a Romanian SV, we disagree. Commerce has a regulatory preference to value all factors from a single surrogate country.[202] Given that we have non-aberrational Thai import data to value rollers in this review, there is no need to consider data from another surrogate country.[203] We acknowledge that the Romanian data proffered by GGB are limited to TRBs, while the Thai HS category includes other roller elements; however, the salient fact is that the Thai HS category includes TRBs, and, thus, it is specific to the FOP under consideration. Thus, we disagree that abandoning our regulatory preference here for obtaining SVs from a single surrogate country is necessary.

We also disagree that it would be appropriate to value GGB's rollers using imports made under Thai HS 8482.99. Commerce undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[204] While there is no hierarchy for applying the SV selection criteria, "{Commerce}

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[200] *See* GGB Case Brief at 5-6 (citing *Solarworld Ams., Inc. v. United States*, 273 F. Supp. 3d at 1266-1267 (*Solarworld*)).

[201] *See* PDM at 22. *See also Activated Carbon 2016-2017 Final* and accompanying IDM at Comment 2.

[202] *See* 19 CFR 351.408(c)(2); *Clearon Corp. v. United States*, No. 08-00364, 2013 WL 646390 (CIT 2013) at 6 ("{T}he court must treat seriously {Commerce's} preference for the use of a single surrogate country."). *See also Fine Furniture (Shanghai) Ltd. v. United States,* Slip Op. 18-163 at 18-19 (CIT 2018); and *Jiaxing Brother Fastener Co. v. United States*, 822 F.3d 1289, 1302 (Fed. Cir. 2016) where the court affirmed Commerce's preference to source SVs from a single surrogate country.

[203] *See Fuwei Films, 837 F. Supp. 2d at 1356* (CIT 2012); *see also Calgon Carbon Corp. v. United States*, 190 F. Supp.3d 1224, 1234 (CIT 2016).

[204] *See*, *e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 55039 (September 24, 2008) (PET Film 2008), and accompanying IDM at Comment 2; *see also Freshwater Crawfish Tail Meat from the People's Republic of China;*

must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' SV is for each input."[205] We have examined the HS subheadings on the record and determined that Thai HS 8482.99 covers bearing parts which are not elsewhere specified (*i.e.*, not included under another HS category). Because Thai HS 8482.91 includes tapered rollers, Thai HS 8482.99 does not. Therefore, Thai HS 8482.99 is less specific to the FOP at issue. In light of this, we find GGB's SV comparisons unpersuasive.[206]

Finally, we find GGB's reliance on *Solarworld* misplaced. In that opinion, the CIT upheld Commerce's selection of a particular HS category to value an FOP because "Commerce has broad discretion in deciding what constitutes the best available information."[207] Thus, we find that, rather than calling our reliance on Thai HS 8482.91 into question, *Solarworld* supports it.

For the reasons set forth above, we find that imports under Thai HS subheading 8482.91 represent the best available information to value the rollers used by GGB to produce TRBs. As a result, we continued to rely on this information in the final results.

Comment 8: Surrogate Values for Steel Plate

GGB reported that during the POR one of its suppliers used steel plate in two thicknesses (between 1 and 3mm and 3mm or over) in its production of subject merchandise.[208] At verification of the data reported by the supplier, we examined the supplier's records and found that the supplier purchased and used steel plate in thicknesses not exceeding 3.5mm in non-coil form.[209] Based on this finding, in the *Preliminary Results*, we valued GGB's two reported FOPs for steel plate under the same Thai HS category of 7209.26,[210] which covers steel plate not in coils, in thicknesses between 1 mm and 3 mm.[211]

Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review, 67 FR 19546, 19549 (April 22, 2002), and accompanying IDM at Comment 2.

[205] GGB's argument, in essence, is that a similarity in U.S. dollar value equates to a similarity in product characteristics. However, because the two categories being compared (one containing tapered rollers and another which does not) are different, the similarity in value is not meaningful.

[206] *See*, *e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013,* 80 FR 33241 (June 11, 2015) and accompanying IDM at Comment 3; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order*, 75 FR 844 (January 6, 2010) and accompanying IDM at Comment 2.

[207] *See Solarworld* at 1265. *See also QVD Food Co., Ltd. v. United States*, 658 F.3d 1318, 1323 (*QVD*).

[208] GGB reported the former steel plate under the field STEELPLATE1 and the latter steel plate STEELPLATE2 in the FOP database.

[209] *See* GGB Verification Report at page 21.

[210] The subheading for Thai HS 7209.26 covers, "flat-rolled products of iron or nonalloy steel with a width of 600 mm or more, not in coils, cold-rolled worked only, and of a thickness over 1 mm but less than 3 mm. *See also* GGB Verification Report at 21."

[211] *See* Prelim SV Memorandum.

GGB's Arguments

- Commerce should not rely on imports under Thai HS 7209.26 to determine the SV for either size of steel plate. Instead, Commerce should use imports under Thai HS 7209.1600.012[212] for the thinner plates (*i.e.*, STEELPLATE1) and Thai HS 7209.15[213] for the thicker ones (*i.e.*, STEELPLATE2).

- With respect to STEELPLATE1, record evidence shows that the SV computed using Thai HS 7209.26 is aberrationally high and unreliable. Not only is this SV three times the value of the SV computed using HS 7209.1600.012 (*i.e.*, $500/MT vs $1500/MT, respectively), but Metal Expert and Steelguru, data for cold-rolled non-alloy plates from Germany, Spain, Italy, Turkey, and India establish that these prices vary in the range of $550/MT to $664/MT.[214]

- While Thai HS 7209.26 is technically more suitable than Thai HS 7209.1600.012 for purposes of tariff classification, Commerce should not prefer the former to value STEELPLATE1 because: 1) only a minor, slitting operation (costing between 14 and 30 percent) is required to convert coils into plates; 2) the best choice is the one that provides a more accurate SV rather than classification; and 3) following tariff classifications blindly may not yield the most appropriate SV because the purpose of these classifications is to yield accurate duty collection, not accurate dumping margin calculations).[215]

- Commerce must undertake a detailed examination of the material input to determine the most appropriate HS heading, consistent with the CIT's ruling in *SolarWorld*.[216]

- With respect to STEELPLATE2, Thai HS 7209.26 covers steel plate in thicknesses between 1 mm and 3 mm, and, thus, it does not include the size of plate reported by GGB under STEELPLATE2 (*i.e.*, steel plate in thicknesses of 3mm or greater). In contrast, Thai HS 7209.15 covers steel plate that is greater than or equal to 3 mm. Because thickness is an essential product specificity attribute, Commerce should reject Thai HS 7209.26 because it is less specific.

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[212] The subheading for Thai HS 7209.1600.012 covers, "flat-rolled products of iron or nonalloy steel with a width of 600 mm or more, in coils, cold-rolled worked only, of a thickness over 1 mm but less than 3 mm, and unannealed of a width not exceeding 1550 mm."

[213] The subheading for Thai HS 7209.15 covers, "flat-rolled products of iron or nonalloy steel with a width of 600 mm or more, in coils, cold-rolled worked only, and of a thickness of 3 mm or more."

[214] *See* GGB Case Brief at 42 (citing GGB's June 14, 2018 Surrogate Value Rebuttal Submission (GGB SVRS) at Exhibits 9-11 and calling this variation "a reasonable markup").

[215] *See* GGB Case Brief at 39-40 and 43 (citing GGB SVRS at Exhibits 1-8).

[216] *See* GGB Case Brief at 43 (citing *Solarworld*, 273 F. Supp. 3d 1254).

The Petitioner's Rebuttal Arguments

- The record shows Thai import values under HS 7209.26 are the best information available for valuing GGB's steel plate inputs. Further, there appears to be no evidence to support several of GGB's claims, including aberrational prices, reliability of Thai import values under HS 7209.26, and conversion costs.[217]

- GGB's reliance on the cost of cold-rolled steel from various countries is irrelevant in that cold-rolled steel is not the product to be valued using a surrogate. Therefore, its values provide no insight as to appropriate values for the sheets in specific sizes that GGB uses to produce subject merchandise. Moreover, the countries GGB selected are of no utility because none of them are economically comparable to China.[218]

- Commerce made a reasonable judgement in selecting the SV for steel plate up to 3 mm thick as the best available information for valuing plate that may be as thick as 3.5 mm, instead of an SV for a product that had not been converted from coils to plates. Moreover, Commerce did not find bills of materials (BOMs) or stock-out slips at verification to suggest GGB had steel plates with a thickness over 3.5 mm.

Commerce's Position

We disagree that we should use Thai HS 7209.1600.012 to value STEELPLATE1 and Thai HS 7209.15 to value STEELPLATE2. For the final results, as discussed below, we continue to use Thai import data under HS subheading 7209.26 to value these FOPs, respectively.

As noted above, Commerce's practice when selecting the best available information for valuing FOPs, and in accordance with section 773(c)(1) of the Act, is to select, to the extent practicable, SVs which are product-specific, representative of a broad-market average, publicly available, contemporaneous with the POR, and tax and duty exclusive.[219] Further, the courts have affirmed that Commerce has broad discretion in deciding what constitutes the best available information, provided that the agency makes a selection that will enable it to ultimately calculate accurate dumping margins.[220]

In this case, GGB reported that its cage supplier, Hengli, purchased steel plate in two thicknesses (between 1mm and 3mm and 3mm to 3.5mm), and it used these plates in its production of the cages provided to GGB. According to GGB's FOP database, both steel plate inputs are described as cold-rolled, non-alloy steel plate, with the only variance being thickness.[221] GGB did not report that either of the steel plate inputs were in coil form or that its supplier had any transformation process to convert steel coil into steel plate. At verification, we observed that the

[217] *See* Petitioner's Rebuttal Brief at 12-13.

[218] *See* Petitioner's Rebuttal Brief at 13 (citing Surrogate Country Letter).

[219] *See* PDM at 22.

[220] *See Solarworld* at 1265. *See also QVD* at 1323.

[221] *See* GGB May 10, 2018 SSQR at Exhibit SSD-4.

steel plate Hengli used to produce cages was, in fact, purchased in plate form, and that Hengli used plates in up to 3.5 mm in thickness.[222] Based on this verified information, we valued Hengli's steel plate using Thai HS 7209.26 (*i.e.*, steel plate not in coils, in thicknesses between 1 mm and 3 mm). We used this value because it is the only SV on the record for steel plate in uncoiled form;[223] the HS category covers merchandise identical to that reported in STEELPLATE1; and the difference in thickness between the imports in this category and the STEELPLATE2 FOP was small (*i.e.*, 3mm vs 3.5mm).

We disagree with GGB that reliance on a different HS category in the final results would be more appropriate. GGB bases its argument with respect to STEELPLATE1 on a claim that the import data for Thai HS 7209.26 are aberrationally high and, therefore, unreliable. However, we find that the analysis accompanying this claim (comparison of the weighted-average SVs for two non-identical product categories, supported by price data from countries which are not economically-comparable to China) is not valid.

Contrary to GGB's assertion, the mere fact that the weighted-average average unit value (AUV) of imports under Thai HS 7209.26 is higher than the weighted-average AUV for imports under Thai HS 7209.1600.012 does not demonstrate that the data themselves are somehow flawed. While GGB implies that "higher" is the same as "less accurate," there is no evidence on the record to support such a conclusion. Indeed, when we examine the import data included under Thai HS 7209.26, we found that these imports were in significant quantities, from a number of countries, and had AUVs which were generally consistent.[224] Thus, we found nothing unusual about the import data themselves which would call their reliability into question.[225]

In any event, we disagree that the price data from Metal Expert and Steelguru corroborates GGB's conclusion that the SV computed using Thai HS 7209.26 is aberrational. These data are for POR prices within a handful of countries for cold-rolled, cut steel sheet or other flat products.[226] Further, it is unclear that the data in these reports are even relevant to GGB's comparison because: 1) the exact dimensions of the steel at issue are not apparent, 2) the flat products may not include any plate identical to the plate imported under Thai HS 7209.26;[227] 3) it is not clear that these data represent actual transactions (*e.g.*, there may be price quotes), what the terms of delivery (*e.g.*, whether freight is included) for those transactions are, or, indeed,

[222] *See* GGB Verification Report at page 21.

[223] *See* Petitioner's June 4, 2018 Supplemental Surrogate Value Comments at Exhibit 2.

[224] *See* Memorandum, "Surrogate Value Memorandum for the Final Results," dated concurrently with this memorandum (Final SV Memo) at Attachment 1. We note that two of the individual AUVs (one from Malaysia and another from the United States) did, indeed, appear to be outliers; however, the inclusion of these imports in the average had little to no impact on the average SV (*i.e.*, the revised SV would be 51.077 baht/kg vs. the original 51.073 baht/kg).

[225] *Id.*

[226] *See* GGB SVRS at Exhibits 9 and 10.

[227] Specifically, the Steelguru report is limited to cold-rolled steel sheet, while Metal Expert covers "CR Flats – CRC." *Id.*

whether the data consist of domestic prices, export prices, or imports; and 4) none of the countries from which the data are sourced is on Commerce's surrogate country list.[228]

With respect to STEELPLATE2, we also disagree with GGB that Thai HS 7209.15 would be a more appropriate source of SV data than Thai HS 7209.26. GGB bases its argument with respect to STEELPLATE2, in part, on the same faulty analysis noted above, as well as the additional claim that thickness is more relevant than form (*i.e*, coil vs. non-coil) when determining the specificity. However, GGB provided no evidence to support this latter argument, and, thus, it is merely an unsupported assertion. Further, while GGB did make the claim that slitting operations are minor in the context of its STEELPLATE1 arguments, this claim is based on GGB's "quantitative estimation" of slitting costs using an article published on a personal website (http://www.dallan.com/) and a steel company's "guidebook" related to steel fabrication estimates, in an unspecified location which does not appear to relate to Thailand.[229]

Conversely, GGB separately submitted information on slitting in the context of its surrogate value comments.[230] This information shows that slitting involves uncoiling, flattening, and shearing, which are all additional processes that require additional, specialized equipment.[231] By GGB's own admission, these processes could account for as much as 30 percent of a product's cost, an amount which is by no means minor.[232] Thus, reliance on imports under Thai HS 7209.15 to determine the SV in question could potentially understate that SV by a significant amount.

Finally, we find GGB's reliance on *Solarworld* misplaced. As noted in Comment 7, above, in that case, the CIT upheld Commerce's selection of a particular HS category to value an FOP because "Commerce has broad discretion in deciding what constitutes the best available information."[233] In this case, we have exercised that discretion in finding that the plate in 1 mm to 3 mm thickness under Thai HS subheading 7209.26 is more specific to the plate consumed by Hengli than the plate in coils over 3 mm suggested by GGB.

Commerce has previously determined that "{w}hen a party claims that a particular SV is not appropriate to value a certain FOP, the burden is on the party to provide evidence demonstrating the inadequacy of the SV."[234] As noted above, GGB has failed to meet this burden here and,

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[228] Specifically, the data from Metal Expert are from the Czech Republic, Germany, India, Iran, Italy, Russia, Turkey, Ukraine, and the United States, while the Steelguru data are from Germany, India, Italy, Spain, and Turkey. *Id*.

[229] *See* GGB SVRS at Exhibits 7 and 8. Specifically, we note that Exhibit 7 is an article on http://www.dallan.com/, while Exhibit 8 is a "Step-By-Step Guide to Understanding How Fabricated Parts Are Estimated," by ETM Manufacturing.

[230] *See* GGB SVRS at Exhibits 7 and 8.

[231] *Id*. at Exhibits 1-8.

[232] *Id*. We note that GGB makes this claim in the "List of Exhibits with Explanation."

[233] *See Solarworld* at 1265. *See also QVD* and *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (Commerce is afforded "wide discretion" to value factors of production in nonmarket economies).

[234] *See*, *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2011-2012 Antidumping Duty Administrative Review and New Shipper Reviews*, 79 FR

therefore, we have continued to rely on Thai HS 7209.26 to determine the SV for both STEELPLATE1 and STEELPLATE2. For the reasons set forth above, we find that imports under Thai HS 7209.26 represent the best available information for this SV.

Comment 9: Surrogate Values for Packing Materials

GGB's Arguments

- GGB reported that it packed the subject TRBs in folding boxes of corrugated paperboard.[235] As a result, Commerce's use of Thai import data under HS 4819.20[236] to value the reported FOPs of this input is inappropriate because this HS category includes only non-corrugated paper/paperboard. For the final results, Commerce should use imports under Thai HS 4819.10[237] instead, because these imports include corrugated boxes.

- GGB also reported that it used "corner protectors of plywood" to pack the subject TRBs. Similarly, Commerce's use of Thai import data under HS 4415.2000.000[238] is inappropriate because this HS category covers pallets, not plywood. For the final results, Commerce should use imports under Thai HS 4412.3900.000[239] (*i.e.*, other plywood).

The Petitioner's Rebuttal Arguments

- Commerce should choose the best information available to value these packing materials.

Commerce's Position

We agree, in part, with GGB, and, for the final results, we have recalculated the SV for individual boxes (*i.e.*, INBOX) based on Thai import data under HS subheading 4819.10. However, we disagree with GGB with respect to corner protectors (*i.e.*, CPROTECTOR) and continue to use Thai import data under HS subheading 4415.2000.000 as the most accurate SV.

4327 (January 27,2014) and accompanying IDM at comment 7; *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) and accompanying IDM at Comment 16-A; *see also Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) and accompanying IDM at Comment 15; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) and accompanying IDM at Comment 6.

[235] *See* GGB May 10, 2018 SSQR at Exhibit SSD-4.

[236] The subheading for Thai HS 4819.20 covers, "folding cartons, boxes and cases, of non-corrugated paper or paperboard used in offices, shops, or the like."

[237] The subheading for Thai HS 4819.10 covers cartons, "boxes and cases of corrugated paper and paperboard used in offices, shops, or the like."

[238] The subheading for Thai HS 4415.2000.000 covers, "pallets, box pallets and other load boards; pallet collars."

[239] The subheading for Thai HS 4412.3900.000 covers, "plywood consisting solely of sheets of wood (except bamboo), with each plywood not exceeding 6 mm in thickness, coniferous wd, nesoi, other."

Commerce undertakes its analysis of valuing the FOPs on a case-by-case basis, carefully considering the available evidence in light of the particular facts of each industry.[240] While there is no hierarchy for applying the SV selection criteria, "{Commerce} must weigh available information with respect to each input value and make a product-specific and case-specific decision as to what the 'best' SV is for each input."[241] For the final results, we have reexamined the HS categories on the record and determined that Thai imports under the above categories best represent the materials reported as used by GGB to pack subject merchandise.

With respect to individual boxes, GGB initially reported that these boxes were made of non-corrugated paperboard,[242] and it provided Thai import data for non-corrugated boxes to value them.[243] However, in response to a supplemental questionnaire, GGB revised its description of these boxes to "Folding Box, of Corrugated paperboard."[244] We verified GGB's reported packing data and noted no discrepancies.[245] Therefore, consistent with record evidence, we have valued GGB's inner boxes using Thai import data under HS subheading 4819.10, which covers boxes made of corrugated paper.

With respect to corner protectors, GGB described this packing material as "Corner Protector of plywood."[246] GGB also submitted photographs of corner protectors in its first supplemental response.[247] These photographs show that the protectors are more akin to pallets than they are to sheets of plywood, because they are pieces of wood fabricated together and attached to the pallets as corner protectors. As a result, we continue to find that Thai import data under HS subheading 4415.2000.000 (*i.e.*, pallets and pallet collars) provides the most accurate SV for this material.

[240] *See Glycine from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 70 FR 47176 (August 12, 2005), and accompanying IDM at Comment 1.

[241] *See*, *e.g., PET Film 2008*, and accompanying IDM at Comment 2; *see also Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546, 19549 (April 22, 2002) and accompanying IDM at Comment 2.

[242] *See* GGB October 20, 2017 DQR at Exhibits D-20 and D-32.

[243] *See* GGB's January 16, 2018 Surrogate Value Submission (GGB SVS) at Exhibit 1.

[244] *See* GGB April 19, 2018 SQR at Exhibit SD-15.1.

[245] *See* GGB Verification Report at 9.

[246] *See* GGB April 19, 2018 SQR at Exhibits SD-15.1 and SD-20.2. *See also* GGB May 10, 2018 SSQR at Exhibit SSD-4.

[247] *See* GGB April 19, 2018 SQR at Exhibit SD-20.2.

Comment 10: Surrogate Financial Ratios

There are five sets of financial statements on the record from producers of identical or comparable merchandise (*i.e.*, the 2011 financial statements of a Thai bearings company who produces bearings and four sets of 2016 financial statements of bearings in Romania) which are available for use in calculating GGB's surrogate financial ratios.[248] In the *Preliminary Results*, we relied on the 2011 financial statements from the Thai bearings producer, JTEKT (Thailand) Co., Ltd. (JTEKT), finding that they represented the best available information on the record of the review because they were from a producer of comparable merchandise located in Thailand, the primary surrogate country.[249]

GGB's Arguments

- Commerce should reconsider its decision to use JTEKT's financial statements to value GGB's financial ratios, and instead use the financial statements from the four Romanian companies. JTEKT's financial statements do not represent the best information available on the record of this review because they precede the POR by five years, and, thus, are non-contemporaneous. Further, these statements are not sufficiently detailed to allow Commerce to isolate energy expenses from the other expenses, such as selling, general, and administrative (SG&A) expenses. When financial statements fail to separately itemize energy, it is Commerce's policy to not use the financial statements if the record proffers suitable alternatives.[250]

- Commerce's decision to reject the Romanian financial statements is driven solely by its preference in favor of a primary surrogate country, to the exclusion of other well-established criteria.[251] However, Commerce is required, under section 773(c)(1) of the Act to value FOPs based on the best available information in the surrogate country or countries considered to be appropriate. The Courts have interpreted this provision as requiring Commerce to compare the different data sources conjunctively when selecting among the available options based on the quality, specificity, and contemporaneity of the data.[252]

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[248] *See* GGB SVS at Exhibit 7; Petitioner First SVS at Attachment 13; GGB's June 4, 2018 Surrogate Value Submission (GGB Final SV Comments) at Exhibits 2-5. *See also* GGB's June 4, 2018 Surrogate Value Submission Final Surrogate Value Addendum Submission (GGB Addendum SVS).

[249] *See* PDM at 25.

[250] *See* GGB Case Brief at 10 (citing *Utility Scale Wind Towers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992, (December 26, 2012) (*Utility Scale Wind Towers*); and *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)).

[251] Indeed, GGB argues that Commerce's findings are unsupported by substantial evidence, such that a reasonable mind would be "unable to clearly discern the agency's path," and, thus, these findings are not in accordance with settled law. *Id.* at 7-8 (citing *Rogers Radio Communications Services, Inc. v. FCC*, 751 F.2d 408, 418, 243 U.S. App. D.C. 32 (D.C. Cir. 1985)).

[252] *See* GGB Case Brief at 7-9 and 13 (citing *Ningbo Dafa Chemical Fiber Co., Ltd. Consolidated Fibers, Inc., et al. v. United States*, 580 F.3d 1247, 1257 (Fed. Cir. 2009) (*Ningbo Dafa*) and *CP Kelco US, Inc. v. United States*, Slip Op. 16-36 (CIT2016) (*CP Kelco*)).

- Further, Commerce itself has a practice of resorting to using a secondary surrogate country if data, including financial statements, from the primary surrogate country are "unavailable or unreliable."[253] As such, Commerce should carefully consider the Romanian financial statements before invoking the single country preference.

- Commerce did not point to any data quality defects in the Romanian financial statements submitted by GGB. All four of the 2016 Romanian financial statements are detailed, complete, contemporaneous with the POR, and from producers of identical and comparable merchandise in a country which is both contained on Commerce's list of potential surrogate countries and a net exporter of bearings. Further, as noted above, all four provide discrete breakouts of energy, a factor considered in Commerce's surrogate country selection.

- Computing financial ratios based on the four Romanian financial statements provides a better representation of a broad market average in a surrogate country and better demonstrates the actual financial cost a surrogate producer would incur over the single set of JTEKT financial statements.[254]

- The petitioner's prior arguments for rejecting the Romanian statements are meritless[255] in that 1) the record contains no evidence that Romanian law requires notes to financial statements, and, thus, any comparison to Timken Romania's financial statement practice is not meaningful[256]; 2) the mere fact that labor costs are higher in Romania[257] also is not meaningful because not only could higher labor costs be neutralized by correspondingly higher SG&A, but the petitioner's argument is not based on labor costs specific to the bearings industry; 3) it is irrelevant that the financial statements from one of the companies

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[253] *See* GGB Case Brief at 8-9 and 11-12 (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 36168 (June 17, 2013) (*Garlic from China*); *Freshwater Crawfish Tail Meat from the People's Republic of China: Antidumping Duty Administrative Review; 2010-2011*, 77 FR 61383 (October 9, 2012) (*Crawfish* 2012); *Sichuan Changhong Elec. Co. v. United States, 30 CIT 1481, 1488 (2006)* (*Sichuan Changhong*) *(citing, Peer Bearing Co. v. United States, 22 CIT 472, 480, 12 F. Supp. 2d 445, 455 (1998) (Peer Bearing 1998*); *Shantou Red Garden Foodstuff Co. v. United States*, 880 F. Supp. 2d 1332, 1334-35 (CIT 2012) (*Shantou Red Garden*); *Peer Bearing Company-Changshan v. United States*, 752 F. Supp. 2d 1353, 1373 (CIT 2011) (*Peer Bearing I*); *Peer Bearing Company-Changshan v. United States*, 804 F. Supp. 2d 1337, 1353 (CIT 2011) (*Peer Bearing II*); and *Camau Frozen Seafood Processing Imp. Exp. Corp. v. United*, 929 F. Supp. 2d 1352 (CIT 2013) (*Camau*)).

[254] *See* GGB Case Brief at 10 (citing *Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 75 Fed. Reg. 29720, (May 27, 2010) (*Helical Spring Lock Washers*)).

[255] *See* GGB Case Brief at 13-14 (citing Petitioner's Letter, "Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China (06/01/16-05/31/17): The Timken Company's Supplemental Pre-Preliminary Determination Comments," dated June 19, 2018 (Petitioner's Supplemental Pre-Prelim Comments) at 1.

[256] *See* GGB Case Brief at 13 (citing the petitioner's argument that "the financial statement of Timken Romania confirm that notes are part of Romanian financial statements"). GGB further notes that, in accordance with 19 CFR 351.301(c)(3)(iv), Commerce may not use Timken Romania's financial statement as a source for SV information, as it is considered rebuttal information. *Id*. at 19.

[257] *Id*. at 14 (citing the petitioner's argument that significantly higher average hourly wage rates in Romania signify that the financial ratios computed from the Romanian statements would not align with Thai surrogate values).

was not audited, because, under Romanian law, they were not required to be audited[258]; and 4) it is irrelevant that the financial statements of two companies show subsidies[259] because there is no evidence that these subsidies are either countervailable or distortive.[260]

The Petitioner's Rebuttal Arguments

- Commerce should continue to value the financial ratios using JTEKT's 2011 financial statements. Even though the auditor's reports included for three of the four Romanian companies state that the audited financial statements contain notes, GGB chose not to include them in its submission; further, the financial statements of the fourth company were not audited at all. Therefore, Commerce cannot evaluate the suitability of any of those statements for determining surrogate financial ratios.

- References to the notes in the auditor's opinion of one of the Romanian companies, Rulmenti, show that the company could be near bankruptcy and would not be a reasonable candidate for surrogate financial ratios.[261]

- Two of the companies, Rulmenti and Schaeffler, reported revenues from investment subsidies.[262] Commerce will not use financial statements for companies that receive subsidies unless there is no alternative.[263] Without the notes to the financial statement, Commerce cannot evaluate whether the subsidies are countervailable and should be rejected on that basis.

- Although JTEKT's financial statements are for a period prior to this current review, there is no record evidence indicating that there has been any significant change in the company's financial condition or its reporting. Additionally, the JTEKT statements include complete notes and an auditor's opinion.

Commerce's Position

We continue to find the JTEKT 2011 financial statements, from Thailand, to be the best available information to calculate financial ratios and, for the reasons discussed below, we disagree with

[258] *Id*. at 15-18 (citing the petitioner's argument that the financial statements of Novo Tech S.A. (Novo Tech) were unusable because they were missing an auditor's letter).

[259] *Id*. at 18 (citing the petitioner's argument that the financial statements of SC URB Rulmenti Suceava S.A. (Rulmenti) and Schaeffler Romania S.R.L.(Schaeffler) are unusable because of the existence of subsidies).

[260] *Id*. at 18-19 (citing *Catfish Farmers of Am. v. United States*, 641 F. Supp. 2d 1362, 1379-1380 (CIT 2009) (*Catfish Farmers*) and *GGB Bearing Tech (Suzhou) Co., Ltd. v. United States*, 279 F. Supp. 3d 1233, 1243 (CIT 2017) (*GGB*)).

[261] *See* Petitioner's Rebuttal Brief at 7 (citing GGB Final SV Comments at Exhibit 2B, citing the auditor's opinion at 7-7.2.)).

[262] *See* Petitioner's Rebuttal Brief at 7 (citing GGB Final SV Comments at Exhibit 2B and Exhibit 4B)).

[263] *See* Petitioner's Rebuttal Brief at 7 (citing Omnibus Trade and Competitiveness Act Of 1988, Conference Report to Accompany H.R. 3, H.R. REP. NO. 576, 100th Cong., 2d Sess. 590-91 (1988)).

GGB that the Romanian financial statements provide a better alternative source, or that it is necessary to leave the primary surrogate country, for calculation of the financial ratios.

Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors..." In choosing surrogate financial ratios, it is Commerce's practice to use data from market economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[264] Further, Commerce has a regulatory preference to "value all factors in a single surrogate country," pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable."[265] In accordance with 19 CFR 351.408(c)(4), Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise, in the surrogate country, to value manufacturing overhead, general expenses, and profit.[266] Additionally, the courts have recognized our discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[267]

For the *Preliminary Results* and pursuant to 19 CFR 351.408(c)(4), Commerce valued factory overhead, SG&A expenses, and profit using non-proprietary information gathered from JTEKT, a Thai a producer of bearings and auto parts,[268] for the fiscal year ending December 31, 2011.[269] We continue to find these financial statements to be the best available information on the record of this review because they are from the primary surrogate country; from a producer of identical or comparable merchandise; for a profitable company in good health; publicly available; complete, including notes; and fully translated. We disagree with GGB that, because JTEKT's financial statements neither are contemporaneous with the POR nor separately identify the company's energy costs, they are not the best source of SV data. Not only has Commerce relied

[264] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances*, 71 FR 29303 (May 22, 2006), and accompanying IDM at Comment 1.

[265] *See Jiaxing Brother Fastener Co. v. United States,* 961 F. Supp. 2d 1323, 1335 (CIT 2014) (quoting *Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012), and accompanying IDM at Comment I).

[266] *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Notice of Final Results and Rescission, in Part, of 2004/2006 Antidumping Duty Administrative and New Shipper Reviews,* 72 FR 52049 (September 12, 2007), and accompanying IDM at Comment 2.

[267] *See*, *e.g., FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2003) (holding that Commerce can exercise discretion in choosing between reasonable alternatives), *aff'd* in *FMC Corp. v. United States*, 87 F. Appx. 753 (Fed. Cir. 2004). *See also Shandong Huarong*, 484, 491–94 (2005).

[268] *See* GGB SVS at Exhibit 7 and Petitioner First SVS at Attachment 13, both of which contain JTEKT's financial statements. The notes to these statements include the following description: "The Company's principal businesses include production, sale, import, and export of steering units, bearings, and braking system equipment, including auto parts." Because TRBs are bearings used in automotive applications and are auto parts in their own right, it is reasonable to infer that JTEKT's bearings are identical (or closely comparable) merchandise.

[269] *See* PDM at 25. *See also* Petitioner First SVS at attachment 13.

on these financial statements in prior segments of this proceeding,[270] but, as discussed below, there are no suitable alternatives available in this review.

In sum, we find that JTEKT's financial statements constitute the best available information with which to determine the financial ratios. As noted above, Commerce has a strong preference to value all FOPs in a single surrogate country whenever possible, and to only resort to a secondary surrogate country if data from the primary surrogate country are unavailable or unreliable.[271] The JTEKT statement is from our primary surrogate country, Thailand, and, as described above, meets the criteria as a good and useable set of financial statements. Therefore, there is no reason for Commerce to depart from its strong preference, codified at 19 CFR 351.408(c)(2), for valuing all of GGB's FOPs with Thai SV data.

Nonetheless, absent this regulatory directive, there are additional reasons that the Romanian financial statements are not as preferable as the JTEKT statements. In this case, the record also contains four financial statements from Romania, all from 2016 and three of which (*i.e.*, from Rulmenti, Koyo Romania S.A. Alexandria (Koyo), and Schaeffler) are for producers of bearings (*i.e.*, comparable or identical merchandise).[272] The financial statements of the fourth company, Novo Tech, reveal that Novo Tech is a trading company and not a manufacturer.[273] As an initial matter, and in accordance with 19 CFR 351.408(c)(4), our precedent is to gather non-proprietary information from producers of identical or comparable merchandise in the surrogate country. Thus, we find that Novo Tech is not a suitable option to value surrogate financial ratios because there is no evidence that Novo Tech was engaged in the production of bearings during the POR.[274]

With respect to the remaining companies (*i.e.*, Rulmenti, Koyo, and Schaeffler), we disagree that any of their financial statements provide a better alternative to the Thai financial statements from JTEKT. As noted above, Romania is not the primary surrogate country in this review. Further, the financial statements of each of the three companies lack explanatory notes, which are an integral part of the statements. Notes lay out a company's significant accounting policies, and

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[270] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results, Partial Rescission of Antidumping Duty Administrative Review, and Preliminary Rescission of New Shipper Review; 2014-2015*, 81 FR 45455 (July 14, 2016) and accompanying PDM at 20-21 (unchanged in *TRBs AR28 Final*). *See also TRBs AR29 Prelim* PDM at 24.

[271] *See*, *e.g.*, *Garlic from China*; *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 77 FR 15039 (March 14, 2012) and accompanying IDM at Comment 2A; and *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review*, 76 FR 66903, 66905 (October 28, 2011), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review*, 77 FR 12553 (March 1, 2012).

[272] *See* GGB Second SVS at Exhibits 2, 3, 4, and 5.

[273] Novo Tech's 2016 financial statements indicate that Novo Tech is not a producer of bearings, but a wholesaler. *See* GGB Second SVS at Exhibit 5C in the Report of the Board of Directors under the Company's business and main developments.

[274] *See*, *e.g.*, *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 4542 (January 28, 2015) and accompanying IDM at Comment 1.

they describe individual line items and what they entail.[275] Further, the auditors' opinions accompanying the Romanian financial statements make clear that the notes are integral to understanding the financial statements and were included with them, per the requirements of a standard audit[276]; however, the notes were not placed on the record of this review along with the financial statements themselves. Because Rulmenti's, Koyo's, and Schaeffler's financial statements are missing an integral part, we find these financial statements are not the best available source of surrogate financial data on the record of this review.[277]

Commerce's practice is not to rely on financial statements that are missing significant elements, or which are otherwise deficient, when there are other, more complete financial statements on the record.[278] In the instant case, the notes are "significant elements," and their absence precludes Commerce from analyzing the financial statements for irregularities, both in the company's significant accounting practices or with respect to their production processes and other relevant information.[279] Further, even in the absence of the notes, it is clear with regard to Rulmenti's financial statements that there are significant irregularities in the company's financial position, because the auditor's opinion expresses serious concern regarding Rulmenti's ability to continue to operate under normal conditions. This provides yet another reason to disregard Rulmenti's financial statements and evidences the importance of complete statements, including the explanatory notes.[280]

With respect to the JTEKT financial statements, while these statements are not contemporaneous with the POR, they are product-specific, publicly available, complete (including notes), for a profitable producer of bearings located in the primary surrogate country (*i.e.*, Thailand). We

[275] *See* GGB Second SVS at Exhibits 2, 3, and 4. Specifically, each of the auditor' reports on the record from Rulmenti, Koyo, and Schaeffler all have a phrase stating that the reports contain, "…a summary of significant accounting policies and other explanatory notes."

[276] *See* GGB's June 4, 2018 Surrogate Value Submission (GGB Final SV Comments) at Exhibits 2B, 3B, and 4B. *See also* GGB's June 4, 2018 Surrogate Value Submission Final Surrogate Value Addendum Submission (GGB Addendum SVS).

[277] Commerce has an established practice of rejecting incomplete financial statements for the calculation of surrogate financial ratios. *See*, *e.g.*, *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 60725 (October 1, 2010) at Comment 2. *See also Certain Tissue Paper Products from the People's Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 74 FR 52176 (October 9, 2009) (Tissue Paper 2009) and accompanying IDM at Comment 5. This preference has recently been upheld in a case before the CIT. *See Home Prods. Int'l v. United States*, 675 F. Supp. 2d 1192 (CIT 2009). Without notes, the Romanian financial statements lack explanation regarding accounting policies and the line items in the statements.

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

[279] GGB also cites to *Catfish Farmers* and *GGB* in arguing that the Romanian financial statements are usable because any possible subsidies in the statements are not subsidies Commerce has found to be countervailable. We have not addressed these case citations because we found a lack of notes accompanying the statements to render the statements unusable. Importantly, the lack of notes illustrates how difficult it is to ascertain pertinent information regarding the Romanian companies, *e.g.*, the receipt of subsidies.

[280] *See* GGB Second SVS at Exhibit 2B (stating "These issues indicate significant uncertainty about the Company's ability to continue operating under normal conditions.").

note that surrogate financial statements are used for calculation of ratios, as opposed to values and, therefore, are not subject to inflation. In other words, Commerce adjusts values for inflation over time, but ratios maintain the same proportionate correlation over time. In the past, Commerce has selected non-contemporaneous financial statements while the record has contained other less specific but contemporaneous financial statements.[281] Because JTEKT's statements meet all of Commerce's other selection criteria outlined in 19 CFR 351.408, we find JTEKT's financial statements to be the best available information to calculate surrogate financial ratios for the final results.

Finally, we disagree that any of the cases cited by GGB are on point. For example, while Commerce rejected certain financial statements in *Utility Scale Wind Towers* and *Diamond Sawblades 11-12*, it did so because, unlike here, the financial statements were at such a high level of aggregation that they failed to break out multiple, essential line items used to develop financial ratios (*i.e.*, not only energy, but also raw materials, labor, work-in-process, etc.).[282] These decisions in no way stand for the proposition that Commerce has a blanket practice of relying only on financial statements in which energy costs are itemized; in fact, Commerce often relies on statements lacking this information, when faced with a choice between imperfect alternatives.[283]

Similarly, we disagree that *CP Kelco* or *Ningbo Dafa* apply. In *CP Kelco*, the Court held that Commerce should have compared two sets of flawed financial statements,[284] *from the same surrogate country*, "side-by-side" before making a selection, while in *Ningbo Dafa*,[285] the question before the Court was whether Commerce had relied on "the best available information." Because there exists only one set of financial statements from a Thai bearings producer on the record, *CP Kelco* does not apply here; further, given that JTEKT's financial statements constitute the best available information in this review, our finding is consistent with *Ningbo Dafa*.

Further, we do not dispute that Commerce has relied on data from multiple surrogate countries in other proceedings.[286] However, we have only done so in cases where data from the primary surrogate country was missing or where that data was unacceptably flawed. Thus, we find GGB's reliance on *Sichuan Changhong*, *Peer Bearing 1998*, *Shantou Red Garden*, *Peer Bearing*

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[281] *See*, *e.g.*, *Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, and Revocation of the Order in Part*, 76 FR 66036 (October 25, 2011) and accompanying IDM at Comment 2.

[282] *See Utility Scale Wind Towers* IDM at Comment 2 and *Diamond Sawblades 11-12* IDM at Comment 16.

[283] *See*, *e.g.*, *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009), and accompanying IDM at Comment 2 (accounting for the lack of a breakout for energy in the selected financial statements by presuming that these costs were accounted for in the surrogate financial ratios, and, thus, not valuing energy costs separately).

[284] *See CP Kelco*.

[285] *See Ningbo Dafa*.

[286] *See Garlic from China* and accompanying IDM at Comment 9 (stating, "While the {Commerce's} preference is to rely upon the primary surrogate country for all surrogate values, whenever possible, {Commerce} resorts to using a secondary surrogate country if data, including financial statements, from the primary surrogate country are unavailable or unreliable").

I, *Peer Bearing II*, and *Camau* misplaced. We based our determination on a careful weighing of the totality of the evidence before us in this case, which differs from the records available in the cases cited by GGB.

Finally, we also do not dispute that Commerce prefers multiple statements over a single statement,[287] if there are multiple useable statements available; but, for the reasons explained above, we are unable to rely on the multiple Romanian financial statements, and thus we are using the single set of Thai financial statements from the primary surrogate country.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of the administrative review and the final weighted-average dumping margins for the reviewed firms in the *Federal Register*.

☒	☐
Agree	Disagree

2/19/2019

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

[287] *See Helical Spring Lock Washers* and accompanying IDM at Comment 1.