A-570-084
Investigation
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DATE: May 14, 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: Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China

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I. SUMMARY

We analyzed the comments of the interested parties in the less-than-fair-value (LTFV) investigation of certain quartz surface products (quartz surface products) from the People's Republic of China (China). As a result of our analysis, and based on our findings at verification, we made changes to the margin calculations for CQ International[1] and Foshan Yixin Stone Co., Ltd. (Yixin Stone), two of the mandatory respondents in this case. Additionally, due to its withdrawal of participation and refusal to allow for verification, we find that Guangzhou Hercules Quartz Stone Co., Ltd. (Hercules Quartz) is no longer eligible for a separate rate.[2] Finally, we modified the scope exclusion for crushed glass to only cover certain quartz-glass slabs.

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 LTFV investigation for which we received comments from interested parties:

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[1] We preliminarily "collapsed" CQ International Limited (CQ HK) with two affiliated companies, Suzhou Colorquartzstone New Material Co., Ltd. (CQ Suzhou) and Shanghai Meiyang Stone Co., Ltd. (Meiyang), and, as a result, we are treating them as a single-entity. We hereafter refer to the collapsed entity as CQ International. *See* Memorandum, "Whether to Collapse CQ International Limited and Two Affiliates in the Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China," dated October 31, 2018 (CQ International Collapsing Memorandum). No party has challenged the collapsing determination; hence we continue to treat CQ International as a single company for purposes of this investigation.

[2] *See* Hercules Quartz's Letter, "Certain Quartz Surface Products from the People's Republic of China: Notice of Withdrawal from Investigation," dated November 27, 2018 (Hercules Quartz's Withdrawal Letter).

General Comments

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II. BACKGROUND

On November 20, 2018, the Department of Commerce (Commerce) published the *Preliminary Determination* in the LTFV investigation of quartz surface products from the China.[3] The period of investigation (POI) is October 1, 2017, through March 31, 2018. On November 27, 2018, Hercules Quartz informed Commerce that it was withdrawing from participating in this investigation.[4] In December 2018, Commerce conducted the constructed export price (CEP) verification for CQ International.[5] 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 27, 2019.[6] Accordingly, Commerce postponed the final determination by 40

[3] *See Certain Quartz Surface Products from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 58540 (November 20, 2018) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).
[4] *See* Hercules Quartz's Withdrawal Letter.
[5] *See* Memorandum, "U.S. Verification of the Responses of CQ International in the Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China," dated March 25, 2019 (CQ International CEP Verification Report)
[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.

days, to April 19, 2019. In February and March 2019, Commerce conducted sales and factors of production (FOPs) verifications at the offices of the mandatory respondents, CQ International and Yixin Stone, in China, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[7]

We invited parties to comment on the *Preliminary Determination*. On April 1, 2019, Cambria Company LLC (the petitioner),[8] CQ International,[9] Yixin Stone,[10] Hero Stone,[11] Dal-Tile Corporation (Dal-Tile),[12] Hirsch Glass (Dalian) Co., Ltd. (Hirsch Dalian) and Hirsch Glass Corp (collectively, Hirsch Glass),[13] LG Hausys America, Inc. (LG Hausys),[14] Arizona Tile *et al.*,[15] and Foliot Furniture *et al*.[16] submitted case briefs.[17] On April 8, 2019, the petitioner,[18] CQ

[7] *See* Memoranda, "Export Price and Factors Verification of the Responses of CQ International in the Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China," dated March 19, 2019 (CQ International EP and FOPs Verification Report); and "Verification of the Responses of Foshan Yixin Stone Co., Ltd. in the Less-Than-Fair-Value Investigation of Quartz Surface Products from the People's Republic of China," dated March 21, 2019 (Yixin Stone Verification Report).

[8] *See* Petitioner's Case Brief, "Certain Quartz Surface Products from the People's Republic of China: Petitioner's Case Brief," dated April 1, 2019.

[9] *See* CQ International's Case Brief, "Certain Quartz Surface Products from the People's Republic of China; ("Quartz Surface Products"); A-570-084; Case Brief," dated April 1, 2019 (CQ International Case Brief).

[10] *See* Yixin Stone's Case Brief, "Antidumping Duty Investigation of Certain Quartz Surface Products from the People's Republic of China; Case Brief," dated April 1, 2019 (Yixin Stone Case Brief).

[11] *See* Hero Stone's Case Brief, "Quartz Surface Products from the People's Republic of China: Case Brief of Foshan Hero Stone and Its Affiliates," dated April 1, 2019 (Hero Stone Case Brief).

[12] *See* Dal-Tile's Case Brief, "Certain Quartz Surface Products from the People's Republic of China: Case Brief," dated April 1, 2019 (Dal-Tile Case Brief).

[13] *See* Hirsch Glass' Case Brief, "Certain Quartz Surface Products from the People's Republic of China; ("Quartz Surface Products"); A-570-084; Case Brief," dated April 1, 2019 (Hirsch Glass Case Brief).

[14] *See* LG Hausys's Case Brief, "AD Case Brief of LG Hausys America, Inc.; Certain Quartz Surface Products from the People's Republic of China," dated April 1, 2019 (LG Hausys Case Brief).

[15] *See* the Case Brief filed by U.S. importers Arizona Tile LLC; Bedrosians Tile & Stone; Classic Granite & Marble, Inc.; M S International, Inc.; Piedrafina Marble, Inc.; Premier Surfaces Acquisition, LLC; Quartz Stone, Inc.; and Surface Warehouse, LP dba US Surfaces and US Surface Warehouse (collectively, Arizona Tile *et al.*), "Quartz Surface Products from the People's Republic of China: Importers Case Brief," dated April 1, 2019 (Arizona Tile *et al.* Case Brief).

[16] *See* the Case Brief filed by U.S. importers Foliot Furniture Pacific Inc., Francini Inc., Granite Central Distributors, LLC, Mstone LLC, Mega Master Inc. d/b/a Mega Granite &Marble, Inc., MU Holdings Inc. d/b/a Marble Uniques, National Stoneworks, LLC, Pantai Granite Inc., STStones Inv Inc., The Slab Depot Granite &Marble LLC, and Universal Stone Inc. (collectively, Foliot Furniture *et al.*), "Certain Quartz Surface Products from the People's Republic of China: Antidumping Case Brief," dated April 1, 2019 (Foliot Furniture *et al.* Case Brief).

[17] The following companies also submitted a joint letter stating that Commerce should continue to assign them a separate rate in this proceeding: Xiamen Yeyang Import & Export Co., Ltd. (AKA Xiamen Yeyang Imp&Exp Co., Ltd.); Fujian Pengxiang Industrial Co., Ltd.; Quanzhou Franco Trade Co., Ltd.; Shunsen Industries Corporation; Wanfeng Compound Stone Technology Co., Ltd.; Quanzhou Yifeng Co., Ltd. (AKA Quanzhou Yifeng Industries Corporation); Yekalon Industry, Inc.; Yunfu Chuangyun New Meterail Co., Ltd.; and HongKong FS Development Limited (collectively Xiamen Yeyang *et al*.). No party submitted any other comments regarding the separate rate for Xiamen Yeyang *et al*. and we have not re-visited the separate rate eligibility of these companies for this final determination. Therefore, we have not further addressed the comments submitted by Xiamen Yeyang *et al.* *See* Letter from Xiamen Yeyang *et al.*, "Letter In Lieu of Brief for GDLSK Clients: Antidumping Duty Investigation of Certain Quartz Surface Products from the People's Republic of China, A-570-084," April 1, 2019.

[18] *See* Petitioner's Rebuttal Brief, "Certain Quartz Surface Products from the People's Republic of China: Petitioner's Case Brief," dated April 8, 2019 (Petitioner Rebuttal Brief).

International,[19] and Yixin Stone[20] submitted rebuttal briefs.[21] On April 12, 2019, Commerce held a public hearing.[22] On April 30, 2019, we also requested that the petitioner and Yixin Stone submit re-bracketed case and rebuttal briefs, respectively.[23]

III. SCOPE COMMENTS

During the course of this investigation, and the concurrent countervailing duty (CVD) investigation of quartz surface products from China, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Decision Memorandum to address these comments and set aside a period of time for parties to address scope issues in scope case and rebuttal briefs.[24] We received comments from interested parties on the Preliminary Scope Decision Memorandum, which we addressed in the Final Scope Decision Memorandum.[25] In addition, on February 14, 2019, Cambria Company LLC (the petitioner) submitted a proposed clarification to the scope of this and the concurrent CVD investigation.[26] In response to the petitioner's proposed scope clarification, Commerce established a separate scope briefing schedule and received case and rebuttal briefs regarding the proposed clarification, which we addressed in the Scope Modification Determination.[27] As a result, for this final determination, we made certain changes to the scope of these investigations from that published in the *Preliminary Determination*.

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[19] *See* CQ International's Rebuttal Brief, "Certain Quartz Surface Products from the People's Republic of China; ("Quartz Surface Products"); A-570-084; Rebuttal Brief," dated April 8, 2019 (CQ International Rebuttal Brief).

[20] Yixin Stone timely filed its rebuttal brief on April 8, 2019. However, due to certain surrebuttal in Yixin Stone's case brief, Commerce rejected Yixin Stone's case brief and requested that it re-file the brief without the untimely new argument. *See* Letter to Yixin Stone, "Antidumping Duty Investigation of Certain Quartz Surface Products from the People's Republic of China: Rejection of Rebuttal Brief," dated April 11, 2019; *see also* Yixin Stone's Rebuttal Brief, "Antidumping Duty Investigation of Quartz Surface Products from the People's Republic of China; Resubmission of Rebuttal Case Brief," dated April 12, 2019.

[21] Foliot Furniture *et al.* also filed a letter, in lieu of a rebuttal brief, urging Commerce to address the arguments made in the affirmative case briefs. *See* Letter from Foliot Furniture *et al.*, "Certain Quartz Surface Products from the People's Republic of China: Letter in Lieu of Rebuttal Brief of U.S. Importers," dated April 8, 2019. We have not separately addressed this letter as the arguments were also made in affirmative case briefs and, moreover, Folio Furniture *et al.*'s letter was not specifically rebutting any arguments made in the affirmative case briefs.

[22] *See* Letter, "Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China: Notice of Hearing," dated April 5, 2019; *see also* Hearing Transcript from Neal R. Gross and Co., Inc., filed onto the record on April 19, 2019.

[23] *See* Memorandum, "Phone Call Requesting Rebracketing of Case Brief and Rebuttal Brief" dated May 1, 2019; *see also* Petitioner's Revised Case Brief, "Certain Quartz Surface Products from the People's Republic of China: Petitioner's Revised Case Brief," dated May 1, 2019 (Petitioner Case Brief); and Yixin Stone's Revised Rebuttal Brief, "Antidumping Duty Investigation of Quartz Surface Products from the People's Republic of China; Resubmission of Rebuttal Case Brief," dated May 1, 2019 (Yixin Stone Rebuttal Brief).

[24] *See* Memorandum, "Certain Quartz Surface Products from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated September 14, 2018 (Preliminary Scope Decision Memorandum).

[25] *See* Memorandum, "Certain Quartz Surface Products from the People's Republic of China: Final Scope Comments Decision Memorandum," dated May 10, 2019 (Final Scope Decision Memorandum).

[26] *See* Petitioner's Letter, "Certain Quartz Surface Products from the People's Republic of China: Request to Extend Deadline to Submit Factual Information," dated February 14, 2019.

[27] *See* Memorandum, "Certain Quartz Surface Products from the People's Republic of China: Scope Modification Determination," dated concurrently with this notice (Scope Modification Determination).

IV. USE OF ADVERSE FACTS AVAILABLE

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act, provide that if necessary information is not available on the record or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {Commerce} for information, notifies {Commerce} that such party is unable to submit the information requested in the requested form and manner," Commerce shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.[28] In doing so, Commerce is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) provides that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does

[28] *See* section 776(b)(1)(B) of the Act.

not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[29] Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[30]

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[31] Further, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping duty (AD) order when applying an adverse inference, including the highest of such margins. When selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.

As noted above, sections 776(a)(2)(B) and (D) of the Act provides that if an interested party fails to provide information within the established deadlines or provides information but the information cannot be verified, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[32]

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[33] Thus, according

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[29] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

[30] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997) (*Preamble*); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Federal Circuit 2003) (*Nippon Steel*).

[31] *See* SAA at 870.

[32] *See* SAA at 870; *see also Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

[33] *See Nippon Steel*, 337 F.3d at 1382-83.

to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.[34] The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.[35]

Selection and Corroboration of the AFA Rate

In selecting a facts available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the AFA rule, which is to induce respondents to provide Commerce with complete and accurate information in a timely manner.[36] For CQ International, as partial AFA, we are relying on information obtained during the course of this investigation (*i.e.*, the highest non-aberrational transaction-specific margin calculated using its own reported sales and FOPs); therefore, we are not required to corroborate this information further, pursuant to section 776(c)(1) of the Act.

For the China-wide entity in order to corroborate to the extent practicable the dumping margin alleged in the Petition for assigning an AFA rate, we examined the information on the record. We compared the highest petition dumping margin of 336.69 percent to the transaction-specific margins calculated for CQ International and Yixin Stone, which were not calculated using total AFA. We find that the 336.69 percent petition margin falls within the range of the transaction-specific margins calculated for CQ International and Yixin Stone, which appear to be sales whose terms were normal, when compared with other sales in their respective sales databases.[37] Further, the rate is consistent with actual transaction-specific rates at which cooperating respondents sold subject merchandise during the POI,[38] and "does not lie outside the realm of actual selling practices."[39] Thus, in accordance with section 776(c)(1) of the Act, we have corroborated to the extent practicable the highest dumping margin contained in the petition, 336.69 percent, as AFA, using transaction-specific margins from the mandatory respondents CQ International and Yixin Stone.

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[34] *Id*. at 1382.
[35] *Id.*
[36] *See* SAA at 870; *see also*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988, 75990 (December 26, 2012).
[37] *See* Memorandum, "Final Analysis Memorandum for CQ International Limited," dated May 14, 2019 (CQ International Final Calc Memo); and Yixin Stone's Verification Report; *see also* Memorandum, "Final Analysis Memorandum for Foshan Yixin Stone Co., Ltd.," dated May 14, 2018 (Yixin Stone Final Calc Memo).
[38] *See Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1347-48 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).
[39] *See KYD, Inc. v. United States*, 607 F.3d 760, 767 (Federal Circuit 2010).

Application of AFA for the China-wide Entity

As noted above, section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by Commerce, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD statute, or (D) provides such information but the information cannot be verified, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

In the *Preliminary Determination*, we found that the China-wide entity did not respond to Commerce's requests for information, failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information. We further determined that because non-responsive China companies had not demonstrated their eligibility for separate rate status, Commerce considered them part of the China-wide entity. Finally, Commerce preliminarily assigned a China-wide rate based on the facts otherwise available, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, using an adverse inference, pursuant to 776(b) of the Act.[40]

In the *Preliminary Determination*, when selecting an appropriate rate to apply as AFA, we first examined whether the highest Petition margin was less than or equal to the highest calculated margin. Because the highest Petition margin is 336.69 percent,[41] and the highest calculated margin was 341.29, we determined that the highest calculated margin of 341.29 percent was the higher of the two.[42] We therefore determined that it was unnecessary to corroborate this rate because it was calculated using data obtained in the course of this investigation and, therefore, was not secondary information, pursuant to section 776(c) of the Act. Consequently, we preliminarily determined to apply Yixin Stone's *ad valorem* rate margin of 341.29 percent, based on data in the current investigation, as an AFA rate for the China-wide entity for the preliminary determination. We applied the China-wide rate to all entries of subject merchandise, except for entries from CQ International, Hercules Quartz, Yixin Stone, and the other producers/exporters receiving a separate rate.

For this final determination, we determine that Hercules Quartz is no longer eligible for a separate rate because it withdrew from participation in this investigation and did not submit to verification,[43] and thus Hercules Quartz is now part of the China-wide entity because we do not

[40] *See Preliminary Determination* and accompanying PDM at 22.
[41] *See Initiation Notice*, 83 FR at 22616 ("Based on comparisons of EP to NV in accordance with sections 772 and 773 of the Act, the estimated dumping margins for quartz surface products from China range from 303.38 percent to 336.69 percent." (citing to the Initiation Checklist)).
[42] *See Preliminary Determination* and accompanying PDM at 22.
[43] *See* Hercules Quartz's Withdrawal Letter.

have verifiable information on which to rely to confirm its eligibility for a separate rate.[44] Additionally, we received comments from Hero Stone regarding its eligibility for a separate rate. We continue to find Hero Stone ineligible for a separate rate and thus a part of the China-wide entity. *See* Comment 15, below. We continue to find that the China-wide entity failed to cooperate to the best of its ability in responding to Commerce's requests for information. We have revised our margin calculations for Yixin Stone in this final determination and, as a result, the highest calculated rate is now 333.09 percent, which is less than the highest margin alleged in the Petition of 336.69.[45] Consequently, we are now applying, as the AFA rate, the highest Petition margin of 336.69 percent, which, in accordance with section 776(c)(1) of the Act, we have corroborated to the extent practicable using transaction-specific margins from the mandatory respondents CQ International and Yixin Stone (*see* above at "Selection and Corroboration of the AFA Rate"). The China-wide rate applies to all entries of subject merchandise, except for entries from CQ International, Yixin Stone, and the other producers/exporters receiving a separate rate.

Application of Partial AFA for CQ International

Additionally, with regards to CQ International's CEP sales, we determine that CQ International's CEP sales data is so unreliable, based upon significant and pervasive discrepancies found at verification,[46] that we are unable to use CQ International's reported CEP sales and expenses to calculate an accurate margin for CQ International. Further, we find that CQ International failed to report a quantity of export price (EP) sales which shipped from the factory prior to the end of the POI, but were invoiced after the POI, which were not reported in CQ International's sales database.[47]

As discussed further below in Comment 12, in this case, we find that the application of facts available is appropriate under sections 776(a)(2)(A), (B), and (C) of the Act because, as evidenced by its ability at verification to identify the correct information, it is clear that CQ International possessed the necessary records to provide a complete and accurate U.S. sales database, including accurate expense data and factory shipment dates, but did not conduct a comprehensive investigation of all relevant records in a timely manner. We therefore find that CQ International, by failing to provide the requested shipments, as requested, and by failing to provide accurate expenses and thereby inhibiting Commerce from accurately calculating a dumping margin, withheld information that Commerce had requested, failed to provide information by the deadlines for submission of the information in the form and manner requested, and significantly impeded this proceeding, in accordance with sections 776(a)(2)(A), (B), and (C) of the Act. In addition, we find that CQ International's failures to report the requested information, accurately and in the manner requested, using the records over which it maintained control at all times indicates that CQ International did not act to the best of its ability to comply with our requests for information. Further, in accordance with section 782(d) of the

[44] This is consistent with Commerce's treatment of mandatory respondents in other antidumping investigations involving China where the mandatory respondents withdrew from the proceeding. *See e.g.*, *Certain Steel Wheels from the People's Republic of China: Final Determination of Sales at Less-Than-Fair-Value*, 84 FR 11746 (March 28, 2019).
[45] *See Initiation Notice*, 83 FR at 22616.
[46] *See* CQ International CEP Verification Report at 2, 3, 6, and 8-18.
[47] *See* CQ International EP and FOPs Verification Report at 2 and 13-14.

Act, as explained below in Comment 12, Commerce provided CQ International with opportunities to remedy or explain the deficiencies in its initial responses regarding the missing sales, and misreported expenses. Hence, we find that the application of AFA is appropriate under section 776(b) of the Act for CQ International's missing EP sales and for all of CQ International's CEP sales, due to the serious errors and misreporting discovered at verification. Thus, for this final determination, we have applied partial AFA to CQ International's sales by applying the highest non-aberrational transaction-specific EP margin to CQ International's CEP sales and to the unreported EP sales. *See* Comment 12, below.

V. CALCULATION CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated EP and normal value (NV) for CQ International and Yixin using the same methodology stated in the *Preliminary Determination*,[48] except as follows:

- We revised our margin calculations for CQ International to take into account our findings from the EP sales and FOPs verification and we determined that CQ International's reported CEP sales data was wholly unreliable.[49] *See* Comment 12 for further discussion of certain of these changes.

- We revised our calculations to correct certain ministerial errors for CQ International. *See* Comment 13.

- We revised Yixin Stone's NPORT distance and corresponding *Sigma* freight calculation. *See* Comment 16.

- We revised Yixin Stone's packing costs for slabs of three centimeters. *See* Comment 17.

- We revised our margin calculations for Yixin Stone to take into account our findings from verification.[50]

VI. ADJUSTMENT UNDER SECTION 777A(f) OF THE ACT

As discussed in the *Preliminary Determination*,[51] in applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.[52] For a subsidy meeting these criteria, the statute requires

[48] *See Preliminary Determination* and accompanying PDM at 10-16.
[49] *See* CQ International EP and FOPs Verification Report; *see also* CQ International Final Calc Memo.
[50] *See* Yixin Stone's Verification Report; *see also* Yixin Stone Final Calc Memo.
[51] *See Preliminary Determination* and accompanying PDM at 38-41.
[52] *See* sections 777A(f)(1)(A)-(C) of the Act.

Commerce to reduce the dumping margin by the estimated amount of the increase in the weighted-average dumping margin due to a countervailable subsidy, subject to a specified cap.[53] In conducting this analysis, Commerce has not concluded that concurrent application of non-market economy (NME) dumping duties and countervailing duties necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.[54]

For purposes of our analysis under sections 777A(f)(1)(A) and (f)(1)(C) of the Act, Commerce requested firm-specific information from the mandatory respondents as part of the initial antidumping questionnaire.[55] The information sought included information regarding whether countervailable subsidies were received during the relevant period, information on costs, and information regarding the respondents' pricing policies and practices. Additionally, the respondents were required to provide documentary support for the information provided. Hercules Quartz, Hero Stone, and Yixin Stone submitted responses to Commerce's firm-specific double remedies questionnaire,[56] while CQ International did not. As noted above, we have determined that Hercules Quartz and Hero Stone are part of the China-wide entity for purposes of this investigation, and that the China-wide entity has not acted to the best of its ability in providing Commerce with the necessary information. In light of that determination, we have disregarded the information Hercules Quartz and Hero Stone submitted in their responses to the double remedies questionnaire.

In our *Preliminary Determination*, we found that the response received from Yixin Stone included information concerning countervailable subsidies received during the relevant period, as well as information regarding their costs and pricing policies and practices.[57] No party challenged any part of Commerce's calculation or the offset applied to Yixin Stone's cash deposit rate; nor did any party challenge our decision not to grant an offset to CQ International in the preliminary determination.

Yixin Stone is a mandatory respondent in the companion CVD investigation and reported receiving countervailable subsidies for the provision of electricity, quartz, and polyester resin.[58] Yixin Stone also provided monthly POI costs for its purchases of electricity, quartz, and polyester resin.[59] In accordance with section 777A(f)(1)(A) of the Act, Commerce examined whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise. Because Commerce continues to find the provision of

[53] *See* sections 777A(f)(1)-(2) of the Act.
[54] *See*, *e.g.*, *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017) and accompanying PDM at 43.
[55] *See* Commerce's June 18, 2018, Initial Antidumping Duty Questionnaire issued to the four mandatory respondents at page 2 of the cover letter, and Appendix XI, "Double Remedies Questionnaire."
[56] *See* Hercules Quartz Double Remedies Response; Hero Stone Double Remedies Response; and Yixin Stone August 23, 2018 CDQR at Appendix XI.
[57] *See Preliminary Determination* and accompanying PDM at 38-41.
[58] *See* Yixin Stone August 23, 2018 CDQR at Appendix XI.
[59] *See* Yixin Stone August 23, 2018 CDQR at Exhibits DR-3 and DR-4.

electricity, quartz, and polyester resin for less than adequate remuneration (LTAR) to be countervailable with respect to the class or kind of merchandise under consideration in the companion CVD investigation,[60] Commerce finds that the requirement of section 777A(f)(1)(A) of the Act has been met.

Additionally, in accordance with sections 777A(f)(1)(B)-(C) of the Act, Commerce examined whether Yixin Stone demonstrated: (1) a subsidies-to-cost link, *i.e.*, a subsidy effect on the cost of manufacturing (COM) of the merchandise under consideration; and (2) a cost-to-price link, *i.e.*, respondent's prices were dependent on changes in the COM.[61] With respect to the subsidies-to-cost link, in its double remedies questionnaire response, Yixin Stone reported that it consumed electricity, quartz, and polyester resin in the production of subject merchandise.[62] Yixin Stone provided information indicating that the subsidy programs affected its COM. Specifically, Yixin Stone stated that it identifies and monitors the cost fluctuations of these raw materials.[63] Thus, Commerce concluded that Yixin Stone established a subsidies-to-cost link because subsidies for the provision of electricity, quartz, and polyester resin for LTAR impact their costs for producing subject merchandise.[64]

For the cost-to-price link, Commerce examined whether Yixin Stone demonstrated that changes in costs affected prices or are taken into consideration when setting prices.[65] Yixin Stone stated that it adjust the sales price of the subject quartz surface products when the raw material costs change substantially.[66] In addition, Yixin Stone reported that its accounting department reports significant cost changes to management and that management, in turn, considers the price changes and then instructs the sales department to conduct market research and price negotiations with the U.S. customers.[67] Based on the foregoing, we continue to find that Yixin Stone provided adequate information to establish a link between subsidies (*i.e.*, the provision of electricity, quartz, and polyester resin for LTAR), costs, and prices. Because Yixin Stone's double remedy response indicates that factors other than the cost of the inputs for LTAR impact prices to customers (*e.g.*, prevailing market price for the merchandise and expected profit), we have applied a documented ratio of cost-price changes for the relevant manufacturing sector as a whole, which is based on data provided by Bloomberg, as the estimate of the extent of subsidy pass-through.[68] Therefore, we are adjusting Yixin Stone's U.S. price for a pass-through

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[60] *See* Unpublished *Federal Register* notice, "Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances," dated concurrently with this determination (CVD Quartz Surface Products from China Final Determination) and accompanying Issues and Decision Memorandum (IDM).
[61] *See Preliminary Determination* and accompanying PDM at 39.
[62] *See* Yixin Stone August 23, 2018 CDQR at Appendix XI pages 1-5.
[63] *Id.* at Appendix XI page 2.
[64] *See Preliminary Determination* and accompanying PDM at 39.
[65] *Id.* at 39-40.
[66] *See* Yixin Stone August 23, 2018 CDQR at Appendix XI page 2.
[67] *Id.* at Appendix XI pages 2-3.
[68] *See* Memorandum, "Certain Quartz Surface Products from the People's Republic of China: Final Double Remedies Calculation," dated concurrently with this memorandum (Final Double Remedies Calculation). Note that this is the same double remedies information relied upon for the *Preliminary Determination*. *See* Memorandum to the File, "Certain Quartz Surface Products from the People's Republic of China: Double Remedies Calculation," dated November 13, 2018.

adjustment for domestic subsidies in the calculation of its cash deposit rate. Because Yixin Stone is a mandatory respondent in the companion CVD investigation, we have used its own calculated subsidy rates for electricity, quartz, and polyester resin for LTAR, multiplied by the pass-through rate obtained from Bloomberg, in order to obtain the amount of subsidy passed through and deducted from the calculated AD margin. Additionally, because Yixin Stone is eligible for a domestic pass-through adjustment, and is the source of the CVD non-selected respondents' rate in the companion CVD investigation, we made a domestic pass-through adjustment for the non-selected separate rate respondents using the same domestic pass-through adjustment rates applied to Yixin Stone, which is consistent with section 777A(f)(2) of the Act.[69]

For the China-wide entity, we normally use the lowest domestic pass-through adjustment rate determined for any party in the investigation, as the adjustment to the AD cash deposit rate.[70] Because we did not find CQ International to be eligible for a domestic subsidy pass-through offset, we have not provided an offset for domestic subsidies to the AD cash deposit rate for the China-wide entity.[71]

VII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

Pursuant to section 772(c)(1)(C) of the Act, Commerce normally makes adjustments for countervailable export subsidies. In the concurrent CVD investigation, for the final determination, we are finding export subsidies for Yixin Stone and the companies receiving AFA for failure to cooperate.[72] In the CVD investigation, the calculated subsidy rate for Yixin Stone (including export subsidies) is also being applied to the non-selected companies, which includes mandatory respondent CQ International.[73] As such, Commerce finds that it is appropriate to make an offset to the cash deposit rates in this LTFV investigation pursuant to section 772(c)(1)(C) of the Act for Yixin Stone, CQ International, and the separate rate companies. Accordingly, we will apply an export subsidy offset to the estimated weighted-average dumping margins assigned to Yixin Stone, CQ International, and the separate rate companies.[74]

Additionally, all companies in the companion CVD investigation have export subsidies included in their final subsidy rates.[75] As such, we find that it is appropriate to make an offset to the cash deposit rates in this LTFV investigation pursuant to section 772(c)(1)(C) of the Act for the

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[69] *See Aluminum Extrusions from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 32347 (June 8, 2015) and accompanying PDM at 34, unchanged in *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75060, 75063 (December 1, 2015).

[70] *See Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016) and accompanying PDM at 25-26, unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316, 35318 (June 2, 2016).

[71] *See* Final Double Remedies Calculation.

[72] *See* CVD Quartz Surface Products from China Final Determination and accompanying IDM.

[73] *Id*.

[74] *See* Final Double Remedies Calculation.

[75] *See* CVD Quartz Surface Products from China Final Determination.

China-wide entity.[76] Accordingly, we will apply an export subsidy offset to the estimated weighted-average dumping margin assigned to the China-wide entity.[77]

VIII. DISCUSSION OF THE ISSUES

General Comments

Comment 1: Industry Support for Initiating this Investigation

CQ International's Arguments

- Commerce should examine as to whether the petitioner had standing and is entitled to continue this action. Multiple submissions regarding the proposed expansion of the scope indicate that multiple producers of product that would fall within the scope of the investigation were not analyzed for the purpose of standing. Further there was no analysis of the large fabricator industry, even though fabricated slab falls within the scope of the investigation.[78]

Arizona Tile et al.'s Arguments

- Section 771(10) of the Act directs Commerce to look at U.S. producers and workers "as a whole" when determining domestic like product. Commerce accepted that domestic like product covers not only slabs but also "other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles" and defined the scope of the investigation to include "fabricated or not fabricated" quartz surface products. Accordingly, the scope of domestic like products expressly includes products that are manufactured by U.S. fabricators who purchase quartz surface products and further process it into fabricated quartz surface products.[79]

- Only considering the three U.S. producers of quartz slabs (*i.e.*, Cambria, Caesarstone Technologies USA Inc., and LG Hausys America Inc.) as part of the domestic industry for purposes of standing disregards the remainder of the domestic industry consisting of U.S.

[76] S*ee*, *e.g.*, *See Less-Than-Fair-Value Investigation of Rubber Bands from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances*, 83 FR 45213 (September 6, 2018) and accompanying PDM at 11, unchanged in *Rubber Bands from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 58547 (November 20, 2018).
[77] *See* Final Double Remedies Calculation. As an offset for export subsidies for the China-wide entity, we have applied the lowest total export subsidy amount applied to any party in the CVD final determination, which is the same export subsidy offset applied to Yixin Stone, CQ International, and the separate rate companies for this final determination.
[78] CQ International Case Brief at 26-27.
[79] Arizona Tile *et al.* Case Brief at 3-4

fabricators. Cambria cannot benefit from fabricated products being included in the scope but excluded as members of the domestic industry.[80]

- Commerce's refusal to include U.S. fabricators in the domestic industry for the purposes of determining standing is unsupported by the record, which shows that U.S. fabricators, relative to slab manufacturers like Cambria, invest more in domestic capital equipment, add more domestic value to the end-product, and apply more domestic labor to a quartz surface product. Further, U.S. fabricators account for over 25,000 manufacturing jobs.[81]

- The industry role played by fabricators is closely analogous to the role played by steel service centers in the flat-rolled steel industry, a category of domestic producers that have been included in the industry by the International Trade Commission (ITC) in its past cases.[82]

- Commerce was aware of the deficient support for the Petition and yet neglected its obligation under the act to poll the industry or otherwise determine support amount fabricators. Accordingly, this investigation should be terminated or suspending pending polling of the industry.[83]

Foliot Furniture et al.'s Arguments

- Commerce unlawfully initiated this investigation as the petitioner failed to demonstrate its petition was filed on behalf of a domestic industry. While the scope of this investigation includes quartz surface products, "fabricated or not fabricated," Commerce failed to consider the domestic industry as a whole by ignoring over 25,000 fabricators, despite concerns raised prior to initiation.[84]

[80] *Id.* at 4 and 7.
[81] *Id.* at 5-6 (citing Letter from M S International, Inc. (MSI), "Quartz Surface Products from the People's Republic of China: Comments on the Lack of Standing of the Petitioner and Requests for Action," dated May 1, 2019 (MSI May 1, 2019 Letter); and Letter from MSI, "Antidumping and Countervailing Duty Investigations of Quartz Surface Products from the People's Republic of China: Reply to Petitioner's Comments on Lack of Standing," dated May 4, 2019 (MSI May 4, 2019 Letter)).
[82] *Id*. at 6-7 (citing Stainless Steel Flanges from China, Investigation No. 701-TA-585, Publication 4788, May 2018; Polytetrafluoroethylene Resin from China and India, Investigation Nos. 701-TA-588 and 731-TA-1392-1393, Publication 4801, July 2018; Certain Iron Mechanical Transfer Drive Components from Canada and China, Investigation Nos. 701-TA-550, and 731-TA-1304-1305, Publication 4587, December 2016; and Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from China and Indonesia, Investigation Nos. 701-TA-470-471 and 731-TA-1169-1170, Publication 4192, November 2010).
[83] *Id.*at 7-9 (citing Letter to the Petitioners, "Petition for the Imposition of Antidumping Duties on Imports of Certain Quartz Surface Products from the People's Republic of China: Supplemental Questions," dated April 20, 2018; MSI May 1, 2019 Letter; and MSI May 4, 2019 Letter).
[84] *See* Foliot Furniture *et al.* Case Brief at 2-4 (citing MSI May 4, 2019 Letter).

Petitioner's Rebuttal Arguments

- Record evidence fully supports Commerce's finding that domestic fabricators were not part of the domestic industry.[85] Fabricators have different production related activity, lower level of complexity, lower levels of capital investment, require less technical expertise, and fewer employees than quartz surface product producers.[86]

- Entities that only edge, trim, or finish a product in the United States have not been found to perform sufficient production-related activities to qualify as domestic producers.[87] Additionally, firms which purchase bulk chemical ingredients, compress them into tablets, and re-package them for sale also have not performed sufficient production-related activities to qualify as domestic producers.[88]

Commerce's Position

Section 732(c)(4)(E) of the Act directs Commerce as follows regarding the consideration of comments regarding industry support:

> Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.[89]

Therefore, Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation. As a result, we continue to rely on our determination of industry support provided in the Initiation Checklist, which we reiterate below.[90]

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[85] *See* Petitioner Rebuttal Brief at 4 (citing Commerce's Antidumping Duty Investigation Initiation Checklist, dated May 7, 2018 (Initiation Checklist) at Attachment II).
[86] *Id.* at 4-6 (citing Petitioner's Letter, "Certain Quartz Surface Products from the People's Republic of China: Petitioner's Response to MSI's Comments on Standing," dated May 3, 2018).
[87] *Id.* at 6 (citing Multilayered Wood Flooring from China, Investigation Nos. 701-TA-476 and 731-TA-1179, Publication 4278, November 2011; and Raw Flexible Magnets from China and Taiwan, Investigation Nos. 701-TA-452 and 731-TA-1129-1130, Publication 4030, August 2008).
[88] *Id.* (citing *Chlorinated Isocyanurates from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 78 FR 59001 (September 25, 2013) (*Chlorinated Isos*) and accompanying Initiation Checklist at Attachment II; and *Calcium Hypochlorite from the People's Republic of China: Initiation of Antidumping Duty Investigation*, 79 FR 2410 (January 14, 2014) (*Calcium Hypochlorite*) and accompanying Initiation Checklist at Attachment II).
[89] Section 732(c)(4)(E) of the Act (emphasis added); *see also Certain Uncoated Groundwood Paper from Canada: Final Determination of Sales at Less Than Fair Value*, 83 FR 39412 (August 9, 2018) and accompanying IDM at Comment 1.
[90] *See* Initiation Checklist at Attachment II.

Section 732(c)(4)(A) of the Act states that the administering authority shall determine that a petition has been filed by or on behalf of the industry if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Based on information provided in the Petition, the petitioner established that the Petition was supported by domestic producers accounting for more than 50 percent of the total production of the domestic like product, within the meaning of section 732(c)(4)(D) of the Act; therefore, it was unnecessary to poll the industry.[91]

With respect to fabricators, we analyzed the information provided by the petitioner and found that there is reason to conclude that fabricators do not perform sufficient production-related activities to be included in the domestic industry for industry support purposes. The petitioner provided detailed information to support its argument that fabricators should not be considered part of the domestic industry for standing, making it clear that there are significant differences in the level of complexity and capital investment, employment, training and technical expertise, production processes, and type of equipment, between quartz surface product slab producers and fabricators.[92] Based on the information provided by the petitioner, quartz surface products slab production involves highly complex and interconnected machinery and engineering processes, and as a result, requires specialized equipment dedicated to quartz surface products production and a significantly greater amount of capital investment, training and technical expertise, and number of employees than the fabrication process.[93] In contrast, information provided by the petitioner indicates that the fabrication process requires limited equipment that is not dedicated solely to quartz surface products, requires fewer employees, much less technical expertise, and significantly less capital investment.[94] Information provided by the petitioner further indicates that the fabrication process does not change the fundamental physical characteristics imparted during the slab production process, as fabricators simply convert an existing slab into a geometrical form for its end use or application.[95] In addition, many fabricators rely on imported slabs to produce final fabricated products.[96]

Furthermore, we noted that the petitioner's industry support calculation properly accounts for all production of quartz surface products in the United States; therefore, it necessarily accounts for the production of fabricators who fabricate U.S.-produced quartz surface products. As a result, it was unnecessary to collect data from companies that fabricate quartz surface products and doing so could result in double-counting. Given the facts regarding this industry, and consistent with Commerce's industry support methodology in past cases involving companies that may import and minimally process imported merchandise, such as *Chlorinated Isos* and *Calcium*

[91] *Id*. (citing Petitioner's Letter, "Certain Quartz Surface Products from the People's Republic of China: Petitioner's Response to MSI's Comments on Standing," dated May 3, 2018 (Industry Support Supplement) at 4-10 and Exhibits 2-8).
[92] *Id*.
[93] *Id*. (citing Industry Support Supplement at 2-4 and 6).
[94] *Id*. (citing Industry Support Supplement at 2, 5, and 7-8).
[95] *Id*. (citing Industry Support Supplement at 5).
[96] *Id*. (citing Industry Support Supplement at 9 and Exhibit 7).

Hypochlorite,[97] we have not included fabricators in the domestic industry and industry support calculation, because fabricators do not perform sufficient production-related activities to qualify as domestic producers of quartz surface products.[98]

Our analysis of the remaining information demonstrated that: 1) the domestic producers and workers who supported the petition accounted for at least 25 percent of total production of the domestic like product; and 2) domestic producers and workers who supported the petition accounted for more than 50 percent of the total production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. As a result, we found that there was adequate industry support for the petition, within the meaning of section 732(c)(4)(A) of the Act, to initiate this investigation.

CQ International also argues that numerous submissions regarding the proposed scope clarification indicate that there are multiple producers of product that would fall within the scope of the investigation and were not analyzed for the purpose of standing.[99] We find CQ International's arguments to be unavailing. As an initial matter we note that CQ International fails to provide any support or record citations for this argument.[100] Further, we note that the record is unclear as to if, or how many, U.S. producers of quartz-glass surface products exist; what their production volume might be; and whether or not they have any interest in this investigation. As a corollary, we also note that no U.S. producer of quartz-glass surface products has filed comments on the record objecting to a scope modification. Lastly, CQ International only claimed to produce and export subject quartz surface products from China.[101] Consequently, any modification of the scope, to more carefully delineate the types of crushed glass products excluded from the scope, does not impinge upon either CQ International's due process rights, or the accuracy of CQ International's calculated margin, because CQ International has, throughout the course of the investigation, claimed to be a purveyor of quartz surface products that did not qualify for any exclusions.

Comment 2: Critical Circumstances

In the *Preliminary Determination*, we based our critical circumstances analysis for: 1) CQ International, Hercules Quartz, and Yixin Stone on each company's reported shipment data; 2) for the non-individually investigated companies on Global Trade Atlas (GTA) import statistics specific to quartz surface products, less the reported shipment data for the mandatory respondents preliminarily determined not to be part of the China-wide entity; and 3) the China-wide entity, which includes Hero Stone, on AFA, due to the unresponsiveness of the China-wide entity. As a result of this analysis, we preliminarily determined that massive imports existed with respect to CQ International, Hercules Quartz, Yixin Stone, the non-individually investigated separate rate entities, and the China-wide entity, pursuant to section 733(e)(1)(B) of the Act and

[97] *Id*. (citing, *e.g.*, *Chlorinated Isos* and accompanying Initiation Checklist at Attachment II; and *Calcium Hypochlorite* and accompanying Initiation Checklist at Attachment II).
[98] *Id.* (citing Industry Support Supplement at 10).
[99] *See* CQ International Case Brief at 26.
[100] *Id*.
[101] *See e.g.*, CQ International EP and FOPs Verification Report at 9-10.

19 CFR 351.206(c)(2)(i). Further, we preliminarily determined, based upon the ITC's preliminary injury finding and the preliminary dumping margins, we found, pursuant to section 733(e)(1)(A)(ii) that importers knew or should have known that there was likely to be material injury caused by reason of such imports.[102]

LG Hausys' and Foliot Furniture et al.'s Arguments

- While Commerce considers imports of the product under investigation "massive" pursuant to its regulations if there has been an increase of 15 percent or more over a relatively short period of time, there are other factors relevant to Commerce's analysis. Commerce must also consider trends over time and determine whether there is seasonality with respect to the imports, as well as the imports' share of domestic consumption.[103]

- In the *Preliminary Determination* Commerce had insufficient time to collect and analyze information related to seasonality and the imports' share of domestic consumption. Commerce has now collected additional information, including additional shipment data, evidence of the seasonal nature of demand for quartz surface products, and evidence of the impact of section 301 duties on the quartz industry. Once these factors are properly considered, it is clear that the increase in imports is not "massive." Accordingly, Commerce should render a final negative critical circumstances determination.[104]

- Commerce's regulations require that it consider seasonal trends in determining whether there have been "massive" imports in the post-petition period. If Commerce determines that the surge is explained by seasonality, it will not find "massive" imports. The record demonstrates the demand for quartz surface products is primarily driven by builders for construction of new developments or home renovations/remodeling activity tied to the construction industry. The demand for construction materials is seasonally higher in the late spring, summer and early fall. Single family housing starts have been, according to a 50-year study, on average, "50-percent high in May/June than in December/January."[105]

- LG Hausys anticipates Commerce will use October 2017 to April 2018 as the base period and May 2018 to November 2018 as the comparison period. In a seasonality assessment, Commerce's practice is to rely on an analysis of entries over a two-year period prior to the comparison period to determine seasonal trends.[106] For the non-individually investigated companies, Commerce must continue to rely on U.S. import statistics for Harmonized Tariff Schedule of the United States (HTSUS) subheading 6810.99.0010, as in the *Preliminary*

[102] *See Preliminary Determination* and accompanying PDM at 25-27.
[103] *See* LG Hausys' Case Brief at 3 (citing 19 CFR 351.206(h)(1) and (h)(2); and *Enforcement & Compliance Antidumping Manual* (*E&C Antidumping Manual*), Chapter 12: Critical Circumstances at 6).
[104] *See* LG Hausys' Case Brief at 4 (citing *Preliminary Determination* and accompanying PDM at 4, and 26-27).
[105] *Id.* at 5-7.
[106] *Id.* at 6 (citing *Carbon and Alloy Steel Wire Rod from the United Kingdom: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 83 FR 13252 (March 28, 2018); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29310 (May 22, 2006)).

Determination. The data demonstrate a clear and consistent seasonal trend. Commerce should render a negative final critical circumstances determination for the non-individually investigated companies because the increase in imports is not "massive" in accordance with section 735(a)(3)(B) of the Act.[107]

- Even if Commerce determines that there are not seasonal trends in regard to quartz surface products, the imports of quartz surface products are not "massive." First, the substantial increase in U.S. domestic consumption of quartz surface products has grown at very high rates in recent years. If subject imports merely increased consistent with rising U.S. demand, they would increase at or above the 15 percent threshold for critical circumstances. Additionally, there are unusual circumstances present in this investigation that must be accounted for in Commerce's analysis.[108] The impending section 301 tariffs, which took effect September 18, 2018, caused imports to increase significantly in order to meet rising U.S. demand.

Foliot Furniture et al.'s Additional Arguments

- Commerce was correct to find there is not a history of injurious dumping of quartz surface products from China. Nor is there evidence on the record that the importers knew or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely material injury.

- Record evidence supports the fact that the trend for demand for quartz surface products is seasonally higher in late spring, summer and early fall months compared to the rest of the year. The ITC has recognized the seasonality of quartz surface products.[109] Further, imports of custom fabricated-fully finished quartz products are based on contracts and construction projects. Any increase in imports for these products are due to a specific building project. Thus, Commerce should rely on an analysis of entries over a two-year period prior to the comparison period.[110]

Hero Stone's Arguments

- Imports of subject merchandise by Hero Stone did not increase by a "massive" amount following the April 17, 2018, petitions, and Commerce's finding of critical circumstances

[107] *Id.* at 7-10 (citing *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (March 26, 2012)).
[108] *Id.* at 11-12 (citing *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004)).
[109] *See* Foliot Furniture *et al.*'s Case Brief at 6 (citing to Mstone LLC *et al.*'s Letter, "Certain Quartz Surface Products from the People's Republic of China: Rebuttal Factual Information Pertaining to Petitioner's Unlawful Attempt to Expand the Scope of the Investigation," dated March 8, 2019, at Exhibit 9, Quartz Surface Products from China, USITC Pub. No. 4794 (June 2018) II-7; *see also* Id. at 22, fn. 134).
[110] *See* Hero Stone's Case Brief at 6-7 (citing *E&C Antidumping Manual*, Chapter 12: Critical Circumstances at 7).

must be reversed.[111] The data collected from Hero Stone does not show a massive increase between the base and comparison periods.[112] Because Commerce's "normal practice {of} exam{ing} the longest period for which information is available up to the date of the preliminary determination," Commerce should use a base period of October 2017 through April 2018, and comparison period of May 2018 through November 2018.[113]

- Commerce did not conduct an analysis of seasonal trends of subject merchandise, contrary to Commerce's stated policy to base its "critical circumstances analysis on all available data."[114] Commerce's regulations mandate that Commerce consider seasonal trends in determining whether imports are "massive" in the context of a critical circumstances allegation.[115] The demand for construction materials, like quartz surface products, is seasonally higher in late spring, summer, and early fall months. U.S. imports from China are also seasonal because of the Chinese New Year holidays that typically occur in late January or February. The record demonstrates these seasonal trends. Commerce is obligated to assess in its critical circumstances findings whether these import trends are historical.[116]

- Commerce must factor rising demand into its critical circumstances analysis. The record demonstrates that subject import volumes have been increasing substantially since at least 2015 to meet the "extraordinarily strong" demand.[117] Accordingly, Commerce should also assess whether a 15-percent threshold is meaningful in the context of this investigation, given demand trends.[118]

- Commerce should assess whether "unusual" circumstances are present in this investigation that must be accounted for in Commerce's "massive" imports analysis.[119] The timing of imports of quartz surface products from China has been affected by the new Section 301 proceeding undertaken by the Office of the United States Trade Representative (USTR), and the USTR's subsequent imposition of a 10 percent *ad valorem* tariff on imports of quartz surface products from China.[120]

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[111] *Id.* at 20.
[112] *Id.* at 22.
[113] *Id.* at 22 (citing to *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310 (May 22, 2006) and accompanying IDM at 11-12).
[114] *Id.* at 21 (citing *Preliminary Determination* and accompanying PDM at 26-27).
[115] *Id.* at 23 (citing 19 CFR 351.351.206(h)(1) {sic}; and *E&C Antidumping Manual*, Chapter 12: Critical Circumstances at 6).
[116] *Id.* at 23-24.
[117] *Id.* at 24 (citing Petition, Vol. I, Exhibit I-12).
[118] *Id.* at 24.
[119] *Id.* at 25 (citing *E&C Antidumping Manual*, Chapter 12: Critical Circumstances at 8; *see also Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying IDM at Comment 3).
[120] *Id.* at 25 (citing *Notice of Modification of Section 301 Action: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation*, 83 FR 47974 (September 21, 2018)).

Petitioner's Rebuttal Arguments

- No party has challenged the affirmative determinations for the China-wide entity or the individual mandatory respondents. Yixin Stone is the sole individual mandatory respondent with verified critical circumstance data and it failed to challenge Commerce's affirmative finding with respect to itself. Hercules withdrew from further participation, precluding any reconsideration of its critical circumstances determination.[121] CQ International refused to allow verification of its shipment data and did not challenge its critical circumstances determination in its brief. Hero Stone was denied a separate rate and treated as part of the China-wide entity and its shipment data is irrelevant.[122] Commerce should continue to find critical circumstances for the China-wide entity, Yixin Stone and, by extension, the non-individually investigated companies.[123]

- Commerce chose the correct base and comparison periods for its critical circumstances analysis, consistent with its practice, with the comparison period limited by the month that Commerce began imposing preliminary countervailing duties on subject imports.[124] Further, Commerce correctly limited its critical circumstances analysis to a single HTSUS code, this is solely reserved for subject merchandise.[125]

- Commerce must use Yixin Stone's data to analyze critical circumstances for Yixin Stone and the non-individually examined respondents. The publicly available U.S. import data for HTSUS 6810.99.0010 are not usable because the shipments of three mandatory respondents cannot be subtracted from the data. Nor is there a complete publicly available U.S. import data on the record that would allow Commerce to conduct its analysis. Using Yixin Stone's data for the non-individually examined respondents is consistent with *Stainless Steel Flanges from India*, where Commerce relied on data of the lone cooperating mandatory respondent to determine critical circumstances for the non-individually examined respondents.[126]

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[121] *See* Petitioner's Rebuttal Brief at 52 (citing *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) and accompanying IDM at Comment 24 (*PVLT Tires from China*)).

[122] *Id.* at 52 (citing *Countervailing Duty Investigation of Certain Biaxial Integral Geogrid Products from the People's Republic of China: Final Affirmative Determination and Final Determination of Critical Circumstances, in Part*, 82 FR 3282 (January 11, 2017) and accompanying IDM at Comment 6; and *Antidumping Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Affirmative Final Determination of Sales at Less-Than-Fair Value*, 83 FR 57421 (November 15, 2018) and accompanying IDM at Comment 2).

[123] *Id.* at 52-53.

[124] *Id.* at 53 (citing *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 76 FR 67688 (November 2, 2011) (*Refrigerators from Mexico*); and *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017) and accompanying IDM at Comment 28).

[125] *Id.* at 53-54.

[126] *Id.* at 55-56 (citing *Stainless Steel Flanges from India: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstance Determination*, 83 FR 40745 (August 16, 2018) and accompanying IDM at 4 (*Stainless Steel Flanges from India*)).

- Although monthly import data was placed on the record for HTSUS 6810.99.0010, these data only go back to January 2016. The party claiming a seasonality adjustment bears the burden of developing the record with the necessary evidence.[127] Interested parties in this case did not place 2015 U.S. import data on the record and the lack of such data renders the remaining data unusable. Commerce should reject LG Hausys' suggestion that Commerce can place any missing import data on the record and reject the portions of LG Hausys' case brief that discuss import data not on the record. Commerce has flatly and directly rejected requests to supplement the record with import data for an analysis of critical circumstances and should do so here.[128]

- Commerce usually requires a minimum of three years of import data to be able to conduct its seasonality analysis, in some cases going back as far as ten years to assess whether seasonality exists.[129] In this case the record lacks such a robust data set. The data to perform a review, such as LG Hausys suggests, is simply not on the record. Given that Commerce cannot employ its traditional methodology to analyze seasonality, Commerce should follow its precedent in *Stainless Steel Flanges from India*, cited above, and analyze critical circumstances using only Yixin Stone's data.[130]

- Yixin Stone's data fails to demonstrate the clear and predictable trends, consistent spikes and dips, imports dominated by seasonality, and predictable fluctuations. Rather, Yixin Stone's data shows sporadic variations which Commerce rejects as an indication of seasonality.[131]

- Even if Commerce does discern a seasonal signal in Yixin Stone's data, it should still find massive imports in the comparison period after adjusting for seasonality. Commerce should disregard anomalous periods as aberrational. Even if Commerce finds seasonality exists, Yixin Stone's comparison period imports were still massive whether Commerce uses three, four, or five-month period duration. Commerce should find critical circumstances exist for Yixin Stone and the non-individually investigated companies.[132]

- LG Hausys' claim that section 301 duties skewed import statistics is not supported by the record. In fact, Yixin Stone's monthly shipment data do not demonstrate any such response. If Commerce takes the section 301 duties and their effect into account, it should do so by

[127] *Id.* at 57 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China*, 68 FR 55589 (September 26, 2003) (*Refined Brown Aluminum Oxide from China*) and accompanying IDM at Comment 2).
[128] *Id.* at 57-58 (citing *PVLT Tires from China* and accompanying IDM at Comment 24).
[129] *Id.* at 58 (*Refrigerators from Mexico*, 76 FR at 67688; and *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination*, 80 FR 4250 (January 27, 2015) and accompanying PDM at 28).
[130] *Id.* at 58-59.
[131] *Id.* at 60.
[132] *Id.* at 61-62.

using a shorter four-month comparison period to avoid the anomalous drop in imports due to the dual imposition of section 301 duties and preliminary CVD duties.[133]

- If Commerce relies on the U.S. import data on the record, these data show massive imports. Even after adjusting for seasonality, the increase in imports that took place in May to August of 2018 was well above the increases that took place in 2016 and 2017.[134]

- A comparison of the base period to the comparison period in prior years already takes into account not only seasonality, but also any growth in demand occurring between those periods. There is no reason to adjust the analysis to take increasing demand into account. In addition, the evidence shows that demand has been growing at 15 percent on an annual basis. An annual 15 percent growth rate converts to a five-month growth rate of 6.0 percent. Even if Commerce makes an adjustment for increasing demand, imports of subject merchandise were still massive after the filing of the petitions.[135]

Commerce's Position:

For the final determination, we continue to find that critical circumstances exist for CQ International, Yixin Stone, the China-wide entity, and the separate rate companies. Additionally, we have based our analysis for the "massive" determination for the separate rate respondents on Yixin Stone's data.[136] We also continue to find, as AFA applied to the China-wide entity, that there are massive imports for the China-wide entity.[137]

Section 735(a)(3) of the Act provides that, if the final determination is affirmative, for any investigation in which critical circumstances has been alleged under section 733(e) of the Act, Commerce shall also make a final determination with regards to critical circumstances. Section 735(a)(3) of the Act provides that Commerce will determine whether there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to

[133] *Id.* at 62-63.
[134] *Id.* at 63-64.
[135] *Id.* at 65.
[136] *See* Memorandum, "Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China: Final Critical Circumstances Analysis," dated concurrently with this memorandum (Final Critical Circumstances Memo) at Attachment 1; *see also*, *e.g.*, *Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 81 FR 49950 (July 29, 2016) and accompanying IDM at section IV; *Certain Carbon and Alloy Steel Cut-to-Length Plate from Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16345 (April 4, 2017) (*CTL Plate from Italy*) and accompanying IDM at section IV; and *Stainless Steel Flanges from India* and accompanying IDM at section IV.
[137] *See*, *e.g.*, *Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 80 FR 34893 (June 18, 2015) and accompanying IDM at "Critical Circumstances." Note that, for the purposes of this final determination, Hercules Quartz is part of the China-wide entity.

be material injury by reason of such sales; and (B) there were massive imports of the subject merchandise over a relatively short period.

There is no evidence of a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise pursuant to section 735(a)(3)(A)(i).[138]

In determining whether an importer knew or should have known that the exporter was selling subject merchandise at LTFV and that there was likely to be material injury by reason of such sales pursuant to section 735(a)(3)(A)(2), Commerce must rely on the facts before it at the time the determination is made. For the *Preliminary Determination*, we based our decision with respect to knowledge on the margins calculated in the preliminary determination and the ITC's preliminary injury determination.[139] Commerce normally considers margins of 25 percent or more for EP sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV.[140]

The argument of Foliot Furniture *et al.* that there is no evidence on the record was belied by the margins calculated in the *Preliminary Determination* (*i.e.*, between 242.10 to 341.29 percent) and the ITC's preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by imports of quartz surface products from China.[141] Further, for this final determination, we continue to calculate margins far in excess of the 25 percent required to impute knowledge in EP sales and the 15 percent required to impute knowledge in regard to CEP sales. In accordance with our practice, we find that the knowledge requirement, pursuant to section 735(a)(3)(A)(2), has been satisfied.

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.[142]

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[138] *See Preliminary Determination* and accompanying PDM at 24-25 ("There have been no previous orders on {quartz surface products} in the United States, and Commerce is not aware of the existence of any active AD orders on {quartz surface products} from China in other countries."). Parties did not argue otherwise for this final determination.

[139] *See*, *e.g.*, *Certain Potassium Phosphate Salts from the People's Republic of China: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation*, 75 FR 24572, 24573 (May 5, 2010).

[140] *See*, *e.g.*, *Carbon and Alloy Steel Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790 (August 30, 2002); and *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 69 FR 59187 (October 4, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005).

[141] *See Quartz Surface Products from China*, 83 FR 26307 (June 6, 2018).

[142] *See* 19 CFR 351.206(h)(2).

Various parties urge different base and comparison periods for Commerce to consider in its final critical circumstances determination. It is Commerce's practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.[143] Further, Commerce's practice is to limit the comparison period by the suspension of liquidation resulting from an affirmative preliminary determination.[144] When, as is the case here, there is a companion CVD investigation, we limit the duration of the comparison period by the month that Commerce began imposing preliminary countervailing duties on subject imports (*i.e.*, September 2018).[145] Thus, we continue to use the base period of December 2017 through April 2018 and a comparison period of May 2018 through September 2018 for this final determination of critical circumstances.

The remaining arguments of the parties relate to whether the imports of quartz surface products from China were "massive" over a relatively short period. These arguments have three bases: 1) seasonal trends account for the increase in imports when analyzing the base and comparison periods; 2) rising demand for quartz surface products in the U.S. market must be considered in Commerce's critical circumstances analysis; and 3) the effect of the section 301 duties must be considered in Commerce's critical circumstances analysis.

The factors Commerce considers in its critical circumstances analysis are set forth in 19 CFR 351.206(h)(1), which enumerates the factors as:

(i) The volume and value of the imports;
(ii) Seasonal trends; and
(iii) The share of domestic consumption accounted for by the imports.

Conspicuously absent from this list are trends in U.S. demand for subject merchandise and effects of impending tariffs. Commerce has not considered these factors as part of its practice, and they are not found in the enumerated list of factors to be considered in our regulations. Consequently, we have not considered either in our analysis of critical circumstances in this case.

However, pursuant to 19 CFR 351.206(h)(1)(ii), we normally consider seasonal trends in our analysis. It is our practice to look first at seasonality in the industry under investigation and then,

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[143] *See*, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-47119 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying IDM at Comment 3.

[144] *See Refrigerators from Mexico*, 76 FR at 67702 ("These periods were selected based on {Commerce's} practice of using the longest period for which information is available from the month the petition was filed through the effective date of the preliminary determination.").

[145] *See*, *e.g.*, *Truck and Bus Tires from the People's Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 Fed. Reg. 8599 (January 27, 2017) and accompanying IDM at Comment 28.

if seasonal trends are found, to examine respondent data to see if the seasonal trends explain the change in the post-petition period.[146] Further, the burden of demonstrating seasonality is on the respondents.[147] Although interested parties have advanced seasonality arguments in this case, they appear to be largely self-serving, and are not sufficiently supported by record evidence. Commerce has previously found that "{s}easonal trends, such as those affecting shipments of agricultural products, are the result of conditions known to repeat themselves each year (*e.g.*, a harvest at the end of each summer, or a surge in consumer shopping during the Christmas season)."[148] For durable building goods which have a long shelf life – such as quartz surface products – demand may ebb and flow over the course of the year; however, Commerce sets a higher bar when analyzing seasonal trends than minor fluctuations in import volumes. For example, in *Refined Brown Aluminum Oxide from China* we stated that

> {Commerce} normally does not find seasonality for products for which production and sale are not linked to the seasons. Furthermore, {Commerce} cannot assume that the nature of the production and sale of the subject merchandise {} is seasonal, irrespective of how {the respondent} chooses to ship the subject merchandise. {The respondent} has not provided any evidence that links its shipment data to seasonal changes.[149]

We find the ITC's report, cited to by LG Hausys, to be inconclusive as to seasonal trends in the quartz surface products industry. In that report, the ITC stated that two of three producers noted seasonal trends, while the majority of importers did not note seasonal trends.[150] Additionally, the respondents failed to provide sufficient verifiable data to analyze for seasonality in the quartz surface products industry as a whole.[151] The respondents cited to evidence showing an increase in new home starts during the second and third quarters of the year and purportedly linking these

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[146] *See*, *e.g.*, *1,1,1,2-Tetrafluroethane From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 79 FR 62597 (October 20, 2014) and accompanying IDM at Comment 6.

[147] *See*, *e.g.*, *PVLT Tires from China* and accompanying IDM at Comment 23; and *Refined Brown Aluminum Oxide from China* and accompanying IDM at Comment 2.

[148] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012) (*Solar Cells CVD Final Determination*) and accompanying IDM at Comment 4.

[149] *See Refined Brown Aluminum Oxide from China* and accompanying IDM at Comment 2.

[150] *See* ITC Publication No. 4794 (June 2018), "Quartz Surface Products from China Investigation Nos. 701-TA-606 and 731-TA-1416 (Preliminary)," (ITC Pub. 4794 Quartz Surface Products from China Prelim) at II-7 ("Two of three U.S. producers and 22 of 76 importers indicated that the market was subject to business cycles or distinct conditions of competition. Firms reported that demand from the construction industry is seasonal. Spring and fall were cited as busy seasons for home renovations, and winter was cited as generally being a slower season for construction in most regions."). Additionally, we note that the construction start date data and home remodeling data reviewed by the ITC shows both fall within a relatively tight band over time, with no clear distinctions in seasons. *Id*. at II-6. Further, there is no explanation of when quartz surface products are installed during the construction cycle; however, because quartz surface products are used as a "surface product" that require mounting onto an existing surface, it is likely that the quartz surface products at issue in this investigation are installed later in the construction process, and thus they are likely to be installed significantly after any new construction is started.

[151] *See*, *e.g.*, *QVD Food Co. v. United States*, 658 F.3d 1318, 1324 (Federal Circuit 2011) (*QVD Food Co.*) (the "burden of creating an adequate record lies with {interested parties} and not with Commerce").

new starts to higher demand for quartz surface products during those time periods.[152] We disagree that there is a linkage or that demand swings are significant enough to establish seasonal trends worthy of an adjustment under 19 CFR 351.206(h)(1)(ii). To the contrary, we note that 1) large segments of the U.S. market do not have extreme temperature swings and new construction starts can happen year-round (this appears to be borne out by the ITC's data);[153] 2) quartz surface products are frequently used in remodels which do not operate under the same seasonal constraints, thus their linkage to new home starts is tenuous, at best; and 3) quartz surface products are one of the last items to go into any new home construction project; thus, if home starts occur more frequently in spring-through-early-fall, it is likely that the highest demand for quartz surface products in the construction cycle of new homes would actually occur in the fall and winter, when the new construction is nearing completion. In sum, the record does not support the importers' argument that the demand for quartz surface products at issue in this investigation is tied to the construction industry or that a greater number of construction starts equates to an instantaneous and corresponding rise in demand for quartz surface products. Additionally, the import statistics in Arizona Tile *et al.*'s letter only provide data for 2016, 2017, and 2018.[154] Given that the data on the record covers only two years prior to the POI,[155] it is insufficient for purposes of a critical circumstances analysis based on seasonality.

The only remaining respondent for which we have the verified quantity and value data required to perform a seasonality analysis is Yixin Stone. Yixin Stone itself has not argued that there are seasonal trends in the quartz surface products industry, and an examination of its historic shipment data show sporadic variations and large fluctuations which render the data unusable for the purposes of observing any clear or predictable trends of time, *i.e.*, the sort of consistent spikes and dips, imports dominated by seasonality, and predictable fluctuations over time that Commerce requires to make a seasonality adjustment.[156]

Based upon the information submitted by Yixin Stone (*i.e.*, for the comparison period May 2018 through September 2018, with the base period of December 2017 through April 2018); we find massive imports for Yixin Stone (*i.e.*, an increase greater than or equal to 15 percent between the

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[152] *See* Letter from Arizona Tile *et al.*, "Quartz Surface Products from the People's Republic of China: Factual Information to Clarify Export Data Relevant to the Department's Critical Circumstances Determination," dated October 19, 2018 (Arizona Tile *et al.* October 19, 2018 Factual Information).
[153] *See* ITC Pub. 4794 Quartz Surface Products from China Prelim at II-6 to II-7.
[154] See Arizona Tile *et al.* October 19, 2018 Factual Information at Exhibit 2.
[155] *See*, *e.g.*, *QVD Food Co.*, 658 F.3d 1318, 1324.
[156] *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502, 24504 (May 10, 2005); *see also Solar Cells CVD Final Determination* and accompanying IDM at Comment 4 ("This type of sporadic variation is not the type of predictable fluctuation associated with seasonal trends. Seasonal trends, such as those affecting shipments of agricultural products, are the result of conditions known to repeat themselves each year (*e.g.*, a harvest at the end of each summer, or a surge in consumer shopping during the Christmas season). It is possible to subtract the effects of such predictable, measurable, cyclical patterns from import surges and then determine if what remains constitutes a 'massive increase.' There is no convincing explanation as to what might be the theoretical condition that causes an end-of-year increase in solar cell shipments"). Additionally, even if, *arguendo*, we were to consider a seasonality adjustment for Yixin Stone, its data demonstrate that its imports continue to be "massive," *i.e.*, imports have increased more than 15 percent over the imports during the immediately preceding period of comparable duration. *See* Final Critical Circumstances Memo.

base and comparison periods), and thus we continue to find that affirmative critical circumstances exist for Yixin Stone, for this final determination.[157]

CQ International refused, at verification, to submit to the verification of its critical circumstances shipment data.[158] Therefore, CQ International provided information that could not be verified, as provided in sections 782(i) and 776(a)(2)(D) of the Act, and we must make a determination on the basis of facts available pursuant to section 776(a) of the Act. Furthermore, by failing to permit its critical circumstances information to be verified, we find CQ International failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information and, therefore, find the use of an adverse inference when relying on facts available appropriate. Because we lack verified shipment data from CQ International, as facts available with an adverse inference, pursuant to 776(b) of the Act, for purposes of the "massive" analysis, we find that CQ International shipped quartz surface products in "massive" quantities during the comparison period, thereby fulfilling the criteria under section 735(a)(3)(B) of the Act and 19 CFR 351.206(i). Consequently, we determine that affirmative critical circumstances exist with regard to CQ International.

With regard to the separate rate companies, in the *Preliminary Determination* we analyzed GTA import statistics specific to quartz surface products, less the mandatory respondents' reported shipment data, to determine if imports in the comparison period for the subject merchandise were massive. However, because in this case three of the four mandatory respondents, representing a significant portion of U.S. imports, did not provide verifiable critical circumstances data, we find the normal method of subtracting the mandatory respondent's data (*i.e.*, that of Yixin Stone) from the GTA data to be an unreliable indicator of the experience of the separate rate companies for purposes of the "massive" determination.[159] Thus, we are basing the finding of massive imports for separate rate respondents on the shipment data provided by Yixin Stone, the only mandatory respondent which provided verifiable critical circumstances data.[160] As explained above, we find that Yixin Stone's imports were massive. Consequently, we also find this to be a reasonable finding to apply to the separate rate companies. For the foregoing reasons, we find affirmative critical circumstances for the separate rate companies.

Concerning the China-wide entity, as noted above, we determined to apply total AFA as described under sections 776(a) and 776(b) of the Act. Thus, for purposes of the "massive" analysis, because we lack the necessary reliable shipment data from the China-wide entity (*see* our analysis above under "Use of Adverse Facts Available," applying total AFA to the China-wide entity), we determine, pursuant to sections 776(a) and 776(b) of the Act, that the China-wide entity shipped quartz surface products in "massive" quantities during the comparison period, thereby fulfilling the criteria under section 735(a)(3)(B) of the Act and 19 CFR 351.206(i). Therefore, we determine that affirmative critical circumstances exist with regard to the China-wide entity.

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[157] *See* Final Critical Circumstances Memo.
[158] *See* CQ International EP and FOP Verification Report at 2, 3, and 12.
[159] This is consistent with past cases where we had similar facts. *See*, *e.g.*, *CTL Plate from Italy* and accompanying IDM at section IV; and *Stainless Steel Flanges from India* and accompanying IDM at section IV.
[160] *See* Final Critical Circumstances Memo.

We disagree with Hero Stone that it would be appropriate to base a determination as to whether Hero Stone's imports are massive on its reported shipment data. As noted in Comment 15, below, we continue to find that Hero Stone, Foshan Quartz Stone, and HK Hero Stone are part of the China-wide entity. As a result, it would be inappropriate to treat Hero Stone, Foshan Quartz Stone, and HK Hero Stone separately from the entity for purposes of any critical circumstances determination and therefore Hero Stone's remaining arguments regarding critical circumstances are moot.

Comment 3: Authority to Collect Cash Deposits Based Upon an Affirmative Preliminary Critical Circumstances Determination

Arguments of CQ International, Dal-Tile, Arizona Tile et al., and Foliot Furniture et al.

- Section 733(e)(2) of the Act, which relates critical circumstances determinations, only provides for the suspension of liquidation. Section 733(e)(2) of the Act states that if the critical circumstances determination is affirmative then any suspension of liquidation ordered under section 733(d)(2) of the Act shall apply. Because subsection (d)(2) provides only for the suspension of liquidation on or after the date on which notice of determination is published, the retroactive collection of cash deposits is not authorized.[161]

- U.S. law permits Commerce to suspend liquidation of entries up to 90 days prior to the Preliminary Determination based on a finding of critical circumstances.[162] However, there is no statutory authority to require cash deposits retroactively on entries made prior to the Preliminary Determination based solely on an affirmative preliminary finding of critical circumstances.[163]

Foliot Furniture et al.'s Additional Argument

- Commerce lacks authority under section 733 of the Act to instruct CBP to collect retroactive AD deposits for entries made prior to the *Preliminary Determination* publication at this time. Section 733(d) of the Act only allows Commerce to instruct the suspension of liquidation for entries of subject merchandise and collection of cash deposits for entries made after the publication of the preliminary determination.[164]

Petitioner's Rebuttal Arguments

- The arguments put forth by the respondents and importers fail to take into account other provisions of the Act that clearly and expressly authorize Commerce to require posting of cash deposits when Commerce makes an affirmative preliminary critical circumstances determination and begins retroactively suspending liquidation of affected entries.[165] The Act

[161] *See* Foliot Furniture *et al.*'s Case Brief at 8-9.
[162] *See* Arizona Tile *et al.*'s Case Brief at 9-10.
[163] *Id.* at 10-12.
[164] *See* Foliot Furniture *et al.*'s Case Brief at 7-8.
[165] *See* Petitioner's Rebuttal Brief at 66-67 (citing section 735(c) of the Act).

specifically recognizes that section 733(e)(2) authorizes the collection of cash deposits on entries of merchandise that are suspended from liquidation due to a preliminary determination of critical circumstances.[166]

- Commerce specifically addressed this precise issue when it published regulations regarding the retroactive collection of cash deposits for critical circumstances in countervailing duty investigations. Commerce stated in response to comments that the authority to impose retroactively a bond or cash deposit requirement is stated by implication in the corresponding countervailing duty provision of the Act.[167]

Commerce's Position

Section 733(d)(1)(B) of the Act directs that Commerce "shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable." Section 733(d) of the Act provides the general rules for the suspension of liquidation, directing that Commerce "shall order the posting of a cash deposit…" when it makes an affirmative preliminary determination under section 733(b) of the Act.[168] Section 733(e)(2) of the Act provides the specific rule for the suspension of liquidation applicable to an affirmative preliminary determination of critical circumstances in an antidumping duty investigation – specifying that "any suspension of liquidation ordered under subsection (d)(2) shall apply."

Because an affirmative determination of critical circumstances affects the date of applicability of suspension of liquidation under section 733(d)(2) of the Act, the rule for collection of cash deposits is the same as in the event of an affirmative preliminary determination under 733(d)(1)(B) of the Act, *i.e.*, that Commerce "shall order the posting of a cash deposit… for each entry" in the case of an affirmative determination. Additionally, section 735(c)(4)(A) of the Act, clearly authorizes Commerce to "continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 733(e)(2)" when Commerce makes a final affirmative critical circumstances determination (emphasis added). Likewise, section 735(c)(3)(B) of the Act specifies that, in the event of a final negative determination of critical circumstances, Commerce should "release any bond or other security, and refund any cash deposit required, under section 733(d)(1)(B) with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 733(e)(2)." Since section 735(c) of the Act contemplates either 1) continuation of retroactive suspension and posting of a cash deposit in case of an affirmative final determination by Commerce,[169] or 2) the refunding of cash deposits in the case of a negative critical circumstances determination,[170] then clearly Commerce has the authority to collect cash deposits on the retroactively suspended entries in the case of an affirmative preliminary circumstances determination under section

[166] *Id.* at 67-68.
[167] *Id.* at 68-69 (citing *Countervailing Duties: Final Rule*, 53 FR 52306, 52319 (December 27, 1988)).
[168] *See* section 733(d)(1)(B) of the Act.
[169] *See* section 735(c)(4) of the Act.
[170] *See* section 735(c)(3) of the Act.

733(e) of the Act. This reading of the relevant provisions of the Act is also consistent with Commerce's long-established practice of instructing CBP to collect cash deposits during the entirety of the suspension of liquidation period.[171]

The arguments of the respondent and the importers rely upon a narrow reading of a single provision of the Act without reference to other relevant provisions. Consequently, the respondent and importers reach an incorrect conclusion based upon an incomplete reading of a narrow portion of the statute. As explained above, when read as a whole, the statute clearly directs Commerce to suspend liquidation and collect cash deposits when it reaches a preliminary affirmative determination of critical circumstances. Thus, consistent with the statute and our practice, and because we continue to find affirmative critical circumstances (*see* Comment 2, above), we have not made any of the alterations suggested by the respondent or importers to our previous cash deposit instructions to CBP.

Comment 4: Voluntary Respondent

On June 15, 2018, we selected the four largest exporters/producers of the subject merchandise by volume, CQ International, Hero Stone, Yixin Stone, and Hercules Quartz, for individual examination as mandatory respondents.[172] In the Respondent Selection Memo, we addressed requests by Yixin Stone and Sinostone (Guangdong) Co., Ltd. to be voluntary respondents, stating that if a party met the requirements of section 782(a) of the Act and 19 CFR 351.204(d), we would evaluate the circumstances during the course of the investigation to determine if we could examine another respondent.[173] On June 19, 2018, Hirsch Glass[174] requested treatment as a voluntary respondent in this investigation and submitted timely responses to sections A, C, and D, of Commerce's antidumping duty questionnaire by the due dates specified for the mandatory respondents.[175] On November 8, 2018, we determined not to select Hirsch Glass as a voluntary respondent because doing so would be unduly burdensome and inhibit the timely completion of the investigation.[176] On December 3, 2018, after the *Preliminary Determination*, Hirsch Glass renewed its request to be treated as a voluntary respondent and requested that

[171] *See*, *e.g.*, *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 79 FR 68860 (November 19, 2014); *see also Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Circular Welded Carbon Quality Steel Pipe from the People's Republic of China*, 73 FR 31970 (June 5, 2008).
[172] *See* Memorandum, "Respondent Selection for the Antidumping Duty Investigation of Certain Quartz Surface Products from the People's Republic of China," dated June 15, 2018 (Respondent Selection Memo).
[173] *Id*. at 7.
[174] Hirsch Dalian is the Chinese producer/exporter; Hirsch Glass is the affiliated U.S. importer. For clarity, we refer to the entity collectively as "Hirsch Glass."
[175] *See* Hirsch Glass' Letter, "Certain Quartz Surface Products from the People's Republic of China; ("Quartz Surface Products"); A-570-084; Request for Voluntary Respondent Treatment," dated June 19, 2018; *see also* Hirsch Glass' July 18, 2018 Section A Questionnaire Response; and Hirsch Glass' August 11, 2018 Sections C and D Initial Questionnaire Response.
[176] *See* Memorandum, "Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from China: Selection of Voluntary Respondent" dated November 8, 2018 (Voluntary Respondent Memo).

Commerce reconsider its determination not to accept Hirsch Glass as a voluntary respondent in this investigation.[177]

Hirsch Glass' Arguments

- Commerce refused to accept Hirsch Glass as a voluntary respondent, citing work load and the fact Commerce was reviewing four mandatory respondents. However, one of the mandatory respondents (Hero Stone) was rejected in the preliminary determination and a second (Hercules Quartz) withdrew from participation soon thereafter. Therefore, Commerce conducted a preliminary determination of only three respondents and will be verifying and conducting a final review of the data of only two. Accordingly, Commerce had the resources after the preliminary determination to review Hirsch Glass' response, issue supplemental questionnaires, and conduct a verification at the time contemporary with the verifications of the other mandatory responses. Further, as Commerce had received no new petition for more than 30 days from December 3, 2018, even if a new petition were filed, Commerce would not need to allocate resources to the new investigation until after the time for completing the analysis and verification of Hirsch Glass.[178]

- Commerce had sufficient time before the final determination in which it can calculate a rate for Hirsch Glass based on its voluntary response.[179]

- Hirsh Glass should not be punished by not being selected as a voluntary respondent because the cited circumstances for not selecting Hirsh Glass as a voluntary respondent disappeared and Commerce nevertheless refused to act.[180]

Petitioner's Rebuttal Comments

- Commerce should reject Hirsh Glass' request to reconsider Commerce's decision not to accept Hirsh Glass as a voluntary respondent at this late stage. As it has been nearly 11 months since the initiation of this investigation and over four months since the end of the preliminary phase, it would be unduly burdensome for Commerce to analyze and verify Hirsch Glass' data and unduly impede the timely completion of this investigation, especially given this final determination has already been postponed due to the government shutdown.[181]

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[177] *See* Hirsch Glass' Letter, "Certain Quartz Surface Products from the People's Republic of China; ("Quartz Surface Products"); A-570-084; Request for Reconsideration," dated December 3, 2018 (Hirsch Glass Request for Reconsideration of Voluntary Status).
[178] *See* Hirsch Glass Case Brief at 1-2 (citing Hirsh Glass Request for Reconsideration of Voluntary Status). We note that Hirsch Glass filed its request for voluntary respondent treatment and separate rate application as "Hirsch Dalian," its request for reconsideration as "Hirsch Glass Corporation," and its voluntary response and case brief as "Hirsch Glass." We are referring to all of the aforementioned entities as "Hirsch Glass" for the purpose of this final determination.
[179] *Id.* at 2.
[180] *Id.* at 3.
[181] *See* Petitioner Rebuttal Brief at 69.

- Commerce has the discretion to limit its examination to a reasonable number of respondents if it is not practicable to make individual determinations because of the large number of entities involved and can decline to examine voluntary respondents if doing so would be unduly burdensome.[182]

- The number of mandatory respondents participating in the investigation is just one factor in Commerce's analysis of its resource constraints when determining whether to examine a voluntary respondent. Due to numerous petitions being filed in the last 60 days, Commerce was justified in rejecting Hirsch Glass' request for a separate review at this stage of the investigation.[183] Commerce was similarly justified in rejecting Hirsch Glass' voluntary respondent request at the preliminary state of the investigation due to the number of separate rate applications received.[184]

Commerce's Position:

For the reasons discussed in the Voluntary Respondent Memo,[185] in the *Preliminary Determination*,[186] and reiterated below, we continue to find that we did not have sufficient resources, or time, to individually examine Hirsch Glass for this investigation. Consequently, we continue to assign Hirsch Glass the separate rate margin determined in this final determination.

Section 777A(c)(1) of the Act directs Commerce to calculate an individual weighted average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives Commerce discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations for each known exporter or producer because of the large number of exporters and producers involved in the investigation.

When Commerce limits the number of entities individually examined in an investigation pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs Commerce to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: 1) the information is submitted by the due date specified for the mandatory respondents; and 2) the number of such companies subject to the investigation is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the investigation.

Under Section 782(a) of the Act, in determining whether it would be unduly burdensome to examine a voluntary respondent, Commerce may consider: 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of Commerce in the same or similar proceedings; 3) the total number of

[182] *Id*. at 70-71 (citing sections 777A(c)(2) and 782(a)(1) of the Act).
[183] *Id.*at 71-72.
[184] *Id.* at 72.
[185] *See* Voluntary Respondent Memo at 2-4.
[186] *See Preliminary Determination* and accompanying PDM at 6-7.

investigations or reviews being conducted by Commerce; and 4) such other factors relating to the timely completion of these investigations and reviews.

On June 15, 2018, we determined, pursuant to section 777(c)(2) of the Act, that it was not practicable to examine more than four mandatory respondents in this investigation. Thus, in accordance with section 777(c)(2)(B) of the Act, we selected as mandatory respondents the four companies accounting for the largest volume of quartz surface product exported from China during the POI (*i.e.*, CQ International, Hero Stone, Hercules Quartz, and Yixin Stone) based on quantity and value data.[187] We also noted that, if we received voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), we would evaluate the circumstances in deciding whether to select an additional respondent for examination.[188]

We received a timely request from Hirsch Glass for treatment as a voluntary respondent in this investigation, and in July and August 2018, Hirsch Glass submitted timely responses to Commerce's initial questionnaire. Although Hirsch Glass timely submitted the information required by section 782(a)(1) of the Act, we concluded in the Voluntary Respondent Memo that, pursuant to section 782(a) of the Act, it would be unduly burdensome and inhibit timely completion of this investigation to select and examine Hirsch Glass as a voluntary respondent.[189] In coming to our determination, we considered the following factors: 1) the complexity of the issues or information presented in this investigation; 2) any prior experience of Commerce in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by Commerce; and 4) such other factors relating to the timely completion of these investigations and reviews.[190]

In denying Hirsch Glass' request for voluntary respondent status, we explained that the issues and information presented in this investigation are complex. For example, two of the selected mandatory respondents have multiple affiliates.[191] Additionally, Commerce received 143 applications from companies seeking to qualify for a separate rate in this investigation, necessitating the analysis of a large volume of data from numerous entities.[192] Furthermore, this was the first time that we investigated CQ International, Hero Stone, Hercules Quartz, and Yixin Stone as mandatory respondents and, thus, we had to expend additional resources gaining experience with these companies' records and practices. Indeed, we issued sixteen supplemental questionnaires to the mandatory respondents and separate rate applicants in this investigation, which included numerous questions concerning their FOPs reporting methodologies and claimed by-product offsets, database issues, ownership issues, selling expenses/practices, and general administrative issues. In addition, we encountered numerous issues during the verifications

[187] *See* Respondent Selection Memo at 4-6.
[188] *Id.* at 7.
[189] *See* Voluntary Respondent Memo at 4.
[190] *Id*. at 2-4.
[191] *Id.* at 3.
[192] *See* the 143 separate rate applications received between June 15, 2018, and July 13, 2018; *see also Preliminary Determination* at Appendix III, listing the 289 exporter-producer combination rates assigned to the separate rate companies.

conducted for these respondents,[193] giving rise to a large number of issues to be addressed in this final determination.[194]

Equally significantly, this case involves numerous issues related to the scope of the investigation, some of which are novel and highly complex and others which arose late in the process (*i.e.*, after the preliminary determination). For this reason, and for the reasons stated above, we find that this case is extraordinarily complicated, which prohibits the examination of an additional respondent.

Acceptance of Hirsch Glass as a voluntary respondent would have necessarily required a significant additional level of effort and resources, which we determine would have been unduly burdensome. Specifically, an examination of Hirsch Glass would have required additional resources not currently at our disposal to review and analyze its questionnaire response and potentially issue multiple additional supplemental questionnaires, and further would have required verification both at Hirsch Glass' factory in the China and its sales office in the United States.

Based on our prior experience, a full examination of Hirsch Glass would require writing a margin program specific to Hirsch Glass as well as analysis memoranda and verification reports specific to Hirsch Glass. Moreover, the uncertain nature of any investigation allows for the possibility that complex situations may arise, requiring yet more time for case team to analyze, and address any issues. Finally, we note that Commerce was conducting numerous investigations and reviews during the preliminary phase of this investigation,[195] and Commerce's workload has only increased since then.[196]

Thus, we disagree with Hirsch Glass that it would have been a simple matter for Commerce to select it as a voluntary respondent and determine an individual margin for it. Commerce did not have resources, before or after the preliminary determination, to review Hirsch Glass' response, issue supplementals, verify the information on the record, and calculate an individual dumping margin for Hirsch Glass. And Hirsch Glass' position that, after the preliminary determination, Commerce could still issue supplemental questionnaires, calculate a margin, and conduct verification is untenable; both Commerce and the respondent require sufficient time to issue and respond to supplemental questionnaires, analyze and collect data (including for surrogate

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[193] *See*, *e.g.*, CQ International CEP Verification Report.
[194] *See*, *e.g.*, Petitioner Case Brief; and Petitioner Rebuttal Brief.
[195] *See* Voluntary Respondent Memo at 3-4, noting that in the preliminary phase of this investigation, Office II was also assigned to the following investigations and reviews: Large Diameter Welded Pipe from Greece and Turkey; Tapered Roller Bearings from China; Carbon and Alloy Steel Wire Rod from the United Kingdom; Drawn Stainless Steel Sinks from China; Narrow Woven Ribbons from China and Taiwan; Large Residential Washers from Mexico and Korea; Heavy Walled Rectangular Pipes and Tubes from Mexico and Korea, Uncoated Paper from Indonesia; Circular Welded Pipe from the United Arab Emirates; Nickel-Plated Flat-Rolled Steel from Japan; Quartz Surface Products from China (CVD Investigation); Cut-to-Length Steel Plate from Taiwan; Hydrofluorocarbon Blends from China; and Welded Line Pipe from Korea and Turkey.
[196] Since the date of the *Preliminary Determination*, Commerce has initiated AD and CVD investigations on at least seven different products covering numerous countries, in addition to receiving multiple new anti-circumvention inquiries, scope inquiries, and initiating multiple new administrative reviews. *See http://enforcement.trade.gov/ia-highlights-and-news.html*.

values), and calculate a margin and allow opportunity for comment. Accepting Hirsch Glass as a voluntary respondent after the preliminary determination – *i.e.*, after the record was closed – would have inhibited the timely completion of this investigation.[197]

Therefore, we find that we are unable to calculate an individual dumping margin for a voluntary respondent in addition to the individual dumping margins for the companies individually examined in this investigation. The additional workload of individually examining a voluntary respondent would be unduly burdensome, given Commerce's current resource availability, and would inhibit timely completion of this investigation. Thus, consistent with section 782(a) of the Act, Commerce did not consider Hirsch Glass' unsolicited questionnaire responses. Consequently, in accordance with Commerce's practice regarding entities which are eligible for a separate rate, but are not selected to be an individually examined respondent, we assigned Hirsch Glass the same rate as the other separate rate companies in this investigation.

Comment 5: Procedural Issues

CQ International's Arguments

- Commerce should not make changes to the preliminary determination unless the changes are based upon the case briefs of any party. Specifically, allowing parties to "prove" matters for the first time through the rebuttal briefs results in parties placing unrebutted argument on the record.

- Commerce's regulations require that all arguments presented be included in the case and rebuttal briefs of the parties or they are deemed waived.[198] Commerce indicated that the case briefs should not include argument regarding scope issues. To the extent that Commerce changes its position, CQ International incorporates by reference its scope comments. Accordingly, Commerce cannot argue in any litigation that parties have failed to exhaust their administrative remedies by failing to include such argument in the case briefs.

- On March 25, 2019, the petitioner filed a joint scope case brief on both the AD and CVD case records, as well as a separate scope case brief on just the AD and just the CVD case record, for a total of three scope case briefs. Under the regulations, only a single brief in chief is contemplated for each entity; the petitioner's March 25, 2019, brief, therefore constitutes its case brief in chief, and any later filed brief should be rejected.

Petitioner's Rebuttal Arguments

- Commerce should follow its practice of only addressing arguments raised in parties' case briefs and not allow parties to raise new arguments for the first time in their rebuttal briefs, except to the extent they are rebutting arguments raised by other parties. The petitioner's case brief on scope clarification presented the single affirmative argument that Commerce should clarify the scope of the investigations; the petitioner's rebuttal brief was focused on rebutting the numerous and varied arguments raised in the case briefs filed by the parties

[197] Also, note that Hirsch Glass cites to no precedent for taking a respondent at such a late point in a case.
[198] *See* CQ International Case Brief at 4 (citing 19 CFR 351.309(c)(2)).

opposed to the scope clarification. Accordingly, Commerce should reject CQ International's implicit request to strike from the record the petitioner's rebuttal brief with respect to scope clarification.

- Commerce made clear that parties had already been afforded an opportunity to brief scope clarification issues and that Commerce would not entertain any new arguments on this issue in the regular case briefs due on April 1, 2019.[199] Commerce may re-iterate that, to the extent parties already raised specific arguments regarding scope clarification in previous briefs, parties have not waived those specific arguments by not including them again in their April 1, 2019, case briefs. However, Commerce should also clarify that any specific arguments that were not raised in the prior round of briefing are waived.

- Commerce should reject CQ International's claim that the petitioner improperly filed separate rebuttal briefs on its scope clarification request in the AD and CVD investigations. In their case briefs, the parties opposed to clarification speculated that clarifying the scope would impact Commerce's calculation of the dumping margins and subsidy rates. To meaningfully rebut these arguments, it was necessary to discuss the actual evidence on the record of each investigation. The AD investigation record has five respondents' questionnaire responses that they did not produce or sell crushed glass or quartz glass merchandise. Similarly, the CVD investigation record also shows that the respondents did not produce or sell crushed glass or quartz glass merchandise. Because a specific demonstration of these points relied on evidence that is only on the record of each respective investigation, the petitioner filed separate supplemental rebuttal briefs in each investigation. If the petitioner had discussed this evidence in a single rebuttal brief filed in both investigations, the petitioner would have improperly placed evidence from the record of one investigation onto the record of the other investigation. Thus, contrary to CQ International's claims, it was proper for the petitioner to file separate supplemental briefs which were limited to discussing the particular records of each investigation and Commerce should not strike these supplemental rebuttal briefs from the record.

Commerce's Position

CQ International raised three procedural issues for this final determination.[200] We address each in turn, below.

First, CQ International argues that Commerce should not make changes to the preliminary determination unless the changes are based upon the case briefs of any party and that parties should not be permitted to affirmatively argue issues for the first time in the rebuttal briefs.[201]

[199] *See* Petitioner Case Brief at 2 (citing Commerce's Memorandum, "Certain Quartz Surface Products from the People's Republic of China: Clarification of Briefing Schedule," dated March 27, 2019 (Commerce's March 27, 2019 Clarification of Briefing Schedule Memo)).
[200] CQ International raised on additional procedural issue regarding Commerce's treatment of respondents in a consistent manner. *See* CQ International Case Brief at 3-4. CQ International also raised a related argument elsewhere in its case brief. *Id.* at 22. We have addressed CQ International's arguments on this issue under a single comment. *See* Comment 6, below.
[201] *See* CQ International Case Brief at 3.

We agree with CQ International, to the extent that, pursuant to 19 CFR 351.309(d)(2), a rebuttal brief may respond only to arguments raised in case briefs and must identify the arguments to which it is responding.[202]

Second, CQ International argues that, pursuant to 19 CFR 351.309(c)(2), all arguments not included in the case and rebuttal briefs of parties are deemed waived and that Commerce indicated that the case briefs should not include argument regarding scope issues.[203] Accordingly, CQ International asserts that Commerce cannot argue in litigation that parties have failed to exhaust their administrative remedies by failing to include such argument in the case briefs. Commerce has already clarified for all interested parties that the deadlines for scope comments (*i.e.*, scope case briefs) in both the AD and CVD investigations were prior to the deadlines for case and rebuttal briefs in the AD investigation and that the AD case briefs should not contain additional arguments on the scope.[204] Thus, to the extent parties already raised arguments regarding scope clarifications in previous briefs, those arguments are not waived by not including them again in the AD case briefs.

Third, CQ International implies that the petitioner should not have filed multiple scope briefs and that, consequently, Commerce should reject the petitioner's later-filed case briefs. We disagree. The petitioner properly filed the same case and rebuttal briefs for the scope clarification onto both the AD and CVD investigation records; further, the petitioner also properly filed a separate AD-specific rebuttal brief onto the AD case record, which stated that it was "limited to a discussion of evidence that is on the record of the antidumping investigation but not on the record of the countervailing duty investigation."[205] Thus, we find the petitioner's case and rebuttal briefs (including for all scope issues) were properly submitted, in accordance 19 CFR 351.309, and within the time limits set out by Commerce. Consequently, for this final determination, we have considered the issues raised in the petitioner's scope case and rebuttal briefs as well as in the petitioner's AD case and rebuttal briefs.

Comment 6: Overhead Materials

Petitioner's Arguments

- Commerce should treat certain inputs consumed by Yixin, preliminarily determined to be manufacturing overhead, as direct materials in the final determination.[206]

[202] *See*, *e.g.*, Letter to Yixin Stone, "Antidumping Duty Investigation of Certain Quartz Surface Products from the People's Republic of China: Rejection of Rebuttal Brief," dated April 11, 2019, where we rejected Yixin Stone's rebuttal brief because it did not conform to 19 CFR 351.309(d)(2), and we requested that Yixin Stone resubmit its rebuttal brief without the untimely new argument.
[203] *See* CQ International Case Brief at 4.
[204] *See* Commerce's March 27, 2019 Clarification of Briefing Schedule Memo.
[205] *See* Petitioner's Rebuttal Brief on Scope Clarification for the AD Investigation, "Certain Quartz Surface Products from the People's Republic of China: Petitioner's Scope Rebuttal Brief Based on Antidumping Investigation Record," dated March 25, 2019, at 1.
[206] *See* Petitioner Case Brief at 11.

- In determining whether to classify inputs as direct materials or overhead, Commerce considers: 1) whether the input is physically incorporated into the final product; 2) the input's contribution to the production process and finished product; 3) the relative cost of the input; and, 4) the way the cost of the input is typically treated in the industry. It also classifies inputs as direct materials if they were found to be: 1) consumed continuously with each unit of production; 2) required for a particular segment of the production process; 3) essential for production; 4) not used for incidental purposes; or, 5) otherwise a significant input to the manufacturing process rather than a miscellaneous or occasionally used material. Commerce bases its determination on a totality of the circumstances, not a single factor.[207]

- Commerce has frequently treated materials not physically incorporated into the final product as direct materials and has previously rejected "the argument that incorporation is the determinative factor when deciding whether to treat an input as a direct material or an overhead expense."[208]

- Inputs reported by Yixin as overhead, such as saw blades, abrasives, and grinding materials, are essential materials and in no way incidental to the production of subject merchandise. Yixin reports that these materials are regularly replaced as a part of the production process. Yixin Stone also treats these inputs as direct material rather than overhead in its own books and records. Further, Commerce has requested that CQ International report similar materials in its FOPs. Therefore, Commerce should treat the inputs reported by Yixin as overhead as direct materials.[209]

CQ International's Arguments

- Commerce should treat CQ International and other mandatory respondents in a consistent fashion with respect to certain overhead materials.[210]

- Commerce should treat overhead materials such as footwear, shirts, and similar materials as overhead materials to avoid double counting materials that are also necessarily incorporated in the financial ratios as part of overhead expenses.[211]

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[207] *Id.* at 12 (citing *Certain Nails from the People's Republic of China*, 78 FR 16651 (March 18, 2013) (*Certain Nails from China Final*) and accompanying IDM at Comment 4; and *US Magnesium LLC v. United States*, 839 F.3d 1023, 1028-1029 (Fed. Cir. 2016) (*US Magnesium*)).
[208] *Id.* at 12-13 (quoting *Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying IDM at Comment 6; and citing *Silicon Metal from the Russian Federation*, 68 FR 6885 (February 11, 2003) and accompanying IDM at Comment 25; and *Automotive Replacement Glass Windshields from the People's Republic of China*, 69 FR 61790 (October 21, 2004) and accompanying IDM at Comment 1).
[209] *Id.* at 13-14 (citing Yixin Stone's October 5, 2018 Supplemental Questionnaire Response (Yixin Stone October 5, 2018 SQR); Letter to CQ International, "Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China: Supplemental Sections C and D Questionnaire," dated October 19, 2018, at I-6; and Yixin Verification Exhibit 5).
[210] *See* CQ Case Brief at 3 and 22.
[211] *Id.* at 22.

Yixin Stone's Rebuttal Arguments

- The additional costs identified in the manufacturing process were properly treated as conventional manufacturing overhead, as required by established legal standards, Commerce precedent, and concurrent treatment of other mandatory respondents in the current investigation. Blades and abrasives and grinding materials are reusable, low-cost tools which are not incorporated in the final product and are replaced only after "wear-and-tear" make it necessary to discontinue use. Commerce has precedent in which it found similar materials to constitute overhead.[212]

- While CQ International reported similar materials as FOPs, it did so for Commerce's convenience. Subsequently, in the *Preliminary Determination*, Commerce found blades and abrasives and grinding materials, without exception, to represent overhead for all mandatory respondents.[213]

- As in *US Magnesium*, how inputs are described in a subledger is not definitive, given that the materials in question are grouped with materials that are clearly not direct material inputs. The ambiguous categorization of these materials in Yixin Stone's chart of accounts is insufficient evidence to prove these inputs are direct materials.[214]

Petitioner's Rebuttal Arguments

- The petitioner agrees with CQ International that Commerce should treat CQ International in a consistent fashion with respect to overhead materials and that, to achieve such consistency, Commerce should treat certain items consumed by Yixin Stone as direct materials instead of factory overhead.[215]

- Record evidence shows that many of the items that CQ International reported as overhead are direct materials. Commerce considers four factors (noted above in the petitioner's case brief) when determining whether to treat inputs as direct materials or overhead. CQ International reported certain items like accelerant used in the curing process and glue as factory overhead and failed to show how or why the inputs in question should be treated as overhead. Each of

[212] *Id.* at 4-6 (citing *Certain Steel Nails from the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013) and accompanying IDM at Comment 4; *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review and Final Recession, in Part*, 77 FR 14495 (March 12, 20012) and accompanying IDM at Comment 3; *Silicomanganese from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 31514 (May 19, 2000) and accompanying IDM at Comment 1; *Final Determination of Sales of Less than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (December 8, 2004) and accompanying IDM at Comment 6; *Final Determination of Sales at Less than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China* 71 FR 29303 (May 22, 2006) and accompanying IDM at Comment 2; and *US Magnesium*, 839 F.3d at 1030).
[213] *Id.* at 3-4 (citing Memorandum, "Surrogate Value Memorandum for the Preliminary Determination," dated November 13, 2018 (Prelim SV Memo) at Exhibit 1-A).
[214] *Id*. at 6-7 (citing *US Magnesium* 839 F.3d at 1028).
[215] *See* Petitioner Rebuttal Brief at 2.

these products has clearly been incorporated in the subject merchandise or is regularly replaced in the production process and Commerce should continue to treat those inputs as direct materials.[216]

Commerce's Position

Consistent with our treatment of CQ International's and Yixin Stone's FOPs in the *Preliminary Determination*, we continue to include all material inputs reported by CQ International and Yixin Stone in calculating NV for the final determination.[217] Because the financial ratio for manufacturing overhead in the surrogate financial statements only consists of depreciation and does not include overheard materials,[218] we have included all reported materials as direct materials in our calculation of NV and have not undertaken an analysis of whether they should be treated as direct materials or overhead materials. Normally manufacturing overhead costs are included in the manufacturing overhead ratio (*i.e.*, as a percent of raw materials, direct labor, and energy). In this case, because the manufacturing overhead ratio only consists of depreciation,[219] to not include overhead materials along with direct materials in the margin program would be to understate material consumption for production operations. In other words, in order to properly align the financial ratios with the production experience of our respondents, we have included all reported materials in our calculation of NV.

As explained below in Comment 8, we continue to use Mexico as our primary surrogate country in this investigation and, as explained in Comment 11, we continue to use the consolidated financial statements from Grupo Lamosa S.A.B. de C.V. (Grupo Lamosa),[220] a Mexican producer of ceramic wall and floor tiles, to calculate the surrogate financial ratios.[221] Commerce's regulations at 19 CFR 351.408(c)(4) provide that we will normally use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to calculate manufacturing overhead, general expenses, and profit. In this case, the overhead ratio taken from Grupo Lamosa's financial statements and used in our calculations, "only consists of depreciation and no other overhead-related FOPs. We therefore assigned surrogate values (SVs) to certain overhead-related FOPs in our margin calculations for the respondents, pursuant to section 773(c)(3) of the Act."[222] Further, we used all reported FOPs (overhead and direct), in conjunction with the assigned SVs, to calculate NV for CQ International and Yixin Stone.[223] No party argued that we should change our calculation of the financial ratios performed with Grupo Lamosa's financial statements. Thus, in order to capture overhead expenses not included in our financial ratios, we have continued to use all reported

[216] *Id.* at 38-39 (citing *Certain Nails from China Final* and accompanying IDM at Comment 4).
[217] The petitioner appears to be confused in its case brief, since, in the *Preliminary Determination* Commerce did already include all reported material inputs in the calculation of normal value for both CQ International and Yixin Stone. Thus, we have made no changes to our treatment of these materials for the final determination.
[218] *See* Prelim SV Memo at Exhibit 13-A.
[219] *Id.*
[220] We continue to select Mexico as the primary surrogate country. *See* Comment 8.
[221] *See* Prelim SV Memo at 9.
[222] *Id.* at 10, FN54.
[223] *See* Memorandum, "Preliminary Analysis Memorandum for CQ International Limited," dated November 13, 2018 (CQ International Prelim Calc Memo); and Memorandum, "Preliminary Analysis Memorandum for Foshan Yixin Stone Co., Ltd.," dated November 13, 2018 (Yixin Stone Prelim Calc Memo); *see also* CQ International Final Calc Memo; and Yixin Stone Final Calc Memo.

material inputs to calculate NV for both CQ International and Yixin Stone. Therefore, we need not make a determination whether saw blades, abrasives, and grinding materials are direct materials or overhead for the purpose of this investigation because they are included in the calculation as SVs.

We also disagree with CQ International that we should treat footwear, shirts, and similar materials as overhead materials to avoid double counting materials that are also incorporated in the financial ratios as part of overhead expenses. As explained above, such items are not incorporated in the financial ratios we calculated using Grupo Lamosa's financial statements, because manufacturing overhead in that statement consists solely of depreciation. Further, while the record, with regards to overhead inputs, is more complete for CQ International, including additional inputs that CQ International reported (*e.g.*, footwear, shirts, and similar materials not incorporated into the final product), we find that this merely reflects more accurately on CQ International's material consumption. If this investigation goes to order, we intend to seek additional information regarding overhead materials for the mandatory respondents in the first administrative review, should we continue to use a financial statement without a more detailed accounting of manufacturing overhead costs.

Comment 7: Preliminary Dumping Margin

Yixin Stone's Arguments

- The less-than-fair-value margins established in the *Preliminary Determination* are not realistic in any commercial or economic sense, are punitive in effect, and are therefore contrary to law. The preliminary weighted-average dumping margin for Yixin Stone is 341.29 percent. This margin was also applied as the AFA rate for Hero Stone and the China-wide entity and averaged with the other mandatory respondent rates to set a SRA company rate of 290.86 percent. These excessively high rates contravene Commerce's statutory and legal mandate to "calculate dumping margins as accurately as possible" in a way that is "fair and equitable."[224]

- The recent CIT decision in *Baoding* required a re-evaluation of all the SVs applied when the weighted-average dumping margin of 453.79 percent defied commercial and economic reality. With such a large dumping margin, the sale of subject merchandise would result in massive losses for the seller, but such a loss is not reflected in Yixin Stone's financial statements. Commerce has also not found any export subsidies sufficient to offset such enormous losses.[225]

- The underlying logic of producing quartz surface products at a significant cost defies economic reality, in either a market or non-market economy. Further, Yixin Stone's rate

[224] *See* Yixin Stone Case Brief at 1-2 (citing *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013); and *Koyo Seiko Co., Ltd. v. United States*, 36 F.3d 1565, 1573 (Fed. Cir. 2013)).
[225] *Id.* at 2-3 (citing *Baoding Mantong Fine Chemistry Co. v. United States*, 113 F. Supp. 3d 1332, 1334 (CIT 2015) (*Baoding*); Yixin Stone's July 20, 2018 Section A Questionnaire Response (Yixin Stone July 20, 2018 AQR); and *Preliminary Determination* and accompanying PDM).

applies to most of the Chinese industry, through the AFA rate and SRA average rate, suggesting that all the industry is suffering massive losses on every sale.[226]

- The SVs used in this investigation do not withstand the *Baoding* test of economic and commercial reality. In *Baoding*, the CIT ordered Commerce to recalculate the margin on remand and reevaluate "any and all aspects of {Commerce's} calculation," including the use of "invalid surrogate values for {certain} factors of production" and "surrogate financial ratios," resulting in a re-calculated margin of 0.00 percent.[227] Such concerns are similar to the issues with the use of Mexico as the primary surrogate country to value certain FOPs in this investigation.

- More generally, the CIT in *Baoding* stated that "{a}ntidumping duties are remedial, not punitive, measures" for "prevent{ing} foreign manufacturers from injuring domestic industries by selling their products in the United States at less than 'fair value.'" Commerce has not satisfied the legal requirements with substantial evidence because, under the law, SVs must still be within the "limits of permissible approximation."[228]

Petitioner's Rebuttal Arguments

- Commerce determines NV based on the FOPs used to produce merchandise due to distortion of costs and prices in a non-market economy. These FOPs are based on the best available and appropriate information and Commerce has broad discretion in deciding what constitutes best available information.[229]

- Unlike in *Baoding*, none of the SVs Commerce used in this investigation are aberrational. Further, *Baoding* is of limited, if any, precedential value in this case, as Commerce recalculated the dumping margin under protest of the CIT's remand order and, in a separate case, the CIT upheld Commerce's calculation of the China-wide rate of 155.89 percent which was based on many of the same SVs the CIT held as aberrational in *Baoding*.[230]

- Whether a loss is shown on Yixin Stone's financial statements is immaterial to the accuracy of Commerce's calculated dumping margin. Yixin Stone could have sold subject merchandise or other merchandise in its home market or third-country markets such that it could still show a profit despite massive dumping of subject merchandise in the United States. Commerce relies on its non-market economy methodology because Yixin Stone operates in a country that is completely distorted by widespread government intervention.[231]

Commerce's Position

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[226] *Id.* at 3.
[227] *Id.* at 4 (citing *Baoding* at 1324-1325).
[228] *Id.* at 4-5 (citing *Baoding* at 1336 and 1341; and *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (CIT 1997) (*Sigma*)).
[229] *See* Petitioner Rebuttal Brief at 39-40 (citing Section 773(c) of the Act; SAA at Volume 1 808-809; and *QVD Food Co.*, 658 F.3d 1318, 1323).
[230] *Id.* at 40-41 (citing *Baoding* at 1334; and *Evonik Rexim (Nanning) Pharmaceutical Co. Ltd. v. United States*, 331 F. Supp. 3d 1413 (CIT 2018)).
[231] *Id.* at 41.

We disagree with Yixin Stone 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 Yixin Stone using its own data, without adjustments, relying on the SVs on the record.

In accordance with section 773(c)(1) of the Act, when calculating a 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 Yixin Stone's U.S. prices and its FOPs, we have accepted Yixin Stone's own actual reported data. We used this data in our margin calculations and we made no adverse inferences. Thus, the U.S. price and FOPs used in our calculation of Yixin Stone's margin cannot be anything other than reasonable because they are Yixin Stone's own, reported information. Therefore, it is evident that Yixin Stone'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 Yixin Stone'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 NV 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 NV on the basis of the price at which comparable merchandise produced in a comparable market economy country is sold in other countries.[232]

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 regulations at 19 CFR 351.408 provide the rule for calculating NV 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 Bulletin 04.1. Yixin Stone's argument hinges on the assumption that our process was impugned because Commerce improperly selected certain distortive SVs. However,

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

as discussed in more detail below (*see* Comments 8 through 11),[233] after reexamining the source data in question, we find nothing that would cause us to consider using alternative data which are either less specific or have other flaws. Further, every SV came from the information submitted by the parties in this investigation.

Thus, we disagree with Yixin Stone that the margin is unreasonable or inaccurate or that it fails to reflect commercial reality. We point out that, 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."[234] 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."[235]

Thus, we find that our calculations are proper, because they are: 1) in accordance with our normal NME practice; 2) factually and mathematically correct; and 3) supported by information on the record and in accordance with the law. 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 Yixin Stone's actual U.S. price and FOPs data and the exact same methodology for valuing SVs as in the investigation using information submitted by Yixin Stone, the other mandatory respondents, and the petitioner. We also disagree with Yixin Stone 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.[236] While we acknowledge that Yixin Stone's financial statements do show a profit, we cannot be assured that Yixin Stone would have made a similar profit had it been located in a market economy country.

For similar reasons, we also disagree with Yixin Stone that it would need to decrease its prices by three fourths to create the calculated dumping margin. As noted above, the dumping margin is a function of prices in conjunction with the associated costs. Prices are only part of the

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[233] Specifically, Yixin Stone has challenged our selection of the surrogate country, surrogate financial statements, and two SVs: 1) quartz powder; and 2) truck freight.

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

[235] *Id*.

[236] *See*, generally, *Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, "China's Status as a Non-Market Economy," dated October 26, 2017) (China NME Status Memorandum), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) (*Aluminum Foil*); *see also*, *e.g.*, *Hydrofluorocarbon Blends from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 17380 (April 25, 2019) (*HFCs from China 2016-2017 AR*) and accompanying IDM at Comment 2.

equation. Therefore, a combination of falling prices and increasing costs can result in a higher dumping margin.

Finally, we disagree that the Court's decision in *Baoding* is precedential here, because that case is limited to the facts on that record.[237] 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 8 through 11, that is not the situation in this investigation.

Based on the aforementioned, we disagree that Commerce should recalculate Yixin Stone's margin. As noted above, we calculated a margin consistent with the law,[238] and thus it is accurate and commercially realistic, and it is also based on Yixin Stone's own data. As discussed below, the SVs were based on the best available information. Therefore, we have continued to calculate Yixin Stone's dumping margin using the information on the record.

Surrogate Values

Comment 8: Surrogate Country

CQ International's Arguments

- Commerce made a number of errors when selecting a surrogate country. Therefore, Commerce should not use Mexico as the surrogate country, and should instead use Malaysia as the surrogate country.

- The data from Mexico to value FOPs is aberrational, and the SVs are not accurate surrogates for the actual value of the FOPs. Further, the data is of insufficient quantities to be reliable.

[237] We also do not find *Baoding* to be applicable as binding precedent in this investigation, as Commerce issued remand redeterminations under protest. Further, the Federal Circuit has upheld that Commerce's determinations are accurate if 1) they are correct as a mathematical and factual matter, and supported by substantial evidence; and 2) that Commerce's determinations reflect commercial reality if they are consistent with the method provided in the statute, and thus are in accordance with the law. *See Nan Ya Plastics*, F.3d, 1344.

[238] We note that Commerce has calculated similarly high margins in other AD NME cases using a company's own data. *See e.g.*, *HFCs from China 2016-2017 AR* (showing the calculated rate for T.T. International Co., Ltd of 285.73 percent); *Cast Iron Soil Pipe from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 6767 (February 28, 2019) (showing the calculated rate for Yucheng Jiangxian Economic Development Zone HengTong Casting Co., Ltd. of 235.93 percent) *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).

- Grupo Lamosa's financial statement is not representative of the production of quartz surface products and distorts the surrogate financial ratios. This is due to the fact that Grupo Lamosa produces ceramic tiles, which have a vastly different production process from quartz surface products. Significantly, ceramic tile is not produced with resin, which is a key material used in making quartz surface products and is specifically mentioned in the scope of the investigation. In fact, the petitioner has argued that products produced using a non-resin binder are not like-products.[239]

- Malaysia is the superior choice for the surrogate country in this investigation, even if the Mexican data was not flawed, as the data from Malaysia is "at least as good as Mexico."[240] For example, information such as trucking and brokerage and handling costs is based on similar publications (*i.e.*, *Doing Business in Mexico: 2018* versus *Doing Business in Malaysia: 2018*). Further, Malaysia is economically comparable to China, like Mexico. Unlike Mexico, Malaysia is a significant producer of comparable merchandise; specifically, the record contains financial statements for producers of merchandise that is subject to the processes of calibration and polishing which is distinctive to artificial stone.

Yixin Stone's Arguments

- Commerce aims to use the country with the "best available information" to create SVs with which to value FOPs in China,[241] and must show that there is substantial evidence to support its choice of surrogate country.[242] To establish the country with the best available information Commerce weighs three statutory criteria.[243] Based on its analysis of these criteria, Commerce did not support its designation of Mexico as the surrogate country with substantial evidence, and should, therefore, use Malaysia as the surrogate country for the Final Determination.

- The use of Malaysia is warranted due to substantial evidence on the record showing it is a significant producer of both identical and comparable merchandise. Where production data is not available, Commerce uses export volume as a stand-in for production data.[244] Under the six relevant Harmonized System (HS) codes on the record for subject merchandise, export data shows that, during the POI, Malaysia was the largest exporter of merchandise

[239] *See* CQ International's Case Brief at 8 (citing Petitioner's Rebuttal Brief, "Certain Quartz Surface Products from the People's Republic of China: Petitioner's Rebuttal Brief on Scope Clarification," dated March 25, 2019 (Petitioner's Scope Rebuttal Brief) at 16).
[240] *Id.* at 9 and 14.
[241] *See* Yixin Stone's Case Brief at 4 (citing *Zhengzhou Harmoni Spice Co. v. United States*, 617 F. Supp. 2d 1281, 1297 (CIT 2009)).
[242] *Id.* at 5 (citing *Timken Co. v. United States*, 201 F. Supp. 2d 1316, 1319 (CIT 2002) (*Timken 2002*).
[243] *Id.* at 4 (citing section 773(c) of the Act; 19 CFR 351.408; and Import Administration Policy Bulletin 04.1: Nonmarket Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1), available at https://enforcement.trade.gov/policy/bull04-1.html).
[244] *Id.* at 17 (citing *Polytetrafluoroethylene Resin from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 20030 (May 7, 2018) and accompanying IDM at VII, "Discussion of the Methodology").

under these HS codes with respect to countries that are on Commerce's list of countries economically comparable to China.

- Mexico is not a significant producer of comparable merchandise. The petitioner's claim that ceramic tile is comparable merchandise is flawed as ceramic tile has a different manufacturing process and dissimilar end uses and physical characteristics. The petitioner has also failed to show that Mexico is a significant producer of identical merchandise. When compared to Mexico, China exported 110,000 percent more quartz surface products by square meter than Mexico in 2017.

- When Commerce identifies more than one country that meets the standard of being economically comparable, and is a significant producer of comparable merchandise, its policy is to use the country with the best available data to value FOPs.[245] The data from Mexico that Commerce used to value major inputs is aberrational and of poor quality, whereas there is an abundance of data from GTA and other sources for Malaysia that is of superior quality. In addition, Malaysian import values are reported on a cost, insurance, and freight (CIF) basis, Commerce's preferred reporting method, as it accounts for freight expenses. Mexican import values are reported on a free on board (FOB) basis, and, thus, require surrogate freight adjustments, which distort the data.

- Commerce's use of aberrational transportation costs for Mexico to base the SVs of FOPs, due to Mexican import values being reported on an FOB basis, distorts the calculation of margins for the respondents. Commerce could avoid this issue were it to use Malaysia as the surrogate country, as Malaysia reports its import data on a CIF basis.

- Because ceramic tile should not be considered comparable merchandise, Commerce's use of the financial statement of a Mexican ceramic tile manufacturer, Grupo Lamosa, has distorted the calculation of surrogate financial ratios. Commerce should, therefore, consider using the financial statements from another country, such as Malaysia or Thailand, to value the surrogate financial ratios. Malaysia's financial statements are better than Mexico's because they are for manufacturers of identical merchandise and the surrogate financial ratios are in line with those from Thailand. In addition, Malaysia's financial statements should be preferred since Malaysia is a producer of identical merchandise and Mexico is not.

Petitioner's Rebuttal Arguments

- Commerce should reject all of the respondents' attempts to undermine Commerce's findings in the *Preliminary Determination*. Further, Commerce should reject the respondents' call to select Malaysia as the surrogate country for the final determination.

- Commerce is directed by U.S. law, when selecting a surrogate country, to choose a country that is a significant producer of comparable merchandise.[246] Mexico, unlike what the respondents contend, is a producer of both identical and comparable merchandise according

[245] *Id*. at 13 (citing Policy Bulletin 04.1).
[246] *See* Petitioner's Rebuttal Brief at 8 (citing section 773(c)(4) of the Act).

to the evidence on the record. In 2017, the United States imported a significant quantity of quartz surface products from Mexico under HTSUS code 6810.99.0010 (*i.e.*, agglomerated quartz slabs of the type used for countertops), a code which is specific to the subject merchandise in this investigation. Additionally, there is evidence on the record that the Mexican company K Compounds produces quartz surface products in Mexico. Yixin asserts the Mexican quartz surface products imported into the United States under HTSUS Code 6810.99.0010 are not significant when compared to the volume imported from China. However, when compared to Malaysia, Mexico's volume of imports is clearly significant, as the United States did not import a single square meter of identical merchandise from Malaysia in 2017, under HTSUS code 6810.99.0010.

- Quartz surface products fall into the larger category of comparable merchandise that is engineered stone surfaces, such as stone tiles, of which there is ample evidence on the record that Mexico is a significant producer. Mexico is also a significant producer of other comparable merchandise, such as crushed glass surface products and ceramic tiles.

- Ceramic tiles should be considered comparable merchandise for the purposes of selecting a surrogate country for the final determination because it has similar physical characteristics, production processes, and end uses to quartz surface products. Yixin Stone and CQ International have argued that ceramic tiles have different physical properties to quartz surface products because they are thinner and are made of other materials. However, evidence on the record shows that quartz surface products can and are produced to similar thicknesses as ceramic tiles. In addition, ceramic tiles are made of inorganic material, often quartz and silica, and contain a binder. Yixin Stone also has claimed that ceramic tile does not share end uses with quartz surface products. This is demonstrably false, as both products can be used for applications such as for floors, walls, and other surfaces in commercial and residential projects. Further, Yixin Stone and CQ International claim that the production processes for ceramic tile differ from the production processes for quartz surface products. However, the respondents fail to demonstrate significant differences in the production processes; the production processes only need to be comparable, not exactly the same.

- Commerce correctly found in the *Preliminary Determination* that the Mexican import data satisfied Commerce's preference for publicly available, product-specific prices for the POI that are tax exclusive to value all FOPs. Respondents' assertions that the Mexican data is flawed or aberrational are baseless.

- Malaysia is not a suitable surrogate country for the purposes of this investigation for a multitude of reasons including: Malaysia is not a significant producer of identical or comparable merchandise; Malaysia's economy is significantly distorted by government interference; and, Malaysia does not provide usable information to value all the FOPs.

- The respondents have not shown that Malaysia is a significant producer of either identical or comparable merchandise. CQ International points to the financial statement of the Malaysian company Marbon Industries SDN BHD (Marbon), as evidence that there is production of identical merchandise in Malaysia. Additionally, respondents have posited that fabrication of quartz surface products constitutes the manufacture of quartz surface products. An email,

submitted by Hero Stone, claims that Marbon "manufactures stone products in Malaysia,"[247] yet this email does not clarify whether Marbon actually manufactures quartz surface products, or merely fabricates them. There is also evidence on the record that Marbon has significant ties to Chinese entities, with production facilities located in China, and Marbon advertises that it produces solid surfaces in China and offers products for sale with FOB Port in China shipment terms. Further, the financial statement shows Marbon is primarily a trading company of surface materials and does not mention the manufacturing of products in Malaysia.

- Respondents have pointed to other Malaysian companies in an attempt to demonstrate the production of comparable merchandise in Malaysia. However, evidence shows that these companies are not producing comparable merchandise. Instead they are manufacturing such products as solid surfaces (the main component of which is alumina tri-hydrate, not quartz or silica), quarried stone, or sinks and bowls. Yixin Stone also argues that export data under six HS codes show that Malaysia is a significant producer of subject merchandise. One of these, 2506.10 (Quartz, Other than Natural Sands), is the one of the raw materials to produce quartz. Four more have nothing to do with subject merchandise, encompassing such products as building block and bricks made of cement or concrete, quartzite, or prefabricated structural components for building or civil engineering. The last HS code is 6810.99, and while this code does encompass the HS subheading for quartz surface products, data from Panjiva shows that imports from Malaysia under HS code 6810.99 consisted of items such as pot planters, Buddha statues, and rolling ball sculptures. Thus, HS code 6810.99 is not a reliable indicator that Malaysia is a significant producer of comparable merchandise.

- Malaysia's economy is a mix of free market principles and government planning, often referred to as "state capitalism," and is, therefore, not suitable to serve as a surrogate country for the purposes of this investigation. The primary purpose of selecting a surrogate country for China to calculate NV is to avoid the distortion resultant of rampant government intervention in the market. State-owned enterprises are a hallmark of the Malaysian economy, with Malaysia ranking the fifth-highest in terms of state-owned enterprises' effect on the economy. Further, state-owned entities are often used for the purposes of policy making in Malaysia. Since Commerce's non-market economy methodology is based upon valuing FOPs while avoiding the government intervention that causes distortions in the economy, choosing Malaysia as the surrogate country would defeat the purpose of this methodology entirely.

- Commerce has a regulatory preference to value all FOPs in a single surrogate country.[248] Consistent with this practice, Commerce will use the surrogate country that can provide data to value all FOPs, and reject a potential surrogate country that does not.[249] The respondents placed incomplete data on the record to value FOPs in Malaysia, and requested Commerce

[247] *Id.* at 25 (citing to Hero Stone's Letter, "Re: Certain Quartz Surface Products from the People's Republic of China: Surrogate Value Submission," dated September 21, 2018 (Hero Stone's First SV Comments)).
[248] *Id.* at 30 (citing 19 CFR 351.408(c)(2)).
[249] *Id.* (citing to *Amended Final Results of Antidumping Duty Administrative Review and New Shipper Reviews: Wooden Bedroom Furniture from the People's Republic of China*, 72 FR 46957 (August 22, 2007) and accompanying IDM at Comment 1C).

collect GTA data for Malaysia to fill in the gaps for the *Preliminary Determination*. It is not Commerce's burden to place this information on the record; rather, it is the respondents' responsibility. Commerce correctly found in the *Preliminary Determination* that Mexico was the most suitable surrogate country due to having the best available and most complete data to value FOPs, while the data from Malaysia was limited.

- Commerce should reject Yixin Stone's argument that Malaysia's import data is superior to Mexico's because it is reported on a CIF basis. Commerce has rejected this argument in the past, that import data reported on a FOB basis is less accurate than data reported on a CIF basis.[250] Commerce has found that to limit the selection of surrogate countries to countries that report on a CIF basis would unreasonably limit the pool of surrogate countries, and, thus, Commerce will add freight and insurance values to import values reported on a FOB basis to adjust them to CIF.[251]

- Mexico's transportation cost data is not inferior to Malaysia's due to being aberrational or distorted, as the respondents have alleged. Both the Malaysian and Mexican transportation cost data are based on the World Bank's *Doing Business* publications, so any alleged problems with the Mexican data would be inherent in the Malaysian data as well.

Commerce's Position

In the *Preliminary Determination*, we selected Mexico as the surrogate country. As detailed below, we continue to find that Mexico is the appropriate surrogate country with which to value factors in this investigation.

As explained in the *Preliminary Determination*,[252] when Commerce is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances on the NME producer's FOPs, valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, "to the extent possible, the prices or costs of FOPs in one or more {ME} countries that are: (A) at a level of economic development comparable to that of the {NME} country; and (B) significant producers of comparable merchandise."[253] As a general rule, Commerce selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise; (b) do not provide sufficiently reliable sources of publicly available surrogate value data; or (c) are not suitable for use based on other reasons. Surrogate countries that are not at the same level of economic development as the NME country, but still at a level of economic development comparable to the NME country, are selected only to the extent that data considerations

[250] *Id.* at 34 (citing to *Aluminum Foil* and accompanying IDM).
[251] *Id.* at 34-35 (citing to *Aluminum Foil* and Import Administration Policy Bulletin 10.2: Inclusion of International Freight Costs When Import Prices Constitute Normal Value (November 1, 2010) at 1, available at https://enforcement.trade.gov/policy/PB-10.2.pdf).
[252] *See Preliminary Determination* and accompanying PDM at 8-9.
[253] *See* Policy Bulletin 04.1.

outweigh the difference in levels of economic development. To determine which countries are at a similar level of economic development, Commerce generally relies solely on per capita gross national income (GNI) from the World Bank's *World Development Report*.[254] In addition, if more than one country satisfies the two criteria noted above, Commerce narrows the field of potential surrogate countries to a single country (pursuant to 19 CFR 351.408(c)(2), Commerce "normally will value all factors in a single surrogate country") based on data availability and quality.

Consistent with our practice, and section 773(c)(4)(A) of the Act, we determined that Brazil, Kazakhstan, Malaysia, Mexico, Romania, and the Russian Federation were countries at the same level of economic development as China, based on the most current annual issue of *World Development Report*.[255] No party has challenged this list of countries as containing countries not comparable to China, nor has any party asserted that we should use a country not on this list.

Section 773(c)(4)(B) of the Act requires Commerce, to the extent possible, to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor Commerce's regulations provide further guidance on what may be considered comparable merchandise. Among the factors we consider in determining whether a country is a significant producer of comparable merchandise is whether the country is an exporter of comparable merchandise. In order to determine whether the above-referenced countries are significant producers of comparable merchandise, we examined which countries on the surrogate country list exported merchandise comparable to the subject merchandise.[256] Consistent with our *Preliminary Determination*, we continue to find that information on the record indicates that Mexico is a significant exporter of merchandise covered by HTSUS categories identified in the scope of this investigation (*i.e.*, identical merchandise), while both Mexico and Malaysia are significant exporters of comparable merchandise.[257] However, evidence from the parties shows that Malaysia, though it is a producer of similar merchandise, does not actually produce quartz surface products; to the contrary, Mexico actually produces (and exports to the United States) identical merchandise under the relevant HTSUS heading.[258] No such imports into the United States, during 2017, were recorded from Malaysia.[259] Accordingly, consistent with our *Preliminary Determination,* we found that both Mexico and Malaysia meet the significant

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[254] *Id.*

[255] *See Preliminary Determination* and accompanying PDM at 9-10; *see also* Letter, "Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China: Revised List of Surrogate Countries," dated October 3, 2018 (Revised List of Surrogate Countries), which contained the Memorandum, "List of Surrogate Countries for Antidumping Investigations and Reviews from the People's Republic of China ('China')," dated August 2, 2018 (*i.e.*, the surrogate country list).

[256] *See Preliminary Determination* and accompanying PDM at 10-11.

[257] *See e.g.*, Hercules Quartz Surrogate Country Comments at 3-5. For example, the petitioner noted that a 2017 study entitled *World Production and Consumption of Ceramic Tiles* ranked Mexico among the top ten producers of ceramic tile in the world, and Mexico exported 98,548,215 square meters of ceramic tile in 2017, thus indicating that its production is significant. *See* Petitioner Surrogate Country Comments at 6 and Exhibits 10 and 11. Additionally, with regards to exports of comparable merchandise under HS 6810.99, both Mexico and Malaysia had significant exports in 2017; 56,551 metric tons and 601,963 metric tons, respectively. *See* Hero Stone Surrogate Country Comments at 10 and Exhibit 4.

[258] *See* Petitioner Rebuttal Surrogate Country Comments at 4-10 and Exhibit 22.

[259] *Id*.

producer of comparable merchandise prong of the surrogate country selection criteria, as provided in section 773(c)(4)(B) of the Act.[260]

If more than one potential surrogate country satisfies the statutory requirements for selection as a surrogate country, Commerce selects the primary surrogate country based on data availability and reliability.[261] When evaluating SV data, Commerce considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[262] There is no hierarchy among these criteria.[263] It is Commerce's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.[264]

In the *Preliminary Determination*, we found that parties placed complete data for Mexico, and limited data for Malaysia, on the record;[265] and that no party provided complete surrogate value information for the other countries on the list (*i.e.*, for Brazil, Kazakhstan, Romania, or Russia), or argued in favor of using surrogate value information for any of the other countries.

Specifically, in the *Preliminary Determination*, we found that the Mexico data are the best available data for valuing respondents' FOPs because 1) we have complete, specific Mexican GTA data for each input used by the respondents, while we have limited Malaysian GTA data on the record; and 2) the Mexican surrogate financial statements on the record are for a company which produces ceramic wall and floor tiles (which are comparable to quartz surface products), while it is unclear whether the Malaysian surrogate financial statements are for manufacturers or merely finishers/fabricators of stone surface products.[266] Therefore, because complete surrogate

[260] *See Preliminary Determination* and accompanying PDM at 10-11.
[261] *See* Policy Bulletin 04.1; *see also*, *e.g.*, *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015).
[262] *See* Policy Bulletin 04.1.
[263] *See*, *e.g.*, *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying IDM at Comment 1.
[264] *See* Policy Bulletin 04.1.
[265] *See Preliminary Determination* and accompanying PDM at 10-11; *see also* Petitioner's Letter, "Certain Quartz Surface Products from the People's Republic of China: Factual Information to Value Factors of Production," dated September 21, 2018 (Petitioner's First SV Comments); CQ International's Letter, "Certain Quartz Surface Products from the People's Republic of China; A-570-084; Information for Valuing Surrogate Values," dated September 21, 2018 (CQ International's First SV Comments); Hero Stone's First SV Comments; Yixin Stone's Letter, "Antidumping Duty Investigation of Quartz Surface Products from the People's Republic of China; Surrogate Value Submission," dated September 21, 2018 (Yixin Stone's First SV Comments); Petitioner's Letter, "Certain Quartz Surface Products from the People's Republic of China: Rebuttal Factual Information for Surrogate Values," dated October 1, 2018 (Petitioner's Rebuttal SV Comments); Petitioner's Letter, "Certain Quartz Surface Products from the People's Republic of China: Factual Information to Value Factors of Production," dated October 15, 2018 (Petitioner's Second SV Comments); Yixin Stone's Letter, "Antidumping Duty Investigation of Quartz Surface Products from the People's Republic of China: Surrogate Value Submission," dated October 15, 2018 (Yixin Stone's Second SV Comments); Petitioner's Letter "Quartz Surface Products from the People's Republic of China: Additional Surrogate Value Information," dated November 2, 2018 (Petitioner's Third SV Comments); CQ International's Letter, "Certain Quartz Surface Products from the People's Republic of China; A-570-084; Submission of Additional Surrogate Value Information," dated November 2, 2018 (CQ International's Second SV Comments); and Petitioner's Letter, "Quartz Surface Products from the People's Republic of China: Additional Surrogate Value Information," dated November 5, 2018 (Petitioner's Fourth SV Comments).
[266] *See Preliminary Determination* and accompanying PDM at 10-11.

value information is available from Mexico and the financial statements from Mexico are more reliable, we determined that Mexican data are the best available surrogate value data.[267] Additionally, we noted that, in conjunction with better data availability for Mexico, Mexico also produces identical merchandise and that this also makes Mexico the preferred surrogate country.[268] The factual record in this case has not changed. Nor have parties pointed to record evidence which is contrary to our findings for the *Preliminary Determination*. Therefore, we continue to find that Mexico meets the criteria in section 773(c)(4) of the Act as being 1) at a similar level of economic development to China; 2) a significant producer of both comparable and identical merchandise; and 3) because Mexico has the best data availability. Thus, we continue to find that Mexico is the best choice for surrogate country in this investigation.

We disagree with Yixin Stone's assertion that Mexico is not a significant producer of identical merchandise (which is inherently comparable merchandise) due to its level of exports relative to China.[269] The antidumping statute and Commerce's regulations are silent in defining a "significant producer."[270] Given the absence of any definition in the statute or regulations, Commerce looks to other guidance, such as Policy Bulletin 04.1, on defining comparable merchandise. Policy Bulletin 04.1 states that "the meaning of 'significant producer' can differ significantly from case to case," and that "fixed standards such as 'one of the top five producers' have not been adopted" in Commerce's surrogate country selection process.[271] The antidumping statute grants Commerce discretion to look at various data sources for determining the best available information.[272]

When selecting a surrogate country, Commerce considers whether all of the potential surrogate countries identified in the Surrogate Country Memorandum have significant exports of comparable merchandise, as defined by the HS subheadings listed in the scope of the antidumping order,[273] and we do not consider levels of significance in comparison with other countries.[274] This analysis demonstrated that Mexico has significant exports of identical merchandise, as defined by the HTSUS subheadings listed in the scope of the investigation.[275] Further, in the *Preliminary Determination,* we determined both Mexico and Malaysia to have

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[267] *Id*. at 10-11.
[268] *Id*. at 11.
[269] We note that in all cases, if a country produces identical merchandise, it would also be a producer of comparable merchandise. *See* Policy Bulletin 04.1.
[270] *See* Policy Bulletin 04.1 and section 773(c)(4) of the Act.
[271] *See* Policy Bulletin 04.1
[272] *See* section 773(c)(1)(B) of the Act; *see also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty New Shipper Reviews; 2011-2012*, 78 FR 39708 (July 2, 2013) and accompanying IDM at comment I(B); and *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1274 n.5 (CIT 2006).
[273] *See*, *e.g.*, *Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 78784 (December 31, 2014) (*Aluminum Extrusions from the PRC 12-13*) and accompanying IDM at Comment 1.
[274] *See* Policy Bulletin 04.1 at 3; *see also Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) (*Hardwood and Decorative Plywood from the PRC*) and accompanying IDM at Comment 7.
[275] *See Preliminary Determination* and accompanying PDM at 10.

significant exports of comparable merchandise.[276] While Mexico may not export the same amount of identical merchandise as China, as stated above,[277] we do not look into levels of comparative significance. So long as a country produces a commercially viable amount of exports, we consider them a significant producer.[278] Accordingly, based on the information available and in consideration of Commerce's standard practice discussed above, Yixin Stone has not provided a sufficient basis to compel Commerce to revisit the preliminary finding with respect to Mexico's production of subject merchandise, and we continue to consider Mexico as a significant producer of quartz surface products and comparable products (*e.g.*, including ceramic tile).

Since Commerce considers whether potential surrogate countries have significant exports of comparable or identical merchandise, as defined by the HS subheadings listed in the scope of the investigation, Yixin Stone argues, export data for six "relevant" HS codes prove Malaysia is a producer of identical merchandise.[279] As the petitioner notes, five of these categories have nothing to do with the subject merchandise.[280] For example, HS 2506.10 ("quartz, other than natural sands") is the HS code Commerce used to value the respondents' raw material inputs of quartz. Another example, HS 6810.11 ("building blocks and bricks" made from cement, concrete, or artificial stone) is not similar to quartz surface products. Moreover, the analysis done using the export data of potential surrogate countries to determine significant producers of comparable merchandise uses the HTSUS codes found in the scope of the investigation or order. In this case, these HTSUS numbers are at the 10-digit level, which is the most specific level of HS code.[281] Yixin Stone, attempts to compare these to the Malaysian export data reported on the six-digit level, thus, for a much broader range of products than at the 10-digit level. This can be illustrated by the fact that the remaining HS code (*i.e.*, 6810.99) is for "articles of cement, of concrete, or artificial stone, whether or not reinforced: other."[282] This is a broader category, under which the HTSUS code found in our scope, 6810.99.0010 (*i.e.*, "agglomerated quartz slabs of the type used for countertops"), can be found. Data obtained from Panjiva shows that items such as Buddha statues, planter pots, and cement tiles were imported into the United States from Malaysia under HS 6810.99; clearly not identical merchandise.[283] Significantly, in 2017, not a

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[276] *Id.*

[277] The total quantity of exports of HTSUS 6810.99.0010 ("Agglomerated quartz slabs of the type used for countertops) in 2017 from Mexico to the United States was 5,142 square meters. The total quantity of exports to the United States in 2017 under this HTSUS code from Malaysia and China were zero square meters and 5,615,463 square meters, respectively. *See* Petitioner's Letter, "Re: Certain Quartz Surface Products from the People's Republic of China: Comments on Surrogate Country Selection," dated September 10, 2018 (Petitioner's September 10, 2018, Surrogate Country Letter) at Exhibit 22.

[278] *See*, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 23272 (April 20, 2016) and accompanying IDM at Comment 7.

[279] *See* Yixin Stone's Case Brief at 17-18 (citing to Hero Stone's Surrogate Country Comments at Exhibit 4.). These "relevant" HS codes are 2506.10, 2506.20, 6810.11, 6810.19, 6810.91, 6810.99, and 6815.99.

[280] *See* Petitioner's Rebuttal Brief at 28-29.

[281] We note that HS codes are harmonized globally to the six-digit level. Beyond that, countries may or may not use the same eight- or ten-digit HS codes to classify the same products.

[282] *See* Hero Stones Surrogate Country Comments at 6.

[283] *See* Petitioner's Rebuttal Brief at 29 (citing Petitioner's September 10, 2018, Surrogate Country Letter at Exhibit 13).

single square meter of identical merchandise was imported into the United States from Malaysia under HTSUS 6810.99.0010.[284] So while Malaysia might be a producer of comparable merchandise by reason of its exports under HS 6810.99, as we noted in the *Preliminary Determination*,[285] we find that Malaysia is not a significant producer of identical merchandise by reason of a lack of imports into the United States of identical merchandise. Thus, we continue to find, as we did in the *Preliminary Determination*, that "the record indicates that Mexico is a significant exporter of merchandise covered by {HTSUS} categories identified in the scope of this investigation (*i.e.*, identical merchandise), while both Mexico and Malaysia are significant exporters of comparable merchandise."[286]

Yixin Stone argues that Malaysia should also be considered a significant producer of identical merchandise because there are producers of identical merchandise in Malaysia, pointing to the Malaysian companies OMPAI Malaysia (OMPAI) and Yaxis DZH Industries Sdn. Bhd. (Yaxis).[287] As an initial matter, we note that no party submitted financial statements for these producers. Further, record evidence shows that, though these companies may produce comparable merchandise, they do not produce identical merchandise. While OMPAI creates a type of engineered stone, in some cases using quartz, it is dissimilar to quartz surface products because: (1) it is composed of a multilayered stone board, each with a different purpose and not all of them agglomerated stone; (2) it appears the pattern of the stone board is printed on, not the natural result of pigment, quartz, and resin being mixed together; and, (3) only one layer (*i.e.* "non-radiation porcelain board") contains quartz, and the other ingredient in this layer is diatomite, not an organic binder.[288] Likewise, Yaxis does not produce identical merchandise. Yaxis produces solid surfaces, a type of surface product the main ingredient of which is alumina tri-hydrate, not quartz.[289] Thus, we find that these producers are not producers of identical merchandise.

CQ International also attempts to demonstrate production of quartz surface products in Malaysia. It points to the financial statement of Marbon, as well as to Marbon's website and communication between Marbon and a market researcher.[290] However, there are number of issues with this assessment of Marbon that the petitioner points to: 1) Marbon has affiliated producers located in Guangzhou and Foshan, China;[291] 2) Marbon advertises itself as a Malaysian business who manufactures the product in China;[292] 3) Marbon offers its products for sale with shipping terms of free on board (FOB) port in China, meaning that the products are not being shipped from Malaysia;[293] and 4) Marbon's financial statements describe them as

[284] *Id.* at 30 (citing Petitioner's September 10, 2018, Surrogate Country Letter at Exhibit 22).
[285] *See Preliminary Determination* and accompanying PDM at 10-11.
[286] *Id.* at 10.
[287] *See* Yixin Stone's Case Brief at 17 (citing Hero Stone's Surrogate Country Comments at Exhibit 2).
[288] *See* Hero Stone's Surrogate Country Comments at Exhibit 2.
[289] *Id.*
[290] *See* CQ International's Case Brief at 12.
[291] *See* Petitioner's Rebuttal Brief at 25; *see also* Hero Stone's First SV Comments at Exhibit M-6; and Petitioner's Rebuttal SV Comments at Exhibit 11.
[292] *See* Petitioner's Rebuttal SV Comments at Exhibit 12.
[293] *Id.* at 11.

"engaged in the business of trading all kinds and types of surface materials."[294] As Commerce found in the *Preliminary Determination*, it is unclear from the record evidence whether the Malaysian surrogate financial statements, including those of Marbon, "are for a company that manufactures {quartz surface products} or {is} merely fabricating {quartz surface products} that were manufactured in another country."[295] We agree with the petitioner that Yaxis, OMPAI, and Marbon do not constitute Malaysian manufacturers of identical merchandise, and, therefore, Commerce continues to find that Malaysia is not a producer of identical merchandise. Additionally, as discussed in Comment 11, below, we also find that Marbon is not a producer of comparable merchandise (*i.e.*, the record does not contain evidence that Marbon produces agglomerated slabs in Malaysia).

In the *Preliminary Determination*, Commerce found both Mexico and Malaysia to be significant producers of comparable merchandise, where Commerce pointed to Mexico's significant production of ceramic tiles as evidence.[296] Here, CQ International and Yixin Stone argue ceramic tiles are not comparable merchandise to quartz surface products because they have different physical properties, end uses, and production processes.[297] Section 773(c)(4)(B) of Act directs Commerce to use a surrogate country that is a significant producer of "comparable merchandise" to value FOPs. Although the statute does not define what constitutes "comparable merchandise," it is Commerce's practice to, where appropriate, apply a three-prong test that considers the: 1) physical characteristics; 2) end uses; and 3) production processes.[298]

First, we find that the physical characteristics of ceramic tiles are sufficiently comparable to that of quartz surface products for the purpose of calculating financial ratios pursuant to 19 CFR 351.408(c)(4). CQ International argues that ceramic tile does not use resin, which is expressly mentioned in the scope of the investigation, and that the petitioner has argued that products manufactured with a non-resin binder are not "like product{s}."[299] The statute defines a domestic like product as a product which is like or most similar in characteristics and uses with the subject merchandise.[300] Thus, the domestic like product is the product that directly competes with the imports under investigation, as outlined in the scope. CQ International is confusing "like product" with "comparable merchandise"; they are not equivalent terms. To the effect that CQ International is claiming that ceramic tiles are not comparable merchandise because they do not incorporate a resin binder, CQ International also advocates that the financial statements of

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[294] *See* Petitioner's Rebuttal Brief at 26; *see also* Hero Stone's First SV Comments at Exhibit M-7.
[295] *See* Petitioner's Rebuttal Brief at 26.
[296] *See Preliminary Determination* and accompanying PDM at 10.
[297] *See* CQ International's Case Brief at 7-8; and Yixin Stone's Case Brief at 6-8.
[298] *See*, *e.g.*, *Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) (*Pure Magnesium 2008-2009*) and accompanying IDM at Comment 2; and *Certain Woven Electric Blankets from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010) (*Woven Blankets*) and accompanying IDM at Comment 2.
[299] *See* CQ International's Case Brief at 8 (citing to Petitioner's Scope Rebuttal Brief, "Certain Quartz Surface Products from the People's Republic of China: Petitioner's Rebuttal Brief on Scope Clarification," dated March 25, 2019 at 16 ("The 'Snow Flurry' merchandise made by Ice Stone is made with 'portland cement' instead of a resin binder and thus is not covered by the scope for this reason.")).
[300] *See* section 771(10) of the Act ("The term 'domestic like product' means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.").

Stone Link Manufacturing Sdn. Bhd. (Stone Link), a Malaysian manufacturer and fabricator of quarried stone slabs, are suitable to calculate the surrogate financial ratios.[301] Quarried stone slabs, since they are cut from large blocks of stone, do not use a resin binder in its production process, and quarried stone slab has a significantly different production process from quartz surface products.[302] Commerce's regulations direct it to calculate the surrogate financial ratios using the financial statements from a producer of identical or comparable merchandise in the surrogate country.[303] Thus, by advocating for the use of Stone Link's financial statements, CQ International is claiming that quarried stone slabs are comparable merchandise, and by extension acknowledging that a product need not incorporate a resin binder to be considered comparable merchandise by Commerce. Ceramic tiles, on the other hand, are produced using a clay slurry, which acts as a type of binder for the feldspar, quartz, or sand used in the production of ceramic tile.[304] Thus, we reject CQ International's inconsistent argument that ceramic tile is not comparable merchandise due to not being produced using a resin binder and find that ceramic tile is comparable to quartz surface products.

Yixin Stone argues that the petitioner's description of ceramic tile and quartz surface products as both having "flat surfaces that are primarily made of inorganic materials, including quartz and other silica material" is superficial.[305] Instead, Yixin Stone argues that ceramic tile is distinct in that ceramic tile is significantly "smaller, thinner, and composed of discrete multiple elements that are pieced together."[306] Further, ceramic tiles are made from clays and other inorganic materials, not quartz, which is highlighted by the fact that quartz surface products fall under a different chapter of the Harmonized Tariff Schedule than ceramic tile.[307] However, information on the record shows that tiles can be as large as 50 square feet (or 4.65 square meters), as large as a standard quartz slab.[308] Likewise, multiple sources provided by the petitioner show that quartz is often used in the production of ceramic tile, and that the suppliers of quartz inputs to ceramic tile producers often supply quartz inputs to quartz surface products producers.[309] Yixin Stone seems to argue that the physical characteristics must be identical for ceramic tile to be comparable to quartz surface products. However, they must merely be comparable.[310] Thus, for all these reasons, we find that ceramic tile has comparable physical characteristics to quartz surface products.

The second prong of our comparable-merchandise analysis concerns the end uses of the comparable merchandise. Yixin Stone claims that quartz surface products have specific end uses

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[301] *See* CQ International's Case Brief at 10-11.
[302] *See* Petitioner's Rebuttal SV Comments at Exhibit 18.
[303] *See* 19 CFR 351.408(c)(4).
[304] *See* Petitioner's Letter, "Re: Certain Quartz Surface Products from the People's Republic of China: Response to Supplemental Questions – Antidumping," dated April 30, 2018 (Petitioner's Second Petition Supplemental Response) at Exhibits II-34 and II-35.
[305] *See* Yixin Stone's Case Brief at 7.
[306] *Id.*
[307] *Id.* at 7-8.
[308] *See* Petitioner's Surrogate Country Comments at Exhibit 2.
[309] *Id.* at Exhibits 2-6.
[310] *See*, *e.g.*, *Woven Blankets* and accompanying IDM at Comment 2, where Commerce found that non-electric blankets were "sufficiently comparable" because they share "similar physical characteristics" with woven electric blankets.

(*e.g.*, kitchen and bathroom counter) discrete from those of ceramic tiles (*e.g.*, floor and wall surfaces, primarily for decoration).[311] Further, Yixin Stone asserts quartz surface products are chosen for their "functional and structural applications," and they do not compete with ceramic tiles as a substitute product.[312] However, information of the record shows that quartz surface products have similar end uses. For example, Commerce noted in the verification report for Yixin Stone that Yixin Stone sold "sets," which included a "backsplash" in addition to the fabricated quartz slab.[313] Further, the scope covers all thicknesses and sizes of quartz surface products, and the petitioner's description of the technical characteristics and end-uses of quartz surface products, include use in other surfaces such as flooring, wall facing, shower surrounds, and as tiles.[314] In addition, while quartz surface products might be, in some instances, chosen for structural and functional reasons, there is undoubtedly a level of decorative purpose inherent to them – as evidenced by the myriad patterns and designs used by the various manufacturers and the elaborate product brochures created to market the various designs.[315] Therefore, we find that ceramic tile has similar end uses to quartz surface products.

For the third prong of Commerce's comparable merchandise analysis, CQ International and Yixin Stone argue that quartz surface products have different production processes from ceramic tile. In the Petition, the petitioner stated that the production process for quartz surface products involved seven separate stages: (1) mixing; (2) combining; (3) dispensing and molding; (4) pressing; (5) curing; (6) cooling; and (7) polishing.[316] No party has argued that this is not the general process for manufacturing quartz surface products. The petitioner argues that ceramic tiles share many of the same production processes.[317] Indeed, record evidence shows that ceramic tiles share similar production processes such as mixing, molding, pressing, curing, and polishing.[318] CQ International argues that because ceramic tile is cured at higher temperatures relative to quartz surface products, and because ceramic tile does not undergo the same calibrating and polishing process, it is not comparable to the production of quartz surface products.[319] As noted above, the analysis does not need to conclude that the three prongs are identical, merely comparable. Both ceramic tile and quartz surface products use a heating process to cure the product. Therefore, just because quartz surface products are cured at a lower temperature than ceramic tile, it does render them so dissimilar as to be not comparable.

CQ International claims that the calibration (*i.e.*, cutting to size and thickness) and polishing of the quartz slab comprises the super-majority of the quartz surface products production

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[311] *See* Yixin Stone's Case Brief at 8.
[312] *Id.*
[313] *See* Yixin Stone Verification Report at 2.
[314] *See Initiation Notice*, 83 FR at 22618; and Petitioner's Submission, "Certain Quartz Surface Products from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, as Amended," dated April 17, 2018 (the Petition) at Volume I; Information Relating to Common Issues and Injury at 5.
[315] *See*, *e.g.*, CQ International's July 20, 2018 Section A Questionnaire Response at Exhibit A-17, and Yixin Stone July 20, 2018 AQR at Exhibit A-19.
[316] *See* the Petition at Volume I; Information Relating to Common Issues and Injury at 6.
[317] *See* Petitioner's Rebuttal Brief at 11.
[318] *See* Petitioner's Second Petition Supplemental Response at Exhibit II-34; *see also* Petitioner's Surrogate Country Comments at Exhibit 7.
[319] *See* CQ International's Case Brief at 7-8.

methodology.[320] This claim is disproven by a complete examination of the record. While cutting may be a necessary step for the respondents' production process, there is no indication that this step is uniform to all production of quartz surface products. In the Petition, the production process for quartz surface products notably lacks any mention of cutting the slab to size; instead, it appears as if this is accomplished in the molding and pressing processes.[321] As noted above, a significant portion of a quartz surface products production line involves the production of the slab itself, which is created from discrete raw materials, and undergoes a lengthy process of mixing, forming, and curing before being polished.

Yixin Stone cites to Breton SpA to claim that it demonstrates the equipment used in the production of ceramic tile is significantly different than in the production of quartz surface products.[322] However, the equipment need not be identical; it only needs to accomplish comparable processes, and, as explained above, the production processes for ceramic tiles are comparable to the production processes for the subject quartz surface products. Additionally, Breton SpA (*i.e.*, the same company that produces machinery used to manufacture quartz surface products), advertises on its website that it produces polishing machines for ceramic tile.[323]

For all the reasons stated above, based on the three-prong test consistent with Commerce's practice,[324] we continue to find that ceramic tile is comparable merchandise to quartz surface products for the purposes of the SV calculations.

If potential surrogate countries have not been definitively disqualified at this point in Commerce's analysis (by either failing to demonstrate economic comparability or significant production of comparable merchandise), Commerce next looks to the availability of SV data on the record to determine the most appropriate surrogate country.[325] Mexico afforded the best overall data availability and Commerce preliminarily determined that Mexico affords better quality financial statements information for use in calculation of surrogate financial ratios over those available from Malaysia, and thus selected Mexico as the most appropriate surrogate country.[326]

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[320] *Id.* at 6-7 and 13 (citing Teltos Quartz Stone Co. Ltd.'s; Hirsch Glass Corporation's; Bruskin International dba Belstone's; and Sino-Stone (Guangdong) Co., Ltd.'s Letter, "Re: Certain Quartz Surface Products from the People's Republic of China; ("Quartz Surface Products"); A-570-084/C-470-085; Rebuttal Factual Information," dated March 8, 2019, which is an affidavit of the production process of quartz surface products).
[321] *See* the Petition at Volume I; Information Relating to Common Issues and Injury at 6 ("In the dispensing and molding stage, the combined material is dispensed into a rubber mold to be molded and pressed. In the pressing stage, the material in the mold may be put under vacuum inside the chamber of a press and the physical force of the press compacts the material into slabs of varying sizes and thicknesses."); *see also* Petitioner's Letter, "Re: Certain Quartz Surface Products from the People's Republic of China: Submission of Materials Provided at Plant Tour," dated June 13, 2018 at Exhibit 1, which summarizes Cambria's production process.
[322] *See* Yixin Stone's Case Brief at 8.
[323] *See* Petitioner's Surrogate Country Comments at Exhibit 7.
[324] *See e.g.*, *Pure Magnesium 2008-2009* at Comment 2; and *Woven Blankets* at Comment 2.
[325] *See*, *e.g.*, *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 77323 (December 14, 2015).
[326] *See Preliminary Determination* and accompanying PDM at 24-26.

We disagree with respondents' arguments that the Mexican sources do not provide better data than the surrogate value sources cited by the respondents because they have significant issues, and that Malaysia, accordingly, is the better surrogate country for use in the final determination.[327] The arguments concerning surrogate values for specific inputs and the appropriate surrogate financial statements are discussed below, in Comments 9 through 11. On the whole, we find that the data availability issues continue to favor Mexico. As a result, we continue to find that Mexico provides the best available information with respect to financial statements, from a Mexican producer of ceramic tile (*see* Comment 11); the respondents' raw material quartz inputs (*see* Comment 9); the best available transportation cost data on the record (*see* Comment 10); and surrogate value information for overhead FOPs treated as direct materials (*see* Comment 6).[328] Though Malaysia has useable GTA data for valuing some of the raw material inputs, we note that the respondents failed to place any GTA data for Malaysia on the record to value the overhead direct materials. Instead, CQ International urged Commerce to obtain the information, if Commerce determined additional factors needed to be valued.[329] It is the respondents' burden to place usable information on the record to value all FOPs, not Commerce's.[330] Thus, we find that the record is lacking sufficient information to value all FOPs in Malaysia. Additionally, as discussed in full in Comments 9 and 10, and contrary to the respondents' claims, we do not find the Mexican data we used in the *Preliminary Determination* to value the quartz sand/powder inputs or transportation surrogate values to be aberrational and are not compelled by the respondents' arguments that the alternative Malaysian information represents superior quality data. Furthermore, the Malaysian financial statements are not useable for various reasons and Grupo Lamosa's financial statements provide a better source to calculate the financial ratios (*see* Comment 11).[331]

Finally, we disagree with Yixin Stone that having to adjust the Mexican import values for international freight and marine insurance, because they are reported on an FOB basis, distorts the calculation of the margins for the respondents, and that the Malaysia import values being reported on a CIF basis renders the Malaysian data superior. In previous investigations and administrative reviews, Commerce has recognized that GTA import values from certain countries are reported on an FOB basis.[332] Because the GTA Mexican import values are reported on an FOB basis, we have no basis for assuming that international movement expenses,

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[327] *See* CQ International's Case Brief at 5-15, and Yixin Stone's Case Brief at 9-10, 13-16, and 19-23.

[328] Because arguments with respect to the usability of financial statements from Mexico and Malaysia and the surrogate used to value quartz inputs and certain transportation expenses were raised by respondents in the context of both overall surrogate country selection and individual surrogate value selection, we address parties' specific arguments on these surrogates, in full, below. In addition, we treated certain materials reported as overhead by the respondents as direct materials. *See* Comment 6.

[329] *See* CQ International's Second SV Comments.

[330] *See e.g.*, *QVD Food Co.*, 658 F.3d 1318, 1324 (the "burden of creating an adequate record lies with {interested parties} and not with Commerce").

[331] *See* Hero Stone's First SV Comments at Exhibits M-6 and M-7, and Yixin Stone's Second SV Comments at Exhibits 6 and 7. *See* Comment 11 for a full analysis of proposed surrogate financial ratios.

[332] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018) and accompanying IDM at Comment 3; *Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24740 (May 30, 2018) and accompanying IDM at Comment 1; and *Aluminum Foil* and accompanying IDM at Comment 1.

including international freight and marine insurance, are accounted for in the GTA Mexican import values. Moreover, attempting to limit Commerce's selection of surrogate value source countries to countries that report import data on a CIF basis could have the effect of unreasonably limiting the potential pool of surrogate value source countries.[333] Here, and as further explained in Comment 9, we have applied ocean freight and marine insurance, which reasonably reflect the derivation of CIF values from Mexican FOB values. Therefore, we agree with the petitioner that just because the Malaysian values are reported on a CIF basis, whereas the Mexican data is reported on an FOB basis, it does not render the Malaysian data superior, and we find that the Mexican import data adjusted for ocean freight and marine insurance are reliable sources from which to value the respondents' FOPs.

Finally, although no party argued that either Mexico or Malaysia was not economically comparable to China, the petitioner argues that the Malaysian economy is too distorted by government interference to serve as a surrogate country.[334] Section 773(c)(4) of the Act only directs Commerce to value the FOPs in one or more market economy country that is economically comparable to the NME country and a significant producer of comparable merchandise. As Commerce considers Malaysia to be a market economy country, we have not disqualified Malaysia as a potential surrogate country in this investigation based on petitioner's argument.

Accordingly, we continue to find Mexico to be 1) at a comparable level of economic development as China; 2) a significant producer of merchandise comparable to quartz surface products; and 3) we find that Mexico provides the best surrogate values in terms of specificity, contemporaneity, and quality of the data that is publicly available, with which to value the respondents' FOPs and financial ratios.[335] As such, we find no basis to reconsider our preliminary finding with respect to surrogate country selection and continue to consider Mexico the primary surrogate country for the purposes of this final determination.

Comment 9: Surrogate Value for Quartz Powder

CQ International's Arguments

- If Commerce persists in using Mexico as the surrogate country for the final determination, it should correct the surrogate value of quartz, which is highly distorted. Commerce based the surrogate value for quartz on HS code 2506.10, which covers "Quartz (Other than Natural Sands)." Instead, Commerce should use HS code 2505.10 which covers "Silica Sands and Quartz Sands, Natural."

- There is not a clear division between HS codes 2506.10 and 2505.10, as Commerce alleged in the *Preliminary Determination*, since commercial quartz sand includes ground or manufactured product. Thus, Commerce should use the weighted average of the two HS

[333] *See*, *e.g.*, *Aluminum Foil* and accompanying IDM at Comment 1.
[334] *See* Petitioner's Rebuttal Brief at 21-24.
[335] *See*, *e.g.*, *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) (*Diamond Sawblades LTFV*) and accompanying IDM at Comment 1.

codes to find the appropriate surrogate value. If Commerce does not do this, it should not use HS code 2506.10, as it is not representative of the quartz input.

- Quartz powder has many different applications and comes in a wide range of grades at drastically different prices. Quartz powder grades are based upon the purity of the quartz and the amount of silica present in the quartz. The grade of the quartz powder determines the applications in which it is used. Low purity quartz powder is used in applications where impurities will not affect the process, such as quartz surface products. All of the values placed on the record for low-grade quartz powder, except for the Mexican import data, reflect a low value for the quartz input. The Mexican surrogate value is off from the price data on the record by a factor of 10 and is not reflective of the actual value of quartz powder used in quartz surface products.

Yixin Stone's Arguments

- Commerce has regularly rejected surrogate value data found to be aberrational relative to general benchmarks established in the course of the investigation.[336] Compared to the values of quartz imported into Malaysia and Thailand, reported on a CIF basis, the value of quartz imported into Mexico during the POI is over eight times higher before factoring in transportation cost, as Mexican data is reported on an FOB basis. The substantial difference in values proves that the surrogate value for quartz is aberrational.

- The Malaysian import value for quartz is not aberrational, relative to values reported by other countries of comparable economic development to China, and are therefore, more credible than the Mexican import value.

- Eighty-four percent of quartz powder imported to Mexico comes from the United States. Mexico has no quartz surface products industry buying low-cost, low-grade quartz. Thus, this is likely quartz of a higher-value technical grade not used in the production of quartz surface products, and there is a substantial difference in price between the different grades of quartz powder.

- The quartz surrogate value is skewed by Commerce adjusting the AUV of 2506.10 to include ocean freight based on delivery from China to Mexico.[337] This is irrelevant to valuing a surrogate value as if China were buying and transporting raw material from a market economy country. Additionally, adding ocean freight to the surrogate value for the quartz inputs further distorts it because most of the quartz imported to Mexico from the United States came by land.

- Even if Malaysia is not chosen as the surrogate country for the final determination it should be used to value quartz, as the data from Mexico is aberrational, and the Malaysian import values are more credible and reported on a CIF basis.

[336] *See* Yixin Stone's Case Brief at 13 (citing *Timken Co. v. United States*, 166 F. Supp. 2d 608, 623 (CIT 2001) (*Timken 2001*)).
[337] We note that Yixin Stone argues that the surrogate value for ocean freight was based on delivery from China to Mexico. In fact, it was based on delivery from China to the United States.

Petitioner's Rebuttal Arguments

- The Mexican GTA import data for quartz powder is not aberrational. Yixin Stone's claim that it is aberrational is based on a comparison of the Mexican average unit value (AUV) to Malaysian and Thai AUVs for quartz powder. However, Commerce's practice is to only use data from economically comparable countries to determine whether a particular surrogate value is aberrational.[338] Since Thailand is not economically comparable to China, the Thai AUV for quartz powder is not an appropriate benchmark with which to determine whether the Mexican AUV is aberrational.

- The Malaysian tariff schedule provides an HS code specific to quartz sands (*i.e.* 2505.10.0020), which is separate from the Malaysian HS code for silica sands (*i.e.* 2505.10.0010) that the respondents are using as a basis of comparison to the Mexican AUV for quartz powder. The HS code for quartz sands has an AUV that is more in line with the Mexican AUV for quartz powder than the HS code for silica sands.

- Yixin Stone argues that the Mexican quartz value is aberrational because Mexico does not produce identical merchandise; however, record evidence, such as significant imports to the United States from Mexico under 6810.99.0010 (*i.e.* quartz surface products) proves otherwise for both identical and comparable merchandise. Further, the suppliers of raw quartz materials also often supply the raw clay materials used to produce ceramic products, such as ceramic tile.

- CQ International's claim that the lowest priced quartz grade is the one used to produce subject merchandise is not supported by the record of this investigation. The study CQ International cites is from December 2013 and is not contemporaneous with the POI. Additionally, Commerce prefers the use of a broad-based average, not a single data point, as provided by the study.

- CQ International claims the proper HS code to value quartz powder is 2505.10 (Silica Sands and Quartz Sands; Natural) because Mexican HS code 2506.10 (Quartz; Other than Natural Sands) "appears to be based on high grade quartz powder for technical applications such as semi-conductors or solar panels which require a high purity of quartz."[339] There is ample evidence on the record to support 2506.10 being the correct HS code with which to value quartz powder, as it covers "quartz in its crude state, including quartz that has been ground, powdered, sifted, screened, and separated."[340] This description clearly encompasses the quartz input the respondents consume in the production of quartz surface products. Further, Yixin Stone has argued that 2506.10 is the correct HS code to value the quartz input.[341] CQ

[338] *See* Petitioner's Rebuttal Brief at 16 (citing Commerce's Redetermination, "Final Results of Redetermination Pursuant to Court Remand pursuant to *SeAH Steel Vina Corporation v. United States, et al.*, Consol. Court No. 14-00224, Slip Op. 16-82 (CIT 2016)," dated April 28, 2017 at 13).
[339] *Id.* at 17 (citing CQ's Case Brief at 18).
[340] *Id.* at 17-18 (citing Petitioner's Rebuttal SV Comments at Exhibit 1).
[341] *Id.* at 18 (citing Yixin Stone's First SV Comments at Exhibit 1).

International's argument that 2505.10 is the correct HS code is also incorrect, as the World Customs Organization (WCO) explanatory notes for HS code 2505.10 explain that it covers "natural sea, lake, river or quarry sand (*i.e.* sand in the form of more or less fine particles resulting from the natural disintegration of minerals), but excludes sands and powders obtained artificially, for example, by crushing."[342]

Commerce's Position

We disagree that we should use Malaysian HS codes 2505.10 or 2506.10 or Mexican HS code 2505.10 to value the respondents' quartz inputs. For the final determination, as discussed below, we continue to use Mexican import data under HS subheading 2506.10 to value these FOPs.

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 POI, and tax and duty exclusive.[343] Further, the courts have affirmed that "Commerce has broad discretion in deciding what constitutes the best available information," given that the term "best available information" is not defined by statute and provided that "the overall purpose of the statute… is to calculate accurate dumping margins."[344] Commerce's practice and preference is also to value all FOPs in a single surrogate country, when practicable,[345] and to not use aberrational surrogate values.[346]

As explained above, we continue to use Mexico as the primary surrogate country. 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."[347]

As is Commerce's practice,[348] when selecting the surrogate values to use in the *Preliminary Determination*, Commerce considered, among other factors, the quality, specificity, and contemporaneity of the data. For the respondents' quartz inputs, in the *Preliminary Determination*, we used Mexican HS code 2506.10. The description of this category is "Quartz (Other Than Natural Sands)." Yixin Stone and CQ International provided the following descriptions for their quartz sand/powder inputs: "irregular granule shape or powder shape of

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[342] *Id.* at 19 (citing Petitioner's Rebuttal SV Comments at Exhibits 1, 2, and 4).
[343] *See Preliminary Determination* and accompanying PDM at 31; *see also*, *e.g.*, *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) and accompanying IDM at Comment 7.
[344] *See SolarWorld Americas, Inc. v. United States*, 273 F. Supp. 3d 1254 (CIT 2017) (*SolarWorld*) at 1265; *see also QVD Food Co.*, 658 F. 3d 1318, 1323.
[345] *See* 19 CFR 351.408(c)(2).
[346] *See Antidumping Duties*; *Countervailing Duties: Final Rule*, 62 FR 27296, 27366 (May 19, 1997) (*Preamble*).
[347] *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).
[348] *See*, *e.g.*, *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008) (*OTR Tires*) and accompanying IDM at Comment 9.

different sizes…most of these quartz granules/powders are crushed/smashed from natural quartz stone," and "common quartz sand and quartz sand powder are crushed directly from normal grade quartz."[349] Yixin Stone also submitted pictures of the raw quartz materials and its production process showing that the quartz sand/powder is artificially crushed, and not naturally reduced.[350] Additionally, the petitioner provided factual information which shows that HS code 2506.10 is the correct subheading under which to classify the quartz inputs.[351] In particular, the WCO explanatory notes for chapter 25 of the HS code describe HS Code 2505.10 as quartz sands, the heading of which (*i.e.* 2505) "covers all natural sea, lake, river or quarry sand (*i.e.* sand in the form of more or less fine particles resulting from the natural disintegration of minerals), but *excludes* sands and powders obtained artificially, for example, by crushing."[352] Further, a technical data sheet from Mikroman Madencilik San. Tıc. Ltd. Şti. (Mikroman), a Turkish producer of quartz sands for the artificial stone industry (*i.e.* quartz surface products and others),[353] states that "grounded quartz is produced in micronizing plant after drilling, blasting, crushing, washing, screening, optic sorting, drying, and grinding processes."[354] The Mikroman data sheet classified the crushed quartz sand (*i.e.* quartz not naturally reduced to sand) under HS code 2506.10. Additionally, Lingshou County Jiaqi Mineral Processing Factory, a Chinese supplier of quartz sand/powder, also advertises its quartz sand/powder under HS subheading 2506.10.[355]

Based upon the description of the HS code, and the description of the quartz inputs used by CQ International and Yixin Stone in their production of quartz surface products, we affirm that the proper HS code with which to value the respondents' quartz inputs is 2506.10, *i.e.*, quartz, other than natural sands. Thus, we disagree with CQ International that reliance on a different HS category for the final determination would be more appropriate (*i.e.*, HS code 2505.10). As explained above, code 2506.10 is specific to the machine-ground quartz and quartz powder inputs used by the respondents; while the code suggested by CQ International is for naturally eroded quartz sands. There is ample record evidence supporting HS code 2506.10 as the proper HS code for quartz sand and powder;[356] thus, we disagree with CQ International that the difference between HS 2505.10 and 2506.10 is unclear.[357] Further, we disagree with CQ

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[349] *See* Yixin Stone's November 2, 2018, Third Supplemental Sections A, C, and D Questionnaire Response (Yixin Stone 3rd Supp. ACD Response) at 8; and CQ International's October 16, 2018, Supplemental Section D Questionnaire Response (CQ International Supp. D Response) at 15.
[350] *See* Yixin Stone 3rd Supp. ACD Response at 8 and Exhibit S2ACD-18.
[351] *See* Petitioner's Rebuttal SV Comments at Exhibits 1-10.
[352] *Id.* at Exhibit 1.
[353] *Id.* at Exhibit 5.
[354] *Id.* at Exhibit 6.
[355] *Id.* at Exhibit 3.
[356] *See*, *e.g.*, Petitioner's Letter, "Re: Certain Quartz Surface Products from the People's Republic of China: Response to Supplemental Questions – Antidumping," dated April 24, 2018 (Petitioner's First Petition Supplemental Response) at Exhibits II-16 and II-29.
[357] There is a clear and distinct line between HS 2506.10 and 2505.10. CQ International points to the United States Geological Survey's (USGS') *2015 Minerals Yearbook* to show that commercial quartz sand includes "ground" or "manufactured" quartz sand/powder. *See* CQ International's Case Brief at 15-16 (citing CQ International's Letter, "Re: Certain Quartz Surface Products from the People's Republic of China; A-570-084; Submission of Surrogate Value Information, Rebuttal Surrogate Value Information and Factual Rebuttal to Petitioners Submission of October 18, 2018," dated October 25, 2018 (CQ International's Rebuttal SV Comments) at Attachment III). Indeed, as discussed above, the respondents have placed factual information on the record stating that the raw quartz

International that the proper way to calculate the surrogate value for the quartz inputs is to take the average of the two HS codes. As explained, above, the respondents use mechanically ground quartz and quartz powder; not natural quartz sands. Thus, the most specific HS code is 2506.10, and, therefore, HS 2506.10 is also the best available surrogate value for the inputs at question; averaging the most specific HS code with a non-specific HS code does not create a better surrogate value. In other cases, the courts have recognized that, when faced with a choice between two imperfect options, it is within Commerce's discretion to determine which choice represents the best available information.[358] In this case, the record is clear that 2506.10 is the better choice – *i.e.*, this is not a case of two imperfect options. The salient fact is that naturally disintegrated quartz sand is not the same product as quartz and quartz powder that has been crushed from quartz stone, and, thus, any imports of natural sands are less specific than imports of crushed quartz. As explained above, Commerce selects surrogate values based on product specificity, and CQ International has given us no reason to depart from our practice here. Moreover, Commerce has previously determined that "{w}hen a party claims that a particular {surrogate value} is not appropriate to value a certain FOP, the burden is on the party to provide evidence demonstrating the inadequacy of the {surrogate value}."[359] CQ International has failed to meet this burden here and, therefore, we continue to rely on HS 2506.10 to determine the surrogate values for the respondents' quartz inputs.

Yixin Stone and CQ International also argue that the import data for Mexican HS 2506.10 are aberrationally high and, therefore, unreliable. However, we find that the analysis accompanying this claim (*i.e.* the comparison of the AUVs for HS 2506.10 from Mexico, Malaysia, and Thailand, and the comparison of the Mexican AUV to the price of different grades of quartz) is not valid. Specifically, Yixin Stone calls Thailand "a country with comparable economic development,"[360] arguing that Thailand's AUV for HS 2506.10 can be used as a benchmark to assess the validity of the Mexican and Malaysian quartz AUV. However, Thailand is not on the list of countries that Commerce considers to be economically comparable to China.[361]

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sand/powder that is used to make quartz surface products is crushed, smashed, or ground from quartz stone; that is, it has not naturally disintegrated into sand/powder. The surplus of evidence that the petitioner has placed on the record confirms that quartz sand that has been crushed from quartz stone should be valued under HS 2506.10. *See*, *e.g.*, Petitioner's Rebuttal SV Comments at Exhibits 1-10.

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

[359] *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; *see also Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) and accompanying IDM at Comment 15; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 3987 (January 22, 2009) and accompanying IDM at Comment 6.

[360] *See* Yixin Stone's Case Brief at 14.

[361] *See* Revised List of Surrogate Countries ("For the purposes of this investigation, Commerce has determined to use the revised list for the selection of the primary surrogate country. The revised list is more contemporaneous with the period of investigation (POI) for this case, as it is for 2017 GNI; and, as such, better reflects countries with a comparable level of economic development to China during the POI. Further, the revised list is being used in the other concurrent antidumping investigations involving China with the same POI as in this investigation.") at

Commerce's practice is to use data from economically comparable countries as benchmarks to determine whether surrogate values are aberrational.[362] Further, the CIT found in *Clearon II* that Commerce is not required to evaluate data from non-economically comparable countries when making its surrogate value selections, unless the parties provide information showing that quality data is unavailable from all of the economically comparable countries.[363] Since Thailand is not economically comparable to China, the Thai AUV for HS 2506.10 is inappropriate as a benchmark for the Mexican quartz data. Parties have not established that any other country on the surrogate country list (*i.e.* at the same level of economic development as China) is a source of quality data that would be suitable to use as a benchmark to determine whether particular surrogate values are aberrational; thus, we are left with only the Mexican and Malaysian AUVs. Contrary to Yixin Stone's assertion, the mere fact that the AUV of imports under Mexican HS 2506.10 is higher than the AUV for imports under Malaysian HS 2506.10 does not demonstrate that the data themselves are somehow flawed. While Yixin Stone 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 2506.10, we find that these imports were in commercially significant quantities and from multiple countries; further, no party argues that any of the individual imports under this category were aberrational.[364] Thus, we find nothing unusual about the import data themselves which would call their reliability into question.[365] Accordingly, we find that the Mexican AUV is not aberrational merely by virtue of being higher than the Malaysian AUV (*i.e.*, with only two data points it is impossible to establish which value, of the two, might be aberrational, if indeed either is aberrational).

We also disagree with CQ International's and Yixin Stone's allegations that imports of high-grade, high-value quartz sands not used in the production of subject merchandise are distorting the Mexican import value of HS 2506.10. CQ International makes unsubstantiated claims that the production of quartz surface products only uses the lowest grade of quartz sands, with low silica content and more impurities,[366] and that high-grade quartz sand/powder is only used in such applications as semi-conductors or solar panels, which require high silica contents.[367] In fact, record evidence contradicts CQ International's claim. An offer for sale from Acromont

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Attachment, where the listed countries are Romania, Malaysia, Russia, Mexico, Brazil, and Kazakhstan; Thailand is below the GNI level of the lowest GNI country on the revised list of surrogate countries.

[362] *See*, *e.g.*, Commerce's Redetermination, "Final Results of Redetermination Pursuant to Court Remand pursuant to *SeAH Steel Vina Corporation v. United States, et al.*, Consol. Court No. 14-00224, Slip Op. 16-82 (CIT 2016)," dated April 28, 2017, at 13; and *Multilayered Wood Flooring from the People's Republic of China: Final Result of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014) (*Multilayered Wood Flooring*) and accompanying IDM at Comment 6.

[363] *See Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014*-2015, 81 FR 62088 (September 8, 2016) at Comment 3 (citing *Clearon Corp. v. United States*, Slip Op 15-91 (CIT 2015) (*Clearon II*)).

[364] *See* Prelim SV Memo at Exhibit 4. While Yixin Stone argues that the U.S. imports into Mexico under this category distort the AUV, we note that the AUV for each of the U.S. imports falls within the range of the import values from the other countries.

[365] *Id.*

[366] *See* CQ International's Case Brief at 16 ("Quartz used for the production of slab does not require a high percentage of silica. This lower level of silica is similar to that of clear grade glass.") and 18 ("The quartz sand/powder used for the production of quartz slab is the low-grade quartz sand/powder analogous to the low-grade quartz sand/powder used to produce glass.").

[367] *Id.* at 18.

corporation advertises high-grade quartz sand with high purity and a high silica content for use in applications like artificial/engineered stone (*e.g.* quartz surface products) and semi-conductors.[368] Additionally, a product brochure from Gebrüder Dorfner GmbH & Co. describes their high-purity quartz sand, which "boasts a high {silica} content…free of humic substances and other contaminants," for use in engineered stone.[369] Thus, the record shows that quartz surface products can be, and are, made with high-grade quartz sands.

In addition, we disagree that the price data from Verdant Minerals Ltd., the USGS, Ashirwad Minerals & Marbles, and Raghav Productivity Enhancers Limited[370] corroborates CQ International's and Yixin Stone's conclusion that the surrogate value computed using Mexican HS 2506.10 is distorted. It is unclear how this data is relevant, as the record demonstrates that quartz surface products are generally produced using high-purity quartz and quartz powder,[371] and the only evidence CQ International cites to the contrary are unsubstantiated statements made in its questionnaire responses.[372] Additionally, the price data from Verdant Minerals and the USGS are not contemporaneous to our POI,[373] and thus are not comparable to the Mexican import data. We also note that the price data from Verdant Minerals, *et al.* nowhere mentions what grade of quartz sand/powder is used in the production of quartz surface products. Furthermore, the price data is from the United States and India, two countries that are not at the same level of economic development as China, and, therefore, not appropriate to be used as benchmarks to assess the suitability of the Mexican surrogate value data.

Yixin Stone also points out that 84 percent of the imports into Mexico under HS 2506.10 come from the United States, and that these imports are driving the surrogate value up because they must be of "higher value technical grade inputs that are not used in QSP production."[374] Yixin Stone bases this unsubstantiated speculation on the assertion that "there is little evidence of a {quartz surface products} industry in Mexico to purchase such high value quartz input."[375] We disagree that imports from the United States are distorting the Mexican AUV for HS 2506.10. As noted above, the record contains evidence of a quartz surface products industry in Mexico, and that the ceramic industry, such as ceramic tile makers in Mexico, uses quartz inputs;[376] and further, as established above, quartz surface products are produced using high-purity, high-grade

[368] *See* Petitioner's First Petition Supplemental Response at Exhibit II-16.
[369] *Id.* at Exhibit II-17.
[370] *See* CQ International's Case Brief at Exhibits CB-3 and CB-4, previously submitted as Attachment III of CQ International's Rebuttal SV Comments.
[371] *See* Petitioner's First Petition Supplemental Response at 4-6 ("To be suitable for use in the production of quartz surface products, the materials generally must have very high silica content and few impurities.") and Exhibits II-15 and II-16.
[372] *See* CQ International Supp. D Response at 15; and CQ International's Case Brief at 16 ("Quartz used for the production of slab does not require a high percentage of silica. This lower level of silica is similar to that used for clear grade glass.").
[373] The survey by Verdant Minerals appears to be from 2013, while the USGS survey was conducted in 2015.
[374] *See* Yixin Stone's Case Brief at 15.
[375] *Id.*
[376] *See* Petitioner's Rebuttal Brief at 8-11; *see also* Petitioner's September 10, 2018, Surrogate Country Letter at Exhibit 22; Petitioner's Second SV Comments at Exhibit 5; Petitioner's Second Petition Supplemental Response at Exhibit II-35; and Petitioner's Surrogate Country Comments at 4 and Exhibits 5-6.

quartz. Thus, there is no basis to discard the quartz sand/powder imported into Mexico from the United States or to conclude that they are somehow distorting the AUV for HS 2506.10.

In the *Preliminary Determination*, we based the surrogate values for the respondents' raw material FOPs on GTA data for imports into Mexico. Consistent with our practice,[377] because these data were stated on a FOB foreign port basis, we added an amount for international freight and marine insurance to derive a landed (or CIF) value, in Mexico.[378] Using one of the two sources of information placed on the record, we calculated the ocean freight surrogate value using a rate reported by Maersk via Descartes for shipping a 20-foot container of "engineered quartz polished slabs" from a port in China to a port in the United States.[379] We excluded any brokerage and handling expenses included in this rate to avoid double counting. We then converted the per-container quote to a per-kilogram rate by dividing the quote by the average container weight of shipments of quartz surface products to the United States during the POI obtained from Panjiva.[380] We added this USD-per-kilogram rate to the USD-per-kilogram cost of the Mexican import data in our surrogate value calculations to account for freight-in costs.[381] The surrogate value for marine insurance expenses is based on prices quoted by RJG consultants.[382] We calculated a rate per-USD amount and multiplied this rate by the surrogate value dollar amount of the raw material FOPs to calculate the marine insurance expense.[383]

Yixin Stone claims that adding the cost of ocean freight to the surrogate value for the quartz inputs is distortion inducing, and basing the cost of ocean freight on delivery from China to United States is irrelevant to valuing a surrogate value, "as if China were buying and transporting the raw material from a market economy."[384] In addition, Yixin Stone asserts that quartz imported into Mexico from the United States is likely to come by land.[385] Commerce rejects these arguments. Because Mexican import values are reported on an FOB basis, Commerce must make adjustments to value them on a CIF basis, consistent with our practice.[386] As a result

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[377] *See* Policy Bulletin 10.2.
[378] *See* Prelim SV Memo at 4.
[379] *Id.* at 9; *see also* Petitioner's First SV Comments at Exhibit 8-B.
[380] *See* Prelim SV Memo at 9, Exhibit 11, and Exhibit 12; *see also* Petitioner's First SV Comments at Exhibit 13.
[381] *See* Prelim SV Memo at Exhibit 1-A.
[382] *See* Petitioner's First SV Comments at Exhibit 7.
[383] *See* Prelim SV Memo at 9 and Exhibits 1-A and 10.
[384] *See* Yixin Stone's Case Brief at 15.
[385] *Id.*
[386] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018) and accompanying IDM at Comment 3 (citations omitted):

> Policy Bulletin 10.2 states that "in situations where the surrogate country import statistics do not include international freight costs, {Commerce} 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. Policy Bulletin 10.2 further states that "{w}hen relying on surrogate country import statistics to value inputs, {Commerce} normally obtains import prices that include the international freight costs on shipping the product to the port of the importing country… However, when the import statistics of the surrogate country do not include such costs, {Commerce} has added surrogate values for international freight and brokerage and handling charges to the calculation of normal value."

we continue to find that adding ocean freight and marine insurance expenses to the AUV value of the surrogate values for the FOPs, including quartz sand/powder, is necessary to account for the otherwise absent import costs. We also disagree with Yixin Stone'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.[387] 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. Further, the respondents have provided no evidence on the record to indicate that the quartz imports into Mexico from the United States came by land, and GTA does not detail what method of transport the commodity arrives by.

With regard to valuing ocean freight based on delivery to the United States from China, only two sources were placed on the record with which to value ocean freight, both from the petitioner.[388] It is not Commerce's burden to place information on the record with which to value FOPs, it is the parties' burden; if Yixin Stone disagreed with the freight values provided by the petitioner, it should have provided an alternative source. As there were only two sources on the record with which to value the surrogate value for ocean freight, we selected the one we determined to be the "best available information," pursuant to section 773(c)(1) of the Act. As noted above, the CIT has upheld that Commerce has broad discretion in determining what constitutes the "best available information."[389] For the foregoing reasons, we continue to add the cost of ocean freight to the surrogate values for all raw material FOPs for the final determination and we disagree with Yixin Stone that the additional freight is distortionary; to the contrary, not including the freight would create distorted and undervalued surrogate values.

Finally, we find Yixin Stone's reliance on *Timken 2001* misplaced. Yixin Stone cites to *Timken 2001* to argue that Commerce has regularly rejected data found to be aberrational relative to general benchmarks (*i.e.* the HS 2506.10 import data from Thailand).[390] In this case, we have exercised discretion by determining what information to use to value FOPs, as affirmed by the Court in *Timken 2001*.[391] As explained above, consistent with Commerce's long-held practice and pursuant to section 773(c)(4) of the Act, Thailand is not an appropriate source of data to use as a benchmark to assess the suitability of particular surrogate values because Thailand is not economically comparable to China. Thus, for the foregoing reasons, we have determined that Mexican HS 2506.10 is the best available information with which to value the respondents' quartz inputs.

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[387] *See*, *e.g.*, *Hydrofluorocarbon Blends from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 17380 (April 25, 2019) at Comment 4.
[388] *See* Petitioner's First SV Comments at Exhibits 8-B and 8-D.
[389] *See*, *e.g.*, *QVD Food Co.*, 658 F.3d 1318, 1323 ("Commerce has broad discretion to determine the best available information for an antidumping review, given that the term 'best available information' is not defined by statute.").
[390] *See* Yixing Case Brief at 14 (citing *Timken 2001*, 166 F. Supp. 2d at 623).
[391] *See Timken 2001*, 166 F. Supp. 2d at 623 ("Commerce has never adopted a numerical standard for identifying aberrational or questionable data and has properly exercised its statutory discretion by determining what information to use for valuing FOPs on a case-by-case basis.").

Comment 10: Surrogate Values for Transportation and Brokerage and Handling

In the *Preliminary Determination*, we valued truck freight expenses using data from the World Bank's *Doing Business in Mexico: 2018.* We derived an average weight- and distance-based freight rate based on a 20-foot container weight of 15 metric tons. We calculated an average rate using two scenarios provided in *Doing Business in Mexico: 2018*; inland transportation cost of $1,300 over a distance of 1,117 kilometers from Mexico City to the border crossing at Nuevo Laredo, and an inland transportation cost of $500 over a distance of 219 kilometers from Monterrey to Nuevo Laredo.[392] Because this rate predated the POI (*i.e.,* from June 2017), we inflated the value using the Producer Price Index inflator (PPI inflator).[393] We followed a similar methodology to calculate the brokerage and handling expense, using the methodology from *Doing Business in Mexico: 2018*. Using the 15 metric ton weight provided for a 20-foot container, we calculated a per-kilogram surrogate import brokerage and handling rate after adjusting for inflation using the PPI inflator.[394]

CQ International's Arguments

- The truck freight SV from Mexico, used to value domestic inland transportation costs in China, is aberrational and overstated by 250 to 400 percent.

- Commerce used the methodology outline in *Doing Business in Mexico: 2018* to value trucking costs. Specifically, Commerce used the 20-foot container, weighing 15,000 kilograms assumptions stated in *Doing Business in Mexico: 2018* and calculated a per kilometer, per-kilogram value for truck freight. However, this calculation significantly overstates the actual trucking costs.

- *An Analysis of the Operational Costs of Trucking: 2016 Update*, states that the relative costs of shipping goods by truck is not based on the weight, but on other factors that are incorporated into an "average marginal cost per mile."[395] This cost is the same, calculated on a per truck, per mile basis, no matter the weight or product. Thus, in valuing truck freight and brokerage and handling, Commerce should divide the cost per {kilometer} by the actual quantity of product in each truckload; for CQ International, this would be 40,000 kilograms per truckload for domestic inland freight for shipments of quartz surface products, and 59,000 kilograms for shipments of raw materials for valuing FOPs.

- Commerce made the same errors in the calculation of brokerage and handling surrogate values, and should, therefore, adjust the value according to the methodology laid out above, no matter which country is used as the surrogate country.

[392] *See* Prelim SV Memo at 8 and Exhibit 8.
[393] *Id.*
[394] *Id.* at 8 and Exhibit 9.
[395] *See* CQ's Case Brief at 19 (citing CQ International's First SV Comments at Exhibit 1).

Yixin Stone's Arguments

- The distortive effect of the Mexican transportation cost is highlighted by the surrogate value of the brokerage and handling costs for Mexico calculated in the *Preliminary Determination*, as it is nearly 300 percent higher than the brokerage and handling costs in Malaysia and Thailand.

- Even if Malaysia is not chosen as the surrogate country for the final determination it should be used to value transportation costs, as the data from Mexico is aberrational, and the Malaysian import values are more credible and reported on a CIF basis.

Petitioner's Rebuttal Arguments

- Yixin Stone's claim that the brokerage and handling costs sourced from *Doing Business in Mexico: 2018* (*i.e.* $0.03 USD/kilogram) are aberrational compared to the costs in Malaysia and Thailand *Doing Business* publications (*i.e.* $0.01) are meritless. A difference of $0.02 is not aberrational and Commerce should continue to follow its practice of using the *Doing Business in Mexico* publication to value brokerage and handling.

- CQ International's argument that the trucking costs reported in *Doing Business 2018: Mexico* are distorted because Commerce converted the cost to a per unit value is similarly baseless. *An Analysis of the Operational Costs of Trucking: 2016 Update* (*Costs of Trucking 2016*) does not provide the price trucking companies charge their customers, but the costs they incur in providing trucking services. Thus, it is of no relevance to the issue at hand. Additionally, the second publication CQ International cites to discusses how to get the best rate for a full truckload, not the actual weight of a full truckload. This also does not support CQ International's assertion that it is inappropriate to use the assumption of a 15,000 kilogram truckload outlined in the *Doing Business in Mexico: 2018* methodology.

Commerce's Position

For the reasons explained below, we agree with the petitioner and continue to value brokerage and handling and truck freight using a 20-foot container weight of 15 metric tons from *Doing Business in Mexico: 2018* for the final determination.

Commerce has established in prior NME cases in which the World Bank's *Doing Business* was used to value truck freight, and brokerage and handling, that the weight of the 20-foot container specified in the *Doing Business* publication should serve as the basis for conversion to a per-kilogram basis.[396] Specifically, the weight listed in the World Bank's *Doing Business in Mexico: 2018* publication (*i.e.*, 15 metric tons) serves as the basis for the brokerage and handling and

[396] *See*, *e.g.*, *Drawn Stainless Steel Sinks from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2012-2014*, 80 FR 69644 (November 10, 2015) at Comment 15. Note that, in prior iterations of *Doing Business* the standard survey methodology prescribed a weight of 10 metric tons for a 20-foot container; the 2018 version of *Doing Business* prescribes a standard weight of 15 metric tons for a 20-foot container. *See* Petitioner's First SV Submission at Exhibit 5-B.

truck freight expense data collected for the World Bank's study. The study collects data on these costs, and others, through a questionnaire based on the assumption of a 15 metric ton shipment from "private sector experts in international trade logistics."[397] Commerce addressed this same issue in *Steel Nails AR 2010-2011* and determined that the methodology relied upon the hypothetical container weight to collect the cost information contained in the study.[398]

Regarding the publications submitted by CQ International, we find this information is not relevant to *Doing Business in Mexico: 2018*, as those rates have no relationship to the rate in *Doing Business in Mexico: 2018*. Additionally, we have no reason in this investigation to question the 15 metric ton weight used as the basis for the expenses in *Doing Business in Mexico: 2018* or to find that the weight and cost listed in *Doing Business in Mexico: 2018* are independent of one another such that the associated cost is not based on the 15 metric ton weight.

Further, in selecting surrogate values for inputs, section 773(c)(1) of the Act directs us to use the "best available information." In determining the "best available information," it is our practice to consider the following five factors: (1) broad market average; (2) public availability; (3) product specificity; (4) tax and duty exclusivity; and (5) contemporaneity of the data. Based on these criteria, we find that in this investigation *Doing Business in Mexico: 2018* is the only reliable data source. *Doing Business in Mexico: 2018* provides a publicly available, broad market average freight rate, and we have consistently found it to provide the best available information in other prior cases to value truck freight and brokerage and handling.[399] We prefer to value an FOP using prices that are broad market averages because "a single input price reported by a surrogate producer may be less representative of the cost of that input in the surrogate country."[400] The *Doing Business* publication contains data collected from local freight forwarders, customs brokers, port authorities and traders;[401] thus, it reflects the freight costs of multiple vendors and users and provides a broad market average.[402] Based on these facts and given that *Doing Business in Mexico: 2018* is a World Bank publication, we find the quality of the data in this publication to be reliable and consistent with our decisions in other non-market

[397] *See* Petitioner's First SV Comments at Exhibit 5-B at 92 ("Case study assumptions" for *Doing Business Mexico: 2018*).
[398] *See Certain Steel Nails from the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011*, 78 FR 16651 (March 18, 2013) (*Steel Nails AR 2010-2011*) and accompanying IDM at Comment 3R.
[399] *See*, *e.g.*, *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24 2014) (*Diamond Sawblades 2011-2012*) and accompanying IDM at Comment 20; *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014) (*Steel Rail Tie Wire*) and accompanying IDM at Comment 4; and *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 6-A.
[400] *See Honey from the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Order Administrative Review*, 71 FR 34893 (June 16, 2006).
[401] *See* Hero Stone's First SV Comments at Exhibit M-8.
[402] *See Certain Polyester Staple Fiber from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 2366 (January 11, 2013) and accompanying IDM at Comment 3.

economy NME proceedings.[403] Therefore, it is not necessary to adjust the truck freight or brokerage and handling expense surrogate values on any other weight basis.

CQ International also argues that Commerce should use its maximum cargo load weights because they better represent CQ International's shipping practices.[404] With respect to Commerce's reliance of the 15 metric ton container weight in its surrogate brokerage and handling and truck freight calculations, CQ International insists that there is no evidence that the price of transportation is dependent on the weight of the container or the 15 metric ton figure reflected in the World Bank report. In support of its claim that the price of transportation is not dependent on the weight of the container, CQ International submitted two sources, from the American Transportation Research Institute (ATRI) and a logistics company called Zipline Logistics, demonstrate that the hypothetical container weight of 15 metric tons noted in *Doing Business in Mexico: 2018* is not relevant to the costs provided in *Doing Business in Mexico: 2018*. Specifically, CQ International claims that truck freight is set on a per-mile (or kilometer) basis, taking into account factors such as fuel, truck repair, and insurance, rather than the weight or volume of the container. For all these reasons, CQ International claims that Commerce should use maximum shipment when using data from *Doing Business in Mexico: 2018* to value brokerage and handling fees and truck freight expenses.

We agree with the petitioner that the information that CQ International provided in support of its claims is irrelevant.[405] Specifically, ATRI's study, *An Analysis of the Operational Costs of Trucking*, does not discuss the actual price trucking companies charge their customers, but the costs incurred by these companies when providing their services.[406] Zipline Logistics' publication discusses merely how to get the best rate for "full truckload rates."[407] Thus, the evidence submitted by CQ International does nothing to indicate that the assumption of a truck containing 15 metric tons of merchandise discussed in the methodology from *Doing Business in Mexico: 2018* is inappropriate.

We also do not find availing Yixin Stone's argument that the allegedly distortive and aberrational transportation costs in Mexico can be highlighted by the Mexican brokerage and handling rate because they are three times higher than those in Thailand and Malaysia. Yixin Stone points out that the brokerage and handling surrogate value calculated in the *Preliminary Determination* was 0.0322 USD/kilogram, while the Malaysian and Thailand values are 0.0114 USD/kilogram and 0.0113 USD/kilogram, respectively.[408] With regards to the Thai value, as we have noted above, Thailand is not an economically comparable country for this investigation, and, as such, price data from Thailand is not appropriate to use as a benchmark to determine the suitability of particular surrogate values. Additionally, the sources for the Thai and Malaysian values are *Doing Business in Thailand: 2018* and *Doing Business in Malaysia: 2018*, which use the same assumptions and methodologies (*i.e.*, 20-foot container weighing 15 metric tons) to calculate a brokerage and handling rate as *Doing Business in Mexico: 2018.* Thus, Yixin Stone

[403] *See*, *e.g.*, *Diamond Sawblades 2011-2012* at Comment 20.
[404] *See* CQ International's Case Brief at 20-21 (*i.e.*, 40 metric tons for shipments of quartz surface products, and 59 metric tons for shipments of raw materials).
[405] *See* Petitioner's Rebuttal Brief at 20.
[406] *See* CQ International's First SV Comments at Exhibit I.
[407] *Id.*
[408] *See* Yixin Stone's Case brief at 16.

is arguing that the Mexican surrogate value for brokerage and handling is distortive and aberrational, merely for being larger than the Thai and Malaysian values. In our discussion of the surrogate value for quartz, *supra*, we noted that while Yixin Stone implies that "higher" is the same as "less accurate;" there is no evidence on the record to support such a conclusion. The values Yixin Stone is comparing are published by the same source, using the same methodology and assumption (*i.e.*, the World Bank's *Doing Business* publications). Merely being a larger value than others on the record does not demonstrate that the value in question is aberrational. Therefore, we find that the Mexican transportation expenses surrogate values are not distortive or aberrational merely by virtue of being larger.

Finally, Yixin Stone's remaining argument that, even if Malaysia is not chosen as the surrogate country for the final results of this investigation, Commerce should still use Malaysia to value transportation costs because the Mexican data is aberrational, is neither in accordance with Commerce's regulations nor supported by the facts in this case. Commerce's regulations, at 19 CFR 351.408(c)(2), state a preference for valuing all FOPs in a single surrogate country; as discussed in Comment 8, above, we continue to find Mexico to provide the best data and to serve as the primary surrogate country for this investigation. Because the Mexican data from *Doing Business* is not aberrational or distortive, there is no reason not to value this FOP from our primary surrogate country; therefore, we continue to value the costs for truck freight and brokerage and handling in Mexico using *Doing Business in Mexico: 2018*.

Comment 11: Surrogate Financial Statements

CQ International's Arguments

- Grupo Lamosa's financial statement is not representative of the production of quartz surface products and distorts the surrogate financial ratios. This is due to the fact that Grupo Lamosa produces ceramic tiles, which have a vastly different production process from quartz surface products. Ceramic tile, also, is not produced with resin, which is a key material used in making quartz surface products, and specifically mentioned in the scope of the investigation. In fact, the petitioner has specifically argued that products produced using a non-resin binder are not like-products.[409]

- The Malaysian financial statements on the record are superior to the Mexican financial statements. The Malaysian financial statements demonstrate that the Malaysian manufacturers are producing stone, artificial stone, and solid surface products that are comparable to quartz surface products and use the same production processes as quartz surface products. Additionally, there is, on the record, the financial statement of Marbon Industries, which manufactures quartz surface products.

- The petitioner has, throughout the case, mischaracterized the financial statements of the Malaysian manufacturers. For example, the petitioner has argued that HTL Industries Sdn. Bhd. (HTL) is a producer of solid surfaces and artificial marble, and produces "sinks, bowls, and quarried granite."[410] However, this is misleading, as the webpage the petitioner

[409] *See* CQ's Case Brief at 8 (citing Petitioner's Scope Rebuttal Brief at 16).
[410] *Id.* at 12 (citing Petitioner's Rebuttal SV Comments at Exhibit 14).

references refers to only a specific product HTL produces and is not an exhaustive list. Ample evidence on the record proves that the Malaysian manufacturers (with financial statements) are producing comparable or identical merchandise to quartz surface products, whereas Grupo Lamosa manufactures ceramic tile, a product with a production process wholly dissimilar to quartz surface products.

- Malaysia has more than one usable set of financial statements, and Commerce has a long-standing preference for using multiple financial statements, even in cases where one statement is not perfect.[411]

Yixin Stone's Arguments

- Because ceramic tile should not be considered comparable merchandise, Commerce's use of the financial statement of a Mexican ceramic tile manufacturer, Grupo Lamosa, has distorted the calculation of surrogate financial ratios. Commerce should, therefore, consider using the financial statements from another country, such as Malaysia or Thailand, to value the surrogate financial ratios.

- Commerce should use the financial statements on the record from Malaysian manufacturers to calculate the surrogate financial ratios in the final determination, as they will yield more accurate results. A comparison of the financial ratios for the Malaysian company Marbon, to the financial ratios of the Thai company Thai Her Chern Marble & Granite Co., Ltd. (Thai Her Chern) show surrogate financial ratios that are roughly even. In Mexico, the reported profit ratio is approximately 300 to 500 percent higher, and the SG&A ratio is approximately 700 to 1,000 percent higher, than the ratios reported in Malaysia and Thailand.

- If Commerce continues to designate Mexico as the surrogate country, it should not follow its current practice of discounting financial statements that show zero profits, or a loss, during the POI. Instead, Commerce should use an average of Grupo Lamosa's and Unigel Participacoes S.A.'s (Unigel's) financial statements to calculate the surrogate financial ratios. Disregarding financial statements with no or negative profits has not always been Commerce's practice, Commerce has previously acknowledged this, and there is no statutory impediment to doing so.[412]

- If Commerce were to use the average of the two financial statements, it would overcome any deficiencies of the zero-profit statement, such as the interconnectedness of the overhead and SG&A with the profit and would yield a more accurate result. Commerce should "look first to the profit figure established on the record, incorporate that percentage into the financial ratio of the company with negative profit, and allocate the remaining overhead, and SG&A

[411] *Id.* at 14 (citing *1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 82 FR 14876 (March 23, 2017) (*1-Hydroxyethylidene-1*) and accompanying IDM at Comment 1).
[412] *See* Yixin Stone's Case Brief at 10 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars from the People's Republic of China*, 66 FR 33522 (June 22, 2001) at 33525; and *Rhodia, Inc. v. United States*, 240 F. Supp. 1247, 1252, and 1253 (CIT 2002)).

costs on a proportional basis."[413] An alternative approach would be for Commerce to zero the profit figures for both companies and then take the average of the overhead and SG&A figures, since it is normal to have companies continue to operate after showing a loss in the previous fiscal year.

- Grupo Lamosa's SG&A ratio of 41.91 percent is excessively high and does not break out selling expenses, such as "freight out," although general and administrative expenses are provided for. Should Commerce continue to err in using Grupo Lamosa's financial statement to calculate surrogate financial ratios, selling expenses should be excluded from the calculation of the SG&A ratio, or Commerce should exclude selling expenses from the calculation of the net price.

Petitioner's Rebuttal Arguments

- The respondents' arguments that the Malaysian financial statements are superior to the financial statements of Grupo Lamosa are baseless. The three Malaysian financial statements on the record are for products that are not comparable to quartz surface products, such as solid surfaces, quarried stone, and sinks and bowls. These products are made from different materials, have different production processes, or have different end uses from quartz surface products, and, therefore, are not representative of the manufacturing process for quartz surface products.

- CQ International argues that producers of quarried stone should be considered producers of comparable merchandise and that the most important part, and the majority, of the production processes of quartz surface products is the cutting and polishing of the slab, not the creation of the slab itself. In essence, CQ International is claiming that the fabrication of the slab, not the manufacturing of the slab, is the essential process. In the initiation of this investigation, Commerce correctly found that fabrication of the quartz surface slab was not comparable to the production of the quartz surface slab.[414] Clearly the fabrication of quarried stone is not comparable to the production of quartz surface products, and using the financial statements of quarried stone fabricator would distort the calculation of the NV.

- CQ International's claim that the financial statement from HTL, a producer of artificial marble, would be a suitable basis with which to calculate surrogate financial ratios should be rejected. It is unclear where on the record the production process for artificial marble is stated, except in CQ International's case brief, which would make it untimely submitted new factual information. Even if this is not new factual information, and the production process of artificial marble is comparable to the production process of quartz surface products, HTL is also a producer of non-comparable merchandise and cannot be used to calculate surrogate financial ratios.

[413] *Id*. at 11.
[414] *See* Petitioner's Rebuttal Brief at 30 (citing to Initiation Checklist at Attachment II).

- Yixin Stone contends that Marbon's financial statements are superior to Grupo Lamosa's because Marbon's financial ratios are in line with the Thai company Thai Her Chern's financial ratios. However, Thailand is not on the list of economically comparable countries to China, and "Commerce's practice is not to rely on data from non-economically comparable countries as benchmarks to gauge the reliability of proposed surrogate values."[415]

- Though Thai Her Chern's financial statements do not have "probative value" in determining Marbon's financial statements superiority to Grupo Lamosa's, if there is a financial statement on the record that does have probative value germane to this issue, it is Pokarna Engineered Stone Limited (Pokarna). Pokarna is an Indian producer of quartz surface products, whose financial ratios are roughly in line with Grupo Lamosa's. Thus, the available evidence on the record shows that Grupo Lamosa's financial statement can be used to calculate accurate surrogate financial ratios for the respondents.

- Commerce should reject Yixin Stone's argument that Commerce should use the financial statements of Unigel if Mexico is designated the surrogate country for the final determination because: 1) Unigel is a Brazilian company and 2) its financial statements show a loss. Unigel's financial statements were submitted to show that Mexico was a producer of comparable merchandise, not to be considered to calculate surrogate financial ratios. This was in case Commerce determined that solid surfaces where comparable merchandise to quartz surface products, which it should not, as Unigel produces solid surfaces in Mexico by its subsidiary Plastiglas de Mexico S.A. C.V.

- Commerce should reject Yixin Stone's suggestion that Commerce use an alternative approach to calculate SG&A expenses using Grupo Lamosa's financial statement, as Yixin Stone does not provide evidence to support its claim that Grupo Lamosa's SG&A ratio is excessively high; nor does Yixin Stone proffer an adjustment that could be made by Commerce.

Commerce's Position

For the reasons explained below, we continue to calculate the surrogate financial ratios (*i.e.*, manufacturing overhead, SG&A, and profit) using the financial statements of Grupo Lamosa, a Mexican producer of ceramic tile, for the final determination.

In selecting financial statements for purposes of calculating financial ratios, Commerce's policy is to use data from ME surrogate companies based on the "specificity, contemporaneity, and quality of the data."[416] 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

[415] *Id.* at 33.
[416] *See*, *e.g.*, *Pure Magnesium 2008-2009* at Comment 2; and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, in Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079 (September 8, 2006) (*Lined Paper*) and accompanying IDM at Comment 1.

the primary surrogate country to value manufacturing overhead, general expenses, and profit.[417] Additionally, Commerce has a regulatory preference to value all FOPs from a single surrogate country.[418] As discussed above in Comment 8, for numerous reasons, we have selected Mexico as our primary surrogate country. Also discussed above in Comment 8, although our regulations do not define what constitutes "comparable merchandise," it is Commerce's practice to, where appropriate, apply a three-prong test that considers the: 1) physical characteristics; 2) end use; and 3) production process.[419] For the purposes of selecting surrogate producers, Commerce examines how similar a proposed surrogate producer's production experience is to the NME producer's.[420] Commerce, however, is not required to "duplicate the exact production experience of" an NME producer, nor must it undertake "an item-by-item analysis in calculating factory overhead."[421] Further, the courts have recognized Commerce's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[422] While Commerce generally prefers to rely on more than one surrogate financial statement, upon examining the financial statements submitted by interested parties on the record of this investigation, and taking parties' arguments into consideration, we have determined that the financial statements of the Mexican tile producer, Grupo Lamosa, represent the best information for calculating surrogate financial ratios for the final determination of this investigation.

We have determined that ceramic tiles are a comparable product to quartz surface products (*see* Comment 8), and, accordingly, a producer of ceramic tiles is representative of an NME producer of quartz surface products' production experience for the purpose of selecting surrogate financial statements and calculating surrogate financial ratios in the instant case. Additionally, Grupo Lamosa's financial statements are completely translated, publicly available, contemporaneous

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[417] *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) (*Shrimp 2004/2006*) and accompanying IDM at Comment 2.

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

[419] *See*, *e.g.*, *Frontseating Service Valves from the People's Republic of China: Final Results of the 2008-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 76 FR 70706 (November 15, 2011) (*FSV 2008-2010*) and accompanying IDM at Comment 1; *Woven Blankets* and accompanying IDM at Comment 2; and *Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48612 (July 25, 2002) and accompanying IDM at Comment 5.

[420] *See*, *e.g.*, *FSV 2008-2010* and accompanying IDM at Comment 1; and *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) (*OCTG from China*) and accompanying IDM at Comment 13.

[421] *See*, *e.g.*, *FSV 2008-2010* and accompanying IDM at Comment 1; *Certain Steel Wheels from the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances*, 77 FR 17021 (March 23, 2012) and accompanying IDM at Comment 3; and *OCTG from China* and accompanying IDM at Comment 13 (citing *Nation Ford Chemical Company v. United States*, 166 F.3d 1373, 1377 (Federal Circuit 1999) and *Magnesium Corporation of America v. United States*, 166 F.3d 1364, 1372 (Federal Circuit 1999)).

[422] *See*, *e.g.*, *FMC Corp. v. United States*, 27 CIT 240, 251 (2003) (finding that Commerce "has wide discretion in choosing among various surrogate sources"), affirmed in *FMC Corp. v. United States*, 87 Fed. Appx. 753 (Federal Circuit 2004).

with the POI, show a profit before taxes, do not contain countervailable subsidies, are sufficiently detailed to calculate financial ratios, and are from the primary surrogate country.[423]

Yixin argues that, should Commerce persist in designating Mexico as the primary surrogate country, it should apply an average formula to the financial statements of Grupo Lamosa and Unigel.[424] However, as stated in the *Preliminary Determination*, Unigel's financial statements are not usable because the company operated at a loss before taxes for the three years covered by its financial statements;[425] Commerce's preference is to use financial statements for profitable companies and to discard financial statements showing a loss, if alternative statements are available.[426] Moreover, Unigel is a Brazilian company, that makes solid surfaces in Mexico through a subsidiary.[427] Thus, it is not clear what proportion of its operations involve comparable merchandise in the surrogate country or if Unigel's consolidated financial statements could be considered those of a Mexican company. Commerce prefers to value all FOPs in a single surrogate country,[428] and Grupo Lamosa is an unambiguously Mexican company which also did not operate at a loss before taxes. Therefore, we have not used Unigel's financial statements to derive financial ratios for this investigation.

Yixin Stone argues that Grupo Lamosa's calculated SG&A surrogate financial ratio of 41.91 percent is excessively high and that the financial statements are insufficiently detailed, as they do not break out selling expenses, such as "freight out."[429] We disagree with Yixin Stone that Commerce should exclude selling expenses from the calculation or make other allegedly "reasonable adjustments" to the calculation of the SG&A surrogate financial ratio. Yixin Stones's suggested adjustment would grossly distort the S&GA ratio, as selling expenses make up a significant portion of the SG&A ratio in the Grupo Lamosa statements.[430] Further, "freight out" is only a small part of many expenses typically categorized as selling expenses, including sales commissions and salaries, advertising, promotional and travel expenses, rent, utilities, and supplies. CQ International's and Yixin Stone's own proffered Malaysian financial statements are as detailed, or less detailed, than Grupo Lamosa's. Thus, it appears as if Yixin Stone argument against the calculated SG&A ratio, like its other unpersuasive arguments about aberrational values, is merely that it is too high. However, this argument is not substantiated with evidence, and "higher" does not constitute "less accurate."[431] Yixin Stone also does not point to any evidence that freight expenses are definitively included in Grupo Lamosa's SG&A ratio, nor does Yixin Stone suggest any other specific adjustment or revised SG&A ratio which

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[423] *See* Petitioner's Second SV Comments at Exhibit 2.
[424] *See* Yixin Stone's Case Brief at 10.
[425] *See* Petitioner's Second SV Comments at 3 and Exhibit 10.
[426] *See Preliminary Determination* and accompanying PDM at 33; *see also*, *e.g.*, *Hardwood and Decorative Plywood from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013) at Comment 7 ("We will use the financial statements of companies that have earned a profit and disregard the financial statements of companies that have zero profit when there are other financial statements that have earned positive profit on the record.").
[427] *See* Petitioner's Second SV Comments at Exhibit 10; *see also* Yixin Stone's Case Brief at 9.
[428] *See* 19 CFR 351.408(c)(2).
[429] *See* Yixin Stone's Case Brief at 12-13.
[430] *See* Prelim SV Memo at Exhibit 13-A.
[431] *See*, *e.g.*, *Tr. Chem Co. v. United States*, 791 F.Supp.2d 1257, 1263-64 (CIT 2011) (court upheld Commerce's SV determination because respondent did not put specific evidence on the record calling the SV into question).

Commerce could apply. Although the selection of financial statements and calculation of financial ratios if a very fact-specific exercise which requires Commerce to weigh the available evidence carefully, in past cases, Commerce has similarly declined to adjust SG&A for freight expenses when no such expenses were detailed in the financial statements.[432] Therefore, we find that Grupo Lamosa's calculated surrogate SG&A ratio does not warrant adjusting.

Yixin Stone and CQ International offer three Malaysian financial statements for Commerce to use in the final results of the investigation (*i.e.*, Marbon, HTL, and Stone Link).[433] For the reasons discussed below, we find all three Malaysian financial statements unusable or less preferable when compared to Grupo Lamosa's statements.

Aside from the aforementioned issues related to Marbon's affiliation with Chinese entities, and the fact that it appears that Marbon is solely a trading company with seven employees (*see* Comment 8),[434] we have identified additional of issues with Marbon's financial statements. Importantly, Marbon's financial statements show a before-tax loss.[435] In past cases, Commerce has declined to use financial statements where we have determined that profit ratios are negative or zero.[436] Additionally, while Yixin Stone argues that the Marbon's financial ratios are roughly even with those of the Thai company Thai Her Chern, thus, showing Grupo Lamosa's calculated ratios to be excessively high,[437] Thailand is not on the list of countries at the same level of economic development as China, and it is, therefore, not appropriate to use the financial statement of Thai Her Chern as a benchmark.[438] Additionally, we note that financial statements are company-specific, related to an individual company's production and sales experience and benchmarking of financial ratios is of limited use. The respondents have not pointed to specific issues within Grupo Lamosa's statements or operations that would make it ineligible for consideration or require an adjustment and, further, we have found Grupo Lamosa to produce comparable merchandise. For the foregoing reasons, we find that it would be inappropriate to use the financial statement of Marbon to value the surrogate financial ratios.

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[432] *See*, *e.g.*, *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) (*HFCs from China*) and accompanying IDM at Comment 30.
[433] *See* Yixin Stone's Case Brief at 18-19; and CQ International's Case Brief at 10-14.
[434] *See* Hero Stone's SV Submission at Exhibit M-6 at Note 1 ("{Marbon} is primarily engaged in the business of trading all kinds and types of surface products."); Petitioner's Rebuttal SV Comments at Exhibit 11-12 ("Marbon Solid Surfaces which is a Malaysian enterprise producing solid surface in China."); and Yixin Stone's Second SV Comments at Exhibit 6.
[435] *See* Yixin Stone's October 15, 2018, SV Submission at Exhibit 7.
[436] *See*, *e.g.*, *Silicon Metal from the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order*, 76 FR 3084 (January 19, 2011) and accompanying IDM at Comment 9; and *Shrimp 2004/2006* and accompanying IDM at Comment 2.
[437] *See* Yixin Stone's Case Brief at 18-19.
[438] *See*, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017) and accompanying IDM at Comment 12 ("{Commerce} has previously indicated that to discern whether a particular value is aberrational, it typically compares the prices for an input from all countries found to be at the same level of economic development as the NME whose products are under review.").

CQ International argues that the financial statements of Stone Link and HTL are appropriate to use to value the surrogate financial ratios because they are manufacturers of quarried stone slabs (Stone Link) and of artificial marble and solid surfaces (HTL).[439]

The record shows that Stone Link is a Malaysian manufacturer of stone slab made from mined blocks of stone, such as marble and travertine.[440] We disagree with CQ International's assertion that this is comparable merchandise. While the end uses of stone slab and quartz surface products are the same, the physical characteristics and production process differ significantly. Quartz surface products are made from ground quartz sand and powder that must be agglomerated with a resin binder and incorporates pigments to create certain patterns in the slab; in other words, it is an artificially engineered stone. Stone slab, on the other hand, is made from quarried stone blocks;[441] a singular, natural input with naturally occurring patterns, negating the need for inputs like pigments and resin. The main inputs for stone slab and quartz surface products offer further distinctions in their physical characteristics in the amount of processing required. Stone slabs are simply large, quarried stone blocks which are cut from the earth and undergo no further processing before being put into production.[442] Quartz, on the other hand, has to undergo significant processing after being mined to become quartz sand/powder, including processes such as crushing, washing, drying, lab testing, and being sorted into color, grade, and purity.[443] Further, record evidence indicates that the production process for stone slab is limited compared to the production process for quartz surface products. Stone slab requires only three major steps: 1) large stone blocks are mined from a quarry; 2) the stone blocks are sawed into rough slab shapes; and 3) the rough slabs are calibrated and polished.[444] This is a significantly different process compared to quartz surface products, which require mixing of discrete ingredients, combining, molding, pressing, and curing, and only once the slabs emerge from the manufacturing line are they polished. CQ argues that this is not the extent of the production process for stone slab, claiming the petitioner has mischaracterized the statement on Stone Link's website, "now with it {two} 80-blade diamond gangsaws, {two} slab polishing lines and a state-of-the-art UV treatment line," indicates that there is more to the production process.[445] CQ International leaves out the second half of that statement, which merely indicates that the Stone Link can now manufacture more product, not that there are more steps to the production process.[446] Thus, by applying the aforementioned three-prong test to determine product comparability, we determine that stone slabs are not comparable merchandise. Consequently, we

[439] *See* CQ International's Case Brief at 10-13.
[440] *See* Petitioner's Rebuttal SV Comments at Exhibit 16.
[441] *Id.* at Exhibit 18.
[442] *Id.*, showing the Thai company Thai Her Chern's "blockyard," where they store quarried stone blocks, and the production process. We note that the first image in the production process shows the first step in the production process is the stone blocks being sawn into slabs.
[443] *Id.* at Exhibit 5; and Petitioner's First Petition Supplemental Response at Exhibit II-17.
[444] *See* Petitioner's Rebuttal SV Comments at Exhibit 18, showing Thai Her Chern's production process of stone slab. We note that the Stone Link website mentions a UV treatment process. *Id.* at Exhibit 16, describing Stone Link's production lines. However, there is no indication that this process is uniform throughout all stone slab manufacturing.
[445] *See* CQ International's Case Brief at 13.
[446] *See* Petitioner's Rebuttal SV Comments at Exhibit 16 ("Now with it {two} 80-blade diamond gangsaws, {two} slab polishing lines and a state-of-the-art UV treatment line, Stone Link is able to generate enough output to sustain a few large projects concurrently.").

determine that Stone Link's financial statement would not be appropriate to use to value the surrogate financial ratios.

CQ International argues that HTL is a producer of solid surfaces and artificial marble, and is, thus, a producer of comparable merchandise.[447] We agree that solid surfaces and artificial marble could be considered comparable merchandise, though are not identical merchandise. However, HTL's financial statement is for the year ending April 30, 2017, which is not contemporaneous with the POI.[448] It is Commerce's preference to not use non-contemporaneous data where reliable, publicly available contemporaneous data from producers of comparable merchandise is available.[449] Grupo Lamosa's financial statement is contemporaneous with the POI (*i.e.* for the year ending December 31, 2017),[450] and is for a company located in the primary surrogate country of Mexico, for which complete import data to value FOPs is available (as discussed in Comment 8). Thus, we determine that HTL financial statements are not suitable for the purpose of calculating surrogate financial ratios in this investigation.

For all the reasons stated above, we continue to find Grupo Lamosa's complete, fully-translated, contemporaneous, subsidy-free, publicly available financial statement from a producer of comparable merchandise located in the primary surrogate country to be the best information on the record. Additionally, for the reasons discussed above, we find that Grupo Lamosa represents a better match for the respondents' experience than any of the Malaysian financial statements on the record. As such, Commerce continues to rely on Grupo Lamosa's statement to calculate surrogate financial ratios for the final determination.

Company-Specific Comments

Comment 12: CQ International Verification Failures

CQ International consists of two Chinese producers/exporters, CQ Suzhou and Meiyang, plus a third affiliated Hong Kong exporter, CQ HK.[451] Additionally, CQ International had three affiliated resellers in the United States during the POI: Color Marble Inc. (CMI), located in California; Colorquartz, Inc. (CQ NY), located in New York; and Colorquartz Texas, Inc. (CQ TX), located in Texas.[452] For the *Preliminary Determination*, we calculated a margin for CQ International relying upon the consolidated sales and FOPs data it provided, without any significant adjustments.[453] We conducted a CEP verification at CMI's offices in California; the CEP verification covered all CEP sales made by the three U.S. affiliates.[454] We conducted a

[447] CQ International's Case Brief at 11 (citing Hero Stone's SV Submission at Exhibit M-6).
[448] *See* Yixin Stone's Second SV Comments at Exhibit 7.
[449] *See*, *e.g.*, *1-Hydroxyethylidene-1* at Comment 1; and *Certain Preserved Mushrooms from the People's Republic of China: Final Result of Antidumping Duty New Shipper Review*, 73 FR 21904 (April 23, 2008) and accompanying IDM at Comment 1.
[450] *See* Petitioner's Second SV Comments at Exhibit 2.
[451] *See* CQ International Collapsing Memorandum.
[452] *See* CQ International CEP Verification Report.
[453] *See* CQ International Prelim Calc Memorandum.
[454] *See* CQ International CEP Verification Report.

separate verification of CQ International's reported FOPs and EP sales at its offices and factories in China.[455]

Petitioner's Arguments

- Because of the pervasive problems with CQ International's submitted sales data that Commerce discovered at verification,[456] Commerce cannot rely on the sales data to calculate CQ International's dumping margin and should resort to making a determination on the basis of facts available.

- Specifically, Commerce identified the following issues at CQ International's EP verification:
    - CQ International did not report U.S. sales which CQ HK shipped from the factory prior to the end of the POI but which it invoiced after the POI, and thus the universe of sales is incomplete.
    - The gross unit price for observation number 1146 contained a significant error;
    - CQ International incorrectly calculated the gross weight (GRSWGHTU) for multiple sales observations.
    - CQ International reported an incorrect amount of irrecoverable value added tax (VAT) for sales made by CQ HK.

- Commerce identified additional issues at CQ International's CEP verification:
    - CQ NY failed to report discounts granted on certain sales.
    - Commerce was unable to tie the actual payment dates with reported payment dates for certain of CQ NY's sales and, for particular sales examined, the actual payment dates were significantly later than those reported.
    - CQ International did not report freight revenue and inland freight from the warehouse to customer for sales made by CQ TX.
    - CQ International allocated inland freight from the warehouse to the customer to all of CMI's sales, despite the fact that CMI's customers picked up certain merchandise and CMI maintained records to report these expenses on a transaction-specific basis.
    - For sales made by CQ NY and CQ TX, CQ International was unable to explain or connect the reported 1) international freight, 2) inland freight from port to warehouse, 3) U.S. brokerage and handling, and 4) U.S. duty to freight invoices and customs documents during the POI.
    - CQ International failed to report a consignment sale arrangement whereby it paid an additional fee for certain sales made by CQ TX, pursuant to a "Consignment and Distribution Agreement."
    - CQ International reported international freight and inland freight from the port to the warehouse incorrectly for CMI for multiple sales observations.
    - CQ International incorrectly reported CQ NY's inventory carrying expenses.
    - CQ International incorrectly reported the amount of commission it paid on its U.S. sales during the POI. Indeed, CQ International under-reported commissions for all pre-selected and surprise sales with commissions made by CQ TX and CQ NY.

[455] *See* CQ International EP and FOPs Verification Report.
[456] *See* Petitioner Case Brief at 1-5.

- In calculating its indirect selling expenses for CMI, CQ International failed to include amounts related to automobiles and warehouse vehicles that were not related to freight or delivery expenses and excluded certain postage for shipping samples as advertising expenses even though it did not include these expenses in its advertising calculation.

- When Commerce is unable, through spot-checks, to tie the data reported in a respondent's sales database to the source sales data, Commerce cannot have confidence the information reported is accurate or reliable.[457] At CQ International's CEP verification, Commerce found discrepancies between the reported sales data and the sales documentation for 11 of the sales traces it conducted. As a result, Commerce cannot have any confidence that the information reported in CQ International's U.S. sales database is accurate or reliable.

- Because Commerce was unable to verify the accuracy and completeness of CQ International's reported sales data, it must resort to facts available to calculate the dumping margin. In an antidumping duty investigation, the statute requires that Commerce verify the information upon which it relies in reaching its final determination.[458] As the CIT has explained, {v}erification is like an audit, the purpose of which is to test information provided by a party for accuracy and completeness, so that Commerce can justifiably rely upon that information."[459] If the respondent fails at verification to support the sales data it has reported, the statute provides that Commerce must disregard that information and instead rely on facts otherwise available.[460] Additionally, if Commerce is unable to verify information that is critical to the calculation of U.S. price and NV, it is appropriate to disregard the respondent's submissions in their entirety and rely complete on facts available.[461]

- Commerce discovered numerous discrepancies between CQ International's reported sales data and the sales documentation examined at verification. The CIT has recognized that, where so much information is missing and unverifiable, Commerce "is not required to cobble together the remaining information to produce an unreliable, inaccurate dumping margin;" rather, it is appropriate to reject all of the respondent's submitted data and apply facts available.[462]

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[457] *Id.* at 3 (citing *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8907 (February 27, 2009) and accompanying IDM at Comment 5.A.2).
[458] *Id.* at 5 (citing section 782(i)(1) of the Act).
[459] *Id.* (citing *Tatung Co. v. United States*, 18 CIT 1137, 1140 (1994) (quoting *Bomont Indus. v. United States*, 14 CIT 208, 209 (1990) (internal quotation omitted)).
[460] *Id.* (citing sections 776 and 782(i) of the Act; *Heveafil Sdn. Bhd. v. United States*, 25 CIT 147, 149 (2001); and *AK Steel Corp. v. United States*, 21 CIT 1265, 1267 (1997)).
[461] *Id.* (citing *Universal Polybag Co. v. United States*, 32 CIT 904, 915-16 (2008) (*Universal Polybag*), where the Court upheld Commerce's application of total facts available to calculate the respondent's dumping margin where it was unable to verify the conversion factors, sales quantities, billing adjustments, movement expenses, and indirect selling expenses reported by the respondent).
[462] *Id.* at 6 (citing *Universal Polybag*, which was citing *Steel Auth. of India Ltd. v. United States*, 25 CIT 482, 485-486 (2001)).

- Commerce should employ an adverse inference in calculating CQ International's dumping margin. Under the statute, Commerce may apply AFA if an interested party fails to cooperate by not acting to the best of its ability to comply with Commerce's requests for information.[463] It is not enough for a respondent to simply submit any information to Commerce; the information provided must represent the "maximum it is able to do" and must be complete and accurate.[464] With respect to whether a respondent has acted to the best of its ability, the Federal Circuit has explained that, "{w}hile the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping."[465] The level of care exercised by CQ International in preparing its sales data clearly does not meet the standard of care set forth in the statute; even if CQ International did not intend to deceive Commerce, and all of its failures can be attributed to "oversights," the cascading series of "oversights" committed by CQ International shows that it did not put forth the best efforts to cooperate with Commerce. As Commerce and the courts have recognized, regardless of its intent, a respondent's failure to cooperate to the best of its ability under circumstances such as these warrants the application of AFA.[466] In sum, CQ International did not cooperate to the best of its ability and Commerce should apply total AFA to calculate CQ International's dumping margin for the final determination.

- In applying total AFA, Commerce must select a rate sufficiently adverse to induce cooperation.[467] The SAA emphasizes that, in applying AFA, Commerce should take into account the extent to which a respondent may benefit from its lack of cooperation;[468] thus, Commerce and the courts have recognized that the use of adverse inferences is intended to ensure that parties do not benefit from their lack of cooperation and are provided with sufficient incentive to cooperate in future proceedings.[469] To serve these objectives, the AFA rate selected must be inherently adverse.[470] As total AFA, Commerce should assign CQ International the highest calculated rate in the investigation (*i.e.*, 341.29 percent), which is the same rate assigned to the China-wide entity in the *Preliminary Determination*. It is not necessary to corroborate this rate because it was calculated using data obtained in the course of this investigation.

CQ International's Rebuttal Arguments

- The petitioner has exaggerated the purported flaws in the filings of CQ International and Commerce should not calculate the rate based on adverse facts. While CQ International's

[463] *Id.* (citing section 776(b) of the Act).
[464] *Id.* (citing *Nippon Steel*, 337 F.3d. at 1382).
[465] *Id*.
[466] *Id.* at 7 (citing *Tianjin Mach. Imp. & Exp. Corp. v. United States*, 28 CIT 1635, 1645 (2004)).
[467] *Id.* (citing *Certain Lined Paper Products from the People's Republic of China: Notice of Final Results of the Antidumping Duty Administrative Review*, 74 FR 17160, 17163-64 (April 14, 2009)).
[468] *Id.* at 8 (citing SAA at 870).
[469] *Id.* (citing *Ta Chen Stainless Steel Pipe Inc. v. United States*, 24 CIT 841, 850 (2000); and *Barium Chloride from the People's Republic of China: Final Results and Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 12669 (March 17, 2003) and accompanying IDM at Comment 1).
[470] *Id.* (citing *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790 (August 30, 2002) and accompanying IDM at Comment 2).

filings did contain some small errors, these were the normal errors which exist for a first-time respondent with a complex corporate structure and, with respect to two related entities, an unsophisticated accounting system. Further, a number of the errors noted by the petitioner were either adverse to CQ International or had no, or minimal, impact. Additionally, many of the errors pertain to expenses and, due to the nature of these expenses, are ultimately included in total in the database and, as such, the allocations are not directly relevant.

- Notably, the petitioner does not raise any issues with respect to CQ International's FOPs reporting, affiliations, or separate rate status. The petitioner also did not challenge, to any significant degree, CQ International's EP sales reporting. Further, the challenges to CQ International's CEP sales did not go to the underlying sales data or the sale reconciliations, but rather focused on certain adjustments and related factors.

- The claims made by the petitioner with respect to CQ International's EP sales are analyzed as follows:
    - With regards to the small number of sales made by CQ HK which were shipped from the factory prior to the POI but invoiced after the POI, CQ International's position remains that invoice date is the appropriate date of sale and these were properly not reported in the database. If Commerce determines that these sales should be included, it has all of the necessary information to calculate a margin for these sales.
    - The error in the gross unit price for EP sale OBSNUMU 1146 was not a systemic error but was limited to one transaction, and the magnitude of the error indicates a typographical or clerical error.
    - The error regarding GRSWGHTU should have no impact on the calculation as the total values allocated are ultimately included in the calculation.
    - CQ International calculated irrecoverable VAT by applying the difference between the VAT rate and the VAT refund rate to the FOB price; this resulted in an irrecoverable VAT deduction greater than CQ International's experience and thus adverse to CQ International.[471]

- The claims made by the petitioner with respect to CQ International's CEP sales are analyzed as follows:
    - With regards to unreported discounts granted by CQ NY, Commerce collected the entire discounts ledger, showing that the discounts were for a small number of sales. In addition, some of the sales were made "out of the ordinary course of trade."[472] At any rate, Commerce has all of the necessary details from the discount ledger to calculate the margin.
    - With regards to actual payment dates for certain of CQ NY's sales, due to the unsophisticated bookkeeping system, certain payment dates were reported earlier than the actual payment date; however, due to low interest rates, the total impact of this error (only on imputed credit) is quite small.
    - With regards to unreported inland freight and freight revenue for CQ TX, the net result is minimal, as the revenue from the freight service was intended to offset the cost of freight.

[471] *See* CQ International Rebuttal Brief at 7 (citing *1-Hydroxyethylidene-1* and accompanying IDM at Comment 17).
[472] *See* CQ International Rebuttal Brief at 8.

- With regards to CMI's inland freight from warehouse to customer, CQ International consistently reported this allocation to all sales and neither the petitioner nor Commerce raised questions or requested the CQ International clarify its response. In addition, the allocation is ultimately neutral as the total cost of transportation will be reflected in the totality of sales.
- With regards to sales made by CQ NY and CQ TX where CQ International was unable to explain or connect the reported 1) international freight, 2) inland freight port-to-warehouse, 3) U.S. brokerage and handling, and 4) U.S. duty, it should be noted that the transportation factors for these sales were higher than for CMI, for which the data was verified by Commerce and that, to the extent the reported data had discrepancies, the reported data was actually adverse to CQ International. Additionally, the record contains alternate data which could be used as a substitute.
- With regards to consignment sales made by CQ TX, this issue arose for a single customer and Commerce collected information with respect to this entity which can confirm the small import of this issue on the overall margin.
- With regards to certain errors in CMI's reported international freight and inland freight from port to warehouse, the petitioner has not properly characterized the issue. Commerce confirmed that all of CMI's international and inland freight was correctly reported, with the exception of only three sales.[473]
- With regards to CQ NY's inventory carrying expense being misreported, the error is a small clerical error, related to a single month, and can be easily corrected.
- With regards to under-reported commission expenses, the error was due to a mathematical error related to the way CQ International reported its gross unit price, as CQ International explained in its minor corrections at the beginning of verification.
- With regards to indirect selling expenses, Commerce has the information to make an adjustment to the allocation, should one be needed.
- With regards to freight from warehouse to customer for a single CQ NY sale (observation 3151), this error is for a single sale, was adverse to CQ International, and does not impinge upon the completeness of the sales database but relates to an adjustment factor.
- With regards to CQ International's sample sales, these were multiple small, low value, sales which CQ International entered into its accounting system once a month. Though made for consideration, these sales are outside the ordinary course of trade.
- With regards to misreported freight revenue for a single sale by CMI (observation 4482), this was an isolated error and did not relate to the primary sales data, but to freight expenses.
- With regards to several sales by CQ NY with incorrect payment dates, the date was off by two days and the verification report only noted three sales with this issue; this is a minor error with no meaningful impact on the margin.

- The underlying sales database is reliable and ties to the books and records of the company; to the extent there are errors, the majority of such errors are small and none goes to the inherent reliability of the sales database. Further, due to the nature of the shipments, any difference with respect to allocations has no impact on the final margin, as the total amount of the expenses will be included in the margin calculation. For the final determination, Commerce

[473] *See* CQ International Rebuttal Brief at 11-12 (citing CQ International CEP Verification Report at 13-14).

should take into account the complexity of this case and the overall completeness of the data submitted by CQ International and should calculate a margin for CQ International.

Commerce's Position

We agree with the petitioner, in part, and with CQ International, in part, and determine that the application of partial facts available to CQ International, with an adverse inference, is warranted for the final determination. As an initial matter, we agree with CQ International that Commerce successfully verified the majority of CQ International's EP sales and virtually all of CQ International's FOPs reporting, and thus we do not find applying total AFA because of the issues noted with regards to CQ International's EP sales to be appropriate. Further, we note that the vast majority (by volume) of CQ International's sales were EP sales, not CEP sales, and thus there is no reason to impute errors from the CEP sales to CQ International's EP sales. However, with respect to CQ International's CEP sales, as discussed below, we find that the information provided is so unreliable, based upon multiple errors and failures noted at verification, that we cannot rely on it to calculate an accurate dumping margin for CQ International's CEP sales, and so we have applied AFA to the totality of CQ International's CEP sales.

In our verification report for CQ International's EP sales and FOPs, we only noted one significant issue in the "Summary of Issues" section at the beginning of the verification report which pertains to CQ International's EP sales, and no issues for CQ International's FOPs.[474] With regards to CQ International's EP sales, during the course of performing a completeness check of CQ HK's sales, we found that CQ International did not report the complete universe of its U.S. EP sales because it neglected to include sales made by CQ HK which shipped from the factory prior to the end of the POI, but which were invoiced after the POI.[475]

CQ International asserts that it properly did not report the sales invoiced by CQ HK after the POI because it based its date of sale on invoice date.[476] We disagree with CQ International that the invoice date is the most appropriate date to use as the date of sale for CQ International's U.S. sales.[477] Rather, as explained more fully below, we find that the record indicates that the shipment date from the factory is the proper sale date; and, because the shipment date precedes invoice date (in many instances), it is also the proper date of sale because it is on this date that the material terms of sale are set.[478] Although Commerce normally uses the date of invoice, as

[474] *See* CQ International EP and FOPs Verification Report at 2.
[475] *Id.* at 2, 9, and 13-14.
[476] *See* CQ International Case Brief at 4-5.
[477] In the *Preliminary Determination*, we used the earlier of factory shipment date or invoice date as the date upon which the terms of sale are fixed.
[478] In many instances, Commerce has used date of shipment from the factory as the date of shipment. *See*, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Narrow Woven Ribbons with Woven Selvedge from Taiwan*, 75 FR 41804 (July 19, 2010) and accompanying IDM at Comment 5; *Silicomanganese from India: Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances Determination*, 67 FR 15531 (April 2, 2002) and accompanying IDM at Comment 19; *Stainless Steel Bar from Japan: Final Results of Antidumping Administrative Review*, 65 FR 13717 (March 14, 2000) and accompanying IDM at Comment 1; *Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 63 FR 6899, 6908 (Feb. 11, 1998); and *Silicon Metal from Brazil, Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 54094, 54095 (October 17, 1997).

recorded in the producer's or exporter's records kept in the ordinary course of business, as the date of sale, Commerce's regulations at 19 CFR 351.401(i) provide that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale (*e.g.*, price and quantity).[479]

In its initial questionnaire response, for date of shipment, CQ International reported its invoice date.[480] In its supplemental questionnaire, Commerce requested that CQ International report the earlier of invoice date or shipment date in the field "SALEDATU" and that CQ International report both sales invoiced and shipped from the factory or warehouse during the POI.[481] In response, CQ International stated that it "reported all sales invoiced during the POI and shipped from the factory or warehouse in China or the United States, as relevant, during the POI."[482]

The record, in this case, support's Commerce's normal presumption that the material terms of CQ International's EP sales were not subject to change once they left the factory gate. Specifically, we examined the documentation for multiple sales at verification, and, in each case, the terms of sale were unchanged following the date on which the merchandise left the factory.[483] CQ International provided no examples where the price, quantity, or delivery terms changed after merchandise left its factory. Therefore, consistent with our *Preliminary Determination*, the earlier of the date of shipment from the factory, or the invoice date, is the appropriate date of sale for CQ International's EP sales, in accordance with our normal practice, where the date of shipment from the factory preceded the date of invoice.[484]

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[479] *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-92 (CIT 2001) (*Allied*); *Yieh Phui Enterprise Co. v. United States*, 791 F. Supp. 2d 1319 (CIT 2011) (*Yieh-Phui*) (affirming that Commerce "has some flexibility in selecting the date of sale; the presumption in favor of invoice date is not conclusive"); *Preamble* at 27349 ("If {Commerce} is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, {Commerce} will use that alternative date as the date of sale. For example, in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, {Commerce} usually will use a date other than the date of invoice. However, {Commerce} emphasizes that in these situations, the terms of sale must be firmly established and not merely proposed."); and *Mittal Steel Point Lisas Ltd. v. United States*, 31 CIT 638 (CIT 2007) (*Mittal Steel*) ("using the date of shipment when that date is before the invoice date is a practice {Commerce} has adhered to in other investigations, and which has been implicitly approved by the courts. . . Commerce's reasoning therefore seems to be that shipment to the customer does not occur before the material terms of sale have been determined, so that when invoicing is subsequent to shipment, the date of shipment is generally an appropriate date of sale, although depending on the facts of specific review, Commerce may find another date more appropriate.").

[480] *See* CQ International August 10, 2018 Initial Section C Response at 11.

[481] *See* Letter to CQ International, "Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China: Supplemental Sections A, C, and D Questionnaire," dated September 12, 2018 (Supplemental ACD Questionnaire for CQ International) at 9.

[482] *See* CQ International October 12, 2018 Supplemental Section C Response at 16.

[483] *See* CQ International EP and FOPs Verification Report, generally, and verification exhibits 6 and 7.

[484] *See*, *e.g.*, *Certain Polyester Staple Fiber from the Republic of Korea: Preliminary Results of the 2007/2008 Antidumping Duty Administrative Review*, 74 FR 27281, 27283 (June 9, 2009), unchanged in *Certain Polyester Staple Fiber from the Republic of Korea: Final Results of the 2007-2008 Antidumping Duty Administrative Review*, 74 FR 65517 (December 10, 2009); *see also Certain Oil Country Tubular Goods from Taiwan: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 79 FR 10495 (February 25, 2014) and accompanying Preliminary Decision Memorandum at "Date of Sale" section,

Commerce agrees with the petitioner that CQ International failed to provide a complete universe of sales during the POI by not reporting sales shipped by CQ HK during the POI but invoiced after the POI. Based upon an examination of CQ International's sales database for CQ HK, and information viewed at verification, CQ HK made numerous shipments with substantial lag times between factory shipment date and invoice date.[485] Thus, although Commerce viewed some previously unreported shipment information at verification, there are likely other shipments in April which were also outstanding (*i.e.*, beyond the five sales examined).[486] Additionally, in response to CQ International's argument that Commerce has the necessary data to calculate for the sales invoices taken from verification, we note that certain pieces of information are lacking, such as the actual shipment dates and gross unit weights, and that Commerce 1) lacks the necessary data to calculate a dumping margin for these sales and 2) Commerce also does not possess data for the full range of sales which shipped prior to the end of the POI, though were invoiced after the POI. Thus, it is impossible to assess what the dumping margins would be, for those unreported sales, without the additional sale-specific factors. Moreover, CQ International neglects to address the fact that, by shifting its universe of sales, there may be additional unreported sales, as noted above.

Based upon the other EP sales data that CQ International reported, including with complete shipment date information, it is evident that CQ International had the necessary information to report factory shipment for all of its sales and it could have provided a complete universe of EP sales. However, because CQ International failed to report its sales universe based upon factory shipment date, Commerce does not have complete sales information on the record of this investigation for the relevant sales universe.

With regards to CQ International's EP sales, we find that the application of facts available is appropriate under section 776(a)(2) of the Act.[487] As discussed above, the antidumping duty questionnaires issued in this investigation required that CQ International report: 1) factory shipment date; and 2) all sales made during the POI (pursuant to those shipment dates). We afforded CQ International multiple opportunities to provide this information, in accordance with section 782(d) of the Act, given that Commerce issued a supplemental questionnaire explicitly requesting that CQ International report all shipments during the POI and shipment date from the factory.[488] CQ International stated that it had,[489] despite Commerce discovering otherwise at verification.[490] As a result, CQ International withheld necessary information and failed to report information by the deadline and in the manner in which it was requested, within the meaning of sections 776(a)(2)(A) and (B) of the Act, and significantly impeded the proceeding, under section 776(a)(2)(C) of the Act by inhibiting Commerce from collecting the correct universe of

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unchanged in *Certain Oil Country Tubular Goods from Taiwan: Final Determination of Sales at Less Than Fair Valu*e, 79 FR41979 (July 18, 2014).

[485] *See*, *e.g.*, CQ International EP and FOPs Verification Report at 13-14 and verification exhibits 6 and 7.

[486] *See* CQ International EP and FOPs Verification Report at 13-14 (Completeness Test #3) and verification exhibit 18.

[487] *See* 782(i) of the Act.

[488] *See* Supplemental ACD Questionnaire for CQ International at 9.

[489] *See* CQ International October 12, 2018 Supplemental Section C Response at 16.

[490] *See* CQ International EP and FOPs Verification Report at 2, 9, and 13-14.

sales. Because CQ International possessed the necessary records to provide a complete EP sales universe but failed to provide the data, we also find that CQ International did not act to the best of its ability to comply with our request for information, within the meaning of 776(b) of the Act.

We have, therefore, determined to use an adverse inference when selecting from among the facts otherwise available to CQ International's EP sales for its refusal to report its complete universe of sales. In an investigation, the date of sale determines the universe of reportable sales.[491] Therefore, as partial AFA, we included unreported sales (both potential and actual) in our analysis using information obtained at verification. Based upon an examination of CQ International's reported EP sales and shipment dates there is a lag time between factory shipment and invoicing, which typically coincides with the bill of lading date.[492] Therefore, we presume that CQ International failed to report sales made a certain number of days prior to the end of the POI.[493] In order to determine the quantity of such sales, we: 1) identified the quantity of unreported invoices (representing a certain number of days) in CQ HK's ledger for the month of April 2018 (*i.e.*, the month following the end of the POI); then 2) we calculated the average quantity per invoice shipped by CQ HK during the POI; and 3) we multiplied the average invoice quantity by the number of invoices identified for a total missing quantity. As AFA, after deriving the missing quantity, we based the margin for the unreported quantity on the highest non-aberrational, transaction-specific margin calculated for this final determination using CQ International's reported EP sales.[494]

The petitioner raises three additional issues that pertain to CQ International's EP sales: 1) the erroneous gross unit price for observation number 1146; 2) CQ International's gross weight; and 3) irrecoverable VAT for sales made by CQ HK. We find all of these issues to be minor and correctable based upon information collected at verification. With respect to the gross unit price for observation number 1146, we note that this error related to a single surprise sales trace; none of the other nine sales packages examined as part of CQ International's EP sales verification had any similar issues.[495] Additionally, the record contains the necessary information to make this correction.[496] With respect to the error in gross weight, which we encountered in the course of performing selected sales traces, we noted that this error did not affect all sales and that it only amounted to an understatement of gross weight of approximately one percent.[497] Thus, as facts available, in accordance with 776(a) of the Act, for all sales where we are uncertain as to the appropriate gross weight, we have adjusted gross weight upwards to account for the small error that CQ International made when it under-reported gross weight for certain EP sales.[498] With

[491] *See*, *e.g.*, *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017) and accompanying IDM at Comment 4.
[492] *See* CQ International EP and FOPs Verification Report at 9.
[493] *Id.* at 14. We noted that "a review of CQ International's database shows that for sales exported by CQ HK, which were produced by {***}, there was an average of {***} days lag between shipment and invoice date." The number of days lag is proprietary.
[494] *See* CQ International Final Calc Memo.
[495] *See* CQ International EP and FOPs Verification Report at 15-16 and verification exhibits 6 and 7.
[496] *See* CQ International Final Calc Memo.
[497] *See* CQ International EP and FOPs Verification Report at 16.
[498] *See* CQ International Final Calc Memo.

respect to irrecoverable VAT for CQ HK's sales, we noted at verification that, consistent with the VAT methodology we applied for the preliminary determination, "the amount of irrecoverable VAT which CQ International reported in its sales listing was calculated by multiplying 12 percent (*i.e.*, 17 percent VAT paid less the five percent VAT rebated) by the FOB sales price on the invoice."[499] Additionally, with respect to all sales made by CQ HK, we noted that "the calculated irrecoverable VATTAXU… was overstated."[500] Thus, we note that 1) this error on the part of CQ International's reporting was to its own detriment for the *Preliminary Determination*; and 2) this error is correctable for the final determination by appropriately adjusting the reported FOB price and corresponding irrecoverable VAT calculation for CQ International's EP sales made by CQ HK. Accordingly, we have made a downward adjustment to the irrecoverable VAT tax for CQ HK, to match the actual irrecoverable VAT incurred by CQ International on sales made by CQ HK.[501]

With respect to CQ International's CEP sales, we determine that the use of an adverse inference when selected from among the facts otherwise available, is warranted for the final determination. As noted in the "Use of Adverse Facts Available" section above, section 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that if necessary information is not available on the record or if an interested party:

> (A) withholds information that has been requested by Commerce;
> (B) fails to provide such information in a timely manner or in the form or manner requested, subject to section 782(c)(1) and (e) of the Act;
> (C) significantly impedes a proceeding under the antidumping statute; or
> (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act,

Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e) of the Act,[502] disregard all or part of the original and subsequent responses, as appropriate.

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[499] *See* CQ International EP and FOPs Verification Report at 16.
[500] *Id*.
[501] *See* CQ International Final Calc Memo.
[502] Section 782(e) of the Act states that Commerce shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

While we agree with CQ International that any single error it made, in its CEP sales reporting when, taken by itself, may have been minor and correctable, that is not the case when the numerous CEP sales reporting errors are cumulated. Rather, we find that CQ International failed to establish the accuracy and completeness of its reported CEP sales information at verification, and the errors and omissions, taken as a whole, were substantial. In particular we encountered the following issues with CQ International's reported CEP sales:

1) CQ International was unable to tie the actual payment dates with reported payment dates for certain of CQ NY's sales.[503]
2) CQ International did not report inland freight or freight revenue from the warehouse to customer for any of CQ TX's sales where it had incurred such expenses.[504]
3) CQ International mis-allocated inland freight from warehouse to customer for all of CMI's sales, including for sales which were picked up, despite the fact that CMI possessed the necessary records to report these expenses on a transaction-specific basis.[505]
4) For all sales made by CQ NY and CQ TX, CQ International was unable to explain or connect to freight invoices and customs documents for the POI the following expenses:[506]
    a. international freight,
    b. inland freight port-to-warehouse,
    c. U.S. brokerage and handling, and
    d. U.S. duty expenses.
5) CQ International failed to report a consignment sale arrangement whereby it paid an additional fee for certain sales made by CQ TX.[507]
6) CQ International reported incorrect commissions for all three U.S. affiliates, including for all pre-selected and surprise sales examined for CQ NY and CQ TX, and CQ International failed to report certain additional commission expenses.[508]
7) Additionally, CQ International made CEP sample sales for consideration, but did not report the complete information for these sales in its CEP sales database, despite maintaining the records to do-so.[509] The Federal Circuit has held that the term "sold" requires: 1) a transfer of ownership to an unrelated party; and 2) consideration.[510] CQ International acknowledges that there was "consideration" for the sample sales at issue here, and there was a transfer of ownership to unrelated parties.[511] Therefore, the sample

[503] *See* CQ International CEP Verification Report at 2 and 16.
[504] *Id.* at 2 and 12.
[505] *Id.* at 2 and 12.
[506] *Id.* at 2 and 13-15.
[507] *Id.* at 2 and 10-11.
[508] *Id.* at 18.
[509] *Id.* at 12 and verification exhibit 9a.
[510] *See NSK Ltd. v. United States*, 115 F.3d 965, 975 (Federal Circuit 1997).
[511] *See* CQ International Rebuttal Brief at 16-17. CQ International also asserts that these are sales made outside the ordinary course of trade. The "ordinary course of trade" provision in in 771(15) of the Act only applies to construction of normal value and should only be used to exclude sales of merchandise in the home market or third country markets, which may not be fair comparisons to U.S. sales; it does not apply to U.S. sales. *See*, *e.g.*, *Certain Carbon and Alloy Steel Cut-To-Length Plate from Belgium: Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 82 FR 16378 (April 4, 2017) and accompanying IDM at Comment 3.

sales at issue are considered "sold" under section 772(b) and CQ International failed to provide the complete information for these sample sales, despite being provided with opportunities to correct its reporting.[512]

Further, when these errors are viewed in combination with the other extensive data problems observed at the CEP verification, the conclusion that CQ International's CEP sales data are unusable becomes inescapable. Specifically, we noted the following additional issues at CQ International's CEP verification:

1) CQ International presented a correction for quantity discounts at the start of verification; however the presented correction only works for the gross unit price and quantity discount fields and does not accurately correct the related expenses for commissions, credit, indirect selling expenses, and inventory carrying costs, when applied to the database.[513] Further, the presented correction in fact affects nearly the entire universe of CEP sales and, despite the fact that it was presented as a simple mathematical fix to what was otherwise a clerical calculation error, the error presented significant difficulties in tying the selected sales data at verification.[514]
2) We discovered previously unreported discounts for CQ NY at verification.[515]
3) We noted numerous shipment date and date of sale errors for CQ International's CEP sales.[516]
4) During the sales reconciliation, we discovered that two sales made by CMI are missing from the database.[517]
5) CQ International incorrectly reported freight from warehouse for a CQ NY selected sale, as the result of miscalculations.[518]
6) CQ International significantly over-reported freight revenue for a CMI sale.[519]
7) CQ International incorrectly reported international freight and freight port-to-warehouse for certain sales pertaining to CMI.[520]
8) CQ International excluded certain expenses from its indirect selling ratio without properly accounting for them elsewhere.[521]
9) CQ International reported an incorrect inventory carrying ratio for five out of six of CMI's selected sales.[522]
10) CQ International calculated an incorrect inventory carrying ratio for CQ NY's sales due to the inadvertent exclusion of one month's opening inventory balance.[523]

[512] *See*, *e.g.*, CQ International's October 12, 2018 Supplemental Section C Response at SQ-36.
[513] *See* CQ International CEP Verification Report at 3.
[514] *See*, *e.g.*, CQ International CEP Verification Report at 12-18 and verification exhibits 8 and 9, where we attempted to match the correction to the reported data.
[515] *Id.* at 2, 10, and 12.
[516] *Id.* at 6.
[517] *Id.* at 8.
[518] *Id.* at 12.
[519] *Id.* at 12.
[520] *Id.* at 13-14.
[521] *Id.* at 17.
[522] *Id.*
[523] *Id.*

As listed above, CQ International had numerous errors and omissions in its reporting that Commerce identified at verification. These errors and omissions were pervasive throughout CQ International's CEP sales data, including unreported discounts, sales/shipment date, freight expenses/revenue, indirect selling expenses, inventory carrying costs, and credit expenses, as well as in the transaction-specific data examined for the pre-selected and surprise sales.[524] While CQ International provided corrections to some of its misreported data at verification, it did not do so in many instances. Further, the existence of so many individual errors undermines our confidence that other data, not specifically examined at verification, do not also suffer similar defects. Verification, by its nature, is a spot check (somewhat akin to sampling),[525] and when spot checks reveal that the data sample examined at verification is replete with errors, omissions, and discrepancies, we have no confidence in the accuracy of CQ International's other reported CEP sales information not specifically examined.

In sum, with regards to CQ International's CEP sales, we find that necessary information is not on the record, and that CQ International withheld information requested by Commerce, failed to provide essential information on request and in a timely manner, provided information that could not be verified, as provided in section 782(i) of the Act, and, as a result, significantly impeded the proceeding, in accordance with sections 776(a)(1) and 776(a)(2)(A), (B), (C), and (D) of the Act.[526] To the extent that some information was provided,[527] it was unverifiable and/or so incomplete that it could not serve as a reliable basis for reaching the determination in this investigation.[528]

Given the above facts, we find that CQ International failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information, as provided in section 776(b) of the Act, despite being afforded multiple opportunities to do so, in accordance with section 782(d) of the Act.[529] Specifically, CQ International failed to report the requested CEP sales information, and in the manner requested; and at the CEP verification, CQ International failed to substantiate the CEP sales information it had provided.[530] In addition to the instances noted above, we note that CQ International was careless, in general, with the data that it submitted; for example, in its response to Commerce's initial questionnaire, CQ International submitted an unusable and separate CEP database;[531] in CQ International's first supplemental questionnaire

[524] *Id.* at 2-3 and 6-18.
[525] *See Monsanto Co. v. United States*, 12 CIT 937, 944, 698 F. Supp. 275, 281 (1988), cited in *Micron Technology, Inc. v. United States*, 117 F.3d 1386 (Federal Circuit 1997).
[526] This is consistent with, *e.g.*, the Court's determination in *Universal Polybag*, 32 CIT 904, 915-16 ("{E}very sale trace failed Commerce's scrutiny… {t}hus, Commerce's decision that it could disregard all of {respondent's} submissions is supported by substantial evidence and in accordance with law.").
[527] *See*, *e.g.*, *FAG U.K. Ltd. v. United States*, 945 F. Supp. 260, 265 (CIT 1996) ("Commerce is not required to engage in a paper war to obtain responses to questions it has already explicitly asked."). Commerce asked CQ International, on multiple occasions, to correct or explain numerous errors and anomalies in its sales database; CQ International's answers to Commerce's supplemental questionnaires purported to have corrected the reporting issues.
[528] *See* sections 782(e)(2)-(3) of the Act.
[529] We issued extensive supplemental section C (*i.e.*, sales) questionnaires to CQ International on September 12 and October 19, 2018.
[530] *See* CQ International CEP Verification Report.
[531] *See* CQ International August 10, 2018 Initial Section C Response.

response, CQ International again provided a set of CEP sales that was incomplete and riddled with inaccuracies.[532]

As explained by the Federal Circuit:

> {b}efore making an adverse inference, Commerce must examine respondent's actions and assess the extent of respondent's abilities, efforts, and cooperation in responding to Commerce's requests for information. Compliance with the "best of ability" standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection, and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.[533]

We find that the scope of the errors and omissions identified at verification in CQ International's data are the result of both inattentiveness and carelessness. Even though Commerce does not require perfection in questionnaire responses and recognizes that mistakes sometimes occur, Commerce does not condone submission of incomplete and misleading responses, which are replete with errors and discrepancies.

CQ International argues that the errors are no more than could be expected for as a first-time respondent with an unsophisticated accounting system. We disagree. At verification, we used CQ International's accounting systems to identify errors in the reporting and the verification report makes no mention of limitations in searching account ledgers, etc. To the contrary, it was through the account ledgers for each of the companies that Commerce was able to identify specific errors in the reported CEP sales data.[534] Additionally, CQ International cannot lay all of its blame on its accounting system because many of the errors and omissions discussed, *supra*, in fact had nothing to do with CQ International's accounting records – they were errors relating to, for example, failure to supply calculations and explanation substantiating reported freight expenses at verification, or the failure to include a consignment sale agreement in the reported sales data. CQ International also argues that its errors were, "not of the type or magnitude to justify the application of adverse facts and {Commerce} has all of the information necessary to calculate a rate for CQ International."[535] Again, we disagree. As explained above, the record is wholly incomplete with regards to CQ International's CEP sales expenses and is riddled with errors that make the database unusable, as submitted. While Commerce demonstrated its reasonableness at verification by accepting minor data revisions,[536] accepting a new database, with all of the revisions and corrections for the multitudinous issues viewed at verification,

[532] *See* CQ International October 12, 2018 First Supplemental Section C Response; and CQ International October 26, 2018 Second Supplemental Section C Response.
[533] *See Nippon Steel*, 337 F. 3d at 1382-83.
[534] *See* CQ International CEP Verification Report general, and specifically, *e.g.* at 10.
[535] *See* CQ International Case Brief at 3.
[536] *See* CQ International CEP Verification Report at 3.

would amount to accepting a wholly-new response, and is not required or permitted by the statute or by Commerce's practice.[537]

We have, therefore, determined to apply AFA to CQ International's CEP sales. As AFA, we are applying the highest non-aberrational transaction-specific margin for CQ International's EP sales to the quantity of CQ International's CEP sales.[538]

Comment 13: CQ International Ministerial Errors

Petitioner's Arguments

- Commerce should correct the error in CQ International's margin program in the SAS code to correctly account for brokerage and handling by re-calculating the variable RDBROKU.[539]

- Commerce should also correct the error in CQ International's margin program in the SAS code to correctly account for gross weight in the calculation of brokerage and handling and inland freight.[540]

Commerce's Position

We agree with the petitioner that the code, as written, did not properly perform the data operations Commerce had intended to perform and therefore, we have corrected these two ministerial errors to modify the SAS programming language, as proposed by the petitioner, for the final determination.[541]

Comment 14: CQ International Indirect Selling Ratios

CQ International's Arguments

- In calculating the indirect selling expense (ISE) ratio for the final determination, Commerce should use CQ TX's full-year 2017 tax return. The 2017 tax return is contemporaneous with the POI and should be used in lieu of the partial-year 2016 tax returns which were used to calculate the ISE ratio for CQ TX for the preliminary determination.

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[537] *See Brother Industries, Ltd. v. US*, 771 F. Supp. 374, 384 (CIT 1991), where the Court held, "Presumably, a 'correction' correlates to matter already part of the record while an 'omission' lacks such correlation. That is, a submission of previously-omitted information may well be the equivalent of entirely new data and beyond the ability of the agency to digest and incorporate." Accordingly, we find that changes reviewed at CQ International's CEP verification were not minor and amounted to new factual information within the meaning of 19 CFR 351.301(c)(5).

[538] *See* CQ International Final Calc Memo. We have removed CQ International's CEP sales from the margin calculation for this final determination. Further, note that we were able to substantively confirm the accuracy of the reported total quantity of CQ International's CEP sales at verification. For our AFA calculation, we have removed the reported minor correction quantity from CQ International's CEP sales total, and added back the quantities for the two invoices that CQ International reported it mistakenly removed from its CEP sales listing. *See* CQ International Verification Report at 8-9.

[539] *See* Petitioner Case Brief at 8-9.

[540] *Id.* at 9-10.

[541] *See* CQ International Final Calc Memo.

Commerce's Position

Because of Commerce's decision to base CQ International's final dumping margin for its CEP sales on AFA because of the numerous and significant reporting and verification issues (*see* Comment 12), any issues relating CQ International's CEP expenses are moot. Therefore, we have not addressed this issue for purposes of the final determination.

Comment 15: Hero Stone's Separate Rate Eligibility

Hero Stone notified Commerce that it and its affiliates did not maintain complete financial records, use a general ledger, or prepare trial balances or financial statements. We preliminarily found that their accounting systems were unreliable and, as a result, the information recorded in these systems was unusable for purposes of a separate rate analysis. Thus, we preliminarily determined that Hero Stone, Foshan Quartz Stone, and HK Hero Stone had not demonstrated an absence of *de facto* government control, and therefore preliminarily denied a separate rate to Hero Stone, Foshan Quartz Stone, and HK Hero Stone.[542]

Hero Stone's Arguments

- Hero Stone placed substantial, complete, and accurate information on the record that rebuts any presumption of government control. Specifically, Hero Stone demonstrated: 1) it sets its own export prices without any government involvement or approval; 2) it negotiates and signs contracts and other agreements; 3) it selects its management without government involvement; and 4) it retains the proceeds of its export sales and makes independent decisions regarding dispositions of profits and financing of losses.[543]

- Commerce lacks evidence to find that it is *de facto* government controlled and that Commerce unreasonably rejected the evidence submitted by Hero Stone. Commerce applied an adverse inference to infer that Hero Stone is under *de facto* government control and that it is unlawful to apply an adverse inference to a cooperative respondent such as Hero Stone. The Federal Circuit has held that Commerce may apply an adverse inference only where the respondent at issue has failed to cooperate to the best of its ability in providing the required information.[544] Furthermore, Commerce unreasonably concluded the information provided by Hero Stone is not reliable.[545]

- When notice of difficulty is provided, Commerce is required by statute to take into account such difficulties in submitting information in response to a questionnaire.[546] The United States' statutory policy on this point is also in line with WTO commitments in regard to

[542] *See Preliminary Determination* and accompanying PDM at 16-17.
[543] *See* Hero Stone's Case Brief at 6-10.
[544] *See* Hero Stone's Case Brief at 12 (citing *Nippon Steel*).
[545] *See* Hero Stone's Case Brief at 10-18.
[546] *See* Hero Stone's Case Brief at 15 (citing sections 782(c)(1) and (2) of the Act).

small and medium sized businesses.[547] Further, Commerce's own antidumping and countervailing duty handbook advises that Commerce should accommodate departures from U.S. accounting principles.[548]

- Commerce's determination that Hero Stone failed to rebut the presumption of *de facto* government control is contrary to Commerce's precedent and contrary to record evidence.[549] At a minimum, Hero Stone is entitled to a separate rate because it has rebutted Commerce's presumption of *de jure* and *de facto* government control.[550]

- Given that Hero Stone is not part of the China-wide entity and it was selected as a mandatory respondent in this case, it is entitled to an individually calculated rate. Hero Stone submitted complete information on the record in this case and Commerce must calculate an individual rate for Hero Stone based on that information.[551]

Petitioner's Rebuttal Arguments

- Commerce should continue to treat Hero Stone as part of the Chine-wide entity, because Hero Stone and its affiliates failed to show they were entitled to a separate rate.[552]

- It would be completely inappropriate for Commerce to rely on Hero Stone's bank accounts to verify its reported information.[553]

- Hero Stone did not proffer "a viable alternative method to verify this information employing bank records."[554] Hero Stone's assertion that Commerce could rely on summaries of its bank statements as a method of verifying its responses is not possible because the bank statements do not tie to the other books and records maintained in the normal course of business, and "{o}ther than the summary of bank statements themselves, there are no other documents

[547] *See* Hero Stone's Case Brief at 15 (citing Articles 6.13 and 12.11 of the World Trade Organization AD Agreement and SCM Agreement; Agreement on the Implementation of Article VI of GATT 1994, Article 6.13, April 15, 1994, 1868 U.N.T.S. 201 at Article 6.13; Agreement on Subsidies and Countervailing Measures, April 15, 1994; and Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 U.N.T.S. 14. at Article XII.1).
[548] *See* Hero Stone's Case Brief at 16 (citing Enforcement & Compliance Antidumping Manual, Chapter 15 at 5 (last updated March 16, 2015), https://enforcement.trade.gov/admanual/index.html (last accessed October 24, 2018)).
[549] *See* Hero Stone's Case Brief at 18-19 (citing *HFCs from China* and accompanying IDM at Comment 13; *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22586 (May 2, 1994) (*Silicon Carbide from China*); and *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) (*Furfuryl Alcohol from China*)).
[550] *See* Hero Stone's Case Brief at 19.
[551] *Id.* at 20.
[552] *See* Petitioner's Rebuttal Brief at 41.
[553] *Id.* at 42. Because the specifics of this argument rely on Hero Stone's proprietary information, we discuss the argument's specifics in a separate business proprietary memorandum.
[554] *Id.* at 41 (citing Hero Stone's Case Brief at 5 and 10).

substantiating their preparation."[555] Using the bank statements themselves for purposes of reconciliation and verification would by contrary to Commerce's practice.[556]

- Hero Stone's claim that its "ownership structure is also demonstrative of a company that sets its own export program" has no merit, because Hero Stone's ownership structure is not verifiable. Hero Stone did not provide a capital verification report as requested by Commerce.[557] There are further anomalies and inconsistencies in Hero Stone's reporting of its ownership that make it impossible for Commerce to verify the company's ownership structure.[558]

- Hero Stone's assertion that the only piece of evidence Commerce relied on in determining that the company's accounting records were unreliable and unverifiable was the lack of a general ledger is not supported by the record. Commerce issued a lengthy analysis memorandum that detail numerous problems with Hero Stone's accounting system, in addition to the lack of a general ledger, and why these problems rendered Hero Stone's information unreliable and unverifiable.[559]

Commerce's Position

Commerce considers China to be an NME.[560] In accordance with section 771(18)(C)(i) of the Act, a determination that a country is an NME shall remain in effect until revoked by the administering authority. Further, no party submitted a request to reconsider China's NME status as part of this investigation. Therefore, we continue to treat China as an NME for purposes of this final determination. In evaluating whether to grant separate rate status to a company in an NME, Commerce has a rebuttable presumption that the export activities of all firms operating within the country are subject to government control and influence.[561] It is Commerce's policy to assign all exporters in an NME a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.[562] To establish that a company is independent of government control and, therefore,

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[555] *Id.* at 43 (citing Hero Stone's Case Brief at 5 and 10). The remainder of this argument relies on Hero Stone's proprietary information relating to an affiliate, Quartz Depot Inc.
[556] *Id.* at 43-44 (citing to *Stainless Steel Flanges from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 13244 (March 28, 2018) (*Stainless Steel Flanges from China*) and accompanying PDM at 8-10).
[557] *Id.* at 45 (citing Hero Stone's July 20, 2018 AIQR at A-13).
[558] *Id.* (citing Hero Stone's July 20, 2018 AIQR at A-13, A-15, Exhibit A-7; Hero Stone's October 3, 2018 ASQR at Exhibit SA-2; and Hero Stone's October 24, 2018 Response Comments at 4). The specifics of the petitioner's argument rely on Hero Stone's proprietary information.
[559] *Id.* (citing Hero Stone's Case Brief at 19; and Memorandum, "Additional Analysis Regarding the Preliminary Determination that Foshan Hero Stone Co., Ltd., Foshan Quartz Stone Imp & Exp Co., Ltd., and Hero Stone Co., Limited are Part of the China-Wide Entity (November 13, 2018)).
[560] *See* China NME Status Memorandum.
[561] *See Lined Paper* at 53082; *Diamond Sawblades LTFV*, 71 FR 29303, 29307; *see also Preliminary Determination* and accompanying PDM at 6-8.
[562] *See*, *e.g.*, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791 at 63793 (October 17, 2012) and accompanying IDM.

entitled to a separate rate, Commerce analyzes each exporting entity in an NME under the test established in *Sparklers*,[563] as further developed in *Silicon Carbide*.[564] Together, these tests require a respondent to demonstrate an absence of both *de jure* and *de facto* government control with respect to exports.[565] The consequences of failing to do so mean the exporter will be assigned the single rate given to the NME-wide entity.[566] In sum, Commerce determines whether an exporter has demonstrated an ability to control its own commercial decision-making concerning exportation of the subject merchandise, *i.e.*, whether decisions at the firm level are separate and apart from decisions made at the central government level with respect to exports.

Typically, Commerce considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions. They are: (1) whether the EPs are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[567]

In regard to *de facto* government control, Commerce examined the relevance of the books and records to the separate rate issue with respect to the statements made by Hero Stone, Foshan Quartz Stone, and HK Hero Stone that support a *de facto* determination. In examining this question, we find a critical nexus between certain of the criteria noted above and the companies' books and records. In cases in which Commerce finds that the company's books and records are unreliable, the submitted responses which rely on the books and records for support cannot be accepted as accurate factual statements.[568]

As in the *Preliminary Results*, we continue to find that Hero Stone, Foshan Quartz Stone, and HK Hero Stone have not demonstrated their entitlement to a rate separate from the China-wide entity.[569] It is the respondents' evidentiary burden to demonstrate the absence of both *de jure* and *de facto* government control. We find that Hero Stone, Foshan Quartz Stone, and HK Hero

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

[564] *See Silicon Carbide from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*) (Companies for which the record demonstrates a *de jure* and *de facto* absence of government control over export activities are eligible for separate rates).

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

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

[567] *See*, *e.g.*, *Silicon Carbide from China*, 59 FR 22585; *Furfuryl Alcohol from China*, 60 FR 22545; and *Preliminary Determination* and accompanying PDM at 16-17.

[568] *See*, *e.g.*, *HFCs from China* and accompanying IDM at Comment 14.

[569] *See Preliminary Determination* 83 FR 58540, 58541 and accompanying PDM at 16-17.

Stone have submitted sufficient evidence to establish the absence of *de jure* government control.[570] However, the unverifiable nature of the evidence Hero Stone, Foshan Quartz Stone, and HK Hero Stone submitted to demonstrate the absence of *de facto* government control renders the evidence insufficient to rebut the presumption of *de facto* government control.[571] Thus, we continue to treat these companies as part of the China-wide entity.

Hero Stone's argument that it has placed substantial, complete, and accurate information on the record that rebuts any presumption of government control is not tenable. Under the *de facto* separate rates analysis, the majority of the criteria can be, in some way or another, supported (or refuted) by data recorded in a company's accounting system.[572] A company's accounting system is the cornerstone of Commerce's *de facto* separate rates analysis, and a company must satisfy all of the criteria in order to demonstrate eligibility for a separate rate. We continue to find that the significant deficiencies in the record-keeping practices of Hero Stone, Foshan Quartz Stone, and HK Hero Stone render their accounting systems so unreliable that the information recorded in these systems is unusable for a separate rate analysis.[573] We also continue to find that we cannot conclude, through verifiable evidence, that these companies set their own price or retain export revenue, despite their statements on the record to the contrary with respect to these criteria.

Hero Stone's argument that Commerce has applied an adverse inference in regard to *de facto* government control misapprehends the legal standard and evidentiary burden in regard to *de facto* government control. As stated above, Commerce begins its separate rates analysis with the rebuttable presumption that all exporters are under NME control of the government. It is the separate rate applicants' burden to provide evidence sufficient to rebut this presumption. Commerce does not find in this case that Hero Stone is under *de facto* governmental control through the application of AFA. Rather, Commerce finds that Hero Stone, Foshan Quartz Stone, and HK Hero Stone have not rebutted the presumption of *de facto* government control and are, therefore, found to be part of the China-wide entity. Even if we were to apply AFA to Hero Stone, it is our well-settled practice that inadequate record keeping may be the sole basis for the application of AFA.[574] However, in this case we determine only that Hero Stone, Foshan Quartz Stone, and HK Hero Stone have failed to rebut the presumption of *de facto* government control. Thus, Hero Stone's arguments in regard to the application of AFA are misplaced.

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[570] *See Preliminary Determination* and accompanying PDM at 16.
[571] *See* Hero Stone's Letter, "Quartz Surface Products from the People's Republic of China: Notification of Difficulty in Responding to Questionnaire," dated July 2, 2018; Hero Stone July 20, 2018 AQR; Foshan Quartz Stone's July 9, 2018 Separate Rate Application; HK Hero Stone's July 9, 2018 Separate Rate Application; and Hero Stone's September 4, 2018 Supplemental Questionnaire Response; *see also* Commerce's proprietary memorandum analyzing Hero Stone's eligibility for a separate rate, "Less-Than-Fair-Value Investigation of Certain Quartz Surface Products from the People's Republic of China: Additional Analysis Regarding the Preliminary Determination that Foshan Hero Stone Co., Ltd., Foshan Quartz Stone Imp & Exp Co., Ltd., and Hero Stone Co., Limited are Part of the China-Wide Entity," dated November 13, 2018 (Hero Stone Separate Rate Prelim Memorandum).
[572] *See*, *e.g.*, *HFCs from China* and accompanying IDM at Comment 14.
[573] *See* Hero Stone Separate Rate Prelim Memorandum for an analysis of the proprietary information we relied upon to reach this conclusion.
[574] *See*, *e.g.*, *Nippon Steel*, 337 F.3d at 1382, sustaining Commerce's application of AFA where a company did not maintain adequate books and records ("While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.").

Hero Stone's argument that the filing of the notification of difficulties under 782(c)(1) of the Act in some way obviates Hero Stone, Foshan Quartz Stone, and HK Hero Stone's responsibilities to maintain adequate and complete records, and comprehensive accounting systems, is not persuasive. We do not find Hero Stone's suggested accommodation of providing Commerce with selected bank statements and bank summaries prepared by Hero Stone, and using only its own and third-party invoices – without any other method of validation for the entire universes of sales and purchases – to be an acceptable method of establishing completeness of its universes of sales or purchases. Following Hero Stone's notification of expected difficulty in responding to Commerce's questionnaire, Commerce reviewed Hero Stone's responses to Commerce's questionnaires and, pursuant to 782(d) of the Act, Commerce requested additional explanation and response from Hero Stone and its affiliates to ascertain the completeness of its records and to reconcile deficiencies in its submissions.[575] Thus, Commerce considered Hero Stone's proposed alternative reporting, requested additional information regarding that proposed alternative reporting, and determined that the proposed alternative reporting would still not provide a complete and verifiable response, in compliance with its obligations under section 782(c) of the Act. Consequently, we determined that Hero Stone's suggested approach to construct an unverifiable record of purchases and sales is not an appropriate accommodation, as envisioned by 782(c)(2) of the Act. To that extent, our request for additional information only revealed additional problems with Hero Stone's record keeping. For example, in response a supplemental questionnaire, Hero Stone found that its affiliate, Foshan Hero Stone Co., Ltd. (Samoa) may have received payments in its bank account; and Hero Stone also "discovered" the existence of an additional U.S. affiliate, Quartz Depot Inc., and that affiliate's corresponding bank account.[576] That is, Hero Stone's record keeping, as demonstrated by its supplemental questionnaire response, was so jumbled that even it did not know the full scope of its own business operations.[577] Under such conditions, Commerce could not gain assurance of that it had obtained the complete set of Hero Stone's records necessary to verify its sales, retained earnings, and profit distributions for purposes of the separate rate analysis.

Hero Stone cites to three cases, discussed below, to demonstrate that Commerce's determination that Hero Stone, Foshan Quartz Stone, and HK Hero Stone did not rebut the presumption of *de facto* government control is contrary to Commerce's practice and precedent.[578] Hero Stone also argues that the failure to maintain a general ledger was the only reason Hero Stone failed to rebut the presumption of *de facto* government control. As a preliminary matter, Hero Stone's failure to maintain a general ledger is not the only basis on which we find that Hero Stone, Foshan Quartz Stone, and HK Hero Stone failed to rebut the presumption of *de facto* government control. The myriad issues with Hero Stone, Foshan Quartz Stone, and HK Hero Stone's

[575] *See* Supplemental Questionnaire Issued by Commerce to Hero Stone on September 10, 2018.
[576] *See* Hero Stone's October 3, 2018 SQR at SA-3, fn. 4 and SA-7 to SA-8.
[577] Commerce noted additional proprietary details regarding Hero Stone's accounting practices which render its record keeping unreliable for purposes of preparing a complete and verifiable response in this AD investigation. *See* Hero Stone Separate Rate Prelim Memorandum at 2-3.
[578] *See* Hero Stone Case Brief at 18-19 (citing *HFCs from China*, *Silicon Carbide from China*, and *Furfuryl Alcohol from China*).

accounting systems and record-keeping are dealt with at length in the Hero Stone Separate Rate Prelim Memorandum.[579]

Hero Stone notes that, in each of the cases cited, Commerce attempted to verify the data provided by the respondents and should have done so in this case. In *HFCs from China*, Commerce determined at verification that the reported sales price in the company's accounting system and VAT invoices did not match the values in its commercial invoices.[580] In this case, Hero Stone has said from the outset that Commerce will be unable to tie total sales values and volume to either the accounting system or VAT invoices.[581] It makes no sense for Commerce to expend resources to verify a fact, the confirmation of which would continue to make Hero Stone ineligible for a rate separate from the China-wide entity. In fact, in *HFCs from China*, we explicitly stated that it would not be appropriate to conduct an additional verification or to rely on information taken from that accounting system for purposes of the final determination in that case.[582]

Hero Stones asserts that in *Silicon Carbide from China*, Commerce identified the failure to provide bank records as the reason certain companies failed verification.[583] In this case we are not asking for bank records to substantiate payments in an accounting system. Rather, Hero Stone urges Commerce to rely solely on selected bank records and summaries provided by Hero Stone. There is no method to determine if these bank records are complete because there exists nothing with which to verify that the bank records and summaries at issue represent the entire universe of sales, purchases, and distribution of profits from Hero Stone, Foshan Quartz Stone, and HK Hero Stone. Further, in *Stainless Steel Flanges from China*, Commerce expressly rejected the use of invoices and bank accounts as a method of performing a reconciliation, and in that case, Commerce also did not conduct verification or calculate a preliminary dumping margin for the mandatory respondent.[584]

In *Furfuryl Alcohol from China*, Commerce confirmed the two respondents' eligibility for a separate rate and the absence of *de facto* control through verification; this eligibility was supported by sales documentation, correspondence, documents related to sales negotiations,

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[579] *See* Hero Stone Separate Rate Prelim Memorandum for an analysis of the proprietary information we relied upon to reach this conclusion. The facts have not changed since the *Preliminary Determination*; thus, our analysis remains unchanged for this final determination.
[580] *See HFCs from China* and accompanying IDM at Comment 14.
[581] *See* Hero Stone's Letter, "Quartz Surface Products from the People's Republic of China: Notification of Difficulty in Responding to Questionnaire," dated July 2, 2018 at 3 and 5 with revised bracketing in Hero Stone's Letter, "Certain Quartz Surface Products from the People's Republic of China: Response to Supplemental Questionnaire," dated September 4, 2018; *see also* Hero Stone's July 20, 2018 Section A Questionnaire Response at A-35.
[582] *See HFCs from China* and accompanying IDM at Comment 13.
[583] *See Silicon Carbide from China*, 59 FR at 22586-89 ("Respondents… have failed to establish their eligibility for separate rates because, at verification, these companies failed to produce bank records necessary to prove their retention of proceeds from export sales. Therefore, these respondents did not meet an important criterion for separate rates.").
[584] *See Stainless Steel Flanges from China* and accompanying PDM at 8-10, unchanged in *Stainless Steel Flanges from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 26959 (June 11, 2018).

financial statements, accounting records, and bank statements.[585] In this case, Hero Stone, Foshan Quartz Stone, and HK Hero Stone offer no financial statements, no complete accounting records, or other methods such as tax records that can be used to verify the entire universe of sales and purchases.

Given that Hero Stone, Foshan Quartz Stone, and HK Hero Stone have not rebutted Commerce's presumption of *de facto* government control, Hero Stone, Foshan Quartz Stone, and HK Hero Stone are not entitled to a rate separate from that of the China-wide entity; nor are they entitled to an individually-calculated rate. Thus, we continue to find that Hero Stone, Foshan Quartz Stone, and HK Hero Stone are part of the China-wide entity.

Comment 16: Yixin Stone's Port Distance

Petitioner's Arguments

- Yixin Stone reported that the nearest port to its factory is the port of Gaoming. However, record evidence shows this port is relatively small in size and generally services barges. Record evidence in the form of satellite images show only barges and similar craft docked at the port facility; further, schedules published by China Intermodal North Guangdong show merchandise is transported from Gaoming Port to a "gateway port" via barges.[586]

- Hercules Quartz reported the distance from its factory to a river port, rather than an ocean port. In the *Preliminary Determination*, Commerce required Hercules Quartz to revise this distance to reflect the distance from the nearest seaport to Hercules Quartz's factory and should require Yixin to do the same for the final determination.[587] Consequently, Commerce should revise the distance from Yixin Stone's factory to the closest ocean port in the DINLFTPU field for all of Yixin Stone's sales in its U.S. sales listing and use the same port as the *Sigma* distance in Yixin Stone's FOPs database.[588]

Yixin Stone's Rebuttal Arguments

- Yixin Stone properly reported the distance from its factory to the nearest major port or, as Commerce described it in its *Preliminary Determination*, the nearest "seaport."[589]

- The petitioner mischaracterizes the descriptive language used by Commerce. There is no reference or requirement that the reported value under NPORT reflect the nearest "ocean port."[590] Rather, NPORT represents the "distance in kilometers from the plant to the nearest

[585] *See Furfuryl Alcohol from China*, 60 FR at 22545.
[586] *See* Petitioner Case Brief at 10 (citing Yixin Stone October 5, 2018 SQR; and Letter from Petitioner, "Certain Quartz Surface Products from the People's Republic of China: Comments on Yixin Supplemental Responses," dated October 15, 2018 (Petitioner October 15, 2018 Comments)).
[587] *Id.* at 10-11 (citing *Preliminary Determination* and accompanying PDM at 31, fn.149).
[588] *Id.* at 11.
[589] *See* Yixin Rebuttal Brief at 1 (citing *Preliminary Determination* and accompanying PDM at 31, fn.149).
[590] *Id.*

port where the plant can receive supplies shipped in international containers."[591] Commerce's supplemental questionnaire request for additional information, including infrastructure, water depth, and capabilities to accept international container ships, reflect this definition of NPORT. Commerce did not ask Hercules Quartz the same questions regarding its designation of Huangpo port as the nearest port.[592]

- Information about Gaoming port provided by Yixin Stone shows that Gaoming port is the "largest port in the Foshan area," "located near the South China Sea," has numerous rail gantry cranes, bridge drains, and reach stackers, all with the capacity to handle standard international shipping containers.[593]

- There is no requirement that the nearest export port for U.S. sales be the same as the theoretical import port for materials in the FOPs database. Therefore, there is no reason for Commerce to revise its preliminary determination that Gaoming port was an appropriate major port for the purposes of calculating the NPORT value.[594]

Commerce's Position

We agree with the petitioner and, for this final determination, we have revised the NPORT distance used for Yixin Stone's *Sigma* cap calculation to be the distance from the closest seaport, *i.e.* the closest ocean port, to Yixin Stone's factory.

As we stated in the *Preliminary Determination*, "{w}hen selecting the SVs, Commerce considered, among other factors, the quality, specificity, and contemporaneity of the data. As appropriate, Commerce adjusted input prices by including freight costs to make them delivered prices. Specifically, Commerce added a surrogate freight cost, where appropriate, to surrogate input values using the shorter of the reported distance from the domestic supplier to the respondent's factory or the distance from the nearest seaport to the respondent's factory."[595] In calculating the inland freight rate, we use the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport (*i.e.*, NPORT) to the factory, in accordance with the Federal Circuit's decision in *Sigma*.[596]

Record evidence shows that the port of Gaoming is "relatively small in size and generally only has barges" and that international containers loaded at the port of Gaoming are transferred at a port capable of accommodating ocean vessels before being shipped internationally.[597] While Yixin Stone can receive materials at the port of Gaoming, imported inputs would have to be

[591] *Id.* (citing Yixin Stone's August 23, 2018 Section C Questionnaire Response at 20 (Yixin Stone August 23, 2018 CQR)).
[592] *Id.* at 1-2 (citing Yixin Stone August 23, 2018 CQR; Hercules Quartz October 15, 2018 Supplemental Questionnaire Response; Hercules Quartz November 2, 2018 Supplemental Questionnaire Response; and Hercules Quartz November 5, 2018 Supplemental Questionnaire Response).
[593] *Id.* at 2 (citing Yixin Stone October 5, 2018 SQR at 12).
[594] *Id.*
[595] *See Preliminary Decision* and accompanying PDM at 31 (citing *OTR Tires* at Comment 9; and *Sigma* at 1407-08).
[596] *See* Prelim SV Memo at 8.
[597] *See* Petitioner October 15, 2018 Comments at Exhibit 1.

transferred to barges at a port capable of receiving ocean vessels, even if the material did not have to be transferred to different shipping containers. Yixin Stone has not provided evidence that ocean vessels can be accommodated at the port of Gaoming, only that international containers can be delivered there. Therefore, the full transportation costs for Yixin Stone's material inputs are not captured by using the port of Gaoming as the *Sigma* distance because it lacks the transportation cost from the seaport to the port of Gaoming.

We do not have on the record of this investigation the over-water distance from Gaoming to the closest port capable of receiving ocean vessel, or a surrogate value for barge freight. We therefore find that, pursuant to section 776(a)(1) of the Act, necessary information in the form of the transportation cost from the seaport to the port of Gaoming is missing from the record, and thus we must select from among the facts otherwise available on the record. Thus, as facts available, pursuant to section 776(a) of the Act, we have revised the NPORT distance for Yixin Stone to be the closest seaport for any distances and have re-calculated Yixin Stone's *Sigma* cap distance using the revised distance from its factory to the port of Shekou.[598]

We do not find persuasive Yixin Stone's argument that Commerce's initial questionnaire and supplemental questionnaires limit the definition of a seaport as only one capable of accepting international containers. As explained above, the purpose of the NPORT distance is to calculate freight cost to import inputs. Imports accepted at the port of Gaoming enter China at a seaport capable of receiving ocean vessels and are then transferred to barges to ship up-river to the port of Gaoming. Therefore, the full freight costs for inputs are not captured if NPORT is the distance from the port of Gaoming to Yixin Stone's manufacturing facility.

We disagree with the petitioner that we should revise the DINLFTPU field in Yixin Stone's U.S. sales listing to use the closest ocean port. As we confirmed at verification, Yixin Stone properly reported the inland freight from the plant or warehouse to the port of exit, based on the actual terms of its individual sales.[599]

Comment 17: Yixin Stone's Packing Costs

Petitioner's Arguments

- At verification, Commerce noted that while Yixin Stone reported packing on the basis of 15 slabs per box, during the factory tour it was observed that it was typical to have 10 slabs per box and that packing 15 slabs per box was only done if the slab thickness was two

[598] *See* Petitioner's letter "Certain Quartz Surface Products from the People's Republic of China: General Comments on the Preliminary Determination," dated October 18, 2018, at 39 ("The record shows that the Gaoming port, Huangpu port, and Yunfu Port are all inland river ports that are part of the Pearl River Delta (PRD) inland waterway system. All three ports are serviced by barges that act as feeder ships to connect the inland river ports to the major seaports of Shekou and Hong Kong. Because Shekou is closer to the respondent's factories than Hong Kong, it satisfies Commerce's requirements for purposes of determining *Sigma* distance as it is the nearest major seaport.").

[599] *See* Yixin Stone's Verification Report at 18-19 and Exhibits 7, 19-25; and Yixin Stone August 23, 2018 CQR at 15.

centimeters (cm) or less. Therefore, Commerce should adjust Yixin Stone's reported packing costs upwards by 150 percent for all sales where the reported thickness is three cm.[600]

Yixin Stone's Rebuttal Arguments

- Commerce correctly based its FOPs calculation for packing costs on representative examples in Yixin Stone's responses. The observations in the Yixin Stone Verification Report were allegedly told by factory personnel and do not prove that the boxes were in fact shipped without being filled with more than the 10 slabs observed at the warehouse. The observations by the verification team are anecdotal and do not disprove the two cm slabs packed 15 units to a box used as a basis for calculating packing costs.[601]

- As a rational actor using economies of scale Yixin Stone would not necessarily choose to use the same box size for thicker quartz slabs. There is no evidence of a standardized box size or that packing costs for three cm slabs were meaningfully higher than packing costs for two cm slabs, much less 50 percent higher.[602]

Commerce's Position

We agree with the petitioner, and we have adjusted the packing costs for three cm slabs by 150 percent for the final determination. As we noted in our verification report:

> Yixin Stone reported its {FOPs} for packing using two product types that it claimed were "representative" of its shipments (*i.e.,* a jumbo slab of 2{} cm thickness, packed 15 to a box; and a crate of fabricated product measuring 44.6 m^2). During the factory tour, however, we noted that many of the slabs in Yixin Stone's warehouses were packed 10 to a box….[603]

We further noted, in our verification report, based upon unambiguous statements by Yixin Stone "factory personnel," "that Yixin Stone packs slabs in 15 units per box only if the thickness is 2{} cm or less."[604] Thus, it is clear from our observations at verification, that Yixin Stone's packing FOPs are understated for three cm thick slabs, as Yixin Stone packs fewer three cm slabs in a packing container/box than it packs two cm slabs. Therefore, to properly account for packing costs on a square meter basis for Yixin Stone's three cm slabs, we are determining to increase packing costs by 150 percent (*i.e.* the cost to pack the same container/crate reported with five fewer slabs).

We disagree with Yixin Stone's characterization of Commerce's findings at verification. Commerce's verification report, required under 19 CFR 351.307(c), explicitly states that

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[600] *See* Petitioner Case Brief at 14-15 (citing Yixin Stone Verification Report at 2 and 28-29; and Yixin Stone Verification Exhibit 5).
[601] *See* Yixin Stone Rebuttal Brief at 7-8 (citing Yixin Stone Verification Report at 29).
[602] *Id.*
[603] *See* Yixin Verification Report at 2. We mistakenly reported the slab size as "20 cm." The actual thickness of the slab was 2 cm, reported as 20 millimeters in the field THICKU.
[604] *See* Yixin Verification Report at 28-29.

verifiers observed that "many" slabs were packed 10 to a box and that factory personnel "stated" that that is a common practice to pack slabs in 15 units per box only for slabs which are equal to or less than two cm.[605] That evidence is not anecdotal; it is based on factual observations made by the Commerce team while at verification.

We also disagree with Yixin Stone's characterization of the determination as to what box/crate size to use that, as "a rational actor using economies of scale," it would "not necessarily choose to use the same size boxes for the thicker quartz slabs as… for the thinner."[606] First, it may, in fact, be rational to pack slabs into the same sized boxes based upon density and the ability to safely lift and consistently place bundles of slabs into containers for international shipment. Due to the same surface area but greater thickness, 10 slabs that are three cm thick (*i.e.*, a total of 30 cm) should weigh approximately the same as the thinner slabs which are 15 to a bundle and only two cm thick (*i.e.*, again, a total of 30 cm). Second, based upon a review CQ International's proprietary packing calculations, we can confirm that it is typical for Chinese exporters to pack two cm and three cm slabs into bundles with similar dimensions (*i.e.*, more two cm slabs, but fewer three cm slabs, per package), so as to achieve similarly-weighted bundles for handling purposes.[607] As this appears to be standard practice within the Chinese quartz surface products industry, and based upon our observations at Yixin Stone's verification, as facts available, pursuant to 776(a) of the Act, we have increased Yixin Stone's packing costs for three cm slabs by 150 percent, because we find that Yixin Stone did not correctly account for packing costs for its three cm slabs, as explained above.

[605] *Id.* at 29.
[606] *See* Yixin Stone Rebuttal Brief at 8.
[607] *See* CQ International August 10, 2018, Initial Section D Response at Exhibit D-11; *see also* CQ International EP and FOPs Verification Report at 11 ("We… counted the quantity of slabs per bundle and bundles per container. We noted no discrepancies. *See* verification exhibit 16.").

IX. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.

☒	☐
Agree	Disagree

5/14/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance