A-570-045
Administrative Review
POR: 11/4/2016 – 4/30/2018
Public Document
E&C/Office V: JM

December 6, 2019

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

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Antidumping Duty Administrative Review of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China; 2016-2018

I. SUMMARY

We analyzed the case and rebuttal briefs of interested parties in the 2016-2018 administrative review of the antidumping duty *Order* covering 1-hydroxyethylidene-1, 1-diphosphonic acid (HEDP) from the People's Republic of China (China).[1] Based on our analysis, we made two changes to the margin calculation. However, both changes did not affect the dumping margin for the sole mandatory respondent participating in this administrative review: Henan Qingshuiyuan Technology Co., Ltd. (Qingshuiyuan). We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this review for which we received comments from interested parties:

Comment 1: Whether to Adjust Qingshuiyuan's Reported Factors of Production (FOPs)
Comment 2: Whether to Include Brokerage and Handling (B&H) Expenses for Surrogate Values
Comment 3: Whether the Dumping Margin is Commercially or Economically Realistic
Comment 4: Whether Commerce's Erroneous Calculation Prevents Effective Comment
Comment 5: Whether the Liquidation Instructions are Incorrect
Comment 6: Whether the Financial Statements from CYDSA, S.A.B. de C.V. Are Unusable
Comment 7: Whether to Use Mexico as the Surrogate Country
Comment 8: Whether the Surrogate Value (SV) for Yellow Phosphorus is Aberrational
Comment 9: Whether the Deductions from Constructed Export Price (CEP) Were Excessive
Comment 10: Whether Non-Deductible Value-Added Tax Should be Deducted from U.S. Price

[1] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 82 FR 22807 (May 18, 2017) (*Order*).

II. BACKGROUND

On July 12, 2019, the Department of Commerce (Commerce) published the *Preliminary Results* of this administrative review.[2] The period of review is November 4, 2016 through April 30, 2018. We invited parties to comment on the *Preliminary Results*.[3] On August 19, 2019, we received case briefs on behalf of Compass Chemical International LLC (the petitioner) and Qingshuiyuan.[4] On August 28, 2019, we received rebuttal briefs from the petitioner and Qingshuiyuan.[5] On September 25, 2019, Commerce postponed the final results to 151 days after the *Preliminary Results*.[6] The revised deadline for the final results in this review is now December 10, 2019.

III. SCOPE OF THE *ORDER*

The merchandise covered by this order includes all grades of aqueous acidic (non-neutralized) concentrations of 1- hydroxyethylidene-1, 1-diphosphonic acid (HEDP), also referred to as hydroxyethylidenendiphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The Chemical Abstract Service (CAS) registry number for HEDP is 2809–21–4.

The merchandise subject to this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.90.9043. It may also enter under HTSUS subheadings 2811.19.6090 and 2931.90.9041. While HTSUS subheadings and the CAS registry number are provided for convenience and customs purposes only, the written description of the scope of this order is dispositive.[7]

IV. CHANGES SINCE THE *PRELIMINARY RESULTS*

Based on a review of the record and comments received from interested parties, Commerce made two changes to the *Preliminary Results*. First, instead of converting U.S. price to a metric ton basis, we converted normal value to a kilogram basis to match the U.S price unit of measure, before calculating the weight-average dumping margin. Second, there were multiple variants of the name for the same importer. Thus, we adjusted the name of the importers to make the names

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[2] *See 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2016-2018*, 84 FR 33236 (July 12, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).
[3] *Id*., 84 FR at 33238.
[4] *See* Petitioner's Case Brief, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated August 19, 2019 (Petitioner's Case Brief); *see also* Qingshuiyuan's Case Brief, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China, A-570-045; Case Brief," dated August 19, 2019 (Qingshuiyuan's Case Brief).
[5] *See* Petitioner's Rebuttal Brief, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China," dated August 28, 2019 (Petitioner's Rebuttal Brief); *see also* Qingshuiyuan's Rebuttal Brief, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China, A-570-045; Rebuttal Brief" dated August 28, 2019 (Qingshuiyuan's Rebuttal Brief).
[6] *See* Memorandum, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated September 25, 2019.
[7] *See Order*, 82 FR at 22809.

consistent. For a more detailed discussion of these changes, *see* the Final Analysis Memorandum.[8]

V. DISCUSSION OF THE ISSUES:

Comment 1: Whether to Adjust Qingshuiyuan's Reported FOPs

Petitioner's Comments:[9]

- Qingshuiyuan is manipulating the margin by allocating its FOP consumption across subject merchandise and non-subject merchandise.
- Commerce should allocate Qingshuiyuan's cost to the production of HEDP only, or in the alternative, commit to more rigorously examining Qingshuiyuan's production of HEDP in future administrative reviews (ARs).

Qingshuiyuan's Rebuttal Comments:[10]

- Commerce used the proper allocation for the FOPs. The petitioner's allocation would result in all production materials being allocated to only a portion of the products it produced.
- Qingshuiyuan's production process results in a more efficient use of its materials. Qingshuiyuan should not be punished because it has a more "cost effective way" to produce its products. Therefore, in this case, the non-subject merchandise is an inevitable result of its HEDP production.

Commerce Position: In the instant review, the record supports Qingshuiyuan's reported FOP consumptions. According to Qingshuiyuan, its accounting system does not separately record the consumptions of certain FOP inputs for the production of HEDP and the non-subject product. Instead, it records the total consumption of these material inputs into the total combined production of HEDP and the non-subject product.[11] Therefore, it is not manipulating its margin, but instead accurately reporting its consumption based on its normal accounting principles. To report its FOP consumption for HEDP, Qingshuiyuan allocated consumption ratios based on the quantity of inputs consumed with the total production of each product,[12] which is in accordance with our normal practice.[13] Qingshuiyuan submitted documentation supporting its quantity-based allocation.[14] For example, Qingshuiyuan's reported data is supported by lists of warehouse-out slips for all material consumption for select months from their "ERP system."[15]

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[8] *See* Memorandum, "Antidumping Duty Administrative Review of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China; 2016-2018: Final Results Analysis Memorandum," dated concurrently with this memorandum (Final Analysis Memorandum).

[9] *See* Petitioner's Case Brief at 2-3.

[10] *See* Qingshuiyuan's Rebuttal Brief at 2-3.

[11] *See* Qingshuiyuan's May 28, 2019 Supplemental Questionnaire Response (SQR) at 5.

[12] *See* Qingshuiyuan's October 4, 2018 Section C & D Questionnaire Response (SCDQR) at D-10-11 and Exhibit D-7; *see also* Qingshuiyuan's May 28, 2019 SQR at Exhibit SSD-12.

[13] *See 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) (*HEDP LTFV*), and accompanying Issues and Decision Memorandum (IDM) at Comment 3.

[14] *See* Qingshuiyuan's March 13, 2019 SQR at Exhibit SD-9-11; *see also* Qingshuiyuan's May 28, 2019 SQR at Exhibit SSD 5-7, 9, 11, and 14-15.

[15] *See* Qingshuiyuan's May 28, 2019 SQR at Exhibit SSD-11 and 14-15.

The total consumption quantities, values, and per-unit consumption of Qingshuiyuan's direct materials tie to Qingshuiyuan's cost reconciliation and to its audited financial statements.[16] We note that the petitioner has not argued that the reconciliation is deficient. Therefore, because Qingshuiyuan's reported FOP consumptions are supported by documentation that ties to its cost reconciliation and financial statements, Commerce has continued to use Qingshuiyuan's reported FOPs for the final results. However, we do agree with the petitioner, and plan to evaluate in much greater depth Qingshuiyuan's production process to clearly establish, with supporting documentation, whether the non-subject merchandise is indeed an inevitable co-product of Qingshuiyuan's HEDP production process, in future ARs.

Comment 2: Whether to Include B&H Expenses for Surrogate Values

Petitioner's Comments: [17]

- Commerce added ocean freight and marine insurance to SVs calculated using Global Trade Atlas (GTA) data. Commerce failed to include an amount for B&H. Commerce should include B&H for SVs calculated using GTA data.

Qingshuiyuan's Rebuttal Comments:[18]

- Commerce should not add B&H to the SVs. The petitioner's argument is not supported by the record.
- It is not clear that Commerce has a consistent pattern of adding B&H on top of international freight and inland freight to the import values.
- The addition of international freight and inland freight already distorts the SV. Qingshuiyuan acquires its raw materials domestically and thus does not incur any international transportation expenses on its raw material purchases and should be removed from the SV calculation.
- The international freight SV used included B&H. Specifically, the international freight included port security, AMS, BAF, and B/L fees. Adding B&H would result in double counting. Additionally, Descartes data, which the petitioner provided to value ocean freight and marine insurance, does not break out all the elements of the freight transaction.

Commerce Position: In the *Preliminary Results*, we adjusted SVs by "including freight, insurance, and brokerage and handling costs to make them delivered prices."[19] Because the GTA import prices for Mexico were reported on a free on board (FOB) basis, we adjusted the input prices by including international freight, marine insurance, and B&H to convert the SVs to a cost, insurance, and freight (CIF) basis. Contrary to what the petitioner states, we did adjust the SVs to include B&H.

[16] *See* Qingshuiyuan's May 28, 2019 SQR at Exhibit SSD-12-13; *see also* Qingshuiyuan's September 18, 2018 Section A Questionnaire Response at Exhibits A-14-19.
[17] *See* Petitioner's Case Brief at 3.
[18] *See* Qingshuiyuan's Rebuttal Brief at 3-5.
[19] *See Preliminary Results* PDM at 15; *see also* Memorandum, "First Administrative Review of 1-Hydroxyethylidene-1, 1- Diphosphonic Acid from the People's Republic of China: Preliminary Results Analysis Memorandum," dated July 8, 2019, at Attachment 1.

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."[20] *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 of 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."[21]

As noted above, Commerce recognized that GTA data for Mexico's import values were reported on an FOB basis. Because the GTA data for Mexico's import values are reported on an FOB basis, we have no basis for assuming that international movement expenses, including marine insurance and B&H, are accounted for in the import values. For these reasons, we added an amount for international freight, marine insurance, and B&H to the inputs we valued using GTA data from Mexico for the *Preliminary Results* and the final results, which is in accordance with our normal practice.[22]

Regarding Qingshuiyuan's argument that we should not calculate any international transportation because it acquires its raw materials domestically, we disagree. As stated above, it is our normal practice when using SVs in non-market economy (NME) proceedings for the import statistics to include international freight costs.[23] In other NME proceedings, we have used surrogate countries where the import values were already reported on a CIF basis.[24] In other words, the only difference between the instant review and other proceedings is that the international movement costs were already included in the import value. Therefore, for the final results, we have calculated international movement expenses for SVs.

We also disagree that the international freight SV used included B&H. The Descartes ocean freight quotes include fees for port security, AMS, BAF, and B/L fee.[25] There is nothing on the record to clarify what these fees comprise, nor did Qingshuiyuan provide clarification regarding these fees. The SV for B&H was based on the World Bank's *Doing Business 2018: Mexico* and consisted of charges for documentary compliance (*i.e.*, obtaining, preparing and submitting documents) and border compliance (*i.e.*, customs clearance and inspections).[26] Based on the record, the charges that appear in the Descartes ocean freight quote and in the World Bank's

[20] *See* Import Administration Policy Bulletin 10.2: Inclusion of International Freight Costs When Import Prices Constitute Normal Value (November 1, 2010) (*Policy Bulletin 10.2*) at 1.
[21] *Id*. at 1-2.
[22] *See, e.g., Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Affirmation Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances, in Part*, 83 FR 33205 (July 17, 2018) (*Cast Iron Soil Pipe Fittings*), and accompanying IDM at Comment 2.
[23] *See Policy Bulletin 10.2* at 1-2.
[24] *See, e.g., Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 53449 (October 23, 2018).
[25] *See* Petitioner's Letter, "1-Hydroxyethylidene-1, 1- Diphosphonic Acid from the People's Republic of China," dated November 21, 2018 (Petitioner's SV Submission), at Exhibit 7b.
[26] *Id*. at Exhibit 4.

Doing Business 2018: Mexico are not similar in nature and thus would not be double counted in our calculation. As a result, we have made no adjustments to the SV for international freight or B&H.

Comment 3: Whether the Dumping Margin is Commercially or Economically Realistic

Qingshuiyuan's Comments:[27]

- Commerce's statutory and legal mandate is to "calculate dumping margins as accurately as possible" in a way that is "fair and equitable." The preliminary dumping margin of 397.20 percent is not realistic in any commercial or economic sense, is punitive, and is therefore contrary to law in accordance with *Baoding.*[28]
- A dumping margin of 397.20 percent would be the equivalent of producing a product at significant cost and then practically giving it away. Yet Qingshuiyuan's financial statements show consistent profit. Therefore, this margin defies Qingshuiyuan's economic reality.
- The current FOP valuations and surrogate financial ratios have resulted in clearly excessive margins. Commerce must adopt a different approach in calculating the dumping margin to remain in accordance with law.

Petitioner's Rebuttal Comments:[29]

- The dumping margin for the *Preliminary Results* was calculated in strict accordance to Commerce's NME methodology. Qingshuiyuan did not dispute that the dumping margin should be calculated pursuant to Commerce's NME methodology.
- Export price (EP) and CEP were calculated from Qingshuiyuan's reported sales database. Normal value (NV) was also calculated from Qingshuiyuan's reported FOP database.
- A high dumping margin is not synonymous with a "punitive" dumping margin. A punitive dumping margin would require applying additional penalties. The dumping rate of 397.20 percent was calculated in accordance with a well-established methodology and used Qingshuiyuan's own databases. Therefore, the margin is "remedial" (*i.e.*, it serves to remedy unfair trading).
- In *Baoding*, the high dumping margin was appealed because of a long-standing pattern of much lower dumping margins. This is not the case with Qingshuiyuan. Qingshuiyuan received a separate rate margin of 90.34 percent. Therefore, the history of the *Order* to date documents that Qingshuiyuan dumped at high margins and that there is nothing suspicious regarding Qingshuiyuan's high dumping margin for this instant review.
- Where dumping is involved, it is common for foreign companies to take large losses on its sales of dumped products in the U.S. market while it maintains or increases profit in its protected home market.

Commerce Position: We disagree with Qingshuiyuan that its margin is excessive, punitive, and not realistic from what it describes as its commercial reality. As the U.S. Court of Appeals for

[27] *See* Qingshuiyuan's Case Brief at 3-7.
[28] *Id*. at 3-7 (citing *Baoding Mantong Fine Chemistry Co., Ltd. v. United States*, 113 F. Supp. 3d 1332, 1334 (CIT 2015) (*Baoding*)).
[29] *See* Petitioner's Rebuttal Brief at 1-4.

the Federal Circuit (CAFC) clarified in *Nan Ya Plastics*,[30] Commerce is not expected to apply "commercial reality" in the broadest terms. The CAFC explained that "Commerce need not examine the economic or commercial reality of the parties specifically, or of the industry more generally, in some broader sense."[31] Rather, Commerce's decision "reflects 'commercial reality' if it is consistent with the method provided in the statute, thus in accordance with law."[32] In this instant review, Commerce followed the SV methodology set forth in the governing law, and thus, contrary to Qingshuiyuan's argument, the margin calculated in these final results reflects commercial reality. Specifically, when comparing normal value to U.S. price, the resulting difference is the value attributable to dumping or the amount the U.S. price would have to increase to reach the normal or fair value.

In accordance with section 773(c)(1) of the Tariff Act of 1930, as amended (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 a comparable 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 Qingshuiyuan's U.S. prices and its FOPs, we have accepted its own reported data. Qingshuiyuan has taken no issue with its data. We also find that SVs have been valued appropriately, *see* Comments 6 through 8 for a discussion of SV and surrogate country used in this administrative review. Thus, Qingshuiyuan's margin has been calculated in accordance with law.

We also disagree with Qingshuiyuan 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 a NME company's production costs invalid under Commerce's normal dumping methodology.[33] While we acknowledge that Qingshuiyuan's financial statements do show a profit, we cannot be assured that Qingshuiyuan would have made a similar profit had it been located in a market economy country, and the size of Qingshuiyuan's dumping margin implies that this would not be the case. Further, we note that Qingshuiyuan's profit was based on sales from all of its product lines, including non-subject merchandise.

Finally, we disagree that the U.S. Court of International Trade's (CIT) decision in *Baoding* is applicable here, because that case is limited to the facts on that record. In particular, the CIT held in *Baoding* that information on that record suggested that certain SVs were aberrational 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

[30] *See Nan Ya Plastics Corp., Ltd. v. United States*, 810 F. 3d 1333 (Fed. Cir. 2016) (*Nan Ya Plastics*).
[31] *Id*., 810 F. 3d at 1344.
[32] *Id*.
[33] *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) (*Hydrofluorocarbon Blends*), and accompanying IDM at Comment 2.

words, in that case, the CIT held that Commerce did not base its analysis on the best available information. However, as discussed in Comments 6 through 8, that is not the situation in this review.

Based on the aforementioned, we disagree that Commerce should recalculate Qingshuiyuan's margin or use an alternate methodology. As noted above, we calculated a margin consistent with the law;[34] thus it is accurate and commercially realistic, and it is also based on Qingshuiyuan's own data. As discussed below, the SVs were based on the best available information on the record. Therefore, we have continued to calculate Qingshuiyuan's margin using the information on the record, consistent with our long-standing practice.

Comment 4: Whether Commerce's Erroneous Calculation Prevents Effective Comment

Qingshuiyuan's Comments:[35]

- In the *Preliminary Results*, Commerce reported a "Total Value U.S. Sales" and a "Total Amount of Dumping" which were each off by a factor of 1,000. Commerce claimed that this was due to a "conversion error" from kilogram to metric ton. However, adjusting the total U.S. sales value by 1,000 results in a sales value that is lower than the sales value reported by Qingshuiyuan.
- The total amount of duties to be collected for the total U.S. sales value that Qingshuiyuan reported and a dumping margin of 397.20 percent is significantly higher than what is reported by Commerce for "Total Amount of Dumping." This demonstrates that Commerce's claimed "conversion error" is false.

Commerce Position: We disagree with Qingshuiyuan that the calculation was erroneous. As we have previously stated, Commerce identified a "discrepancy in the calculation…{when we} converted U.S. net price from a U.S. dollars (USD) per kilogram basis to USD per metric ton. We inadvertently overlooked this conversion when calculating {'Total Value U.S. Sales' and 'Total Amount of Dumping,' and thus,} we multiplied a USD per metric ton variable by a quantity in kilograms."[36]

As detailed in the *Preliminary Results*, "pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another

[34] We note that Commerce has calculated similarly high margins in other AD NME cases using a company's own data. *See, e.g.*, *Hydrofluorocarbon Blends*, 84 FR at 17381; *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 the margin calculated for Kunshan Lets Win Steel Machinery Co., Ltd./Kunshan Lets Win Steel Machinery Co., Ltd. was 249.12 percent).

[35] *See* Qingshuiyuan's Case Brief at 7-8.

[36] *See* Memorandum, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China: Preliminary Results Analysis Memorandum Clarification," dated July 12, 2019.

method is appropriate in a particular situation."[37] In the *Preliminary Results*, we found that 83.8 percent of the value of U.S. sales passed the Cohen's *d* test, but that there was no meaningful difference in the weighted-average dumping margins calculated using the average-to-average comparison method and the average-to-transaction comparison method, and thus used the standard method.[38] For the final results, the results of the Cohen's *d* test has not changed.[39]

In other words, "Total Value U.S. Sales" is the sum of the U.S. sales value for each observation reported in Qingshuiyuan's U.S. sales database. We calculated the U.S. sales value for each observation by multiplying the average U.S. net sales value (*i.e.*, EP or CEP) by the quantity. Thus, the "Total Value U.S. Sales" does not represent the total gross U.S. sales value Qingshuiyuan reported and would not match the sales value that Qingshuiyuan reported. The dumping margin of 397.20 percent would be multiplied against "Total Value U.S. Sales," which matches the total amount of dumping that is reported.[40]

Comment 5: Whether the Liquidation Instructions are Incorrect

Qingshuiyuan's Comments:[41]

- Commerce calculated liquidation instructions for some imports on a per-unit basis and on a percentage basis for other imports, resulting in the imposition of antidumping duties far in excess of the actual duties. Commerce should have calculated these duties on a consistent basis.
- Commerce should use a per-unit assessment rate because Qingshuiyuan does not know the entered value for some of its sales.
- 19 CFR 351.212 provides for a provisional remedies deposit cap for entries made during the investigation and prior to the issuance of the order. The draft instructions did not instruct U.S. Customs and Border Protection (CBP) to disregard the differences between the provisional measures and final duties.

Petitioner's Rebuttal Comments:[42]

- The petitioner does not take issue with the proposition that the provisional measures cap should apply to entries made prior to the International Trade Commission's final determination of material injury.
- The assessment rates should be issued on an *ad valorem* basis as has historically been the case (*e.g.*, the assessment rates in the expired AD order on HEDP from China and the estimated margins established at the end of the underlying AD duty investigation).

Commerce Position: We agree, in part, with Qingshuiyuan that the liquidation instructions were incorrect. In the draft instructions we did not instruct CBP to disregard the differences between the provisional measures and final duties. For the final results, we revised the

[37] *See Preliminary Results* PDM at 10.
[38] *Id*. at 12.
[39] *See* Final Analysis Memorandum.
[40] *Id*.
[41] *See* Qingshuiyuan's Case Brief at 8-11.
[42] *See* Petitioner's Rebuttal Brief at 4-5.

instructions to CBP to account for this capping in accordance with 19 CFR 351.212(d).[43] However, we disagree with Qingshuiyuan that Commerce should use a single assessment rate. It is our normal practice to use a per-unit assessment rate when the entered value is unknown and to use an *ad valorem* assessment rate when the entered value is known.[44] As Qingshuiyuan argued in its brief, Qingshuiyuan knows the entered value for some sales and does not know the entered value for other sales.[45] Therefore, in accordance with our standard practice, we have calculated a per-unit assessment rate for entries for which the entered value is unknown, and an *ad valorem* assessment rate for entries for which entered value is known.

Comment 6: Whether the Financial Statements from CYDSA, S.A.B. de C.V. Are Unusable

Qingshuiyuan's Comments:[46]

- The labor cost reported by CYDSA, S.A.B. de C.V. (CYDSA) of 19 million Mexican Pesos (MXN) is a gross understatement and does not account for the actual annual cost of labor, but instead represents the amount owed or payable from an unknown period. With a cost of goods sold expense of 5.9 billion MXN, labor costs would account for 0.32 percent of the cost.
- In its financial statements, CYDSA stated that it makes payments between two and three percent of its workers integrated wage to a defined contribution plan. In other words, CYDSA's actual labor costs should be 1.06 billion MXN to 1.6 billion MXN.
- CYDSA's statements do not have an energy line item. Commerce reported an "adjustment to the costs of sales," but this value does not appear to be based on any actual values in the financial statements. Given the numerous costs of goods sold line items lacking from the CYDSA statements, this adjustment may not only include the costs of energy.
- In the investigation of *Citric Acid* and in the fifth AR,[47] Commerce stated that because there was not a separate line item for energy in the cost of manufacturing of the surrogate financial statements, Commerce concluded that energy was recorded in the factory overhead. Additionally, in *Polyester Staple Fiber*,[48] when the financial statements did not breakout electricity and water, Commerce placed these expenses in overhead and omitted the valuation in NV. Thus, because CYDSA's financial statements have no breakout for energy, labor, and transportation costs, Commerce should disregard these inputs.
- CYDSA self-produces almost all its energy. A value for energy would need to include depreciation, administrative charges, and other costs for self-production. A portion of the

[43] *See* the Final Analysis Memorandum for the revised instructions.
[44] *See, e.g., Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010), and accompanying IDM at Comment 17.
[45] *See* Qingshuiyuan's Case Brief at 9; *see also* Qingshuiyuan's May 13, 2019 SQR at Exhibit SC2-5.
[46] *See* Qingshuiyuan's Case Brief at 11-25.
[47] *Id*. at 28-29 (citing *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 74 FR 16838 (April 13, 2009) (*Citric Acid*), and accompanying IDM.
[48] *Id*. at 29-30 (citing *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) (*Polyester Staple Fiber*), and accompanying IDM).

expense for this self-production is reflected in the selling and administrative expenses. Absent a more detailed breakdown, it is impossible to determine the full nature of these expenses.

- In a prospectus issued by CYDSA, it detailed that CYDSA produces more electricity than required for operations of the facilities. Moreover, CYDSA obtains a significant portion of its raw materials from brine facilities. The self-produced salt is both packaged and sold through its retail channel and is used as a key raw material in other products produced by CYDSA.
- CYDSA's statements also fail to break-out the sales expense. The reported "selling expenses" appear to include expenses which would normally be excluded from the calculation (*e.g.*, freight and transportation costs; salaries/commissions/traveling expenses of its sales department; marketing expenses; and depreciation of transportation equipment). Therefore, Commerce is unable to calculate accurate financial ratios for CYDSA.
- The level of integration between CYDSA and Qingshuiyuan are radically different. Qingshuiyuan purchases all its raw materials and energy; sells to unrelated distributors and manufacturers; and does not have a vertically integrated operation.
- CYDSA has significant marketing and branding expenses which are included in its selling expenses and amount to a significant percentage of the cost of goods sold. Qingshuiyuan has virtually zero marketing. Customers market their own brands to the ultimate customer, thus Qingshuiyuan's customers are the ones that incur marketing costs.
- The CIT found in *Xinboda* that marketing and branding expenses of a large company were critically different compared to the respondent and that the financial statements could not be used.[49]
- If Commerce continues to use the financial statements from CYDSA, it must follow its practice of not double counting by either modifying the financial ratio calculation or by excluding certain FOPs (*i.e.*, energy, transportation, and labor inputs).

Petitioner's Comments:[50]

- Qingshuiyuan is using the same arguments used by the mandatory respondent Nantong Uniphos Chemicals Co., Ltd. in the underlying investigation. In the final remand redetermination, Commerce re-affirmed its use of CYDSA's annual report and financial statements. In this review, Commerce included an amount of 3.4 billion MXN to account for the fact that labor and other items were not broken out in the financial statements. Qingshuiyuan's argument fails to point to any other logical or appropriate expense category in CYDSA's financial statements where additional labor costs would be captured aside from the additional sums Commerce already added.
- There is no record evidence that Qingshuiyuan's customers incurred the expenses associated with developing and marketing. There is also nothing on the record to support Qingshuiyuan's presumptions as to what percentage of CYDSA's selling expenses are accounted for by marketing and branding.

[49] *Id*. at 23 (citing *Shenzhen Xinboda Indus. Co., Ltd. v. United States*, 976 F. Supp. 2d 1333, 1383 (CIT 2014) (*Xinboda*)).
[50] *See* Petitioner's Rebuttal Brief at 7-15.

- Qingshuiyuan incorrectly relied on *Xinboda* to support its position. The court merely summarized the arguments of Shenzhen Xinboda Industries Co., Ltd.'s (Xinboda) and found that Commerce did not address said arguments. On remand, Commerce considered Xinboda's arguments and concluded that the financial statements continued to constitute the best available information.
- In the final remand redetermination for the underlying investigation, Commerce addressed the issue of the differences in the levels of integration and determined CYDSA was not so dissimilar that it could not be used for surrogate ratio valuation purposes. Several of the reasons listed are similar to the evidence on the record for this AR. Specifically, the production of electricity (and steam) is not listed as a business group; it is not clear that CYDSA produces all of its electricity requirements; and that CYDSA produces electricity is irrelevant to determining whether CYDSA is a significant producer of comparable merchandise.
- Qingshuiyuan presented no argument against the use of the second Mexican company used in the surrogate financial ratios for the *Preliminary Results*. Should Commerce determine not to use CYDSA for the surrogate financial ratios in the final, it should continue to use Alpek S.A.B. de C.V. (Alpek) for its financial ratio calculation.
- Commerce has a well-established practice to use the information available in the surrogate financial statements as allocated and accounted for and to not look beyond the financial statements for clarifying information. The CIT has upheld Commerce's practice in *CS Wind*.[51] In this review, Commerce did just that.

Commerce Position: Commerce's criteria for choosing financial statements for the calculation of surrogate financial ratios are: the availability of contemporaneous financial statements; comparability to the respondent's experience; and publicly available information.[52] In accordance with 19 CFR 351.408(c)(4), Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country to value manufacturing overhead, general expenses, and profit. Further, the courts have recognized Commerce's discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[53]

In the underlying investigation, we found that CYDSA's financial statements were usable and addressed many of the same issues that Qingshuiyuan raised in its case briefs.[54] For this instant review, Commerce continues to find that CYDSA's financial statements are usable. Thus, for the final results of this administrative review, Commerce continues to use the financial statements of both CYDSA and Alpek to value the surrogate financial ratios.

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[51] *Id*. at 13 (citing *CS Wind Vietnam Co., Ltd. v. United States*, 219 F. Supp. 3d at 1273, 1284 (CIT 2017) (*CS Wind*)).
[52] *See, e.g., Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 51779 (August 26, 2015), and accompanying IDM at Comment 1.
[53] *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"), *aff'd FMC Corp. v. United States*, 87 Fed. Appx. 753 (Fed. Cir. 2004).
[54] *See Final Results of Voluntary Redetermination Pursuant to Remand: Nantong Uniphos Chemicals Co., Ltd., et al., v. United States*, Consol. Court No. 17-00151 (July 2018).

Qingshuiyuan contends there are numerous concerns with the CYDSA financial statements, such that they should not be used by Commerce in calculating the weighted-average dumping margin. First, Qingshuiyuan states that the cost of labor reported by CYDSA of 19 million MXN and 204 million MXN for direct benefits is a gross understatement and does not account for the actual annual cost of labor because: (1) labor is recorded on the balance sheet as a liability and not in the cost account; (2) the retirement savings paid by CYDSA and listed in the financial statements indicate the value of labor must be higher than what is listed; and (3) since the labor value must be higher, labor must be reported somewhere else in the financial statements, but it is unclear where.[55]

As an initial matter, Commerce prefers to use financial statements that list costs by function rather than by type of transaction and that includes a line item for the cost of goods sold (COGS), because expenses such as labor can relate to manufacturing, administration, and selling.[56] From the COGS amount, we can calculate the cost of manufacturing by accounting for the change in the finished goods inventory from the inventory amounts reported in the corresponding comparative balance sheets. From the cost of manufacturing, we deduct depreciation costs reflected in the notes to the financial statements, with the residual classified as material, labor, and energy (MLE).[57] In this instant review, CYDSA's income statement lists costs by functions (*e.g.*, COGS, selling, administration, *etc.*).[58] Thus, we have followed past precedent and calculated the MLE as described above. We also made inventory adjustments consistent with our practice and deducted depreciation with respect to COGS as reported in CYDSA's financial statements.[59]

We agree with Qingshuiyuan that the 19 million MXN for wages and salaries and the 204 million MXN for direct benefits is not the full amount of labor cost incurred by CYDSA. However, after taking CYDSA's reported COGS, and making the adjustments noted above (*i.e.*, changes in inventory and depreciation), an additional 3.4 billion MXN is included in MLE which accounts for labor and other costs.[60] In fact, CYDSA reports raw materials separately from the COGS and indicates that it accounted for electricity as a raw material.[61] Because CYDSA lists raw materials and electricity separately from the COGS, we believe a significant portion of the 3.4 billion MXN figure of the COGS is labor cost.[62] Although labor is not specifically listed as an individual line item in the COGS, we disagree with Qingshuiyuan that labor is undervalued in

[55] *See* Qingshuiyuan's Case Brief at 12-14.
[56] *See, e.g., HEDP LTFV* IDM at Comment 2; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 5053 (February 20, 2019) (*Isos 16-17*), and accompanying IDM at Comment 3; *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 5243 (February 6, 2018) (*Isos 15-16*), and accompanying IDM at Comment 5; and *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 83 FR 4852 (January 17, 2017) (*Isos 14-15*), and accompanying IDM at Comment 2.
[57] *See, e.g., Isos 16-17* IDM at Comment 3; *Isos 15-16* IDM at Comment 5; and *Isos 14-15* IDM at Comment 2.
[58] *See* Petitioner's SV Submission at Exhibit 13.
[59] *See* Memorandum, "First Administrative Review of 1-Hydroxyethylidene-1, 1- Diphosphonic Acid from the People's Republic of China: Surrogate Values Memorandum," dated July 8, 2019 (SV Memo), at Attachment 10.
[60] *Id*.
[61] *See* Petitioner's SV Submission at Exhibit 13.
[62] *Id*.

our calculation of MLE. Moreover, because CYDSA reported much more than 19 million MXN for wages and labor and 204 million MXN for direct benefits, we find Qingshuiyuan's claims with respect to the retirement payments to be unpersuasive.

In addition, we disagree with Qingshuiyuan that labor (or energy) must be a separately reported line item in financial statements.[63] Contrary to *Citric Acid* and *Polyester Staple Fiber*, Commerce has not placed the line items not separated in the financial statements in overhead. For our calculation of the overhead ratio, we have included only depreciation, with an adjustment for spare parts inventory.[64] In this instant review, the sum of MLE is being used to calculate only the denominator of the financial ratios, in order to determine the surrogate manufacturing overhead ratio and, subsequently, the selling, general & administrative expenses (SG&A), and profit ratios.[65] Thus, Commerce's calculation of the surrogate financial ratios does not include double counting. Additionally, our calculation of SG&A includes only amortization, selling expenses, administrative expenses and finance expenses, adjusted by certain types of income. As such, none of the line items not separated were listed in any of the categories comprising overhead and SG&A.[66]

Qingshuiyuan contends that according to a prospectus issued by CYDSA, CYDSA self-produces a significant amount of electricity and even produced more electricity than needed for the operations of its facilities.[67] As an initial matter, and as noted above, Commerce's criteria for choosing financial statements include, among other things, the information being available publicly. Commerce notes that the prospectus that Qingshuiyuan cited is labeled as "strictly confidential."[68] This raises concern over whether this information is publicly available. However, we note that CYDSA also reported in the same prospectus that: (1) its cogeneration plants are not operating at full capacity; (2) CYDSA's electricity needs would be met once its cogeneration plants attain full production capacity; (3) the commercialization of electricity has not been significant; and (4) the cogeneration plants use gas as a main component and CYDSA cannot assure it will have a stable supply of gas.[69] Thus, it is not clear that CYDSA self-produced all of it electricity requirement. Additionally, in CYDSA's financial statements and in the prospectus, CYDSA continues to note that gas and electricity are two specific raw material inputs used in the production of chlorine and caustic soda, noting that these two energy inputs were still subject to "price risk" because the public company in Mexico that produces and distributes electricity using natural gas is vulnerable to the volatility of the natural gas market.[70] In *Isos 14-15*, *Isos 15-16*, *Isos 16-17*, and *HEDP LTFV* we found that this demonstrates that CYDSA is not energy independent, but still relies on outside purchases of electricity to support its production processes, and that these costs can reasonably be considered substantial given its

[63] *See* Qingshuiyuan's Case Brief at 12-16.
[64] *See* SV Memo at Attachment 10.
[65] *Id*.
[66] *See HEDP LTFV* IDM at Comment 2; *see also Isos 16-17* IDM at Comment 3; *Isos 15-16* IDM at Comment 5; and *Isos 14-15* IDM at Comment 2.
[67] *See* Qingshuiyuan's Case Brief at 14-16.
[68] *See* Qingshuiyuan Letter, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid ("HEDP") from the People's Republic of China, A–570–045; Rebuttal Comments," dated December 3, 2018 (Prospectus Exhibit), at Exhibit 2 .
[69] *Id*. at 3, 9, and 23.
[70] *See* Petitioner's SV Submission at Exhibit 13; *see also* Prospectus Exhibit at 74.

reported vulnerability to "price risk."[71] Thus, in this instant review, because the underlying facts are consistent with our prior determinations, we have come to the same conclusion.

Qingshuiyuan also asserts that the CYDSA financial statements are unusable due to a dissimilarity of operations between CYDSA and Qingshuiyuan. Specifically, Qingshuiyuan argues that: (1) CYDSA self-produces a significant quantity of raw material used in its chemical products division (*i.e.*, it is an integrated producer), and the depreciation for these assets should be part of the cost of materials and not reported as an overhead or SG&A expense; and (2) CYDSA has significant marketing and branding expenses while Qingshuiyuan has virtually zero marketing. These expenses are included in CYDSA's selling expenses and amount to a significant percentage of the COGS.[72]

As an initial matter, we note that CYDSA reported, similar to its electricity production, that it produced some of the raw materials for its products, but that it continued to purchase raw materials from other suppliers as well.[73] In the prospectus, CYDSA reported that a main component of its cost of sales is the purchase of raw materials, including salt, from third parties.[74] Thus, this demonstrates that CYDSA is not a raw material independent producer, but still relies on outside purchases of raw materials to support its production processes, just as it does with respect to electricity. Qingshuiyuan also claims that the depreciation for the assets related to the self-production of inputs should be a part of the cost of materials and not included in the overhead expense.[75] However, Qingshuiyuan did not cite to any prior cases in which Commerce has done so. Additionally, as Qingshuiyuan, noted, CYDSA's financial statements do not break down depreciation at this level. Therefore, it would be impossible to determine the amount of depreciation for these assets, and Qingshuiyuan does not indicate how Commerce should calculate this adjustment.

Qingshuiyuan contends that the CYDSA financial statements cannot be used because Qingshuiyuan does not engage in marketing activities such as advertising and branding, while CYDSA does engage in these activities.[76] We agree with Qingshuiyuan that CYDSA's financial ratios do not exactly duplicate its production experience, but it is not our practice to exactly match production experiences, nor does the law require it.[77] Additionally, we do not find sufficient record information exists that would result in a finding that this expense distorts the surrogate ratios. We did not examine Qingshuiyuan's marketing and branding activities during the course of the review because Qingshuiyuan is located in an NME, and Commerce does not

[71] *See HEDP LTFV* IDM at Comment 2; *see also Isos 16-17* IDM at Comment 3; *Isos 15-16* IDM at Comment 5; and *Isos 14-15* IDM at Comment 2.
[72] *See* Qingshuiyuan's Case Brief at 21-25.
[73] *See* Prospectus Exhibit at 91.
[74] *Id*. at 57.
[75] *See* Qingshuiyuan's Case Brief at 18.
[76] *Id*. at 23-25.
[77] *See Nation Ford Chem. Co. v. United States*, 166 F. 3d 1373, 1377 (Fed. Cir. 1999) (citing *Nation Ford Chem. Co. v. United States*, 985 F. Supp. 133, 137 (CIT 1997) (stating that while a surrogate value must be representative of the situation in the NME country as is feasible, {Commerce} need not duplicate the exact production experience of the respondent at the expense of choosing a surrogate value that most accurately represents the fair market value of an input.)).

rely on prices in NME countries; any marketing in which Qingshuiyuan engaged in its home market would be irrelevant for our dumping analysis, and we do not request this information from NME respondents in the standard questionnaire.[78] As such, the record contains no information with respect to Qingshuiyuan's marketing and branding, making a comparison to CYDSA futile. Although Qingshuiyuan states it engages in no marketing, has no brands, and that its customers incur the SG&A and receive the profits from developing marketing and selling branded products, there is no record information to support these assertions.

Moreover, the record evidence conflicts with Qingshuiyuan's claim that CYDSA's marketing expenses are large. While CYDSA's financial statements report that its "marketing efforts include product placements in reality TV show competitions, industry conventions, and public events," its marketing and branding expenses are not broken out, and thus, we do not know what portion of CYDSA's selling expenses can be attributed to marketing and branding.[79] As such, it is not clear that CYDSA's marketing and branding are necessarily the major contributors to its selling expenses. While Qingshuiyuan speculates that it and CYDSA have vastly different marketing and branding expenses, we find that the record does not support such a finding.

Qingshuiyuan also claimed that in *Xinboda*, the CIT found that the marketing and branding expenses of a large company were critically different compared to the respondent, and therefore, the financial statements could not be used.[80] We disagree that *Xinboda* stands for that proposition. In *Xinboda*, the CIT merely summarized the plaintiff's argument.[81] The CIT remanded this case because it found that Commerce did not address this argument.[82] On remand, Commerce considered this argument and continued to conclude that the financial statements constituted the best available information.[83] The CIT sustained Commerce's remand redetermination.[84]

Lastly, Qingshuiyuan claimed that CYDSA's reported "selling expenses" include expenses which would normally be excluded from the calculation (*e.g.*, freight and transportation costs; salaries/commissions/traveling expenses of its sales department; marketing expenses; and depreciation of transportation equipment) and as was done in the calculation for the financial ratio of Alpek.[85] As an initial matter, Qingshuiyuan did not cite to any prior proceeding or statutory regulation which demonstrates that Commerce normally excludes, or must exclude, these expenses from the selling expenses. As Qingshuiyuan noted, the transportation expenses were not included in the selling expenses for Alpek. This is because these expenses were broken

[78] *See* Commerce's Letter, "Antidumping Duty Non-Market Economy Questionnaire," dated August 21, 2018 (NME Questionnaire).
[79] *See* Petitioner's SV Submission at Exhibit 13.
[80] *See* Qingshuiyuan's Case Brief at 23-24.
[81] *See Xinboda*, 976 F. Supp. 2d at 1383.
[82] *Id*., 976 F. Supp. 2d at 1385.
[83] *See Shenzhen Xinboda Industrial Co., Ltd. v. United States*, 279 F. Supp. 3d 1265 (CIT 2017) (*Xinboda II*).
[84] *Id.*, 279 F. Supp. 3d at 1317. We note that while the CIT remanded Commerce's decision again, the issue was over the SV for garlic bulbs, evidence regarding the market conditions of garlic, intermediary expenses that inflated the cost of market garlic, the price for market garlic, and whether the financial statements incurred countervailable subsidies. In *Shenzhen Xinboda Industrial Co., Ltd. v. United States*, 361 F. Supp. 3d 1337 (CIT 2019), the CIT affirmed Commerce's second remand redetermination.
[85] *See* Qingshuiyuan's Case Brief at 18-20; *see also* SV Memo at Attachment 10.

out in Alpek's financial statements. As we noted above for marketing and branding, because these expenses were not broken out in CYDSA's financial statements, we do not know what portion of CYDSA's selling expenses are for transportation, and Qingshuiyuan did not indicate how Commerce should calculate this adjustment. As such, for the final results, we have not deducted these expenses.

Comment 7: Whether to Use Mexico as the Surrogate Country

Qingshuiyuan's Comments:[86]

- Brazil should be selected as the surrogate country for this administrative review. Commerce mis-stated the record that the financial statements for Ultrapar Participacoes S.A. (Ultra) (a Brazilian company) were not submitted. This was a primary basis for the rejection of Brazil as a potential surrogate country.
- As stated above, the financial statements from CYDSA are seriously flawed and unusable, while the financial statements from Ultra do not contain the same flaws.
- Mexico's SV for yellow phosphorous is aberrational and the data underlying the SV is lacking.

Petitioner's Rebuttal Comments:[87]

- Ultra has five separate business groups. Its chemical group is one of its smaller business groups, accounting for less than five percent of revenue. Similarly, Ultra also self-produces some of its own electricity requirements.
- Qingshuiyuan did not dispute that Mexico is at the same level of economic development as China or that Mexico is a significant exporter of comparable merchandise.
- Qingshuiyuan wrongly argued that Commerce selected Mexico as the surrogate country because of Commerce's allegedly incorrect statement that the financial statements for Ultra were not provided. Commerce explicitly recognized Ultra's annual report for 2016 while noting that the report did not contain accompanying financial statements.
- Commerce was correct in its assertion. The annual report for Ultra does not contain anything more than a one-page summary of the company's financial performance. Ultra's report was unaudited, did not contain a balance sheet, and minimally overlaps with the period of review (POR).
- CYDSA's financial statements contains a 57-page independent auditor's report with detailed notes on the consolidated financial statements.
- Qingshuiyuan presented no argument or analysis to explain why Brazil is a more appropriate surrogate country than Mexico. Qingshuiyuan's argument must be discarded. Commerce should continue to value all FOPs from Mexico.

Commerce Position: We agree with Qingshuiyuan that we incorrectly stated that the financial statements for Ultra were not on the record in the *Preliminary Results*. However, after review, we find that the financial statements for Ultra are severely limited in detail with a two-page summary on its financial performance and no balance sheet. It also appears that the table with its financial information that was used by Qingshuiyuan to calculate surrogate financial ratios for

[86] *See* Qingshuiyuan's Case Brief at 25-30.
[87] *See* Petitioner's Rebuttal Brief at 5-7.

Brazil includes not just Ultra's financial data, but also the data from its other businesses and calls into question whether this data is on a consolidated basis. Additionally, the financial statements are for 2016, which minimally overlaps with the POR. It is also unclear whether the financial statements of Ultra were audited, because no auditor's report and/or notes were provided with the financial statements.[88] For these reasons, we find that the financial statements from Ultra do not represent the best available data on the record to value financial ratios.

As we stated in the *Preliminary Results*, Commerce also selected Mexico as the surrogate country because we found that it had the best available information on the record for the SV data for water.[89] As is our normal practice, and as stated in the *Preliminary Results*, when assessing SV data, we consider several factors.[90] Relevant to this discussion is whether the SV data is contemporaneous with the POR and is for period-wide price averages. The SV data from Mexico for water was from CONAGUA (*i.e.*, Comisión Nacional del Agua) for each Mexican state for 2017 and 2018.[91] The SV data from Brazil consisted of an article published on August 18, 2013, by BNamericas which detailed the cost of water in various South American countries (including Brazil).[92] Not only is the data from Brazil not contemporaneous with the POR, the SV data is not a POR period-wide price average.[93] In addition, regardless of the usability of the financial statements from Ultra and despite there being two financial statements on the record from Mexico that are usable, the SV data for water from Mexico are the best available information on the record, such that Mexico remains the best surrogate country. Thus, for the final results, we continue to find that the SV data for water from Mexico represents the best available information on the record.

In the *Preliminary Results*, we calculated the surrogate financial ratios by taking a simple average between the financial ratios calculated for CYDSA and Alpek. Qingshuiyuan presented no argument against the use of Alpek's financial statements in calculating the surrogate financial ratios and for the reasons discussed in Comment 6, we find that the financial statements from CYDSA are usable. Therefore, for the final results, we continue to find that the surrogate financial ratios calculated by a simple average of the CYDSA and Alpek financial ratios continue to constitute the best available information on the record.

For a discussion of Qingshuiyuan's allegation that the SV of yellow phosphorus is aberrational, *see* Comment 8, where we explain that the SV from Mexico for yellow phosphorus is the best available information on the record. For the reasons stated above, we continue to find that Mexico should be used as the surrogate country as the SVs from Mexico are publicly available, contemporaneous with the POR, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.

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[88] *See* Qingshuiyuan's Letter, "1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the People's Republic of China, A-570-045; Surrogate Value Information for the Preliminary Determination," dated November 21, 2018 (Qingshuiyuan's SV Submission), at Exhibit SV-9.
[89] *See Preliminary Results* PDM at 9.
[90] *See* Import Administration Policy Bulletin 04:1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) at Data Considerations.
[91] *See Preliminary Results* PDM at 9 (citing Petitioner's SV Submission at Exhibit 11).
[92] *See* Qingshuiyuan's SV Submission at Exhibit SV-5.
[93] *Id*.

Comment 8: Whether the Surrogate Value for Yellow Phosphorus is Aberrational

Qingshuiyuan's Comments:[94]

- Mexico's SV for yellow phosphorous is aberrational and the data underlying the SV is lacking. The SV is based on 18,200 kilograms (kg) from a single country (*i.e.*, Italy). The data from Brazil is based on 11,778,465 kg imported from multiple countries.
- Qingshuiyuan provided multiple examples of alternative prices for yellow phosphorous. All these values, ranging from 86 USD/ton to 2,500 USD/ton are significantly lower than the Mexican SV and are based on far larger quantities. A price of 2,500 USD/ton is still 25 percent less than the Mexico SV.
- Commerce must examine the totality of the data and not engage in a granular examination.

Petitioner's Rebuttal Comments:[95]

- Commerce has previously determined that 18,200 kilograms constitute a commercially significant quantity.[96] Therefore, Qingshuiyuan's claim that Mexican imports are not commercially significant is incorrect.
- Commerce's usual practice for determining whether data is aberrational is to require a quantitative analysis comparing either data from commercially comparable countries or historical data from the country at issue. Qingshuiyuan provided no such analysis. Additionally, the examples Qingshuiyuan provided for alternative prices are inappropriate for this analysis. Thus, Qingshuiyuan's claim that the SV of yellow phosphorus is aberrational must fail.
- Commerce should affirm the Mexican SV for yellow phosphorus for purposes of the final results.

Commerce Position: We disagree with Qingshuiyuan's arguments that Mexico's SV for yellow phosphorous is aberrational. When determining whether prices are aberrational, Commerce has found that the existence of high or low prices alone does not necessarily indicate that the price data is distorted or misrepresentative, and thus, it is not a sufficient basis upon which to exclude a particular SV.[97] Rather, it is our practice to require interested parties to provide specific evidence demonstrating that the value is aberrational. In considering the reliability of SVs based on import statistics and alleged to be aberrational, Commerce's practice is to examine import data from the same HTS number for: (1) the same surrogate country over multiple years to

[94] *See* Qingshuiyuan's Case Brief at 31-33.
[95] *See* Petitioner's Rebuttal Brief at 15-19.
[96] *See* Petitioner's Rebuttal Brief at 16 (citing *Certain Polyethylene Terephthalate Resin from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 81 FR 13331 (March 14, 2016), and accompanying IDM at 25-26).
[97] *See, e.g., Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015) (*Hangers*), and accompanying IDM at Comment 5; *see also Steel Propane Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 29161 (June 21, 2019), and accompanying IDM at Comment 3.

determine if the current data appear aberrational compared to historical values; or (2) POR-specific data for other potential surrogate countries for a given case.[98]

Qingshuiyuan cited to eight examples in its case briefs to demonstrate that the Mexican SV for yellow phosphorus is aberrational.[99] None of the examples were from Mexico, the same surrogate country, nor were any of the examples from the other potential surrogate countries.[100] With one exception, no import data was provided and there was nothing on the record that confirms that the alternative prices were for the same HTS subheading used for the *Preliminary Results*. Additionally, several examples were price snapshots or minimally covered the POR.[101] Thus, we find that Qingshuiyuan did not provide the information necessary for Commerce to conduct an analysis of its allegation that the Mexican SV for yellow phosphorus is aberrational. Thus, we intend to continue to use the Mexican SV to value the yellow phosphorus FOP for the final results.

Qingshuiyuan also claimed that the Mexican SV is distorted because it reflects a small quantity of 18,200 kg from a single country. As an initial matter, we note that Qingshuiyuan provided no information to aide Commerce in further contextualizing or quantifying what constitutes a "commercial quantity." Absent any such information, we are unable to substantiate Qingshuiyuan's claim that "{yellow phosphorus} is highly distorted and based on a commercially insignificant quantity."[102] Additionally, we note that Commerce has consistently found that small quantities alone are not inherently distortive and could still constitute a commercially significant quantity.[103]

Comment 9: Whether the Deductions from CEP Were Excessive

Qingshuiyuan's Comments:[104]

- Commerce failed to account for the start-up nature of Qingshuiyuan's U.S. operations. This resulted in a calculated indirect selling expense ratio that was excessive and does not properly represent the nature of its operations in the United States. Commerce should adjust the calculated ratio by applying the CEP expenses across all sales.
- The proposed surrogate financial ratios include the costs for foreign sales operations and therefore, applying a CEP indirect sales adjustment would be double counting. If Commerce continues to apply a CEP indirect sales adjustment, it should be applied to the net sales value (after all other adjustments) and not the gross sales value.
- Excessive deductions and double counting resulted in CEP sales having negative net prices. Commerce should reexamine all its deductions, specifically freight and other

[98] *Id*.
[99] *See* Qingshuiyuan's Case Brief at 31-33.
[100] *See* Commerce's Letter, "Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated August 21, 2018. The countries identified in the attachment to this letter are Brazil, Kazakhstan, Malaysia, Mexico, Romania, and Russia.
[101] *See* Qingshuiyuan's Case Brief at 31-33.
[102] *See* Qingshuiyuan's Case Brief at 31.
[103] *See, e.g.*, *Hangers* IDM at Comment 5.
[104] *See* Qingshuiyuan's Case Brief at 33-34.

charges, to ensure there has been no double counting. If Commerce still calculates a negative price, Commerce should zero out the negative prices.

Petitioner's Comments:[105]

- Qingshuiyuan reported indirect selling expenses based on its experience during the POR. The expenses and gross sales of its CEP entity were properly allocated. Allocating these expenses across all sales has no logical basis. Qingshuiyuan provided no support, legal or otherwise, to support its position.
- There is nothing on the record that supports the notion that the surrogate financial ratios included the same expenses as the ones that Qingshuiyuan's affiliate reported. Even if there was support, the correct course of action would be to adjust the financial ratio not the CEP price.
- Commerce made its calculation based on data provided by Qingshuiyuan. Qingshuiyuan made no argument that its data contained ministerial errors.

Commerce Position: We disagree with Qingshuiyuan that the deductions to CEP were excessive. As an initial matter, while Qingshuiyuan argued that we should have accounted for the start-up nature of its U.S. operations, it did not provide an explanation for why the start-up nature of its U.S. operations would warrant an adjustment. Additionally, Qingshuiyuan did not cite to any prior cases in which Commerce made an adjustment for the start-up nature of a respondent's U.S. affiliate for CEP. Nor did Qingshuiyuan provide any explanation on how to make such an adjustment to its data. On the contrary, it is generally Commerce's practice to treat all expenses incurred by affiliated resellers as selling expenses.[106] Section 772(d)(1) of the Act directs Commerce to deduct from CEP all selling expenses associated with economic activities occurring in the United States. Additionally, there is no statutory provision for making a start-up adjustment to CEP.[107] Section 773(f)(1)(C)(ii) of the Act lays out when Commerce would make an adjustment for startup operations. This adjustment is made when: (1) "a producer is using new production facilities or producing a new product that requires substantial additional investment" and, (2) "production levels are limited by technical factors associated with the initial phase of commercial production."[108] Because Qingshuiyuan's U.S. affiliate was not involved in the production of HEDP, a start-up adjustment is not appropriate.[109]

Qingshuiyuan provided no evidence to support its claim that the proposed surrogate financial ratios also include the costs for the foreign sales operations. No mention of this claim is listed in Qingshuiyuan's extensive comments on CYDSA. Therefore, Commerce is unable to ascertain this claim.[110]

[105] *See* Petitioner's Rebuttal Brief at 20-21.
[106] *See, e.g., Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 68 FR 6889 (February 11, 2003), and accompanying IDM at Comment 11.
[107] *See* sections 772(c) and 772(d) of the Act.
[108] *See* section 773(f)(1)(C)(ii) of the Act.
[109] *See* Qingshuiyuan's September 18, 2019 Section A Questionnaire Response at 15.
[110] *See* Comment 6 for a further discussion of the surrogate financial ratios.

Regarding "zeroing" negative net U.S. prices, Commerce has a long-standing practice to not "zero" out negative net U.S. prices.[111] Commerce has explained in previous proceedings, and explained above, that in accordance with section 772(c)(2) of the Act, we deduct all selling expenses applicable to the reviewed sales, which in some cases may result in negative net U.S. sale prices.[112] In these cases, we have found that "negative prices resulted from the fact that the U.S. price was not high enough to cover the costs associated with making the sale, and a negative net U.S. sales price was the result."[113] We further explained that there is nothing in the statute or regulations allowing Commerce to adjust negative net U.S. sale prices and that in accordance with section 771(35)(A) and (B) of the Act, we will include these negative net U.S. sales prices in the margin calculation so that the dumping margin accurately reflects the amount by which NV exceeds the EP or CEP.[114]

In the instant review, CEP deductions were made based on the indirect selling expenses that Qingshuiyuan reported. Qingshuiyuan made no argument that the data used contained any errors. Thus, based on this fact and the reasons above, we continue to deduct from CEP the indirect selling expenses that Qingshuiyuan reported; we will not make any adjustment for the start-up nature of its U.S. affiliate; and we will not "zero" out any negative net U.S. sale prices.

Comment 10: Whether Non-Deductible Value-Added Tax Should be Deducted from U.S. Price

Qingshuiyuan's Comments:[115]

- Commerce should not deduct from U.S. price any amount for non-deductible value-added tax (VAT). Chinese VAT is not an export tax, duty, or other charge. This export tax adjustment does not apply to Chinese VAT present in the prices of materials used to produce subject merchandise.
- In *Guizhou Tyre Co., Ltd et al v. United States*, the CIT rejected Commerce's practice of deducting such export tax and found that this deduction is contrary to law.[116]

Petitioner's Comments:[117]

- Commerce's policy on VAT is clear: the amount of export VAT that is not refunded is an expense to the company.

[111] *See, e.g., Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 72 FR 12762 (March 19, 2007) (*Carrier Bags*), and accompanying IDM at Comment 10; *see also Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006) (*Wire Rod*), and accompanying IDM at Comment 7; and *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (December 13, 2000), and accompanying IDM at Comment 26.
[112] *Id*.
[113] *See Carrier Bags* IDM at Comment 10.
[114] *Id*.; *see also Wire Rod* IDM at Comment 7.
[115] *See* Qingshuiyuan's Case Brief at 34-35.
[116] *Id*. (citing *Guizhou Tyre Co., Ltd. v. United States*, 389 F. Supp. 3d 1350 (CIT 2019) (*Guizhou Tyre*)).
[117] *See* Petitioner's Rebuttal Brief at 21.

- In *Certain Steel Racks from China*, respondents made this same argument, which Commerce rejected. Commerce should also reject this argument and follow its well-established treatment of non-refunded VAT.

Commerce Position: We disagree with Qingshuiyuan's claim that irrecoverable VAT is not an expense covered by section 772(c)(2)(B) of the Act (*i.e.*, an export tax, duty, or other charge imposed upon exportation). Section 772(c)(2)(B) of the Act authorizes Commerce to deduct from EP or CEP the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. Commerce's recent practice in NME cases is to adjust EP (or the CEP) for the amount of any unrefunded, (herein irrecoverable) VAT in certain non-market economies in accordance with section 772(c)(2)(B) of the Act.[118] In changing this practice, Commerce explained that, when an NME government imposes an export tax, duty, or other charges on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, Commerce will reduce the respondent's EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.[119] Where the irrecoverable VAT is a fixed percentage of EP or CEP, Commerce explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.[120]

VAT is an indirect, *ad valorem* consumption tax imposed on the purchase (sale) of goods. It is levied on the purchase (sale) price of the good, *i.e.*, it is paid by the buyer and collected by the seller. For example, if the purchase price is $100 and the VAT rate is 15 percent, the buyer pays $115 to the seller, $100 for the good and $15 in VAT. VAT is typically imposed at every stage of production. Thus, under a typical VAT system, firms: (1) pay VAT on their purchases of production inputs and raw materials ("input VAT") as well as (2) collect VAT on sales of their output ("output VAT").

Firms calculate input VAT and output VAT for tax purposes on a company-wide (not transaction-specific) basis, *i.e.*, in the case of input VAT, on the basis of *all input purchases* regardless of whether used in the production of goods for export or domestic consumption, and in the case of output VAT, on the basis of *all sales to all markets*, foreign and domestic. Thus, a firm might pay the equivalent of $60 million in total input VAT across all input purchases and collect $100 million in total output VAT across all sales. In this situation, however, the firm would remit to the government only $40 million of the $100 million in output VAT collected on its sales because of a $60 million credit for input VAT paid that the firm can claim against output VAT.[121] As result, the firm bears no "VAT burden (cost)": the firm through the credit is refunded or recovers all of the $60 million in input VAT it paid, and the $40 million remittance to the government is simply a transfer to the government of VAT paid by (collected from) the buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer or the good, not on the firm.

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[118] *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, in Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).
[119] *Id.*; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.A.
[120] *Id.*
[121] The credit, if not exhausted in the current period, can be carried forward.

This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. Instead, Chinese tax law requires a *reduction in or offset to* the input VAT that can be credited against output VAT. This formula for this reduction/offset is provided in Article 5 of the 2012 Chinese government tax regulation, *Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services* (*2012 VAT Notice*):[122]

Reduction/Offset = (P – c) x **(T_1 – T_2)**,

where,
P = (VAT-free) FOB value of export sales;
c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;
T_1 = VAT rate; and,
T_2 = refund rate specific to the export good.
Using the example above, if P = $200 million, c = 0, T_1 = 17% and T_2 = 10%, then the reduction/offset = ($200 million - $0) x (17% - 10%) = $200 million x 7% = $14 million. Chinese law then requires that the firm in this example calculate creditable input VAT by subtracting the $14 million from total input VAT, as specified in Article 5.1(1) of the *2012 VAT Notice*:

Creditable input VAT = Total input VAT – Reduction/Offset

Using again the example above, the firm can credit only $60 million – $14 million = $46 million of the $60 million in input VAT against output VAT. Since the $14 million is not creditable (legally recoverable), it is not refunded to the firm. Thus, the firm incurs a cost equal to $14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of $T_1 – T_2$. This cost therefore functions as an "export tax, duty, or other charge" because the firm does not incur it *but for* exportation of the subject merchandise, and under Chinese law it must be recorded as a cost of exported goods.[123] It is for this "export tax, duty, or other charge" that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act.[124]

It is important to note that under Chinese law, the reduction/offset described above is defined in terms of, and applies to, total (company-wide) input VAT across purchases of all inputs, whether

[122] *See, e.g.*, Qingshuiyuan's October 4, 2018 SCDQR at Exhibit C-5 (*2012 VAT Notice*).
[123] Article 5(3) of the *2012 VAT Notice* states: "If the tax refund rate is lower than the applicable tax rate, the tax for the difference calculated accordingly shall be included in the cost of exported goods and labor services."
[124] Because the $14 million is the amount of input VAT that is not refunded to the firm, it is sometimes referred to as "irrecoverable input VAT." However, that phrase is perhaps misleading because the $14 million is not a fraction or percentage of the VAT the firm paid on purchases of inputs used in the production of exports. If that were the case, the value of production inputs, not FOB export value, would appear somewhere in the formula in Article 5 of the *2012 VAT Notice* as the tax basis for the calculation. The value of production inputs does not appear in the formula. Instead, as explained above, the $14 million is simply a cost imposed on firms that is tied to export sales, as evidenced by the formula's reliance on the FOB export value as the tax basis for the calculation. The $14 million is a reduction in or offset to what is essentially a tax credit, and it is calculated based on and is proportional to the value of a company's export sales. Thus, "irrecoverable input VAT" is in fact, despite its name, an export tax within the meaning of section 772(c) of the Act.

used in the production of goods for export or domestic consumption. The reduction/offset does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint for the simple reason that such treatment under Chinese law applies to the company as a whole, not specific markets or sales. At the same time, however, the reduction/offset is calculated on the basis of the FOB value of exported goods, so it can be thought of as a tax on the company (*i.e.*, a reduction in the input VAT credit) that the company would not incur but for the export sales it makes, a tax fully allocable to export sales because the firm under Chinese law must book it as cost of exported goods.

The VAT treatment under Chinese law of exports of goods described above concerns only export sales that are *not* subject to output VAT, the situation where the firm collects no VAT from the buyer, which applies to most exports from China. However, the *2012 VAT Notice* provides for a limited exception in which export sales of certain goods are, under Chinese law, deemed domestic sales for tax purposes and are thus subject to output VAT at the full rate.[125] The formulas discussed above from Article 5 of the *2012 VAT Notice* do not apply to firms that export these goods, and there is therefore no reduction in or offset to their creditable input VAT. For these firms creditable input VAT = total input VAT, *i.e.*, these firms recover all their input VAT. At the same time, export sales of these firms are subject to an explicit output VAT at the full rate, T_1.[126] Commerce must therefore deduct this tax from U.S. price[127] under section 772(c) of the Act to ensure tax-neutral dumping margin calculations.[128]

As such, in the initial questionnaires, Commerce instructed Qingshuiyuan to report VAT on the subject merchandise sold to the United States during the POR and to identify which taxes are unrefunded upon export.[129] Information placed on the record of this review indicates that according to China VAT schedule, the standard VAT levy during the POR was 17 percent and the refund rate for the subject merchandise was nine percent.[130] Consistent with our standard methodology, for purposes of these final results we based the calculation of irrecoverable VAT on the difference between those standard rates, applied to a FOB price at the time of exportation.[131] Thus, because the VAT levy and VAT rebate rates on exports are different for the POR, we adjusted Qingshuiyuan's U.S. sales for irrecoverable VAT.

Qingshuiyuan's reliance on the CIT's holding in *Guizhou Tyre* to support its position is misplaced.[132] As an initial matter, in Commerce's remand in response to the CIT's decision,

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[125] *See 2012 VAT Notice*, Article 7. For these goods, the VAT refund rate on export is zero.
[126] *See 2012 VAT Notice*, Article 7.2(1).
[127] Commerce will divide the VAT-inclusive export price by (1 + T), where T is the applicable VAT rate.
[128] Pursuant to sections 772(c) and 773(c) of the Act, the calculation of NV based on factors of production in NME antidumping cases is calculated on a VAT-exclusive basis, so U.S. price must also be calculated on a VAT-exclusive basis to ensure tax neutrality.
[129] *See* NME Questionnaire.
[130] *See* Qingshuiyuan's October 4, 2018 SCDQR at 45-49 and Exhibits C-3 to C-6.
[131] *See, e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying IDM at Comment 5.
[132] *See* Qingshuiyuan's Case Brief at 34-35 (citing *Guizhou Tyre*).

Commerce explained that it made its redetermination under protest.[133] As Commerce explained in *Cast Iron Soil Pipe Fittings*, where we continued to adjust U.S. price by the reported amount of irrecoverable VAT, "the {CIT} has yet to speak in one voice on this issue."[134] For instance, in *Jacobi Carbons I*, the CIT recognized that the *2012 VAT Notice* mandates that a taxpayer recognize a cost for exported merchandise as a result of "irrecoverable VAT" and that this cost is imposed as a reduction in the credit which the taxpayer is due for paid VAT-in on a company-wide basis.[135]

As discussed in detail above, the *2012 VAT Notice* establishes that the Chinese VAT system can impose a cost on export sales of subject merchandise which must be recovered by the exporter through the U.S. price. As such, the U.S. price incorporates an "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise which is not reflected in the comparable NV. Thus, section 772(c)(2)(B) of the Act is squarely applicable to the question at hand. Commerce agrees that the comparison of U.S. price with NV must be tax neutral, in order to ensure a fair comparison.[136] Therefore, the amount of any such "charge" must be deducted from the reported U.S. price. In particular, as recently explained in *Jacobi Carbons II*, and for these final results, "{t}o interpret section {772}(c)(2)(B) {of the Act} as unambiguously barring Commerce from adjusting EP/CEP for these taxes when comparing those prices to a tax-exclusive NV would be to require that it understate the margin of dumping."[137]

Accordingly, for these final results, Commerce has continued to adjust Qingshuiyuan's U.S. price for irrecoverable VAT consistent with section 772(c)(2)(B) of the Act to ensure a fair comparison of U.S. price with NV that is tax neutral.

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[133] *See Final Results of Redetermination Pursuant to Court Remand in Guizhou Tyre Co., Ltd. v. United States*, 389 F. Supp. 3d 1350 (CIT 2019).

[134] *See Cast Iron Soil Pipe Fittings* IDM at Comment 9; *see also Certain Steel Racks and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 35595 (July 24, 2019) (*Steel Racks*), and accompanying IDM at Comment 6. In *Steel Racks*, after the *Guizhou Tyre* decision, Commerce also continued to adjust U.S. price by the reported amount of irrecoverable VAT.

[135] *See Jacobi Carbons AB v. United States*, 313 F. Supp. 3d 1308, 1340 n.49 (CIT 2018) (*Jacobi Carbons I*).

[136] *See* section 773(a) of the Act.

[137] *See Jacobi Carbons AB v. United States*, 365 F. Supp. 3d 1323, 1339 (CIT 2019) (*Jacobi Carbons II*) ("the principle that dumping margin calculations should be tax-neutral supports Commerce's adjustment").

VI. RECOMMENDATION

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

☒	☐
Agree	Disagree

12/6/2019

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance