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April 19, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2016-2017 Antidumping Duty Administrative Review

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I. Summary

The Department of Commerce (Commerce) analyzed the comments submitted by interested parties in this administrative review of the antidumping duty (AD) order on certain passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) covering the period of review August 1, 2016, through July 31, 2017.

As a result of this analysis, we have made changes to the *Preliminary Results*.[1] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

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

Comment 1: Whether Commerce should allow certain separate rate respondents to withdraw from this administrative review after the 90-day deadline.
Comment 2: Whether Commerce should base the margin assigned to separate rate respondents solely on Junhong's margin.
Comment 3: Whether Commerce should have selected a third mandatory respondent.
Comment 4: Whether Commerce should exclude certain information from countries that maintain generally available export subsidies.

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[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission, in Part; 2016–2017*, 83 FR 45893 (September 11, 2018) and accompanying Preliminary Decision Memorandum (PDM) (*Preliminary Results*).

Comment 5: Whether Commerce should offset Junhong's AD margin for the Export Buyer's Credit program.
Comment 6: Whether Commerce properly valued Junhong's energy inputs.
Comment 7: Whether to grant Crown, Hankook, and HK Tiancheng a separate rate for the Final Results.

II. Background

Commerce published its *Preliminary Results* on September 11, 2018.[2] Subsequent to the *Preliminary Results*, several separate rate respondents sought to withdraw their requests for administrative review.[3] Between November 6 and 8, 2018, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC. (the petitioner), mandatory respondent Zhaoqing Junhong Co., Ltd (Junhong), and various separate rate respondents submitted case briefs.[4] On November 15, 2018, certain

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[2] *Id.*

[3] *See* Winrun's Letter, "Withdrawal of Request for AD Administrative Review and Request for Rescission Passenger Vehicle and Light Truck Tires from China," dated October 2, 2018 (Winrun Withdrawal Request); *see also* (1) Qingdao Sentury Tyre Co.; (2) Shandong Linglong Tyre Co.; (3) Hongkong Tiancheng Investment & Trading Co., Limited; (4) Shandong New Continent Tire Co., Ltd.; (5) YC Rubber Co. (North America) LLC; and (6) Sutong Tire Resources, Inc.'s Letter, "GDLSK Respondents' Request to Extend Time to File Withdrawal of Review Requests and Request for Rescission of Review in the 2nd Administrative Review of the Antidumping Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (POR 2: 8/1/16-7/31/17)," dated October 25, 2018 (Sentury *et al.* Withdrawal Requests); Shandong Hengyu's Letter, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China - Withdrawal of Request for Administrative Review and Request for Rescission," dated November 6, 2018 (Shandong Hengyu Withdrawal Request); Qingdao Odyking Tyre Co., Ltd., Shandong Shuangwang Rubber Co., Ltd., and Shouguang Firemax Tyre Co., Ltd.'s Letter, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China - Withdrawal of Request for Administrative Review and Request for Rescission," dated November 6, 2018 (Odyking *et al.* Withdrawal Requests); and American Pacific Industries, Inc.'s Letter, "Passenger Vehicle and Light Truck Tires from People's Republic of China Re: Withdrawal of Request for Administrative Review," dated November 9, 2018 (API Withdrawal Request).

[4] *See* Petitioner's Case Brief, "Case Brief Submitted on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC," dated November 8, 2018 (Petitioner's Case Brief); *see also* Junhong's Case Brief, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Case Brief of Zhaoqing Junhong Co., Ltd.," dated November 8, 2018 (Junhong's Case Brief); Crown International Corporation, "Passenger Vehicle and Light Truck Tires from the People's Republic of China, 2nd Administrative Review; Comments of Crown International Corporation on the Preliminary Results," dated November 8, 2018 (Crown's Comments); Hankook Tire China Co., Ltd., "Passenger Vehicle and Light Truck Tires from China, Case No. A-570-016: Letter in Lieu of Case Brief," dated November 8, 2018 (Hankook's Comments); Hongkong Tiancheng Investment & Trading Co., Limited, "HK Tiancheng Case Brief in the 2nd Administrative Review of the Antidumping Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (POR 2: 8/1/16-7/31/17)," dated November 8, 2018 (HK Tiancheng's Case Brief); Shandong Hengyu Science & Technology Co., Ltd., "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China –Case Brief," dated November 6, 2018 (Shandong Hengyu's Case Brief); Shandong Anchi Tyres Co., Ltd., Shandong Longyue Rubber Co., Ltd., Shandong Province Sanli Tire Manufactured Co., Ltd., and Mayrun Tyre (Hong Kong) Limited Comments, "Passenger Vehicle and Light Truck Tires from China Comments in Lieu of Case Brief," dated November 8, 2018 (Shandong Anchi *et al.*'s Comments); Shandong Wanda Boto Tyre Co. Ltd. (Boto) and ITG Voma Corporation (ITG Voma) Case Brief, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Case Brief of Shandong Wanda Boto Tyre Co. Ltd. and ITG Voma Corporation," dated November 8, 2018 (Boto's & ITG Voma's Case Brief); Qingdao Sentury Tyre Co., Shandong Linglong Tyre Co., Hongkong Tiancheng

separate rate respondents submitted rebuttal briefs.[5]

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[6] This extended the deadline for the final results to February 19, 2019.

On January 31, 2019, Commerce fully extended the deadline for the final results until April 19, 2019.[7]

III. Scope of the Order

The scope of this order is passenger vehicle and light truck tires. Passenger vehicle and light truck tires are new pneumatic tires, of rubber, with a passenger vehicle or light truck size designation. Tires covered by these orders may be tube-type, tubeless, radial, or non-radial, and they may be intended for sale to original equipment manufacturers or the replacement market.

Subject tires have, at the time of importation, the symbol "DOT" on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Subject tires may also have the following prefixes or suffix in their tire size designation, which also appears on the sidewall of the tire:

Prefix designations:

P - Identifies a tire intended primarily for service on passenger cars

LT- Identifies a tire intended primarily for service on light trucks

Suffix letter designations:

Investment & Trading Co., Limited, Shandong New Continent Tire Co., Ltd., YC Rubber Co. (North America) LLC, and Sutong Tire Resources, Inc., "GDLSK Clients' Case Brief in the 2nd Administrative Review of the Antidumping Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (POR 2: 8/1/16-7/31/17)," dated November 8, 2018 (Sentury *et al.*'s Case Brief); and Winrun Tyre Co., Ltd., "Winrun's Case Brief: Passenger Vehicle and Light Truck Tires from China," dated November 8, 2018 (Winrun's Case Brief).

[5] *See* Winrun's Letter, "Letter In Lieu Of Rebuttal Brief Passenger Vehicle and Light Truck Tires from China," dated November 15, 2018 (Winrun's Rebuttal Comments); *see also* Shandong Anchi *et al.*'s Letter, "Passenger Vehicle and Light Truck Tires from China-Rebuttal Letter in Lieu of Brief," dated November 15, 2018 (Shandong Anchi *et al.*'s Rebuttal Comments); and Sentury *et al.*'s Rebuttal Brief, "GDLSK Clients' Rebuttal Brief in the 2nd Administrative Review of the Antidumping Duty Order on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (POR 2: 8/1/16-7/31/17)," dated November 15, 2018 (Sentury *et al.*'s Rebuttal Brief).

[6] *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.

[7] *See* Memorandum, "2016-2017 Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated January 31, 2019.

LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service.

All tires with a "P" or "LT" prefix, and all tires with an "LT" suffix in their sidewall markings are covered by this investigation regardless of their intended use.

In addition, all tires that lack a "P" or "LT" prefix or suffix in their sidewall markings, as well as all tires that include any other prefix or suffix in their sidewall markings, are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set out below.

Passenger vehicle and light truck tires, whether or not attached to wheels or rims, are included in the scope. However, if a subject tire is imported attached to a wheel or rim, only the tire is covered by the scope.

Specifically excluded from the scope are the following types of tires:

(1) racing car tires; such tires do not bear the symbol "DOT" on the sidewall and may be marked with "ZR" in size designation;

(2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the Tire and Rim Association Year Book;

(3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;

(4) non-pneumatic tires, such as solid rubber tires;

(5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in Table PCT-1B ("T" Type Spare Tires for Temporary Use on Passenger Vehicles) of the Tire and Rim Association Year Book,

(b) the designation "T" is molded into the tire's sidewall as part of the size designation, and,

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed is 81 MPH or a "M" rating;

(6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:

(a) the size designation molded on the tire's sidewall is listed in the ST sections of the Tire and Rim Association Year Book,

(b) the designation "ST" is molded into the tire's sidewall as part of the size designation,

(c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is "For Trailer Service Only" or "For Trailer Use Only",

(d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the Tire and Rim Association Year Book for the relevant ST tire size, and

(e) either

(i) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by Tire and Rim Association Year Book, and the rated speed does not exceed 81 MPH or an "M" rating; or

(ii) the tire's speed rating molded on the sidewall is 87 MPH or an "N" rating, and in either case the tire's maximum pressure and maximum load limit are molded on the sidewall and either

(1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book; or

(2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the Tire and Rim Association Year Book;

(7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:

(a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the Tire and Rim Association Year Book,

(b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",

(c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the Tire and Rim Association Year Book, and the rated speed does not exceed 55 MPH or a "G" rating, and

(d) the tire features a recognizable off-road tread design.

The products covered by the orders are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60.

While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

IV. Changes Since the *Preliminary Results*

Based on our analysis of the comments received and the record, we made certain changes to the *Preliminary Results*. Specifically, we have made adjustments to the antidumping margin program for Junhong;[8] and granted a separate rate to BC Tyre Group Limited/Best Choice International Trade Co., Limited, Crown International Corporation, Hankook Tire China Co., Ltd., and Hong Kong Tiancheng Investment & Trading Co., Limited.[9]

V. Discussion of the Issues

Comment 1: Whether Commerce should allow certain separate rate respondents to withdraw from this administrative review after the 90-day deadline.

Petitioner's Case Brief

- Commerce clearly stated in the October 16, 2017 Initiation Notice that the withdrawal deadline would be 90-days from publication date (*i.e.*, January 15, 2018).[10]
- Sixteen separate rate respondents timely filed withdrawal requests; however, several separate rate respondents untimely filed withdrawal requests after the *Preliminary Results,* where Commerce calculated a margin of 73.63 percent for Junhong.[11]
- Contrary to the separate rate respondents' claims in their various withdrawal requests, the U.S. Court of Appeals for the Federal Circuit (CAFC) made clear in *Glycine & More* that its decision only addressed the *standard* Commerce was to apply in considering untimely withdrawals but did not create any new rights for parties to withdraw their requests after the regulatory deadline, even where that deadline preceded the publication of the final results of a prior review.[12]
- The CAFC decision in *Glycine & More* is not applicable to the current administrative review, as the respondent in that case met the reasonableness standard, because the

[8] *See* Comments 5 and 6, below; *see also* Memorandum, "Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Analysis Memorandum for Zhaoqing Junhong Co., Ltd.," dated concurrently with the instant memorandum (Junhong Final Calculation Memorandum).
[9] *See* Comment 7, below; *see also* Memorandum, "Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Separate Rate Status," dated concurrently with the instant memorandum (Final Separate Rate Memorandum).
[10] *See* Petitioner's Case Brief at 2.
[11] *Id.*
[12] *Id.* at 5.

company submitted its withdrawal request a few days after the 90-day deadline. In contrast, the separate rate respondents in this proceeding waited over nine months to submit their withdrawal requests.[13]

- The separate rate respondents at issue filed their withdrawal requests 260 days or more after the deadline established in 19 CFR 351.213(d). These untimely withdrawal requests in this review meet neither the extraordinary circumstances, nor the reasonableness standard for an extension of the time to withdraw.[14]
- The separate rate respondents do not explain how their decisions to request or continue the current administrative review were dependent on the final results of the prior administrative review. Even if it were relevant, the prior administrative review results were published in March 2018 and respondents could have submitted their untimely requests in the spring of 2018. It is more likely that several separate rate respondents filed untimely withdrawal requests because they were unhappy with the *Preliminary Results* of this administrative review.[15]
- Commerce has already devoted considerable time and resources to this review.[16]

Shandong Anchi *et al.*'s Comments and Rebuttal Comments

- Even though Shandong Anchi *et al.*'s October 9, 2018 withdrawal request was not timely, the CAFC previously ruled that, within the reasonableness standard, a respondent is entitled to know the final results of the previous review before being forced to continue in the subsequent review.[17]
- Shandong Anchi *et al.*'s reviews were all self-requested and, thus, they alone have the right to request rescission of the instant review.[18]
- Contrary to the petitioner's claim, the separate rate respondents never argued that *Glycine & More* creates new rights, but only that the correct standard for withdrawal requests is a reasonableness standard.[19]
- Shandong Anchi *et al.*'s untimely withdrawal request meets the reasonableness standard, because Commerce's decision to select only one respondent happened late in the review process which resulted in a high preliminary margin rate.[20]

Winrun's Case Brief and Rebuttal Comments

- Winrun reiterates its request to withdraw from the current administrative review after the 90-day deadline.[21]
- Commerce released the first administrative review results on March 9, 2018, nearly two months after the withdrawal request deadline in the current administrative review.[22]

[13] *Id.*
[14] *Id.* at 3 and 7.
[15] *Id.* at 8.
[16] *Id.* at 6.
[17] *See* Shandong Anchi *et al.*'s Comments at 2 and 3 (citing *Glycine & More, Inc. v. United States,* 880 F.3d 1335, 1341 (CAFC 2018) (*Glycine & More*)).
[18] *See* Shandong Anchi *et al.*'s Comments at 2.
[19] *See* Shandong Anchi *et al.*'s Rebuttal Comments at 2.
[20] *Id.* at 3.
[21] *See* Winrun's Case Brief at 2 and Winrun Withdrawal Request at 2-3.
[22] *See* Winrun's Case Brief at 3.

- Commerce itself recognizes "the importance to the party submitting the request for review of knowing the final results of the immediately preceding review" in promulgating the "withdrawal of review request" regulation.[23]
- Commerce selected the mandatory respondents in the current administrative review after the 90-day deadline for withdrawal requests.[24]
- Contrary to the petitioner's arguments, 19 CFR 351.213 states that Commerce may extend the 90-day time limit if the Secretary decides that it is reasonable to do so.[25]
- Winrun's late withdrawal would have minimal effect on Commerce's resources, as Winrun is only a separate rate respondent.[26]

Sentury *et al.*'s Case Brief and Rebuttal Brief

- Sentury *et al.* reassert their requests to rescind this review for the reasons stated in its October 25, 2018 withdrawal letter.[27]
- Commerce has broad discretion to extend the 90-day deadline for exporters, if it finds it reasonable to do so.[28]
- Knowledge of the previous administrative review results is a relevant factor for determining whether or not to withdraw from a subsequent review.[29]

HK Tiancheng's Case Brief

- Commerce should extend the 90-day deadline for parties to withdraw from the current administrative review for the reasons stated in HK Tiancheng's October 25, 2018 withdrawal request.[30]

Commerce's Position: Commerce will not extend the 90-day review request withdrawal deadline for the various separate rate respondents in the instant administrative review. As noted by the petitioner, the initiation notices for all administrative reviews in general (and the instant review specifically) set a 90-day withdrawal period (*i.e.*, January 15, 2018 for this proceeding). The record of the instant review shows that several separate companies timely filed withdrawal requests.[31]

Section 351.213(d)(1) of Commerce's regulations provides that Commerce "will rescind an administrative review… if the party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." The regulation goes on to state that Commerce "may extend this time limit if {the agency} decides that it is reasonable to do so." In determining whether it is reasonable to rescind a review beyond the 90-day deadline, Commerce has looked to two factors: (1) whether it has expended *significant* resources

[23] *Id.* at 3 (citing the *Antidumping Duty Proceedings (Final Rule)*, 54 FR 12742, 12755 (March 28, 1989)).
[24] *Id.* at 3-6.
[25] *See* Winrun's Rebuttal Brief at 2.
[26] *Id.* at 3.
[27] *See* Sentury *et al.*'s Case Brief at 24 and Sentury *et al.'s* Withdrawal Requests at 3-5.
[28] *See* Sentury *et al.*'s Rebuttal Brief at 4.
[29] *Id.* at 4-5.
[30] *See* HK Tiancheng's Case Brief at 5.
[31] *See Preliminary Results* 83 FR 45893, 45894.

in conducting the review;[32] and (2) whether any interested party has objected to the withdrawal request. In this case, the withdrawal requests were filed approximately *nine months* after the 90-day deadline, and approximately *six months* after the publication of the final results for the prior segment. Commerce has expended considerable resources in the preliminary phase of this review, including but not limited to, the selection of mandatory respondents, the analysis of extensive information regarding separate rate eligibility for 16 companies, the evaluation of company-specific information regarding ownership, sales processes, financial statements, and factors of production, and the selection of surrogate country and surrogate values. Moreover, the petitioner objected to the separate rate respondents' request to withdraw their requests for review.[33]

The *Glycine & More* line of cases does not stand for the proposition, as the respondents have argued, that Commerce "lacked any discretion under 351.213(d)(1) to deny a request when the results of the immediately prior review are not yet known." Rather, the courts held that Commerce could not apply an "extraordinary circumstances" standard for granting untimely requests for extensions of the 90-day withdrawal period. In the underlying proceeding, on remand, Commerce accepted the untimely withdrawal request (filed nine days after the expiry of the 90-day period) and rescinded the review.[34] In this case, in contrast, the withdrawal requests were filed after the issuance of our *Preliminary Results*, approximately nine months after the 90-day deadline, and approximately six months after the publication of the final results for the prior segment. Additionally, although the 1989 Final Rule did recognize the importance of a party knowing the results of a prior review when submitting a request for a review, Commerce stated, in promulgating 19 CFR 351.213 in 1997, "that it must have the final say concerning rescissions of reviews requested after 90 days in order to prevent abuse of the procedures for requesting and withdrawing a review. For example, we are concerned with the situation in which a party requests a review, Commerce devotes considerable time and resources to the review, and then the party withdraws its requests once it ascertains that the results of the review are not likely to be in its favor. To discourage this behavior, the Department must have the ability to deny withdrawals of requests for review, even in situations where no party objects."[35] Thus, in light of the above, we have determined that it is not appropriate to extend the 90-day deadline in this proceeding.

Comment 2: Whether Commerce should base the margin assigned to separate rate respondents solely on Junhong's margin.

Separate Rate Respondents' Case Briefs

- Commerce correctly acknowledges that "the statute and Commerce's regulations do not address the establishment of a dumping margin for respondents not selected for

[32] *See, e.g., Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 39680, (July 5, 2012) and accompanying Issues and Decision Memorandum (IDM) at Comment 1.
[33] *See* Petitioner's Case Brief at 9.
[34] *See Glycine & More, Inc.*, 880 F.3d at 1343.
[35] *See Antidumping Duties; Countervailing Duties* (*Preamble*), 62 FR 27296, 27317 (May 19, 1997).

individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act."[36]

- The Court of International Trade (CIT or Court) has repeatedly required that a dumping margin be fair, accurate, and not punitive, and that the rate assigned to non-examined separate rate respondents reasonably reflect the economic reality of the separate rate respondents and the history of dumping under the order.[37]
- The rate calculated for Junhong and separate rate respondents is aberrational compared to previous rates calculated in this proceeding.[38]
- Given that: (1) the petitioner did not appeal the rates from the previous administrative review; (2) there is no evidence suggesting a wide-spread increase in the dumping margin in the instant administrative review; and (3) Junhong's average unit value (AUV) is significantly less than the AUV of imports from China (according to International Trade Commission web data), it is unreasonable for Commerce to assign Junhong's preliminary rate to the separate rate respondents.[39]
- In the final results, at a minimum, Commerce should assign the separate rate respondents in this review an alternative calculated rate from a prior segment of this proceeding.[40]

Petitioner's Case Brief

- The statute instructs Commerce to "use any reasonable method to establish the estimated all-other rate for exporters and producers not individually investigated, including averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated."[41]
- Methods for calculating all-others rate listed in the statute are "presumptively reasonable," and that "presumption of reasonableness is sensible in light of the overall statutory scheme."[42]
- Commerce's calculation of a preliminary all-others rate was not unreasonable in this review; it was the reasonable outcome directed by statute.[43]

[36] *See* Winrun's Case Brief at 11; Shandong Hengyu's Case Brief at 6.
[37] *See* Winrun's Case Brief at 11-12 (citing *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1379 (CAFC 2013) and *Xiamen International Trade and Industrial Co., Ltd. v. United States*, 953 F.Supp 2d. 1307, 1327 (Court of International Trade 2013) (CIT) (*Xiamen*)); *see also* Sentury *et al.*'s Case Brief at 20-22 (citing *Baoding Mantong Fine Chemistry Co. v. United States*, 113 F. Supp. 3d 1332, 1333-4 (CIT 2015) (*Baoding*) and *Albemarle Corp. v. United States*, 821 F.3d 1345, 1357 (CAFC 2016) (*Albemarle*)); Boto's & ITG Voma's Case Brief at 13-14 (citing *Baroque Timber Indus. (Zhongshan) Co. v. United States*, 971 F. Supp. 2d 1333, 1344 (CIT 2014) (*Baroque Timber*); and *Mid Continent Steel & Wire, Inc. v. United States*, 321 F. Supp. 3d 1313, 1323 (CIT 2018) (*Mid Continent*)); and HK Tiancheng's Case Brief at 5 (referring to the Sentury *et al.* Withdrawal Requests).
[38] *See* Boto's & ITG Voma's Case Brief at 16.
[39] *See* Winrun's Case Brief at 12-13.
[40] *See* Sentury *et al.*'s Case Brief at 24; *see also* Boto's and ITG Voma's Case Brief at 16.
[41] *See* Petitioner's Case Brief at 8-9 (citing section 735A(c)(5)(B) of the Tariff Act of 1930, as amended (the Act)).
[42] *Id.* at 9, note 23 (citing *Amanda Foods (Vietnam) Ltd. v. United States*, 837 F. Supp. 2d 1338, 1345 (CIT 2012) (stating that the methods for calculating all-other rates listed in the statute are "presumptively reasonable" and that "presumption of reasonableness is sensible in light of the overall statutory scheme").
[43] *Id.* at 9.

Commerce's Position: We continue to find, consistent with our practice, that the most appropriate method to calculate the separate rate is to base that rate on the rate calculated for the participating mandatory respondent, Junhong.

As explained in the PDM, the statute and Commerce's regulations do not address the establishment of a dumping margin for respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act.[44] Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the dumping margin for respondents which Commerce did not examine individually in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference not to calculate an all-others rate using dumping margins which are zero, *de minimis* or based entirely on facts available (FA). Accordingly, Commerce's usual practice in determining the dumping margin for separate rate respondents not selected for individual examination has been to average the weighted-average dumping margins for the individually examined respondents, excluding dumping margins that are zero, *de minimis*, or based entirely on facts available.[45] In the instant administrative review, Commerce calculated an above-*de minimis* rate that is not entirely based on facts available for the single remaining mandatory respondent, Junhong. Accordingly, it is not necessary to rely upon an alternative method, as defined under section 735(c)(5)(B) of the Act, or to otherwise depart from our long-standing practice. Our established practice in such circumstances is consistent among numerous proceedings[46] and Court affirmed.[47]

Nothing in the statutory framework requires Commerce to calculate the all-others rate using multiple rates, nor precludes Commerce from relying on a single rate. Boto and ITG Voma here, and as addressed further in Comment 3, argue that, because section 777(c) of the Act and the Statement of Administrative Action Accompanying (SAA) consistently use the plural "exporters" and "producers" to refer to the individually investigated respondents, the

[44] *See* PDM at 11-12.
[45] *See Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming Commerce's determination to assign a 4.22 percent dumping margin to the separate rate respondents in a segment where the three mandatory respondents received dumping margins of 4.22 percent, 0.03 percent, and zero percent, respectively); *see also Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).
[46] *See, e.g.*, *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 62717, 62718 (September 12, 2016); *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, 42316 (June 29, 2016); *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779, 51780-81 (August 26, 2015); *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015) and accompanying IDM at Comment 17; *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009).
[47] *See, e.g.*, *Soc Trang Seafood Joint Stock Co. v. United States*, 321 F. Supp. 3d 1329, 1347-1348 (CIT 2018) (*Soc Trang*) (affirming Commerce's determination to base the all-others rate on the rate of the only remaining respondent in the review); *Longkou Haimeng Mach. Co. v. United States*, 581 F. Supp. 2d 1344, 1357-60 (CIT 2008) (affirming Commerce's determination to exclude zero and *de minimis* antidumping margins in the calculation of the margins assigned to non-selected respondents).

separate rate must be based on the rates of multiple respondents.[48] The statute simply provides for the possibility of Commerce having multiple established rates at the end of a given investigation or review; it does not necessitate the calculation of a separate rate using multiple respondents' rates at the end of every investigation or review. Further, the language of section 735(c)(5)(B) of the Act that guides Commerce's actions when an established rate is zero, *de minimis*, or based entirely on an adverse inference, likewise uses the plural "exporters and producers." It is, nevertheless, possible that, if any one or all three of those circumstances occur, Commerce can be left with only one respondent. Boto's and ITG Voma's construction of the statute, however, would imply that Commerce could not rely on just one respondent's rate, while, in fact, the statute envisions cases when that may happen.[49]

The separate rate respondents also argue that the statutory framework requires the resulting separate rate to be representative, which requires it to be based on multiple rates, where available.[50] It is not an unforeseeable occurrence for Commerce, at the end of an investigation or administrative review, to be left with only one respondent.[51] The loss of a respondent does not automatically mean that the resulting all-others rate is not representative. If that were the case, the exception in section 735(c)(5)(B) of the Act would not exist.[52]

The fact that Junhong's preliminary margin was relatively higher than margins calculated in previous proceedings does not automatically render the margin inaccurate or inappropriate for use as the rate for the non-selected companies. The separate rate respondents' reliance on *Albemarle* to support its claim that Junhong's margin is not appropriate for use as the rate for the non-selected companies is misplaced. *Albemarle* involved a scenario in which Commerce calculated *de minimis* rates for the two individually-examined respondents and, thus, is distinguishable from this proceeding, in which we have calculated a weighted-average margin for a cooperating mandatory respondent.[53] We also disagree with Winrun's argument that Junhong's dumping margin is not representative and, thus, cannot be used as the rate for the non-individually examined companies. The dumping margin, calculated based on evidence submitted to the record by Junhong, is reflective of the pricing behavior during the POR. The facts of this review also differ significantly from those in *Baroque Timber*, which involved a scenario in which Commerce calculated *de minimis* rates for all three mandatory respondents.[54] Further, the separate rate respondents' reliance on *Mid Continent* is misplaced; in that decision, the Court held that Commerce's determination to assign the only margin that was not zero, *de minimis*, or based entirely on facts available or adverse facts available (AFA), to the separate respondents was in accordance with law and supported by substantial evidence.[55] Therefore, we find that the separate rate respondents failed to provide a basis to support a departure from

[48] *See* Boto's and ITG Voma's Case Brief at 8-10; *see also Soc Trang*, 321 F. Supp. 3d 1329 at 1347-48.
[49] *See Soc Trang,* 321 F. Supp 3d 1329 at 1347-48.
[50] *See* Winrun's Case Brief at 6-7; *see also* Sentury *et al.*'s Case Brief at 20; Boto's and ITG Voma's Case Brief at 13-16; and HK Tiancheng's Case Brief at 5.
[51] *See Soc Trang*, 321 F. Supp 3d 1329 at 1347.
[52] *Id.* at 1348.
[53] *See Albemarle* 821 F. 3d 1345 at 1347.
[54] *See Baroque Timber*, 971 F. Supp. 2d 1338-39 (*discussed in Changzhou Hawd Flooring Co. v. United States*, 848 F.3d 1006, 1009-10 (CIT 2017)); *see also Mid Continent* 321 F. Supp. 3d 1313, 1317 &1320-24 (CIT 2018).
[55] *See Mid Continent* 321 F. Supp. 3d 1313, 1317 &1320-24 (CIT 2018).

Commerce's general practice to rely on a contemporaneous rate that is not *de minimis*, based on total FA, or zero.[56]

For the final results, Commerce calculated a rate for the sole remaining mandatory respondent under review, Junhong, that is not zero, *de minimis*, or based entirely on facts available. Haohua withdrew from participation of this review. Commerce already has a well-established and consistently-applied practice in place to address the circumstances presented here. Accordingly, consistent with section 735(c)(5)(A) of the Act and our Court-affirmed practice, Commerce has assigned the non-individually examined companies a separate rate based on the AD rate calculated for Junhong.

Comment 3: Whether Commerce should have selected a third mandatory respondent.

Separate Rate Respondents' Case Briefs

- By limiting the number of respondents selected for individual review to one and assigning an unrepresentative antidumping margin to the separate rate respondents, Commerce has failed to comply with its statutory obligations.[57]
- "Limiting the number of individually-examined respondents is intended to be the exceptional circumstance, not the norm" and Commerce failed to offer compelling evidence showing why examination of all respondent firms is not practicable in this review.[58]
- Commerce cannot rely solely on resource constraints in deciding that individual reviews are impracticable.[59]
- In previous cases, the Court has rejected Commerce's argument that it cannot review more than two respondents,[60] and the Court's opinions that determine that numbers ranging from three to eight do not constitute large enough numbers to limit individual examination.[61]
- Commerce had sufficient time to select a third mandatory respondent.[62]
- In the previous review, Commerce selected another respondent under the same circumstances and at a later point in the POR.[63]
- Commerce should select an additional respondent for the final results.[64]

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[56] *See* section 735(c)(5)(A) of the Act.
[57] *See* Boto's & ITG Voma's Case Brief at 10-12 (citing section 735 of the Act; *Husteel Co. v. United States*, 98 F.Supp.3d 1315, 1329 (CIT 2015) (*Husteel Co.*) and Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 4040, 4201)); *see also* Shandong Anchi *et al.*'s Comments at 4-6; Sentury *et al.*'s Case Brief at 16-23; and Winrun's Case Brief at 8 (citing section 777A of the Act).
[58] *See* Boto's & ITG Voma's Case Brief at 6-7 (citing section 777A(c) of the Act; *Carpenter Tech. Corp. v. United States*, 662 F. Supp. 2d 1337 (CIT 2009) (*Carpenter Tech*)); *see also* Shandong Anchi *et al*'s Comments at 4-6.
[59] *See* Boto's & ITG Voma's Case Brief at 7; *see also* Shandong Anchi *et al.*'s Comments at 5 (citing *Zhejiang Native Produce & Animal By-Products Imp. & Exp. Corp. v. United States*, 637 F. Supp. 2d 1260, 1263-1264 (CIT 2009) (*Zhejiang Native*)); Sentury *et al.*'s Case Brief at 19 (citing section 777A(c) of the Act).
[60] *See* Shandong Anchi *et al.*'s Comments at 6 (citing *Carpenter Tech.* 662 F. Supp. 2d 1337, 1343-44).
[61] *Id.* (citing *Husteel Co.*, 98 F. Supp. 3d 1315, 1327 (CIT 2015)).
[62] *See* Boto's & ITG Voma's Case Brief at 4-12; *see also* Shandong Hengyu's Case Brief at 7; Sentury *et al.*'s Case Brief at 16-19; and Winrun's Case Brief at 3-6.
[63] *See* Sentury *et al.*'s Case Brief at 19.
[64] *Id.* at 20.

The petitioner did not comment on this issue.

Commerce's Position: Although Commerce has, in some cases, selected an additional respondent when a prior-selected mandatory respondent does not participate in the proceeding, Commerce's determination to not do so here is reasonable and in accordance with law. At the outset, we note that the separate rate respondents had several opportunities to comment on Commerce's selection of mandatory respondents. The separate rate respondents did not comment when we released the U.S. Customs and Border Protection (CBP data), or when Haohua withdrew its participation from the review. Notably, not until *after* Commerce calculated Junhong's allegedly "aberrational" margin in the *Preliminary Results* did the separate rate respondents argue in favor of selecting a third mandatory respondent or individually examining all exporters/producers. The separate rate respondents neglected every opportunity to comment on this issue until a point at which it was not feasible to select an additional respondent.

The separate rate respondents argue that Commerce acknowledged in the respondent selection memorandum that it has the resources to examine two respondents for the instant review and, thus, that we had the resources to select a third mandatory respondent after Haohua withdrew its participation in the review. The separate rate respondents' argument misses the point. Although we stated that we had the resources to examine two mandatory respondents, we are not obligated to select automatically a third mandatory respondent, once a previously selected mandatory respondent refuses to participate.

Contrary to the claims of separate rate respondents, the statutory framework does not require the rate assigned to the non-selected respondents to be based on multiple rates. The statute does not impose such a requirement. Rather, the statute allows Commerce to limit its examination to a "reasonable number" when there is a large number of exporters or producers involved in the review, and to examine exporters and producers accounting for the largest volume of the subject merchandise that "can reasonably be examined." In *Soc Trang*, the CIT recognized that it is not an unforeseeable occurrence for Commerce, at the end of an investigation or administrative review, to be left with only one respondent and that the loss of a respondent does not automatically mean that the resulting all-others rate is not representative.[65]

The record of this review shows that Commerce selected two mandatory respondents, Junhong and Haohua, [66] and that Haohua subsequently withdrew its participation.[67] Thus, the record does not support the separate rate respondents' claim that Commerce limited the number of respondents selected for individual review to one.

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[65] *See Soc Trang*, 321 F. Supp. 3d 1329 at 1347-48.
[66] *See* Memorandum, "Administrative Review of Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Respondent Selection Memorandum," dated April 12, 2018 (Respondent Selection Memorandum).
[67] *See* Haohua's Letter, "Passenger Vehicle and Light Truck Tires from the People's Republic of China Haohua Withdrawal from Administrative Review," dated April 26, 2018.

Moreover, the separate rate respondents' position that Commerce failed to offer compelling evidence showing why the individual examination of all respondent firms was not practicable in this review is incorrect. On November 30, 2017, we placed POR-specific CBP import data on the record of this review, noting that these data were intended for use in selecting mandatory respondents.[68] At that time, no exporter/producer subject to the review requested individual examination, treatment as a voluntary respondent, or that Commerce individually examine all exporters/producers.

In our respondent selection memorandum, we determined that it was not practicable to examine individually all known exporters/producers of passenger tires from China and limited our individual examination to two respondents: Haohua and Junhong.[69] Specifically, we noted that, even though it is Commerce's preference to examine individually each exporter/producer,[70] at the time of respondent selection, there were 42 producers/exporters subject to this review.[71] Review of 42 exporters/producers would require that Commerce analyze each company's corporate structure, accounting and selling practices, production information, cost factors, and data regarding sales in the U.S. market and any other potential issues arising from review of 42 companies.[72] Our analysis did not solely focus on the exporters/producers that had submitted separate rate applications/certifications and no shipment certifications at that time, as Boto and ITG Voma argue it should have; however, assuming *arguendo* that it had, 18 exporters/producers would still have been considered large within the context of a proceeding with more than 100 factors of production and surrogate values.[73] Commerce has significant authority to make administrative decisions regarding the allocation of its own limited resources and, thus, Commerce's decision to limit individually-examined companies relied, in part, on resource considerations.[74] However, our analysis centered around the large number of exporters/producers of passenger tires from China, as well as relevant issues expected to arise in a review of a product with this complexity.[75] Thus, Commerce reasonably determined that it was not practicable to review each respondent, pursuant to section 777A(c)(1) of the Act. At that time, no party submitted comments about Commerce's decision to limit its individual examination to two companies, requested individual examination, or requested treatment as a voluntary respondent.

On April 26, 2018, Haohua withdrew its participation in the review.[76] Commerce did not select an additional respondent. At that time, no party requested individual examination, treatment as a

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[68] *See* Memorandum, "Antidumping Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: U.S. Customs Entries," dated November 30, 2017.
[69] *See* Respondent Selection Memorandum.
[70] *See Husteel Co.*, 98 F.Supp.3d 1315, 1329.
[71] *See* Respondent Selection Memorandum at 5; *see also Carpenter Tech*, 662 F. Supp. 2d 1731 (the Court's decision contemplated whether six exporters/producers was a large enough number to limit examination, seven times smaller than the case at hand).
[72] *Id.* at 5.
[73] *See* Memorandum, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Surrogate Value Memorandum," dated September 4, 2018 at Attachment 1.
[74] *See*, *e.g.*, *Torrington Co. v. United States*, 68 F.3d 1347, 1351 (CAFC 1995).
[75] *See* Respondent Selection Memorandum at 5-6 and *Zhejiang Native*, 637 F. Supp. 2d 1260.
[76] *See* Haohua's Letter, "Passenger Vehicle and Light Truck Tires from the People's Republic of China Haohua Withdrawal from Administrative Review," dated April 26, 2018.

voluntary respondent, or that Commerce select an additional respondent. Between May and August, Commerce issued questionnaires to Junhong, the sole remaining mandatory respondent. During that time, no exporter/producer subject to the review requested individual examination, requested treatment as a voluntary respondent, submitted voluntary questionnaire responses, or submitted a request for Commerce to select an additional respondent.[77] Notably, not until after Commerce calculated Junhong's margin in the *Preliminary Results* did certain separate rate respondents argue in favor of selecting a third mandatory respondent or individually examining all exporters/producers. These separate rate respondents neglected every opportunity to comment on this issue until a point at which it was not feasible to select an additional respondent.

The separate rate respondents' reliance on other administrative reviews to support their arguments that Commerce had sufficient time and resources to select a third mandatory respondent ignores Commerce's established practice of treating each segment as an isolated proceeding in the absence of relevant evidence of similarities between the proceedings.[78] In the prior administrative review, Commerce made an explicit determination that there were sufficient resources to select a third mandatory respondent, noting that the office administering the review had 35 other investigations/reviews.[79] In this administrative review, at the time of respondent selection, the office had nearly 50 other investigations/reviews.[80] As such, Commerce's determination not to select a third mandatory respondent was reasonable, and otherwise in accordance with law.

Comment 4: Whether Commerce should exclude certain information from countries that maintain generally available export subsidies.

Junhong's Case Brief

- Commerce normally will use the price(s) paid to market economy supplier(s) of factors of production (FOP).[81]
- Commerce's position that "all exporters in India, Indonesia, and South Korea may have benefited from…{generally available export} subsidies" does not meet the standard of substantial evidence as stated in the Act or in various court cases.[82]

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[77] *See* Shenzhen Xinboda Indus. Co. v. United States, 180 F. Supp. 3d 1305, 1318-1320 (citing *DuPont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338 (CIT 2014)).
[78] *See Albemarle Corp. v. United States*, 821 F.3d 1345 (CAFC 2016) (citing *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 490-91 (CIT 2005)); *see also Final Results in the Second Antidumping Duty Order Administrative Review of Diamond Sawblades and Parts Thereof from the Republic of Korea*, 78 FR 36524 (June 18, 2013), IDM at Comment 4; and *Freeport Minerals Co. (Freeport McMoran, Inc.) v. United States*, 776 F.2d 1029, 1032 (CAFC 1985).
[79] *See* Memorandum, "Administrative Review of the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China: Selection of Additional Respondent," dated May 31, 2018 at note 5.
[80] *See* Respondent Selection Memorandum at 5.
[81] *See* Junhong's Case Brief at 5.
[82] *Id.* at 6 (citing Section 516A of the Act as well as court decisions *Huvis Corp. v. United States*, 570 F. 3d 1347 (CAFC June 25, 2009) and *Gold East Paper (Jiangsu) Co., Ltd. v. United States*, 991 F. Supp. 2d 1357, 1363 (CIT July 2, 2014) (*Gold East Paper*)).

- In the remand of *Gold East Paper*, the Court ordered Commerce to reopen the record and support its decision to ignore Thai and Korean price data."[83]
- Even though the CAFC recently upheld Commerce's approach for excluding information from countries that purportedly maintain generally available export subsidies in *CS Wind Vietnam Co.*, that decision was limited to exclusions in the context of a particular non-market economy (NME) respondent's market economy purchases.[84]
- Commerce is being inconsistent by excluding market economy purchases and surrogate value information from countries with generally available export subsidies while "setting no bar for use of such information from countries for which Commerce has once determined the existence of a particular market situation (PMS).[85] Commerce has determined that the existence of a PMS may distort costs and prices information in a certain country.[86] In light of this inconsistency between using information from countries with a PMS and generally-available export subsidies, Commerce should revisit what constitutes a reliable source of surrogate value data in the instant proceeding.[87]

Boto's & ITG Voma's Case Brief

- There is no evidence on the record that generally available export subsidy programs were actually in effect in India, Indonesia, and South Korea during the POR.[88]
- Commerce did not demonstrate a determination supported by evidence in the record that is specific to the instant review and explain why it has ignored relevant import prices pursuant to the Court's decision in *CS Wind Vietnam Co*.[89]
- The only support Commerce provides for its practice is a single footnote in the PDM referencing previous investigations and reviews without identifying the alleged "broadly available export subsidy" programs, explaining how they fit the specific definition set forth in section 773(c)(5) of the Act, or indicating whether they were even in place during the period of review.[90]
- Commerce's conclusory statement falls short of the statutory requirement for a particular determination and thus import prices from those countries should not be excluded from the calculations in this review.[91]

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[83] *Id.* at 6.
[84] *See* Junhong's Case Brief at 7 (citing *CS Wind Vietnam Co. v. United States*, 832 F.3d 1367, 1374 (CAFC 2016) (*CS Wind Vietnam Co.*)).
[85] *Id.* at 8.
[86] *Id.* (citing *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017) and accompanying PDM at 12-13 ("a particular market situation may exist where there is government control over prices to such an extent that home market prices cannot be considered to be competitively set")); *see also Biodiesel From Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) and accompanying IDM at Comment 2 ("the record of this investigation clearly indicates that domestic biodiesel sales prices are not based on competitive market conditions. …{T}he record shows {that} the GOI's intervention in…{the} biodiesel market is sufficient to create a PMS").
[87] *See* Junhong's Case Brief at 8.
[88] *See* Boto's & ITG Voma's Case Brief at 17.
[89] *Id.* at 17-18 (citing *Jacobi Carbons AB v. United States*, 313 F.Supp.3d 1344, 1371 (CIT 2018) and *CS Wind Vietnam Co.* at 1374).
[90] *Id.* at 18.
[91] *Id.*

The petitioner did not comment on this issue.

Commerce's Position: Commerce continues to follow its practice of excluding imports from India, Indonesia, and Korea in valuing FOPs, because those countries maintain broadly available, non-industry specific export subsidies.

As noted by the respondents, the CAFC upheld this practice in *CS Wind Vietnam Co.* The Court notes that section 773 of the Act states Commerce may disregard price or cost values without further investigation if the administering authority has determined that broadly available export subsidies existed.[92] The Court in the same decision also determined that Congress directed Commerce to avoid using any prices which it has reason to believe or suspect may be dumped or subsidized when valuing FOPs.[93] The CIT also sates in *CS Wind Vietnam Co.* that Commerce's presumption-based approach is not an unreasonable way of implementing the statute.[94] As such, Commerce finds that it is reasonable to infer that all exporters from these countries may have benefitted from these subsidies. Therefore, we will continue to follow this approach in the instant administrative proceeding and exclude market economy purchases from India, Indonesia, and Korea.

Finally, we disagree that Commerce is being inconsistent in excluding market economy purchases and surrogate value information from countries with generally available export subsidies in NME cases while relying on information from countries where a PMS exists. Section 773(c)(5) of the Act explicitly states that Commerce has the discretion to disregard price or cost values from countries if we determine that those countries maintain broadly available export subsidies when calculating normal value for NME countries. On the other hand, section 773(e) of the Act states that "if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology."

As an initial matter, no party to this proceeding has alleged that a PMS exists with respect to the cost of production of passenger tires. The PMS in Korea related to the cost of hot-rolled coil in Korea, while the PMS in Indonesia dealt with the cost of crude palm oil.[95] Given that Junhong did not report using either hot-rolled coil from Korea, or crude palm oil from Indonesia, in its production of passenger tires, it is unclear how a PMS with respect to either product would have an impact on the prices of inputs imported from Korea or Indonesia. Moreover, in instances where Commerce finds that a PMS related to costs exists in a particular country, it does not merely use the data from that country for the relevant inputs as Junhong implies. Rather, Commerce makes an adjustment to take into account the existence of the PMS. We note that adjustments to account for a PMS are not provided for in this context, where Commerce is

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[92] *See CS Wind Vietnam Co.* at 1374.
[93] *Id.* at 1374-1375.
[94] *Id.* at 1375.
[95] *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 57583 (December 6, 2017) and accompanying PDM at 11-14; *see also Biodiesel from Indonesia: Final Determination of Sales at Less Than Fair Value*, 83 FR 8835 (March 1, 2018) and accompanying IDM at Comment 3.

analyzing whether to disregard the prices of certain imports to value FOPs, and moreover, there is no record information that would allow for an adjustment to an AUV.

Comment 5: **Whether Commerce should offset Junhong's AD margin for the Export Buyer's Credit program.**

Shandong Anchi *et al.*'s Comments

- Commerce should adjust the final AD rate to offset the rates applied to the Export Buyer's Credit and Export Seller's Credit programs (collectively, export subsidies).[96]
- In the companion countervailing duty (CVD) proceeding, Commerce determined that all mandatory respondents benefitted from these export subsidy programs; thus, an export subsidy adjustment to the AD export price/constructed export price and the cash deposit rate is warranted, in accordance with section 772(c)(l)(C) of the Act.[97]
- In *Jinko Solar Co.*, the CIT held that Commerce should offset the AD cash deposit rate by an export subsidy from a companion CVD case, even one based on AFA, to ensure that the adverse inference is only applied once.[98]

Sentury *et al.*'s Case Brief

- Pursuant to section 772 of the Act, Commerce must adjust a respondent's U.S. price in AD proceedings by the amount of any CVD export subsidy rate received in the companion CVD case.[99]
- In *Jinko Solar Co*., the Court: (1) approved Commerce's practice of applying the export subsidy adjustment even when the subsidy rate was based on AFA; and (2) approved this practice with regard to the very same Export Buyer's Credit program at issue here.[100]
- Commerce previously offset the Export Buyer's Credit program in the AD investigation calculations for the instant case.[101]

The petitioner did not comment on this issue.

Commerce's Position: In the concurrent CVD administrative review of this order, Commerce has determined that the Export Buyer's Credit and Export Seller's Credit programs are export subsidies, as defined by section 771(5A)(B) of the Act.[102] Accordingly, pursuant to section 772(c)(1)(C) of the Act, we will adjust Junhong's U.S. price for the rates attributable to the Export Buyer's Credit Program and Export Seller's Credit Program in the final results of the concurrent CVD review of this order.[103]

[96] *See* Shandong Anchi *et al.*'s Comments at 7.
[97] *Id.*
[98] *Id.* at 9.
[99] *See* Sentury *et al.*'s Case Brief at 10.
[100] *Id.* at 12.
[101] *Id.* at 14.
[102] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review and Rescission, in Part; 2016*, signed April 18, 2019.
[103] *Id.*

Comment 6: Whether Commerce properly valued Junhong's energy inputs.

Sentury *et al.*'s Case Brief

- In the *Preliminary Results,* Commerce used the financial statement of Goodyear (Thailand) Public Company Limited Annual Report 2017 (Goodyear Thailand 2017 Statements) which did not have a specific breakout for energy costs. Therefore, the cost of energy presumably is included as an expense in the selling and general administrative (SG&A) ratio under one of its basket categories of either selling expenses or administrative expenses.[104]
- In accordance with *Tapered Roller Bearings from China* and *Hangers from China*, where the cost of energy is not broken out in a financial statement and, accordingly, is presumptively included in the financial ratios of overhead or SG&A expenses, Commerce's longstanding practice has been not to value separately the energy FOPs in order to avoid double counting of the same expenses.[105]

The petitioner did not comment on this issue.

Commerce's Position: In a change from our *Preliminary Results*, we have excluded the energy FOPs (*e.g.*, electricity and steam) reported by Junhong from our calculation of NV for these final results. We find that the Goodyear Thailand 2017 Statements used to calculate the financial ratios are not sufficiently detailed for Commerce to isolate energy expenses from other expenses, such as factory overhead or SG&A expenses.[106] When energy costs are not specifically broken out in the financial statements, Commerce presumes that these costs are accounted for in the surrogate financial ratios.[107]

Comment 7: Whether to grant Crown, Hankook, and HK Tiancheng a separate rate for the Final Results.

Crown's Comments

- The record confirms that Crown filed a complete and timely separate rate certification (SRC) in this administrative review and, thus, should be granted separate rate status for the final results.[108]

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[104] *See* Sentury *et al.*'s Case Brief at 7.
[105] *Id.* at 7-9 (citing *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, 32265 (July 12, 2018) (*Tapered Roller Bearings from China*) and citing *Steel Wire Garment Hangers from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 32634, 32636 (July 13, 2018) (*Hangers from China*)).
[106] *See* Junhong's June 5, 2018 Surrogate Value Comments at Exhibit 11.
[107] *See Tapered Roller Bearings from China unchanged in 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); *see also Hangers from China* unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 23052 (October 23, 2018); and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009), and accompanying IDM at Comment 2.
[108] *See* Crown's Comments at 2.

Hankook's Comments

- Hankook timely submitted its SRC, in conformance with the deadlines established in the *Initiation Notice*.[109]
- Hankook's SRC provided all of the information requested by Commerce in the SRC questionnaire.[110]
- Hankook never received a supplemental questionnaire nor any other correspondence from Commerce indicating there were any deficiencies with its SRC.[111]

HK Tiancheng's Case Brief

- Commerce made a mistake denying HK Tiancheng separate status, because it timely filed an SRC in this proceeding.[112]
- Commerce should correct this error and grant HK Tiancheng a separate rate for the final results.[113]

The petitioner did not comment on this issue.

Commerce's Position: Further review of the case record confirms that Crown, Hankook, and HK Tiancheng each timely filed complete SRCs. Therefore, for the final results, we find that Crown, Hankook, and HK Tiancheng continue to demonstrate an absence of both *de jure* and *de facto* government control over their respective export activities and, thus, each still qualifies for separate rate status.

[109] *See* Hankook's Comments at 2.
[110] *Id.*
[111] *Id.*
[112] *See* HK Tiancheng's Case Brief at 4.
[113] *Id.* at 5.

VI. Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of the review and the final dumping margin in the *Federal Register*.

☒	☐
_______	_________
Agree	Disagree

4/19/2019

X

Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance