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DATE: April 19, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review: Hydrofluorocarbon Blends 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 hydrofluorocarbon blends (HFCs) 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, T.T. International Co., Ltd. (TTI). We continue to find that TTI made sales at prices below normal value (NV) and we have applied this rate to three companies not selected for individual examination.[1] Finally, with respect to two companies, Daikin Fluorochemicals (China) Co., Ltd. and Zhejiang Yonghe Refrigerant Co., Ltd (Zhejiang Yonghe), we continue to find that they had no shipments of subject merchandise during the period of review (POR).[2]

We also continue to find that six companies, including the other mandatory respondent, Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. (Weitron), did not qualify for a separate rate,[3] and, therefore, we find these companies to be part of the China-wide entity.

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[1] These companies are: Jinhua Yonghe Fluorochemical Co., Ltd. (Jinhua Yonghe), Shandong Huaan New Material Co., Ltd. (Shandong Huaan); and Zhejiang Sanmei Chemical Industry Co. Ltd. (AKA Zhejiang Sanmei Chemical Ind. Co. Ltd).

[2] In the *Preliminary Results* notice published in the *Federal Register*, we stated that Zhejiang Yonghe had no shipments during the POR, and we also inadvertently listed Zhejiang Yonghe as a separate rate recipient. We also inadvertently failed to list Jinhua Yonghe in the *Preliminary Results* notice. *See Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 45890 (September 11, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM). However, this was inconsistent with our correct statements in the PDM that we intended to assign Jinhua Yonghe a separate rate, based upon the information it provided and that Zhejiang Yonghe had made no shipments during the POR. We have corrected these inconsistencies in the final results. *See* Comment 1 below.

[3] These companies are: Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd. (Arkema); Dongyang Weihua Refrigerants Co., Ltd.; Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.; Weitron;

We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this review for which we received comments from parties:

Comment 1: Ministerial Error
Comment 2: The Margin Assigned to TTI
Comment 3: Selection of Separate Rate for Non-Selected Respondents
Comment 4: Adjusting Global Trade Atlas (GTA) Import Data for Movement Expenses
Comment 5: Surrogate Values (SVs) for R-32 and R-143a
Comment 6: SV for Anhydrous Hydrogen Fluoride (AHF)
Comment 7: Surrogate Financial Statements

Background

The POR is February 1, 2016, through July 31, 2017.[4] On September 11, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* of the 2016-2017 administrative review of the AD duty order on HFCs from China. We subsequently verified TTI's sales and the factors of production (FOP) information.[5]

We invited parties to comment on the *Preliminary Results*. On October 19, 2018, we received case briefs from TTI and the three companies receiving separate rates.[6] On October 24, 2018, we received a rebuttal brief from the petitioners.[7]

On October 16, 2018, Commerce postponed the final determination by 60 days to January 8, 2019.[8] 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.[9] Accordingly, Commerce postponed the final determination by 40 days, to April 19, 2019.

Zhejiang Lantian Environmental Protection Fluoro Material Co. Ltd.; and Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd.

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

[5] *See* Memoranda, "Verification of the Responses of T.T. International Co., Ltd. in the 2016-2017 Antidumping Duty Administrative Review of Hydrofluorocarbon Blends from the People's Republic of China," dated October 9, 2018 (TTI Sales Verification Report); and "Verification of the Responses of Sinochem Lantian Fluoro Materials Co., Ltd. in the Antidumping Duty Administrative Review of Hydrofluorocarbon Blends from the People's Republic of China," dated October 11, 2018 (FOP Verification Report).

[6] *See* TTI's Case Brief, "Hydrofluorocarbon Blends from the People's Republic of China: Case Brief," dated October 19, 2018 (TTI's Case Brief); *see also* Shandong Huaan's, Jinhua Yonghe's, and Zhejiang Yonghe's Case Brief, "First Administrative Review of the Antidumping Order on Hydrofluorocarbon Blends from the People's Republic of China," dated October 19, 2018 (Non-Selected Companies' Case Brief).

[7] *See* Petitioners' Rebuttal Brief, "2016-2017 Administrative Review: Hydrofluorocarbon Blends from the People's Republic of China: Rebuttal Brief of the American HFC Coalition," dated October 24, 2018 (Petitioners' Rebuttal Brief).

[8] *See* Memorandum, "Hydrofluorocarbon Blends from the People's Republic of China: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review," dated December 17, 2018.

[9] *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.

Scope of the Order

The products subject to this order are HFC blends. HFC blends covered by the scope are R-404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R-407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R-407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R-410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R-507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R-507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.

Any blend that includes an HFC component other than R-32, R-125, R-143a, or R-134a is excluded from the scope of this order.

Excluded from this order are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from this order are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R-438A), MO79 (R-422A), MO59 (R-417A), MO49Plus™ (R-437A) and MO29™ (R-4 22D), Genetron® Performax™ LT (R-407F), Choice® R-421A, and Choice® R-421B.

HFC blends covered by the scope of this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Changes Since the *Preliminary Results*

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

- We revised our calculations to take into account our findings at verification.[10]

- We corrected a ministerial error made when computing the SV for marine insurance.[11]

[10] *See* Memorandum, "Calculation Memorandum for the Final Results of the Administrative Review of Hydrofluorocarbon Blends from the People's Republic of China for TTI International Co., Ltd." (Final Calc Memo), dated concurrently with this memorandum.
[11] *See* Memorandum, "Surrogate Value Memorandum for the Preliminary Results," dated September 4, 2018 (Surrogate Value Memo) at 10-11*;see also* Final Calc Memo at 2.

Discussion of the Issues

Comment 1: Ministerial Error

In the *Preliminary Results*, we determined that Zhejiang Yonghe had no shipments of subject merchandise during the POR and inadvertently listed Zhejiang Yonghe as a separate rate recipient.[12] We also preliminarily determined that Jinhua Yonghe, a company with a similar name, was eligible for a separate rate but neglected to name Jinhua Yonghe in the *Preliminary Results* notice.[13]

Non-Selected Companies' Arguments

- The non-selected companies argue that Commerce inadvertently named Zhejiang Yonghe in the *Preliminary Results* when it meant to name Jinhua Yonghe as the separate rate company.[14] Specifically, they note that Jinhua Yonghe submitted a separate rates application and had shipments of HFCs during the POR,[15] while Zhejiang Yonghe provided a "no shipments" certification.[16] These parties request that Commerce correct these errors in the final results by rescinding the administrative review for Zhejiang Yonghe and granting a separate rate to Jinhua Yonghe.

The Petitioners' Rebuttal Arguments

- The petitioners did not comment on this issue.

Commerce's Position
We agree. We reviewed the documents on the record and found that we inadvertently referenced Zhejiang Yonghe in the *Preliminary Results* notice rates section, rather than Jinhua Yonghe. We have corrected this error for the final results and are now granting a separate rate to Jinhua Yonghe based on the information contained in its separate rate application. We have also made a final determination of no shipments for Zhejiang Yonghe based on its confirmed no shipments claim, in accordance with our regulations.[17]

Comment 2: The Margin Assigned to TTI

In the *Preliminary Results,* we calculated a dumping margin for TTI of 283.63 percent, using the information reported in its responses and the SV information provided by the interested parties.[18]

[12] *See Preliminary Results*, 83 FR at 45891 and PDM at 5-6.
[13] *See* PDM at 7-8.
[14] *See* Non-Selected Companies' Case Brief at 2 (citing the *Preliminary Results*, 83 FR at 45891 and PDM at 5-6).
[15] *Id*. (citing Jinhua Yonghe's November 9, 2017 Separate Rate Certification).
[16] *Id*. (citing Zhejiang Yonghe's Letter, "No Shipment Letter for Zhejiang Yonghe in the Administrative Review of the Antidumping Order on Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated November 15, 2017).
[17] *See* 19 CFR 351.213(d)(3).
[18] *See Preliminary Results*, 83 FR 45890, and PDM*;see also* Surrogate Value Memo.

TTI's Arguments

- TTI contends that its AD margin calculated in the *Preliminary Results* is commercially unrealistic and defies U.S. Court of International Trade (CIT) rulings that direct Commerce to calculate margins that are not only accurate[19] and non-punitive,[20] but also realistic from a commercial perspective.[21] TTI claims that, as a result, Commerce must recalculate its margin by changing the selection of certain SVs, as detailed in Comments 3 through 7 below.[22]

- According to TTI, this case bears similarities to another case, *Boading*, in which the CIT held that Commerce had selected unreasonably high SVs, given that it had calculated a cash deposit rate which was three times higher than the China-wide rate. TTI notes that, in *Boading*, the CIT ordered Commerce to reconsider its calculation of the respondent's dumping margin.[23]

- TTI states that, here, Commerce similarly calculated a rate which is commercially unrealistic considering that: 1) the calculated rate is almost triple the rate computed for TTI in the less-than-fair-value (LTFV) investigation; 2) TTI would have had to sell its HFC blends during the POR at prices which were nearly three times lower to yield such a high margin[24]; and 3) TTI reported significant operating and net profits in both 2016 and 2017.[25]

Non-Selected Companies' Arguments

- The separate rates companies argue that TTI's calculated rate is not only commercially unrealistic for the reasons cited by TTI, but also "facially absurd." Therefore, they contend that Commerce should recalculate it, either in the manner suggested by TTI or by using an alternate methodology provided by statute.[26]

- The separate rate companies claim that, in *Baoding*, the CIT refused to sustain Commerce's determination entirely because of the size of the calculated rate, terming it "commercially impossible," "prohibitive," and outside the "limits of permissible approximation" and finding that such a rate violated the principles of fairness and accuracy.[27] Thus, they claim that continuing to calculate a similar rate for TTI could not be legally sustained.

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[19] *See* TTI's Case Brief at 1 (citing *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (Fed. Cir. 2013) (*Yangzhou Bestpak*).
[20] *Id.* at 1 (citing *Baoding Mantong Fine Chemistry Co., Ltd., v. United States and Geo Specialty Chemicals, Inc.,* Slip Op. 15-123, at 3 (CIT 2015) (*Baoding*).
[21] *Id.* at 1 (citing *Yangzhou Bestpak*, 716 F.3d at 1379).
[22] *Id.* at 1-2.
[23] *See Baoding*, Slip Op. 15-123 at 15.
[24] *See* TTI's Case Brief at 2 (citing TTI February 8, 2018 CQR at 22).
[25] *Id.* (citing TTI January 19, 2018 AQR at Exhibit A-7).
[26] *See* Non-Selected Companies' Case Brief at 5.
[27] *Id.* at 3-4 (citing *Baoding*, 113 F. Supp. 3d at 1337-41).

Petitioners' Rebuttal Arguments

- The petitioners disagree that Commerce computed an "unreasonable" rate for TTI.[28] According to the petitioners, Commerce calculated TTI's rate in a manner consistent with its normal practice because it relied on TTI's reported data (*i.e.*, usage rates and U.S. prices)[29] and it selected the relevant SVs using the process outlined in Policy Bulletins 04.1 and 10.2.[30] The petitioner notes that Commerce subsequently verified the accuracy of the reported prices and FOPs.

- The petitioners recognize that TTI's margin is higher in this review than it was in the LTFV investigation. However, the petitioners note that various factor values have changed since the period of investigation, due to exchange rates and commercial conditions in the market for each FOP.

- Finally, the petitioners contend that any reliance on *Baoding* is misplaced because the CIT explicitly limited that ruling to the facts on the record of the underlying case.[31] Further, the petitioners disagree that the CIT's rationale in *Baoding* was solely related to the size of the calculated margin, arguing that it instead hinged on the apparent disconnect between the rate and the underlying commercial reality.[32] They assert that, in *Baoding*, Commerce assigned a margin that had not been demonstrated to be anything other than commercially impossible. Here, in contrast, the rate is based on TTI's actual, verified FOPs using the same SVs and methodology applied in the LTFV investigation.

Commerce's Position

We disagree with TTI that its margin is inaccurate, punitive, and not realistic from what it describes as a commercial perspective. Additionally, we disagree that the size of the margin is relevant to the question of whether it is a reasonably accurate reflection of a respondent's dumping behavior. As noted below, we calculated the margin for TTI using its own data, without adjustments, relying on the SVs on the record.

In accordance with section 773(c)(1) of the Tariff Act of 1930, as amended (the Act), when calculating a non-market economy (NME) margin, we compare a company's own prices for subject merchandise sold to the United States with the NV which is calculated by using a company's own FOPs and SVs selected from another market-economy country at the same level of economic development as the NME. Thus, our NME margin calculations consist of three main components: 1) a company's U.S. prices; 2) a company's FOPs; and 3) SVs used to value those FOPs. With respect to TTI's U.S. prices and its FOPs, we have accepted TTI's own actual reported data and conducted a verification to confirm the integrity and completeness of those

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[28] *See* Petitioners' Case Brief at 16.
[29] *Id.* (citing Memorandum, "Surrogate Value Memorandum for the Preliminary Determination of the Antidumping Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated January 21, 2016 (LTFV Surrogate Value Memo) and Surrogate Value Memo).
[30] *Id.*
[31] *Id.* (citing *Baoding*, 113 F. Supp. 3d at 1340).
[32] *See* Petitioners' Case Brief at 16 (citing *Baoding,* 113 F. Supp. 3d at 1341).

prices and FOPs.[33] We used this verified data in our margin calculations without making adverse inferences. Thus, from the perspective of U.S. price and FOPs, we have demonstrated that our calculation of TTI's margin cannot be anything other than reasonable and accurate. Therefore, it is evident that TTI's claim about the legitimacy of its calculated margin can only be based on the assumption that our selection of its SVs is flawed. However, information on the record does not support TTI's claim and, in fact, suggests the opposite conclusion.

In proceedings involving NME countries, section 773(c)(1) of the Act directs Commerce to base normal value on FOPs valued in a surrogate market economy country, along with an amount for selling, general and administrative expenses (SG&A), plus profit. According to section 773(c)(1) of the Act, the SV selections for each FOP shall be based on the best available information. However, section 773(c)(2) of the Act directs that if Commerce "finds that the available information is inadequate for purposes of determining the normal value of subject merchandise" then Commerce will determine normal value on the basis of the price at which comparable merchandise produced in a comparable market economy country is sold in other countries.[34]

Section 773(c)(4) of the Act requires Commerce to value FOPs in a surrogate country that is (A) at a level of economic development comparable to that of the nonmarket economy country, and (B) a significant producer of comparable merchandise. Commerce's regulation, 19 CFR 351.408, provides a rule for calculating normal value for NMEs. For instance, in valuing FOPs, pursuant to 19 CFR 351.408(c)(1) and (2), Commerce normally will utilize publicly available information, and will normally value all FOPs from a single surrogate country. In addition, pursuant 19 CFR 351.408(c)(4), for SG&A and profit, Commerce normally will use non-proprietary information from producers of identical or comparable merchandise in the surrogate country.

Based on the practice described above, we selected SVs in accordance with the law and Commerce's long-standing practice for selecting SVs using the best available information as outlined in Policy Bulletins 04.1 and 10.2. TTI's argument hinges on the assumption that our process was impugned because Commerce improperly selected certain distortive SVs. However, as discussed in more detail below (*see* Comments 4 through 7),[35] after reexamining the source data in question, we find nothing unusual about them[36] such that we would consider using

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[33] *See* TTI Sales Verification Report and "FOP Verification Report.

[34] *See* sections 773(c)(1) and (2) of the Act.

[35] Specifically, TTI has challenged our selection of four SVs: 1) international freight; 2) R32 and R134a; 3) AHF; and 4) the surrogate financial ratios. *See* Comments 4 through 7, below. We based the SVs for the latter three on the same general sources as were used in the LTFV investigation. With respect to international freight, however, we note that Commerce inadvertently did not place the GTA import values used in the LTFV investigation on a CIF basis. *See also* Petitioners' Letter, "2016-2017 Administrative Review: Hydrofluorocarbon Blends from the People's Republic of China: Rebuttal to TTI's Surrogate Value Submission," dated March 30, 2018 (Petitioners' Rebuttal Comments) at Exhibit 2. Thus, Commerce did not increase any SVs on GTA import data to account for ocean freight in that segment of the proceeding. Because we failed to account for these expenses, we understated TTI's margin in the LTFV investigation.

[36] We note that the SVs computed in this review for R-32/R-134a and AHF are generally consistent with the values calculated in the LTFV investigation (*i.e.*, the SVs increased for R-32/R-134a by 15.6 percent and AHF by 3.2 percent). *See* Memorandum, "Margin Analysis Memo Related to T.T. International Co., Ltd," dated April 19, 2019 (Margin Analysis Memo) at Attachment 2. We also note that the financial ratios computed in this review are similar

alternative data which are either less specific or have other flaws. Further, every SV came from the information submitted by the parties in this review and, in most cases, were values proposed by TTI itself. In fact, there is nothing unusual or unreasonable about our SV selection, considering that it is the same process we followed in the investigation.

Thus, we disagree with TTI that the margin is unreasonable or inaccurate nor that it fails to reflect commercial reality. We point out that, in *Nan Ya Plastics*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) clarified that "{w}hen Congress directs the agency to measure pricing behavior and otherwise execute its duties in a particular manner, Commerce need not examine the economic or commercial reality of the parties, specifically, or of the industry more generally, in some broader sense."[37] The Federal Circuit further held that "a Commerce determination (1) is 'accurate' if it is correct as a mathematical and factual matter, thus supported by substantial evidence; and (2) reflects 'commercial reality' if it is consistent with the method provided in the statute, thus in accordance with the law."[38]

Thus, we find that our calculations are accurate, because they are: 1) in accordance with our normal NME practice; 2) factually and mathematically correct; and 3) supported by substantial evidence. Further, we find that our final calculation is reasonable and representative, because it is consistent with our normal methodology for calculating dumping margins for respondents in NME countries using TTI's actual U.S. price and FOP data and the exact same methodology for valuing SVs as in the investigation using information submitted by TTI and the petitioners.

We also disagree with TTI that its profitability proves that its margin is "commercially impossible." We note that profit is a function of not only the revenue a company earns, but also the costs that it incurs. The presence of pervasive government controls in NME countries (*e.g.*, related to assets and investments, allocation of resources, *etc*.) renders the calculation of an NME company's production costs invalid under Commerce's normal dumping methodology. While we acknowledge that TTI's financial statements do show a profit, we cannot be assured that TTI would have made a similar profit had it been located in a market economy country, and the size of TTI's dumping margin implies that this would not be in this case. Further, we note that TTI's profit was based on sales from all of its product lines, including non-subject merchandise. In fact, the record shows that TTI's sales of HFC components (non-subject merchandise) increased markedly since the *Order* was implemented and TTI's sales of blends have decreased.[39]

For similar reasons, we also disagree with TTI that it would need to decrease its prices by two thirds to create the calculated margin. As noted above, the dumping margin is a function of prices in conjunction with the associated costs. Prices are only half of the equation. Therefore, a combination of falling prices and increasing costs can result in a higher dumping margin. In addition, while the remedial purpose of the AD law is to encourage companies to increase prices to a fair level, there is no evidence on the record that TTI has increased prices from the time of

to the ratios computed for the same Mexican producer used in the LTFV investigation (*e.g.*, the SG&A percentage was 31.77 percent in the LTFV investigation and is 28.74 percent now). *Id*.

[37] *See Nan Ya Plastics Corp. LTD. v. United States*, 810 F.3d 1333, 1344 (Fed. Cir. 2016) (*Nan Ya Plastics*).

[38] *Id*.

[39] *See* TTI's February 8, 2018 Section C Questionnaire Response at Reconciliation Exhibit C-4 at columns F and G (BPI version).

the LTFV investigation. Indeed, when we examined TTI's current pricing trends (*i.e.*, using information on the record of this review), we found that TTI's prices have generally declined overall.[40]

We similarly disagree with TTI that it would be "commercially unrealistic" to sell merchandise with a dumping level at its current cash deposit rate. In the LTFV investigation, TTI continued to sell in the commercial marketplace, although Commerce calculated a margin over 100 percent. In fact, we used TTI's own data to corroborate the AFA rate of 216.37 percent.[41] Thus, TTI was selling HFC blends at close to its current level in the LTFV investigation and there is no reason to believe that it did not continue to do so throughout the POR. Indeed, the data reported by TTI shows that it did.

Finally, we disagree that the Court's decision in *Baoding* is applicable here, because that case is limited to the facts on that record.[42] In particular, the Court held in *Baoding* that information on that record suggested that certain SVs were aberrationally high when compared with the SVs from other potential surrogate countries, and the selected financial statements did not accurately reflect the production experience of a glycine producer. In other words, in that case, the Court held that Commerce did not base its analysis on the best available information. However, as discussed in Comments 4 through 7, that is clearly not the situation in this review.

Based on the aforementioned, we disagree that Commerce should recalculate TTI's margin or use an alternate methodology provided by statute.[43] As noted above, we calculated a margin consistent with the law,[44] and thus it is accurate and commercially realistic, and it is also based on TTI's own data and SVs in large part provided by TTI. As discussed below, the SVs were based on the best available information. Therefore, we have continued to calculate TTI's margin using the information on the record, consistent with our long-standing practice.

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[40] *See* Margin Analysis Memo at Attachment 1. As can be seen from analysis, TTI's prices fell sharply at the beginning of the POR, recovered, then generally declined thereafter.

[41] *See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 42314 (June 29, 2016) (*HFC LTFV Final*) and accompanying Issues and Decision Memorandum (IDM) at 8.

[42] TTI makes two points with regards to the size of the margin: 1) "the previous margin for TTI -101 percent in the underlying investigation - is now three times larger in the first review"; and 2) "{a}s in *Baoding*, the calculated margin is three times higher than the China-wide rate." With regards to the first point, it is not uncommon to calculate a margin three times higher than in a previous review. In *Baoding*, Commerce calculated a rate of 2.75 percent in the 2003-2004 review and 50.20 in the second review (over 17 times higher). *See Baoding*, 113 F. Supp. 3d at 1339 at note 10. With regards to the second point, TTI's final margin (285.73) is almost a third higher than the China-wide rate (216.37), not almost 300 percent higher as in *Baoding*.

[43] *See* Non-Selected Companies' Case Brief at 5. Although separate rate companies argue we use any other method provided by the statute, they have not suggested any method we should adopt or what part of the statute gives Commerce the authority to depart from its normal practice.

[44] We note that Commerce has calculated similarly high margins in other AD NME cases using a company's own data. *See e.g.*, *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 (July 25, 2016) (showing the calculated rate for Yieh Phui (China) Technomaterial Co., Ltd. of 209.97 percent); and *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 81 FR 35652 (June 24, 2008) (showing that the margin calculated for Kunshan Lets Win Steel Machinery Co., Ltd./Kunshan Lets Win Steel Machinery Co., Ltd. was 249.12).

Comment 3: Selection of Separate Rate for Non-Selected Respondents

In the *Preliminary Results,* we assigned an antidumping duty margin to the separate rates respondents based on the calculated margin for TTI, the sole cooperating mandatory respondent in this review.[45] We received comments objecting to this assignment from two of the companies granted separate rates in this review, Shandong Huaan and Jinhua Yonghe (collectively "separate rates companies").

Separate Rates Companies' Arguments

- Shandong Huaan and Jinhua Yonghe argue that TTI's calculated rate is commercially unreasonable, given that it is 30 percent higher than the AFA rate assigned to the China-wide entity, and it is particularly unfair to subject the cooperative separate rates companies to this rate while assigning the non-participating companies a lower rate. In particular, these companies maintain that it is unfair to assign the six non-cooperative companies a margin lower than a cooperative company like Shandong Huaan, which submitted an extensive supplemental Separate Rate Application questionnaire response.[46]

- Shandong Huaan and Jinhua Yonghe allege that assigning a rate higher than the China-wide rate constitutes arbitrary agency action and defies any reasonableness test established by the Court.[47]

TTI's Arguments

- TTI maintains that there is no economic rationality to extending its excessive rate to the cooperating separate rates companies, while allowing non-participating, or non-cooperating, exporters to receive a much lower China-wide rate of 216 percent.[48]

Petitioners' Rebuttal Arguments

- The petitioners disagree that Commerce's application of TTI's calculated margin is arbitrary or unreasonable.[49] According to the petitioners, Commerce has the legal authority to calculate separate rates that are higher than the China-wide rate and it has consistently done so in past cases. For example, the petitioners point out that, in *Aluminum Extrusions 2014-2015*,[50] Commerce assigned a calculated rate of more than double the China-wide rate to

[45] *See Preliminary Results*, 83 FR at 45891.
[46] *See* Non-Selected Companies' Case Brief at 5 (citing Shandong Huaan's November 9, 2017 Separate Rate Application and Shandong Huaan's August 20, 2018 Separate Rate Application Supplemental Questionnaire Response).
[47] *Id.* at 6 (citing *Consolidated Fibers, Inc. v. United States*, 535 F. Supp. 2d 1345, 1354 (CIT 2008) (*Consolidated Fibers*)).
[48] *See* TTI's Case Brief at 1 note 1 (citing *Preliminary Results*).
[49] *See* Petitioners' Rebuttal Brief at 17 (citing Non-Selected Companies' Case Brief at 5).
[50] *Id.* at 17 (citing *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650, 30652 (May 26, 2011) (*Aluminum Extrusions*) and *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015,* 81 FR 85516, 85518 (November 28,

separate rates respondents. Therefore, the petitioners contend that Commerce should continue to base the separate rate on TTI's calculated rate for the final results.[51]

- Further, the petitioners argue that Commerce has no reason to abandon its normal practice, because, according to 735(c)(5)(A) of the Act and *Albemarle*,[52] Commerce calculates separate rates for non-examined companies by averaging the dumping margins for individual examined exporters and producers, except under circumstances not present here.[53]

- Moreover, the petitioners argue that, according to the test in *Albemarle*, Commerce may only use another reasonable method for calculating separate rates if the expected method, based on the margin calculated for examined respondents, is not feasible or does not reflect the potential dumping margins for the separate rates respondents.[54] In this case, the petitioners claim that the separate rates respondents provide no evidence to suggest that the experience of TTI is any different from their own. The petitioner asserts that, to the contrary, since TTI is an exporter representing a large share of the HFCs market who has substantially increased its margin of dumping between the original investigation and this review; it stands to reason that the separate rates companies also continue to engage in dumping practices.

Commerce's Position

Neither the Act, nor Commerce's regulations address the establishment of the dumping margin applied to companies not selected for individual examination in an administrative review. For this reason, Commerce's long-standing practice has been to look to section 735(c)(5) of the Act for guidance. This section, which provides instructions for calculating the all-others rate in an antidumping investigation, directs Commerce to establish that rate at:

> an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776.[55]

Thus, consistent with our practice and in accordance with the intent of the Act, we have continued to assign TTI's margin, which is neither *de minimis* nor based on total AFA, to the separate rates companies for purposes of this final determination.

We disagree that it is appropriate to depart from our practice in this administrative review solely because TTI's calculated margin exceeds the current rate assigned to the China-wide entity.

2016) (*Aluminum Extrusions 2014-2015*)). The petitioners state that the China-wide rate calculated in *Aluminum Extrusions* was 33.28 percent and the rate applied to separate rates respondents in *Aluminum Extrusions 2014-2015* was 86.01 percent. *Id.*

[51] *See* Petitioners' Rebuttal Brief at 17-19.

[52] *Id.* at 18 (citing 735(c)(5)(A) of the Act and *Albemarle Corp. v. United States*, 821 F.3d 1345, 1352-53 (Fed. Cir. 2016) (*Albemarle*)).

[53] *Id.* at 18 (citing 735(c)(5)(B) of the Act and *Yangzhou Bestpak*, 716 F.3d at 1373).

[54] *See* Petitioners' Rebuttal Brief at 18 (citing *Albemarle*, 821 F.3d at 1353).

[55] *See e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2014-2015*, 82 FR 17634 (April 12, 2017).

While six companies failed to establish their entitlement to a separate rate (and, thus, they are part of the China-wide entity), the China-wide entity is not subject to this administrative review.[56]

We acknowledge that the current cash deposit rate for the China-wide entity is lower than TTI's calculated rate. We also recognize that, by finding Weitron (an actively uncooperative respondent) ineligible for a separate rate, Weitron will receive a lower cash deposit rate than the one assigned to the (actively cooperating) separate rates companies. However, while this may appear unjust at first glance, the proposed "fix" for the perceived injustice remedies nothing; had the NME entity been under review here, it would have received a cash deposit rate which could, and likely would, have been higher than the rate computed for TTI. Thus, we find that the comparison of TTI's rate and the China-wide rate is not meaningful.

TTI's and the separate rates companies' argument is, in essence, that Commerce should place a ceiling on the rate assigned to non-selected companies. However, as noted above, this runs counter to Commerce's longstanding practice, well grounded in the Act, of relying on the current experience of the individually-examined respondents as the most accurate proxy for the experience of any non-examined ones.[57] Indeed, the Court recognized the validity of this principle in *Albemarle*, when it held that Commerce may only use another reasonable method for calculating separate rates if the expected method, based on the margin calculated for examined respondents, is not feasible or does not reflect the potential dumping margins for the separate rates respondents.[58] The Court further held that the statute expresses a preference for contemporaneity in administrative reviews and, beginning with an antidumping duty order already in place, Commerce typically employs a methodology that permits greater specificity; as such, the Court stated that "{t}here is no basis to simply assume that the underlying facts or calculated dumping margins remain the same from period to period."[59]

In light of the above facts, we disagree that assigning TTI's calculated rate to the separate rate companies constitutes arbitrary agency action or that this action defies any reasonableness test established by the Court. To the contrary, as explained above, there is no statutory or regulatory imperative that cooperative respondents must receive a lower rate than the China-wide entity; nor is it arbitrary to assign the cooperative separate rate companies a rate which is based on TTI's reported, verified information. For this reason, we find that the separate rates companies'

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[56] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013) (*AD Proceedings Change in Conditional Review of NME Entity*); *see also Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 82 FR 35754, 35756 (August 1, 2017) (*Opportunity Notice*), which states that: 1) the NME entity will not be under review unless Commerce specifically receives a request for a review of it; and 2) where an individual NME exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity.
[57] *See*, *e.g.*, *Aluminum Extrusions,* 76 FR at 30652 and *Aluminum Extrusions 2014-2015,* 81 FR at 85518.
[58] *See Albemarle*, 821 F.3d at 1353 ("The very fact that the statute contemplates using data from the largest volume exporters suggests an assumption that those data can be viewed as representative of all exporters. The statute assumes that, absent such evidence, reviewing only a limited number of exporters will enable Commerce to reasonably approximate the margins of all known exporters.").
[59] *Id.* at 1356.

reliance on *Consolidated Fibers* is not only misplaced, but that case also supports our decision here.[60]

In summary, Commerce has acted in accordance with the statute, its regulations, and its practice in assigning the separates rate companies TTI's calculated rate in this administrative review.

Comment 4: Adjusting GTA Import Data for Movement Expenses

In the *Preliminary Results*, we based the SVs for TTI's raw material FOPs on GTA data for imports into Mexico. Because these data were stated on a freight on board (FOB) foreign port basis, we added an amount for international freight and marine insurance to derive a landed (or cost, insurance, and freight (CIF)) value, in Mexico.[61] We based the international freight costs on quotes from Maersk Line (Maersk) for shipping a 20-foot container from Shanghai, China, to Savannah, Georgia, and marine insurance expenses on data from an import/export service provider.[62]

TTI's Arguments

- TTI disagrees with Commerce's reliance on the price quotes from Maersk to value international freight, arguing that Commerce should, instead, use an estimated freight factor derived from the "BACI Trade Database," a source which employs United Nations COMTRADE data.[63]

- TTI claims that the Maersk information suffers from two flaws: 1) the route of the quote (*i.e.*, Shanghai to Savannah) bears no relationship to the method or distance of transport of the subject inputs to a manufacturing facility in Mexico,[64] many of which would be shipped over land from the United States; and 2) the route originates in Shanghai (a city in a controlled economy, where goods benefit from subsidies) and, thus, Commerce cannot use it. With respect to the latter point, TTI notes that Commerce routinely excludes China-sourced goods from import data for inputs (although it acknowledges that it "apparently" does not exclude China-sourced shipping costs).

- TTI argues that, in contrast, using the BACI Trade Database yields a more comprehensive approach which is both empirically-based and realistic. TTI notes that this database contains more than nine million observations spanning more than ten years, and it measures variables such as contiguity of countries, distance, and variance in unit values. TTI concludes that relying on the freight factor shown in this study would be more accurate than assigning

[60] *See Consolidated Fibers*, 535 F.2d at 1359 (holding that the U.S. International Trade Commission's (ITC's) denial of a reconsideration request was not arbitrary, capricious, or an abuse of discretion because it was based on the factual record of that case).
[61] *See* Surrogate Value Memo at 4.
[62] *Id.* at 10-11 and Exhibit 12.
[63] *See* TTI's Case Brief at 9 (citing TTI's letter, "Hydrofluorocarbon Blends from the People's Republic of China; Second Surrogate Value Comments," dated August 6, 2018 (TTI Second SV Comments) at 15).
[64] *Id*. at 8.

quoted prices per kilogram (kg) from one shipping company, without accounting for the value of the merchandise or circumstances of transportation.[65]

Petitioners' Rebuttal Arguments

- The petitioners argue that TTI's proposed SV for international freight is flawed for the following reasons: 1) TTI's proposed SV is based on an average of data that covers the period of 1989-2004, and, thus, it is not contemporaneous with the POR; 2) the data is weighted more heavily towards trading partners that reported similar data, and, thus, the overall estimated CIF average reflects some import/export statistics more than others;[66] and 3) the freight costs are for all trade, making them specific to neither China nor Mexico.[67] Therefore, the petitioners contend that Commerce should continue to use the Maersk data to value international freight.[68]

Commerce's Position

As noted above, the GTA import data for Mexico is stated on an FOB basis. Therefore, in the *Preliminary Results*, we added amounts for international freight and marine insurance to the import data in order to place them on a CIF basis, consistent with our practice.[69] After considering the arguments on the SV selected for international freight, we agree with the petitioners that the information from Maersk, a transport and logistics company, represents the best available information for valuing these expenses. Therefore, we have continued to use this information in our calculations in the final results.

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, and tax and duty exclusive.[70] 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.[71] While there is no hierarchy for applying the SV

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[65] *Id*. at 9.
[66] *See* Petitioners' Rebuttal Brief at 14 (citing TTI Second SV Comments at 15).
[67] *Id*. at 14 (citing TTI Second SV Comments at Exhibit 2 at 9).
[68] *Id*. at 15 (citing *e.g.*, *Shakeproof Assembly Components Division of Illinois Tool Works, Inc. v. United States*, 30 C.I.T. 1173, 1178 (CIT 2006), *Sichuan Changhong Electricity Co. v. United States,* 460 F. Supp. 2d 1338, 1358-59 (CIT 2006) stating that "non-contemporaneity failed to overcome…greater accuracy")).
[69] *See* Policy Bulletin 10.2 at 1 stating that "in situations where the surrogate country import statistics do not include international freight costs, the Department will add international freight and foreign brokerage and handling charges to the import value. Normally, international freight costs include not only the ocean freight portion of transporting the merchandise from one location to another but also the other expenses associated with moving the goods, such as marine insurance;" *see also Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 83 FR 32075 (July 11, 2018) and accompanying IDM at Comment 3.
[70] *See, e.g., First Administrative Review of Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 75 FR 1336 (January 11, 2010) and accompanying IDM at Comment 1; *See also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 6132 (February 26, 2019) (*TRBs 2016-2017 Final*) and accompanying IDM at Comment 6.
[71] *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.

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."[72]

In considering the available data on the record for use as an SV for international freight, we find that the Maersk data match the above criteria more closely than do the BACI Trade data. The Maersk data are publicly-available price quotes from a market economy supplier, in a market economy currency, which are both contemporaneous with the POR and tax and duty exclusive. Further, the price quotes are specific to international freight (*i.e.*, the portion of the FOP for which an SV is needed),[73] and they are transparent in that they separately detail the freight charges, terminal and handling charges, and other fees.

In contrast, TTI's proposed value is based on a working paper published by an organization named CEPII[74] (an unknown source). This paper describes CEPII's methodology to construct a database called the "BACI Trade Database," which purports to reconcile UN COMTRADE's import and export trade statistics from the period 1994 to 2007[75] by removing the transportation costs from global import data. According to this report, the average estimated CIF expenses during this period were 3.3 percent of the value of the shipped merchandise. Although this value is based on a large number of data points (and, thus, may arguably represent a broad market average) and the working paper is publicly available, the estimated percentage is not contemporaneous with the POR (by one to four decades), is not product-specific, does not separately detail freight charges, could possibly include taxes and duties, and presumably contains shipping cost data from freight carriers located in NME countries (*i.e.*, not market economy freight rates). Further, the working paper itself identifies a number of potential shortcomings in the methodology used to determine the percentage (*e.g.*, product misclassifications, differences in reporting years, *etc*.).[76]

Given the above drawbacks with the CEPII figure, we disagree with TTI that it provides a better source of SV data for international freight than does the Maersk data. Moreover, while we do not dispute that CEPII's methodology is "empirically-based," we disagree that empiricism is a

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[72] *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), 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.

[73] We acknowledge that the quotes are not for the movement of specific inputs used to produce HFCs; however, TTI's proposed freight source is also not HFC-input-specific. That said, information in Petitioners' Initial SV Comments at Exhibit 8 shows the commodity on the Maersk price quotes as "chemical products, nos." We find this relevant because most of the inputs used in the production of HFC blends are various types of chemicals (*i.e.*, liquid ammonia, R-32, R-134A, calcium chloride, *etc*.), many of which are hazardous or require special care (*i.e.*, hydrochloric acid, hydrogen fluoride (HF), and AHF) for which a company is likely to incur additional costs for safety precautions. Thus, we conclude that the Maersk price quotes are preferable to the BACI data from a specificity standpoint.

[74] CEPII stands for the "Centre D'Études Prospectives Et D'Informations Internationales." TTI does not explain who this organization is and the paper itself does not describe the organization or its mission. Rather, TTI placed the working paper on the record with no accompanying narrative.

[75] The report, however, references other time periods, including a chart showing information from 1989 to 2004 and various data classifications from as early as 1980. *See* TTI Second SV Comments at Exhibit 2 at 10.

[76] *Id*. at *11.*

synonym for "realistic" or that use of the CEPII percentage would yield a more accurate result than the Maersk price quotes from the POR. Indeed, Commerce has long recognized Maersk as an appropriate and accurate source to value ocean freight;[77] whereas, the source provided by TTI is untested and unknown.

Finally, we disagree that the CEPII figure is better because it accounts for the value of the merchandise. In Commerce's experience, freight costs are generally a function of distance and weight, and not a function of value.[78] Thus, we find determining the cost of international freight using a value-based factor of 3.3 percent of the FOB value of the input to be potentially distortive. Were we to use this factor, we would compute higher freight costs for higher-value products of the same weight. For example, based on this methodology, the cost for shipping one kg. of TTI's coal, with an SV of $0.09, would be less than one cent per kg., whereas the cost for shipping one kg of tin, with a SV of $18.84, would be $0.60 per kg. (*i.e.*, more than 60 times the cost).[79] TTI has not explained why such an outcome would be reasonable or accurate.

With respect to TTI's objection to the Maersk quotes, we also disagree that it is relevant that the origination point of the shipments are in Shanghai. While Shanghai is indeed located in an NME

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[77] *See Crystalline Silicon Photovoltaic Cells Whether or Not Assembled into Modules. from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2012-2013*, 80 FR 1021 (January 8, 2015) and accompanying PDM at 33, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 40998 (July 14, 2015); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013-2014*, 80 FR 80746 (December 28, 2015) and accompanying PDM at 26, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 81 FR 39905 (June 20, 2016); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014–2015*, 81 FR 93888 (December 22, 2016), and accompanying PDM at 26, unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017); *Certain Polyester Staple Fiber from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR at 4542 (January 28, 2015) and accompanying IDM at Comment 9.

[78] *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) and accompanying PDM at 25 (unchanged in *TRBs 2016-2017 Final*), stating "we valued truck freight expenses using price data from the World Bank's *Doing Business 2018* and used a calculation methodology based on a container weight of 15,000 kilograms and a distance from Bangkok to Laem Chabang port of 129 kgs (both of which are noted in *Doing Business 2018* study.") (footnotes omitted); *see also* Surrogate Value Memo at 10 stating "we valued inland freight charges using the World Bank's Doing Business in Mexico 2018. This report gathers information concerning the distance and cost to transport products in a 20-foot container from Monterrey, Mexico and Mexico City, Mexico to the Nuevo Laredo border crossing. We calculated a per-kilogram, per-kilometer surrogate inland freight rate of $0.000115/kg/km based on using the full capacity of a 20-foot container." (footnotes omitted). *Id.*, at 11 stating "{w}e valued ocean freight using information published by Maersk Line. The rates are quotes based on the cost of shipping of a 20-foot container weighing 28,300 kg from Shanghai, China to Savannah, Georgia in the United States. By taking an average of the ocean freight price (excluding brokerage and handling) from July 2016 to July 2017, divided by the average weight in kilograms of the container (28,300 kg), we find that the average cost in USD per kilogram is $0.1979." (footnotes omitted).

[79] *See* Surrogate Value Memo at 7-8.

country, the quotes themselves are from a market-economy service provider and priced in a market economy currency. Contrary to TTI's contention, Commerce does use prices paid in China if those prices are market-based and in a market economy currency.[80] For this reason, the Maersk quotes conform to Commerce's practice; in contrast, it is difficult to determine if the estimated freight factor proposed by TTI is based partially on NME freight costs which Commerce would not accept.

Finally, we disagree with TTI's assumption that the relevant freight route is to a destination port in Mexico. Under NME methodology, Commerce is tasked with determining what the respondent's cost of producing subject merchandise would be if the NME country operated under market principles. To do this, Commerce determines a market-economy value for each input used to produce that merchandise, and then it computes the cost of transporting that input to the factory in the NME country. Thus, shipment costs over land from the United States to Mexico are not necessarily relevant to this exercise.

As noted above, neither freight SV meets all of the criteria in the Commerce's regulations. However, the CIT has held that, when faced with a choice between imperfect options, it is within Commerce's discretion to determine which choice represents the best available information.[81] Consequently, when presented with these two choices, we find it appropriate to select the value that best matches Commerce's SV selection criteria, which is the value from Maersk. As a result, we are relying on this information in our final results.

Comment 5: Surrogate Values for R-32 and R-143a

In the *Preliminary Results*, we valued TTI's FOPs for the components R-32, and R-134a using GTA data under Mexican Harmonized Schedule (HS) category 2903.39.99 (Other) Acetylene Tetrabromide; Alkyl Bromides; Methylene Dibromide; and Vinyl Bromide.[82]

TTI's Arguments

- TTI argues that the SV computed for R-134a and R-32 is aberrational, and, as a result, Commerce use of this SV distorted TTI's dumping margin. TTI requests that Commerce

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[80] In other cases, we have used Maersk price quotes from ports in China to the United States to value NME ocean freight. *See, e.g., Steel Propane Cylinders from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Postponement of Final Determination Measur*es, 83 FR 66675 (December 27, 2018) and accompanying IDM at 6. Further, we also use respondents' market-economy purchases of inputs when they meet certain criteria, as we did here for TTI's suppliers. *See* Surrogate Value Memo at 5, stating "{p}ursuant to 19 CFR 351.408(c)(1), if substantially all of an input (*i.e.*, 85 percent or more of the total volume purchased of the input) is purchased from ME suppliers, Commerce normally will use the weighted-average purchase price paid to ME suppliers to value all of the input. Where, appropriate Commerce used TTI's actual ME purchase prices to value its FOPs for certain inputs because these prices constitute the best available information to value these FOPs; *see also* Memorandum, "Analysis for the Preliminary Results of the Administrative Review of Hydrofluorocarbon Blends from the People's Republic of China Memo for TTI Co., Ltd," at 2 stating "We valued TTI's reported FOP for 'perchloroethylene' using a weighted average of the surrogate value and the market economy purchase price TTI provided for this input."

[81] *See CS Wind Vietnam Co., Ltd. and CS Wind Corporation v. United States,* 971 F.Supp.2d 1271 at 1288 (CIT 2014) (citing *Dorbest Ltd. v. United States*, 30 CIT 1671, 1687, 462 F. Supp. 2d 1262, 1277 (CIT 2006)).

[82] *See* Surrogate Value Memo at 7.

correct this distortion by computing the SV for both components instead using import data from HS category 2903.39.02, difluoroethane (*i.e.*, R-152).[83]

- According to TTI, HS category 2903.39.99, is a basket category that includes multiple high valued chemicals not used in the production of subject merchandise, such as R23.[84] TTI claims these high-valued inputs raise the average unit value (AUV) under this HS category to a level which is economically implausible, given that the resulting FOP values for these inputs alone were higher than TTI's U.S. selling price for the finished HFC blend.[85] TTI asserts that, under similar facts, the Court found that the outcome "aberrational" and defiant of reality.[86]

- TTI claims that an explanation for the above distortion can be found in the PIERS data placed on the record by the petitioners.[87] According to TTI, these data show that the AUV for R-134a (used in HFC production) is less than one third of the AUV for the other chemicals (not used in HFC production) in this basket (*i.e.*, 79.9 pesos per kg and 283.34 pesos per kg, respectively). TTI asserts that the AUV of these other chemicals raises the average AUV in this category to 165.24 pesos per kg.[88]

- TTI argues that, to remedy the distortion, Commerce should value R-32 and R-134a using HS category 2903.39.02 (covering R-152a), because it is a refrigerant chemical with the same chemical characteristics as R-32 and R-134a, and it has more in common with them (including fluorine, methane, and price) than the rest of the chemicals in the basket category.[89] Thus, TTI claims that the HS category for R-152a is more specific to the inputs under consideration than most of the chemicals in the broader HS category.

- TTI maintains in *Solarworld*, the CIT stated: 1) the "best available information" principle requires that Commerce use a category which is most specific to the input rather than a broader category of products which include a range of other articles; and 2) Commerce's task is not to find the best input for customs purposes, but to select the best available information to value the FOPs.[90] TTI contends that Commerce should follow this precedent and select the HS category for R-152a for purposes of the final determination.

Petitioners' Rebuttal Arguments

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[83] *See* TTI's Case Brief at 2 (citing Surrogate Value Memo at 7).
[84] *Id*. at 3 (citing TTI's March 1, 2018 Section D Questionnaire Response (TTI March 1, 2018 DQR) at 12 and Exhibit D-1, Consolidated FOPs; FOP Verification Report at 13-14; and TTI Sales Verification Report at 9-10).
[85] *Id*. (citing TTI March 1, 2018 DQR at Exhibit D-7.1).
[86] *Id*. (citing *Baoding*).
[87] *Id*. at 3 (citing Petitioners' Letter, "2016-2017 Administrative Review: Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Determination Comments," dated August 6, 2018, (Petitioners' Pre-prelim Comments at Exhibit 3)).
[88] *Id*. at 3 (citing Petitioners' Pre-prelim Comments at Exhibit 2).
[89] *Id*. at 4 (citing TTI March 1, 2018 DQR at Exhibit D-7.1 (FOP database – input volume for R-32 and R-134a)).
[90] *See* TTI's Case Brief at 4 (citing *Solarworld Americas, Inc. and Goal Zero, LLC, v. U.S. and Yingli Green Energy Holding Co., Ltd. et al.*, 234 F.Supp.3d 1286, 1305 (CIT 2017) (*Solarworld*)).

- The petitioners claim that Commerce appropriately valued inputs R-32 and R-134a using HS category 2903.39.99, as it did in the investigation. The petitioners note that TTI does not dispute that R-32 and R-134a are properly classified under this subheading.[91]

- The petitioners note that HS category 2903.39.99 is not only specific to the inputs in question, but over half of the imports into Mexico under this category were R-134a.[92] While the petitioners acknowledge that the Mexican import statistics do not explicitly identify any imports of R-32 during the POR, there are significant imports of general refrigerants (such as "gas refrigerante," "refrigerante," *etc*.) which could be R-32.[93]

- The petitioners disagree that it is meaningful to compare the AUV for R-134a to the AUV for all other imports, noting that higher unit values do not suggest, in and of themselves, that the overall data are aberrational.[94] The petitioners point out that Commerce found as much in *Isos from China*.[95]

- The petitioners point out that the import data for HS category 2903.39.99 is large, with a significant number, volume, and value of transactions. According to the petitioners, one would expect such a large database to include a range of transactions at a wide range of prices. Further, the petitioners note that the SV computed from this database is not aberrational when compared to the SV computed in the LTFV investigation using the same category.[96]

- The petitioners disagree that R-23 has any effect on the prices because the PIERS import data do not identify any imports of R-23.

- The petitioners find TTI's economic implausibility argument (*i.e.*, that the value of R-32 and R-134a should not be higher than the price of TTI's dumped sales) neither logical nor rational. The petitioners note that numerous SVs in this case have unit values well above or below the average value of TTI's U.S. sales of HFCs.[97]

- The petitioners argue that, indeed, any comparison between the prices of a dumped product and the unit values of the raw materials used to produce the product may very well show that the raw material has a higher price, especially where the finished product is sold at prices below constructed value. The petitioners conclude that such results are not economically implausible, but instead are commonly encountered in dumping cases.[98]

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[91] *See* Petitioners' Rebuttal Brief at 3 (citing LTFV Surrogate Value Memo at 7 and Petitioners' Rebuttal Comments at Exhibit 2).
[92] *Id*. at 4 (citing Surrogate Value Memo at 7 and Exhibit 1).
[93] *See* Petitioners' Rebuttal Brief at 5 (citing Petitioners' Pre-prelim Comments at Exhibit 2).
[94] *Id*.
[95] *Id*. (citing *Chlorinated Isocyanurates from the Peoples' Republic of China: Final Results of Antidumping Duty Administrative Review, 2015-2016*, 83 FR 5243 (February 6, 2018) and accompanying IDM at 15 (*Chlorinated Iso from China*).
[96] *Id*. at 6 (citing Petitioners' Rebuttal Comments at Exhibit 2 at 7).
[97] *Id*. at 6 (citing Surrogate Value Memo at 5-6 showing that bactericide and tin are higher in value per unit than R-32 or R-134a and showing that ammonia and chlorine are below those values).
[98] *Id*. at 6-7.

- Finally, the petitioners note that HS category 2903.39.02 covers only R-152a, and, thus, it does not cover the specific FOPs used by TTI. The petitioners note that R-152a is chemically different from R-32 and R-134a and, as a consequence, using an SV derived from this category would not be supported by substantial evidence.[99]

Commerce's Position

We disagree with TTI that we should use HS category 2903.39.02 to value R-32 and R-134a. For the final results, as discussed below, we have continued to use Mexican import data under HS subheading 2903.39.99 to value these FOPs. TTI does not dispute that R-32 and R-134a are covered under this category,[100] and relying on it here is consistent with our valuation of R-32 and R-134a in the investigation.[101]

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.[102] Further, the Federal Circuit has 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.[103] In this case, the Mexican GTA data in HS subheading 2903.39.99 meet all of these criteria and the imports under this category are the only data on the record which are specific to the inputs used to make TTI's HFC blends.

We disagree with TTI that reliance on a different HS category in the final results would be more appropriate. TTI bases its argument with respect to R-32 and R-134a on a claim that the import data for Mexican HS 2903.39.99 are aberrationally high because of the inclusion of high-value components not used in the production of subject merchandise, and, therefore, unreliable.[104] As

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[99] *Id*. at 7-8 (citing Petitioners' Rebuttal Comments at Exhibit 1).
[100] In particular, we note that TTI does not disagree that the HS category at the six-digit level (2903.39) covers HFC components (including the components used in the production of HFC blends sold by TTI), and the ITC has confirmed that this is the correct HS category for HFC components. *See Hydrofluorocarbon Blends and Components from China* (Investigation No. 731-TA-1279, USITC Publication 4629, August 2016) at 1 and VII-5 noting that HS 3824.78 is a basket category for HFC blends and HS 2903.39 is a basket category for HFC components.
Further, the record contains information from the National Institute of Standards and Technology showing that difluoroethane covered under HS category 2903.39.02, and methyl bromide covered under HS category 2903.39.01 are not the same components as R-134a (1,1,1,2-tetrafluoroethane) or R-32 (difluoromethane). *See* Petitioners' Rebuttal Comments at Exhibit 1 showing that, based on the chemical formulas and the Chemical Abstract Service (or "CAS") numbers, difluoroethane, R-152a, is a different chemical from difluoromethane, R-32. Thus, the only HS subheading available under HS category 2903.39 to value R-32 and R-134a is 2903.39.99 (others). Based on this information it is evident that R-32 and R-134a can only be imported under the basket category HS 2903.39.99.
[101] *See* Petitioners' Rebuttal Comments at Exhibit 2 showing HS category 2903.39.99 as the HS category used to value HFC components, R125, R23, R-32, R-134a, and R143a in the investigation.
[102] *See* PDM at 22.
[103] *See Solarworld* at 1302; *see also QVD Food Co., Ltd. v. United States*, 658 F.3d. 1318, 1323 (*QVD*).
[104] TTI specifically mentions R-23 as one of the multiple high value chemicals not used in the production of subject merchandise. However, there is no evidence within the PIERS data showing that there are any imports of R-23 under HS category 2903.39.99. Further, in TTI's case brief it states that Commerce included R-23 in its Surrogate

an initial matter, as noted above, TTI does not dispute that R-32 and R-134a are covered under HS category 2903.39.99. Moreover, according to the PIERS data on the record, the majority of the imports under HS category 2903.39.99 in this data cover R-134a.[105] Further, we note that the data also contains product with generic descriptions such as "refrigerante" which could be either R-134a or R-32.[106] Therefore, HS category 2903.39.99 is clearly specific to the inputs under consideration, and, based on the available record evidence, the inputs under consideration constitute the majority of components under this category. The CIT has held that product specificity must be the primary consideration in determining the best available information when considering SV selection.[107] Therefore, we have continued to value R-32 and R-134a using the Mexican HS category 2903.39.99.

TTI's argument relies on its comparison of AUVs from two groups of products in the GTA data to the PIERS data; however, we do not find this to be a reliable comparison. Although the PIERS data and the GTA data provide similar data, they do not align perfectly in terms of volume or value. The PIERS data provide a description of the merchandise in each shipment; the GTA data do not provide a breakdown of the specific products included in the data, beyond the heading of the HS category. Thus, TTI has not demonstrated that the high values in the GTA data are in fact high-value components not used in the production of subject merchandise. As noted above, the "benchmark" group contains products which could be the components under consideration. Further, the PIERS data itself include a number of imports from countries, such as China, which we removed from the GTA data prior to calculating the AUV.

Contrary to TTI's assertion, the mere fact that the weighted-average AUV of imports under Mexican HS 2903.39.99 is higher than the weighted-average AUV for imports under Mexican HS 2903.39.02 does not demonstrate that the data themselves are somehow flawed. While TTI 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 Mexican HS 2903.39.99, we found that these imports were in significant quantities, from a number of countries, and had AUVs which were generally consistent.[108] Further, when we examined the SV from the HS category for the same inputs from the investigation, we noted that the AUV had

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Value Memo, which it does not use in its production process. *See* TTI's Case Brief at 2-3; *see also* Surrogate Value Memo at 7. We recognize that TTI does not use R-23 in its production process and note that we inadvertently reference this chemical in the Surrogate Value Memo but did not use it in calculating TTI's margin because it was not an input listed in TTI's FOP database. *See* TTI March 1, 2018 DQR at Exhibit D-1, showing that TTI uses R-32 and R-134a in the production of subject merchandise.

[105] *See* Petitioners' Pre-prelim Comments at Exhibit 3 showing that 56 percent, by volume, of these shipments in this category are R-134a.

[106] For instance, the PIERS data shows multiple descriptions of unidentified components such as "gas Freon," "gas refrigerante," "refrigerante para aire acondicionado (nuevo)," "botes de gas refrigerante para a/c de 340 GMS cada uno." *See* Petitioners' Pre-prelim Comments at Exhibit 2.

[107] *See Taian Ziyang Food Company Ltd., v. United States*, 783 F. Supp. 2d 1292, 1300, 1330 (CIT 2011) (*Taian 2011*).

[108] *See* Surrogate Value Memo and corresponding Surrogate Values Microsoft Excel Spreadsheet at tab "Calculated_SV_Data." In particular, the AUVs for imports from each country are in a continuum of values. While one of these values (relating to imports from Denmark) did, indeed, appear to be an outlier, the inclusion of these imports in the average had little to no impact on the average SV (*i.e.*, the revised SV would be $8.2024 per kg vs. the original $8.2025 per kg). We note that the AUVs within HS category 2903.39.02 also vary, ranging between $2.98 per kg to $19.03 per kg, although TTI does not acknowledge this in its argument.

only changed slightly.[109] Thus, we found nothing unusual about the import data themselves which would call their reliability into question.

Moreover, we disagree with TTI that the SV for the components in question are higher than TTI's selling prices for the finished HFC blends. We note that several of TTI's inputs are higher than TTI's average U.S. selling price. For instance, tin and bactericide are \$18.65 per kg and \$12.236 per kg, respectively. Further, any comparison between the unit value of one or more inputs may well be higher than the finished product if the finished product is sold at prices significantly below normal value, as we have determined here.[110] In light of that fact TTI has not changed its U.S. selling prices to account for the significant dumping that Commerce found in the LTFV investigation, we disagree with TTI that it is "economically implausible" for the input values to exceed its U.S. selling prices.

As noted above, in *Nan Ya Plastics*, the Federal Circuit clarified that "{w}hen Congress directs the agency to measure pricing behavior and otherwise execute its duties in a particular manner, Commerce need not examine the economic or commercial reality of the parties, specifically, or of the industry more generally, in some broader sense."[111] The Federal Circuit further held that "a Commerce determination (1) is 'accurate' if it is correct as a mathematical and factual matter, thus supported by substantial evidence; and (2) reflects 'commercial reality' if it is consistent with the method provided in the statute, thus in accordance with the law."[112] Further, as noted above, the CIT's decision in *Baoding* does not apply here as it was based on facts specific to that record.

In addition, we disagree that it is relevant that R-152a is a refrigerant which is chemically similar to R-32 and R-134a, or that R-152a is used in refrigerant HFC production. The salient fact is that R-152a is not the same product as either R-32 or R-134a, and, thus, any imports of this component are less specific than imports of R-32 and R-134a themselves. As noted above, Commerce selects SVs based on product specificity and TTI has given us no reason to depart from our practice here.

Finally, we find TTI's reliance on *Solarworld* misplaced. In that opinion, the CIT upheld Commerce's selection of a particular HS category to value a FOP because "the statute gives Commerce discretion in assessing what the best available information {is} for valuing FOPs and in calculating a normal value for subject merchandise in NME cases."[113] In this case, we have exercised that discretion in finding that the R-32 and R-134a under Mexican HS subheading

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[109] *See* the Margin Analysis Memo at Attachment 2, showing that the AUV in the investigation was \$7.09 per kg and \$8.20 per kg in this review.
[110] As is clear from the pricing analysis discussed in Comment 2 above, TTI's pricing behavior during the POR showed that the company continued to dump its finished HFC blends at ever-increasing levels. Further, the SV computed for R-32 and R-134a is relatively consistent with the SV determined in the LTFV investigation. Thus, while TTI's argument has a surface appeal, it fails to take into account its own actions during this POR.
[111] *See Nan Ya Plastics*, 810 F.3d at 1344.
[112] *Id.*
[113] *See Solarworld* at 1302 (affirmed in *SolarWorld Americas, Inc. v. United States*, 910 F.3d 1216, 1222 (Fed. Cir. 2018) ("Commerce has 'broad discretion' to determine what constitutes the best available information)); *see also QVD* and *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (*Nation Ford*) (Commerce is afforded "wide discretion" to value factors of production in nonmarket economies).

2903.39.99 is more specific to the R-32 and R-134a used in the production of the HFC blends sold by TTI. Thus, we find that, rather than calling our reliance on Mexican GTA in question, *Solarworld* supports it.

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."[114] As noted above, TTI has failed to meet this burden here and, therefore, we have continued to rely on Mexican HS 2903.39.99 to determine the SV for both R-32 and R-134a. For the reasons set forth above, we find that imports under Mexican HS 2903.39.99 represent the best available information for this SV.

Comment 6: SV for AHF[115]

In the *Preliminary Results*, we valued AHF using GTA data under Mexican HS category 2811.11.01 ("fluoruro de hidrogeno (acido fluorhidrico), grado tecnico (hydrogen fluoride (hydrofluoric acid), technical grade").[116]

TTI's Arguments

- TTI argues that, instead of the Mexican GTA data, Commerce should use imports into Brazil under HS category 2811.11 ("hydrogen fluoride (hydrofluoric acid)") to value the input AHF because: 1) this HS category is also specific; 2) the import volume into Brazil is almost five times that of the import volume into Mexico; and 3) Brazil is also at a comparable economic development level to China.[117]

- According to TTI, Commerce should reject the petitioners' previous argument (also made below) that the Brazil HS heading could include technical grade product unsuitable for HFC refrigerants because the petitioners provided no evidence to support it.[118]

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[114] *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 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; *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; and *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.
[115] *See* TTI's Case Brief at 5. TTI titled its argument "The Surrogate Value for Anhydrous Fluoride ('HF') and Anhydrous Hydrogen Fluoride ('AHF') Should Be Changed." Because TTI did not report that its suppliers used the product "anhydrous fluoride" in the production of HFCs, and we did not value the by-product HF using the HS code in TTI's argument, we understand this issue to apply only to AHF.
[116] *See* Surrogate Value Memo at 6.
[117] *See* TTI's Case Brief at 5 (citing Petitioners' Initial SV Comments at Exhibit 2A and TTI's Letter, "Hydrofluorocarbon Blends from the People's Republic of China; Initial Surrogate Value Comments," dated March 20, 2018 (TTI's Initial SV Comments) at Exhibit 3).
[118] *Id*.

The Petitioners' Rebuttal Arguments

- The petitioners argue that Commerce should continue to value AHF using import data in Mexican HS category 2811.11.01 because Mexico is the primary surrogate country. According to the petitioners, Commerce has a preference for using SVs from the primary surrogate country when, like here, those SVs are sold in commercial quantities.[119] Given these facts, the petitioners contend that the larger import volume in the Brazil GTA data is irrelevant.[120]

- The petitioners also argue that the Brazilian import data are less specific - and, thus, less reliable - than the Mexican data because they are at the broader, six-digit level.[121] According to the petitioners, the Brazilian category includes "Hydrogen Fluoride (Hydrofluoric Acid)," as well as recycled hydrofluoric acid in aqueous solution which is too impure to be used in the production of subject merchandise. The petitioners contend that, because the Mexican GTA data specifically describe AHF, these data are superior for this reason alone.

- Finally, the petitioners claim that the fact Mexico produces its own AHF indicates that import prices into Mexico reflect commercial price levels in a market with active competition with domestic AHF producers.

Commerce's Position

We have continued to rely on GTA data from Mexico under HS category 2811.11.01 to calculate the SV for AHF 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).[122] In this case, the Mexican GTA data in HS subheading 2811.11.01 meet all of these criteria and no party is arguing that we should pick Brazil as the primary surrogate country.

With respect to TTI's request that we value AHF using a Brazilian SV, we disagree. Commerce has a court-upheld regulatory preference to value all factors from a single surrogate country.[123] Given that we have viable Mexican import data to value AHF in this review, there is no need to

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[119] *See* Petitioners' Rebuttal Brief at 8 (citing 19 CFR 351.408(c)(2)).

[120] The petitioners speculate that imports into Mexico are lower because Mexico has local AHF production.

[121] *See* Petitioners' Rebuttal Brief at 8-9.

[122] *See* PDM at 22; *see also Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Administrative Review; 2016-2017 Final*, 83 FR 53214 (October 22, 2018) and accompanying IDM at Comment 2.

[123] *See* 19 CFR 351.408(c)(2); *see also Clearon Corp. v. United States*, Slip Op. 13-22, 2013 WL 646390 at 6 (CIT 2013) ("{T}he court must treat seriously {Commerce's} preference for the use of a single surrogate country."); *Fine Furniture (Shanghai) Ltd. v. United States,* 353 F.Supp.3d 1323, 1336-37 (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.

consider less-specific data from another surrogate country.[124] Thus, we disagree that abandoning our regulatory preference here for obtaining SVs from a single surrogate country is necessary.

TTI does not argue that the Mexican GTA data themselves are invalid, nor that the imports were in uncommercial quantities. Rather, its argument is merely that the import volume of products under a broader (*i.e.,* less specific) HS category was markedly larger for Brazil. However, as noted above, relative import volume is not one of the factors enumerated in Commerce's regulations, and taking volume into account would countermand our explicit regulatory preference for the selection of SVs from a single surrogate country.

In any event, we note that the total import volume into Mexico under HS category 2811.11.01 was more than 400,000 kgs. Not only is this not an insignificant quantity on its face, but it is also more than four times the volume of imports under the same category in the LTFV investigation.[125] Moreover, in other cases, Commerce has found that even smaller quantities of imports from the primary surrogate country were not distortive when compared to much larger quantities from other potential surrogate countries. For example, in *Chlorinated Isos 2011-2012*, Commerce relied upon imports of 5,464 kg of ammonium chloride into the primary surrogate country, versus 4,555,382 kg imported into an alternative surrogate country.[126] Thus, we find no basis to reject the Mexican GTA data here for the reason suggested by TTI.

Finally, we agree that the Mexican HS category 2811.11.01 is more specific to the input used in the production process of TTI's suppliers. Unlike the broader Brazilian category, this category explicitly references AHF, which is the input used by those suppliers. Further, this finding is consistent with Commerce's conclusions in the LTFV investigation with respect to this category, albeit for a slightly different issue.[127]

In light of the aforementioned, we continue to find the Mexican GTA data under HS subheading 2811.11.01 "hydrogen fluoride (hydrofluoric acid), technical grade"[128] is the best available information to value AHF. Further, the CIT held that product specificity must be the primary consideration in determining the best available information when considering SV selection.[129] Therefore, because the Mexican value reported for HS category 2811.11.01 is specific to the input used by the respondents' suppliers, from the surrogate country, a broad market average, and exported in commercial quantities we have continued to value AHF using the Mexican GTA data for category 2811.11.01.

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[124] *See Calgon Carbon Corp. v. United States*, 190 F. Supp.3d 1224, 1233-1234 (CIT 2016).
[125] *See* LTFV Surrogate Value Memo at 196.
[126] *See Chlorinated Isocyanates from People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012* 79, 79 FR 4875 (January 30, 2014) (*Chlorinated Isos 2011-2012*) and accompanying IDM, upheld in *Juancheng Kangtai Chemical Co., Ltd. v. United States,* Slip Op, 2017-3 (CIT 2017) at 20-24.
[127] *See HFC LTFV Final* IDM at Comment 29.
[128] We believe TTI mischaracterized the petitioners' argument with respect to technical grade products, given that the petitioners have argued for using the HS category which includes technical grade AHF.
[129] *See Taian 2011*, 783 F. Supp. 2d at 1300, 1330.

Comment 7: Surrogate Financial Ratios

The record contains financial statements from two producers in Mexico: CYDSA, S.A.B. de C.V. (CYDSA)[130] and Mexichem SAB de CV (Mexichem).[131] Because no interested party provided a complete translation of Mexichem's financial statements, in the *Preliminary Results*, we relied only on the financial statements of CYDSA, a producer of refrigerant gases in Mexico.

TTI's Arguments

- TTI argues that Commerce should use both CYDSA's and Mexichem's financial statements to calculate its surrogate financial ratios for the final results. TTI notes that it provided a translation of all "vital" information necessary for Commerce to calculate these ratios.[132] According to TTI, the CIT has held that: 1) the translation of the vital information is an important factor in determining the sufficiency of financial statements[133]; and 2) Commerce cannot reject financial statements solely for translation deficiencies if all vital information (*i.e.*, line items necessary to calculate accurate financial ratios) is translated.[134]

- TTI claims that the translated portion of Mexichem's financial statements provides more detail on the cost of materials, labor, energy, and other items than does CYDSA's statements. Thus, TTI maintains that, by using only CYDSA's financial statements, Commerce will introduce potential distortions into the calculations of the surrogate financial ratios. According to TTI, Commerce has rejected financial statements under similar circumstances (*e.g.*, where the financial statements lack specificity with respect to certain line items or where a financial statement fails to separately itemize energy expenses).[135]

- TTI points out that Commerce used both Mexichem's and CYDSA's statements in the underlying investigation and considered neither too deficient for calculating TTI's financial ratios. According to TTI, Commerce should continue to accept Mexichem's statements here.[136]

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[130] *See* Petitioners' Initial SV Comments at Exhibit 10; *see also* Surrogate Value Memo at 11-12 and Exhibit 11.
[131] *See* TTI's Initial SV Comments at Exhibit 7; *see also* Surrogate Value Memo at 11-12.
[132] *See* TTI's Case Brief at 6.
[133] *Id.* at 6 (citing *CP Kelco U.S. Inc., v. United States, and Neimenggu Fufeng Biotechnologies Co. Ltd. and Shandong Fufeng Fermentation, Co., Ltd.* Slip Op. 18-120, (CIT 2018) (*CP Kelco*)).
[134] *Id.* at 6 (citing *Association of American School Paper Suppliers v. United States*, 791 F. Supp. 2d 1292, 1304 (CIT 2011) (*American School Paper Suppliers*)).
[135] *Id.* (citing *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 1; *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review,* 76 FR 9753 (February 22, 2011) and accompanying IDM at Comment 1; *Utility Scale Wind Towers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992, 75997 (December 26, 2012); *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012,* 79 FR 35723, 35725 (June 24, 2014)).
[136] *Id.* at 5-6 (citing LTFV Surrogate Value Memo; TTI's Initial SV Comments at Exhibit 6; and *HFC LTFV Final*).

- Finally, TTI argues that, given the amount of time remaining before the final results, Commerce should grant it an opportunity to rectify deficiencies with its translation.[137]

The Petitioners' Rebuttal Arguments

- The petitioners contend that CYDSA's financial statements are a better choice than Mexichem's because CYSDA manufactures an HCFC refrigerant, R-22,[138] while Mexichem does not manufacture refrigerants at all.[139] Thus, the petitioners assert that CYDSA produces products that are more comparable to the HFC blends under this review.

- According to the petitioners, in *Chlorinated Isos from China*, like here, Commerce accepted CYDSA's financial statements and rejected Mexichem's because CYDSA produced subject merchandise, whereas Mexichem only produced a product that was comparable to subject merchandise.[140]

- Further, the petitioners note that CYDSA's production experience more closely matches TTI's (*i.e.*, Mexichem is a global corporation with a large workforce that operates in over 30 countries,[141] whereas CYDSA and its subsidiaries operate only in Mexico with a smaller workforce).[142]

- Regarding TTI's claim that Mexichem's statements provide greater detail than CYDSA's financial statements, the petitioners contend that: 1) the level of detail is not the only relevant factor in determining appropriate financial statements;[143] 2) CYDSA's financial statements reflect the actual production experience of an HFC producer;[144] and 3) the issue is whether Mexichem's financial statements provides sufficient detail since Commerce has repeatedly confirmed the sufficiency of CYDSA's financial statements in other cases (*i.e.*, the original investigation, the *Tetra Investigation*,[145] and *Chlorinated Isos from China*).[146]

Commerce's Position

We continue to find CYDSA's financial statements to be the best available information to calculate financial ratios and, for the reasons discussed below, we disagree with TTI that Mexichem's financial statements are an equally reliable source of SV data.

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137 *Id.* at 7-8.
138 *See* Petitioners' Rebuttal Brief at 11.
139 *Id.* (citing Petitioners' Rebuttal Comments at Exhibit 5). The petitioners claim that Mexichem only produces hydrogen fluoride, which they state is an upstream intermediate chemical input used in the production of hydrofluorocarbons and at a chemical level is several steps away from an HFC gas. *Id.* (citing TTI March 1, 2018 DQR at Exhibits D-3.1 – D-3.4).
140 *Id.* at 12 (citing *Chlorinated Iso from China* and accompanying IDM at 12-13).
141 *Id.* at 10 (citing TTI's Initial SV Comments at Exhibit 7 at 177).
142 *Id.* at 10 (citing Petitioners' Initial SV Comments).
143 *Id.* at 13.
144 *Id.* at 13.
145 *Id.* at 14 (citing *1,1,1,2 Tetrafluoroethene (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances*, 82 FR 12192 (March 1, 2017) (*Tetra Investigation*) and accompanying IDM at 25-27)).
146 *Id.* at 14 (citing *Chlorinated Isos from China* and accompanying IDM at 13-14).

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."[147] 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."[148] 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.[149] Additionally, the courts have recognized our discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[150] Additionally, when selecting among the available surrogate financial ratios, Commerce generally will not consider surrogate financial statements which contain evidence of countervailable subsidies when other useable statements are available.[151]

For the *Preliminary Results*, pursuant to 19 CFR 351.408(c)(4), Commerce valued factory overhead, selling, general and administrative expenses, and profit using non-proprietary information gathered from CYDSA, a Mexican a producer of HFCs and other refrigerant gases,[152] for the fiscal year ending December 31, 2016.[153] We continue to find these financial statements to be the best available information on the record of this review because they are from a producer of identical merchandise; are for a profitable company in good health; are publicly available; show no evidence that the company received subsidies under a program that Commerce has found to be countervailable; and are contemporaneous, complete (including notes), and fully translated.

[147] *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.
[148] *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).
[149] *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.
[150] *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) and *Shandong Huarong,* 484, 491–94 (2005); *see also 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.
[151] *See Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Recession of Antidumping Duty Administrative Review*, 75 FR 49460 (August 13, 2010), and accompanying IDM at Comment 9.
[152] In the *Preliminary* Results, we stated that CYDSA was a producer of comparable merchandise. *See* PDM at 20. However, according to CYDSA's 2016 Management Report, CYDSA produces HCFC-22, as well as the HFC blends R404A, and R410A. *See* Petitioners' Initial SV Comments at Exhibit 10 (*i.e.*, pages 130 and 156-157). Therefore, CYDSA is also a producer of identical merchandise.
[153] *See* PDM at 20; *see also*Petitioners' Initial SV Comments at Exhibit 10.

The record in this case also contains the 2016 financial statements from Mexichem, a Mexican manufacturer previously known to produce comparable merchandise.[154] Although TTI submitted a version of these financial statements in Spanish, it did not provide a complete English translation of them. In particular, TTI provided a single worksheet with Mexichem's profit and loss information on it, including translations of the various line items on the worksheet. However, TTI did not provide a translation of remainder of the financial statements, including any explanatory notes accompanying these line items, information related to Mexichem's accounting policies, the auditor's opinion, the director's report, the balance sheet, or any other relevant information (including basic, but essential, information, such as the products produced during that fiscal year). Given these serious translation deficiencies, Commerce was unable to evaluate the suitability of Mexichem's profit and loss data as a source for the surrogate financial ratios, and we did not rely on these data for purposes of our calculations, consistent with our practice.[155]

Further, even assuming, *arguendo*, that Mexichem's production of only comparable merchandise did not preclude the use of its financial statements as source of surrogate value information (*i.e.*, Commerce could find them also to be the "best available information"), we disagree with TTI that it would be appropriate to use them here, given the extremely limited translation provided. Without a complete translation of the financial statements, we are unable to attest to the legitimacy and accuracy of the information TTI uses to calculate the ratios proposed in the calculation worksheet. Further, the lack of translation precludes Commerce from assessing other vital information, such as determining if Mexichem received countervailable subsidies, if its statements contain an unqualified auditor's opinion, and whether TTI has appropriately categorized, added, and/or removed certain expenses in its calculation worksheet.

In view of these deficiencies, we disagree with TTI that it has provided Commerce the vital information necessary to calculate its suppliers' financial ratios. Leaving any part of that information untranslated effectively withholds vital information from Commerce and other interested parties. Typically, the footnotes and disclosures included in a company's financial statements are required by generally accepted accounting principles in a company's home country and these disclosures are deemed vital to the users of those financial statements. We equate the leaving of any footnotes or disclosures untranslated to be the same as omitting them completely, leaving them unavailable for the parties to a proceeding to review or comment on them. In this regard, TTI has submitted an entirely incomplete and unusable financial statement, lacking the vital information necessary to conduct our analysis.

[154] *See* Petitioners' Rebuttal Comments at 8 (citing Petitioners' Letter, "Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Preliminary Determination Comments and Submission of Factual Information," (December 22, 2015) at 18-19) stating that TTI only produces HF, an input into the production of refrigerant gases; *see also* LTFV Surrogate Value Memo at 14.

[155] 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*; 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) 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).

Based on this fact, we do not find *American School Paper Suppliers* supports TTI's position. In that Court case, the issue was whether Commerce could reject financial statements where *any* information was missing. Although the Court found Commerce did not have a consistent practice for rejecting financial statements missing *any* information, it had a practice for consistently rejecting financial statements where significant information was missing, as in this case.[156] The respondent in that case had the vital information necessary, including full translations, to calculate surrogate financial ratios.[157] Unlike here, the record in that case contained translated documents such as a director's report, auditor's report, balance sheet, profit and loss statement, and accounting policies.[158]

Similarly, we disagree with TTI that *CP Kelco* applies. In that case, Commerce disregarded financial statements because they did not contain full English translations for two paragraphs of a footnote related to property plant and equipment (*i.e*., fixed assets).[159] Commerce instead selected other financial statements, which showed evidence of the receipt of countervailable subsidies, because they were the only remaining financial statements on the record.[160] On remand, the CIT required Commerce to provide a more fulsome explanation of its financial statement selection, given that both financial statements contained deficiencies.[161] While the Court ultimately disagreed with Commerce's explanation, it did so for two reasons which are not present here: 1) the untranslated portion was both limited in scope[162] and not clearly germane to the calculation of the financial ratios; and 2) the only alternative source of data was also deficient in some regard. In contrast, the translation deficiencies in Mexichem's financial statements are much more severe.

Further, we disagree with TTI that Commerce should accept Mexichem's untranslated 2016 financial statements here simply because we accepted its translated 2014 financial statements in the investigation. As can be seen from CYDSA's financial statements, a company's business practices may change over time. Thus, even though we relied on Mexichem's 2014 financial statements as the best information in one segment of this proceeding, it does not follow that

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[156] In that case, Commerce clearly articulated that it rejects incomplete financial statements "as a basis for calculating surrogate financial ratios where the statement is missing key sections, such as sections of the auditor's report, that are vital to our analysis and calculations." *See American School Paper Suppliers*, 791 F. Supp. 2d 1292, 1304 (quoting *Galvanized Steel Wire from the People's Republic of China and Mexico: Initiation of Antidumping Duty Investigations,* 76 FR 23548, 23551 (April 27, 2011)).
[157] *See American School Paper Suppliers*, 791 F. Supp. 2d at 1296-97 "Commerce again concluded that Sundaram 'constitutes the best available information'…because 'Sundaram is a producer of stationery products; its financial information is contemporaneous with the POR; and the data are sufficiently complete and accurate for the purpose of calculating surrogate financial ratios' and because 'there is no evidence that Sundaram received [potentially distorting] countervailable subsidies.'" In the case of Mexichem, on the other hand, we cannot confirm that the data is sufficiently complete and accurate, what Mexichem produces, and whether it received countervailable subsidies.
[158] *Id.* 791 F. Supp. 2d at 1299 "Sundaram data contained a director's report, auditor's reports, balance sheet, profit and loss statement, notes, and accounting policies."
[159] *See CP Kelco*, Slip Op. 18-120, at 3-4 (CIT 2018).
[160] *Id*. at 2.
[161] *Id*. at 3.
[162] The record in that case contained translated documents such as a director's report, auditor's report, balance sheet, profit and loss statement, and accounting policies. *See CP Kelco U.S., Inc. v. United States,* 211 F. Supp. 3d 1338, 1343-44 (CIT 2017) (stating "{T}his court previously found that the Thai Fermentation statements were fully translated with the exception of 'two paragraphs at the bottom of accounting note twelve, concerning depreciation' and that '{a}ccounting note twelve nonetheless contained a fully translated depreciation schedule.'").

statements from a subsequent year cannot be deficient for our calculation purposes (*i.e.*, the company could have received countervailable subsidies within that time, the auditor may have submitted a qualified opinion, the company may have failed to make a profit within a particular year, the company may not be producing the same merchandise, *etc*.). Also, we note each proceeding is independent of each other and stands alone.[163]

We also disagree with TTI that it would be appropriate to allow it to provide a complete translation of Mexichem's financial statements at this point in the proceeding. Commerce must conduct its administrative reviews under strict statutory deadlines and accepting new factual information after the record has closed would inhibit the timely completion of the review; in particular, it would be necessary to allow parties to comment on the new information and to establish a second, subsequent briefing schedule, and we would also require time to evaluate that new information. Moreover, the parties had ample time to submit surrogate value information in this review, and TTI requested no additional time to complete its submissions. Given these considerations, allowing TTI to supplement the record now is not reasonable and severely undermines the administrative process.

Finally, we disagree with TTI that reliance on CYDSA's financial statements introduces distortions in the calculations. Although we agree that certain expenses shown on CYDSA's financial statements are not detailed, we disagree with TTI that the ratios derived from these expenses are necessarily distorted and that the financial statements less desirable as a result. TTI has provided no evidence to suggest that they are distorted, beyond mere speculation.

As noted above, since the *Preliminary Results*, we have reexamined the information on the record with respect to CYDSA, and we have discovered that, contrary to our earlier finding, CYDSA produces not only comparable merchandise in the form of HCFCs, but also several identical HFC blends.[164] Consistent with Commerce's stated preference of relying on the financial statements of producers of identical merchandise,[165] we find that CYDSA's financial statements provide a better basis to determine TTI's surrogate financial ratios than would the financial statements of a company who likely produces only comparable merchandise (the other flaws in these statements notwithstanding).[166] Given that CYDSA produces identical merchandise and its financial statements are fully translated, we find that the lack of detail with respect to certain expenses is outweighed by the increase in product specificity. Further, TTI's request to combine Mexichem's financial statements with CYDSA's undermines its argument that CYSDA's financial statements are too deficient to be usable.

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[163] *See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination,* 77 FR 63291 (October 16, 2012).

[164] According to CYDSA's 2016 Management Report, CYDSA produces HCFC-22, as well as the HFC blends R404A, and R410A. *See* Petitioners' Initial SV Comments at Exhibit 10 (*i.e.*, pages 130 and 156-157).

[165]*See*, *e.g.*, *Persulfates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 47887, 47890 (August 6, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China*, 66 FR 49345 (September 27, 2001) and accompanying IDM.

[166] In other words, even had TTI submitted a full translation of Mexichem's 2016 financial statements, we likely would not have relied on them in this segment of the proceeding unless TTI had also submitted evidence that Mexichem produced merchandise identical to the subject HFC blends in 2016. It is important to note that no party in this review has claimed that Mexichem had such production.

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

4/19/2019

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Antidumping and Countervailing Duty Operations