A-570-104
Investigation
**Public Document**
E&C/OI: YJC/LP

February 7, 2020

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

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

SUBJECT: Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Issues and Decision Memorandum for the Final Affirmative Determination of Sales at Less Than Fair Value

---

## I. SUMMARY

The Department of Commerce (Commerce) determines that imports of alloy and certain carbon steel threaded rod (threaded rod) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2018 through December 31, 2018.

As a result of our analysis, we made changes in the margin calculations for the final determination. We recommend that you approve the positions described in the *Discussion of the Issues* section of this memorandum. Below is a complete list of the issues for which we have received comments from the interested parties:

Comment 1: Double Remedies
Comment 2: Export Subsidies
Comment 3: Alloy Wire Rod
Comment 4: Zinc Powder
Comment 5: Selection of Primary Surrogate Country
Comment 6: Labor
Comment 7: SermaGard
Comment 8: Octyl Phenol and Ethylene Oxide Emulsifier
Comment 9: Surrogate Financial Ratios
Comment 10: Junyue's Factors of Production
Comment 11: Ocean Freight
Comment 12: Surrogate Movement Expenses on a Gross Weight Basis
Comment 13: Zhongjiang's U.S. Inland Freight from Port to Customer

Comment 14: Differential Pricing
Comment 15: Irrecoverable Value-Added Tax

## II. BACKGROUND

On September 25, 2019, Commerce published its *Preliminary Determination* in the antidumping duty (AD) investigation of threaded rod from China.[1] Commerce conducted the verification of U.S. sales and factors of production (FOPs) reported by Ningbo Zhongjiang High Strength Bolts Co., Ltd. (Zhongjiang)[2] and Zhejiang Junyue Standard Part Co., Ltd. (Junyue)[3] (collectively, mandatory respondents) in November 2019. The petitioner,[4] Junyue, and Zhongjiang submitted case[5] and rebuttal[6] briefs on December 10 and December 16, 2019, respectively. In their case briefs, Junyue and Zhongjiang incorporated arguments in each other respondent's case brief.[7] Commerce postponed the final determination of this investigation to February 7, 2020.[8]

Based on our analysis of the comments received, our verification findings, and consideration of the data on the record, we have revised the dumping margins for the two individually investigated respondents and the non-selected separate rate respondents. For the China-wide entity, the preliminary rate based on adverse facts available (AFA) continues to be the rate for the final determination.

## III. SURROGATE COUNTRY

In the *Preliminary Determination*, we treated China as a non-market economy (NME) country and calculated normal value in accordance with section 773(c)(1) of the Act. We selected Romania as the primary surrogate country, pursuant to section 773(c)(4) of the Act and 19 CFR

[1] *See Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 50379 (September 25, 2019) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[2] *See* Memorandum, "Verification of the Questionnaire Responses of Ningbo Zhongjiang High Strength Bolts Co., Ltd. in the Antidumping Investigation of Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China," dated December 3, 2019.
[3] *See* Memorandum, "Verification of the Questionnaire Responses of Zhejiang Junyue Standard Part Co., Ltd. in the Antidumping Investigation of Alloy and Certain Steel Threaded Rod from the People's Republic of China," dated December 3, 2019 (Junyue Verification Report).
[4] The petitioner is Vulcan Threaded Products Inc.
[5] *See* Petitioner's Letter, "Alloy Steel Threaded Rod from China: Petitioner's Case Brief," dated December 10, 2019 (Petitioner's Case Brief); Junyue's Letter, "Carbon and Alloy Steel Threaded Rod from the People's Republic of China – Case Brief," dated December 10, 2019 (Junyue's Case Brief); and Zhongjiang's Letter, "Administrative Case Brief: Antidumping Duty Investigation of Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China – A-570-104," dated December 10, 2019 (Zhongjiang's Case Brief).
[6] *See* Petitioner's Letter, "Alloy Steel Threaded Rod from China: Petitioner's Rebuttal Brief," dated December 16, 2019 (Petitioner's Rebuttal Brief); Junyue's Letter, "Carbon and Alloy Steel Threaded Rod from the People's Republic of China – Rebuttal Brief," dated December 16, 2019 (Junyue's Rebuttal Brief); and Zhongjiang's Letter, "Zhongjiang's Rebuttal Case Brief: Antidumping Duty Investigation of Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China – A-570-104," dated December 16, 2019 (Zhongjiang's Rebuttal Brief).
[7] *See* Junyue's Case Brief at 10; and Zhongjiang's Case Brief at 50.
[8] *See Preliminary Determination*, 84 FR at 50381.

351.408(c)(2), because it is at the same level of economic development as China, because it is a significant producer of merchandise comparable to subject merchandise, and because of the availability and quality of Romanian data for valuing FOPs.[9] Interested parties commented on Commerce's selection of the primary surrogate country in this investigation. For the final determination of this investigation, we continue to treat China as an NME country and Romania continues to be the primary surrogate country.[10]

## IV. SEPARATE RATES

In proceedings involving NME countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single AD deposit rate.[11] It is Commerce's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate.[12]

In the *Preliminary Determination*, we found that, in addition to the two individually investigated respondents, certain companies demonstrated their eligibility for separate rate status by demonstrating that they operated free of *de jure* and *de facto* government control. Based on the information on the record of this investigation, we find that the respondents that received preliminary separate rates continue to be eligible for separate rates.

Neither the statute nor Commerce's regulations address how we are to determine the dumping margin for separate rate companies not selected for individual examination. Our practice in this regard has been to assign to separate-rate companies that were not individually examined a dumping margin equal to the average of the margins calculated for the individually examined respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available, looking to section 735(c)(5)(A) of the Act for guidance. If all dumping margins for the individually examined respondents are zero, *de minimis*, or based entirely on facts available, then we will use any reasonable method, including averaging the dumping margins for the individually examined respondents. Like in the *Preliminary Determination*, we continued to calculate margins above *de minimis* for two individually investigated respondents. Thus, in this final determination, we used the same preliminary calculation methodology to assign the separate rate for respondents that are not being individually examined.[13]

[9] *Id.* and accompanying PDM at 8-11.
[10] *See* Comment 5 for our discussion of the primary surrogate country.
[11] *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, 29307 (May 22, 2006); 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).
[12] *See Carbon and Alloy Steel Threaded Rod from India, Taiwan, Thailand, and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations*, 84 FR 10034, 10038 (March 19, 2019).
[13] *See Preliminary Determination* PDM at 14-15.

## V. CHINA-WIDE RATE

For the final determination, we continue to base the China-wide rate on AFA. In the *Preliminary Determination*, Commerce used the highest dumping margin in the Petition, which is 59.45 percent. For the final determination, we continued to use the same rate as the China-wide rate. As we did in the *Preliminary Determination*, we corroborated this rate using Zhongjiang's highest calculated transaction-specific rate, which exceeded 59.45 percent.[14]

## VI. ADJUSTMENTS TO CASH DEPOSIT RATES

Pursuant to section 772(c)(1)(C) of the Act, Commerce normally makes adjustments for countervailable export subsidies. In the preliminary determination of the concurrent countervailing duty (CVD) investigation, for export buyer's credit, we determined a countervailable subsidy rate of 10.54 percent *ad valorem*.[15] Accordingly, in this AD investigation, we preliminarily deducted 10.54 percent from the dumping margins to adjust the cash deposit rates.[16] For the final determination of the concurrent CVD investigation, we determined that the export buyers credit continues to be an export subsidy with 10.54 percent *ad valorem* for Zhongjiang and 31.62 percent *ad valorem* for Junyue.[17] Accordingly, for the final determination of this AD investigation, we adjusted the cash deposit rates with 10.54 percent for Zhongjiang and the China-wide entity, 31.62 percent for Junyue, and 16.25 percent for the non-selected separate rate respondents in the final determination of this AD investigation.[18]

In this AD investigation, we preliminarily denied the domestic subsidy pass-through adjustment to the cash deposit rates. For the final determination, we continue to deny the adjustment of the cash deposit rates for domestic subsidy pass-through.[19]

## VII. CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated U.S. price and normal value using the same methodology stated in the *Preliminary Determination*, except as follows:

---

[14] *See* Memoranda, "Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Final Analysis Memorandum for Zhejiang Junyue Standard Part Co., Ltd.," dated concurrently with this memorandum (Junyue Final Analysis Memorandum), at 2; and "Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Final Analysis Memorandum for Ningbo Zhongjiang High Strength Bolts Co., Ltd.," dated concurrently with this memorandum (Zhongjiang Final Analysis Memorandum) at 2, for the highest transaction-specific rate for each respondent.

[15] *See Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination* 84 FR 36578 (July 29, 2019) (*Preliminary CVD Determination*), and accompanying PDM at 15.

[16] *See Preliminary Determination*, 84 FR at 50380-81.

[17] *See* unpublished *Federal Register* notice, entitled, "Carbon and Alloy Steel Threaded Rod from the People's Republic of China: Final Affirmative Countervailing Duty Determination," dated February 7, 2020 (*Final CVD Determination*), and accompanying Issues and Decision Memorandum (IDM) at 4.

[18] *See* Memorandum, "Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Final Separate Rate for Non-Selected Respondents," dated concurrently with this IDM for the cash deposit rate adjustment for non-selected separate rate respondents.

[19] *See* Comment 1 of this IDM.

- We used Junyue's post-verification FOP database and Zhongjiang's post-verification U.S. sales database.
- For Zhongjiang, we revalued Zhongjiang's U.S. inland freight from port to customer.
- For Junyue and Zhongjiang, we revalued domestic brokerage and handling, labor, and ocean freight.
- We adjusted the surrogate values for domestic brokerage and handling, domestic truck freight, and labor using the Romanian producer price index.
- We adjusted the surrogate values for U.S. brokerage and handling and U.S. truck freight using the U.S. producer price index.

## VIII. DISCUSSION OF THE ISSUES

### Comment 1: Double Remedies

Mandatory Respondents' Arguments:

- For the final determination, Commerce should grant a double remedy adjustment to the dumping margins. Commerce's preliminary denial of double remedy adjustment to dumping margins is based on an erroneous interpretation of section 777A(f)(1)(B) of the Act.

- To grant a double remedy adjustment, Commerce determines whether a respondent has demonstrated: (1) a subsidies-to-cost link, *i.e.*, show the impact of subsidies on the cost of manufacture (COM); and (2) a cost-to-price link, *i.e.*, show that the respondent changed the price of goods sold as a result of changes in COM.

- Commerce's interpretation of the section 777A(f)(1)(B) requirements as meaning there must be a downward trend in prices of all subject merchandise to the United States over the POI is an unreasonable interpretation of the plain meaning of the statute and the purpose of the double remedy adjustment.

- Although the International Trade Commission (ITC) data Commerce relied on for the section 777A(f)(1)(B) analysis represent the average price trend of the in-scope merchandise, the in-scope merchandise consists of several hundred varieties of disparate products, whose inputs and price trends could be dissimilar, as evidenced by the different principal steel inputs used by Junyue and Zhongjiang. As such, relying on the average industry-wide price trend of in-scope merchandise does not represent the unique price trend of a specific respondent.

- A respondent-specific section 777A(f)(1)(B) analysis with the two-link test described above allows Commerce to determine whether the countervailable subsidies that the mandatory respondent received reduces the U.S. prices of the mandatory respondent. In the *Preliminary Determination*, Commerce did not analyze whether Zhongjiang's sales prices were reduced but, instead, after finding that Zhongjiang benefitted from subsidies to its main inputs, Commerce then looked at whether the sales prices of the finished subject merchandise of all other companies had been reduced.

- The increases or decreases of the prices of other Chinese companies is irrelevant to whether subsidies that Zhongjiang received reduced Zhongjiang's U.S. sales prices. If countervailable subsidies reduced Zhongjiang's U.S. sales prices, then applying dumping margins and countervailing duty rates to Zhongjiang without an adjustment results in an unlawful double-remedy, regardless of whether Chinese prices increased or decreased in general.

- A statutory interpretation to rely on other companies' overall price increase trend and deny a double remedy adjustment for Zhongjiang is unreasonable. As evidenced by the top 10 largest sold products on the record of this investigation, Zhongjiang demonstrated a declining price trend due to subsidies. Commerce granted double remedy adjustments based on top 10 products in a prior case.[20]

- Commerce should solely rely on Zhongjiang's double remedy responses in which Zhongjiang satisfied both the subsidy-to-cost link and the cost-to-price link under section 777A(f)(1)(B) of the Act.

Petitioner's Rebuttal:

- In the *Preliminary Determination*, Commerce explained that section 777A(f)(1)(B) of the Act requires a demonstration that the subsidies have reduced the average price of imports of the class or kind during the period. Commerce examined ITC import data and found that import prices had increased over the period and the statutory requirement was not satisfied.

- Commerce's preliminary decision to deny double remedy offsets is consistent with other recent decisions in which Commerce disallowed double remedy adjustments if average import prices did not decrease in accordance with the requirement of section 777A(f)(1)(B) of the Act. In addition, in these prior decisions, Commerce examined import prices generally, not company-specific. Likewise, in these decisions, Commerce examined only whether average import prices have decreased, not whether any increase had been less than it otherwise would have been.

**Commerce's Position:** For the final determination, we continue to deny the domestic subsidy pass-through adjustments (also known as double remedy adjustments) to Junyue and Zhongjiang. Regardless of whether we rely on the ITC data or the company-specific data, we find that both respondents did not satisfy the criteria under section 777A(f)(1)(B) of the Act to be eligible for domestic subsidy pass-through adjustments.

In the *Preliminary Determination*, we examined the imported subject merchandise price trends contained in the ITC preliminary report, which concluded that: "In general, prices for threaded

[20] *See* Zhongjiang's Case Brief at 13 (citing *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2015-2016*, 83 FR 11690 (March 16, 2018) (*Passenger Tires*), and accompanying IDM at Comment 2).

rod from all sources increased during January 2016 – December 2018."[21] In particular, the ITC preliminary report shows an upward movement in prices during the POI. The ITC preliminary report also shows that U.S. imports from China had an average unit value (AUV) of $0.66/lb. in 2016 and 2017, however, that increased to $0.77/lb. in 2018.[22]

Notwithstanding, we also evaluated the company-specific data for this final determination and find that neither Junyue nor Zhongjiang is eligible for a domestic subsidy pass-through adjustment. We do not find that Junyue satisfied the subsidy-to-cost link. In the preliminary determination of the concurrent countervailing duty investigation, Commerce made an affirmative determination of the provision for less than adequate remuneration (LTAR) for steel bar and wire rod combined.[23] In the final determination of the concurrent countervailing duty investigation, Commerce made an affirmative determination of the provision for LTAR for steel bar and wire rod separately.[24] However, Junyue's reported purchase quantities and costs of steel bar and wire rod combined with no underlying data for steel bar and wire rod does not allow us to evaluate steel bar and wire rod separately.[25] Therefore, we are unable to determine whether Junyue satisfied the subsidy-to-cost link for steel bar and wire rod individually. Moreover, we do not find that Junyue established the cost-to-price link for electricity between the export prices of subject merchandise and Junyue's per-unit cost of electricity.[26] Therefore, based on our analysis, even if we considered Junyue's company-specific data, we find it reasonable to deny Junyue's domestic subsidy pass-through adjustment.

We find that Zhongjiang did not satisfy the cost-to-price link. We do not find that the total quantity and value of Zhongjiang's top 10 largest sold product codes – and these top 10 largest sold product codes in comparison to the total number of product codes reported in its U.S. sales database – are sufficiently representative to be a basis to find Zhongjiang eligible for a domestic subsidy pass-through adjustment.[27] We compared the average prices of the reported U.S. sales and the average costs of purchases of steel bar and wire rod on a monthly basis.[28] We do not find that the cost-to-price link is established with Zhongjiang's company-specific data.[29] Regarding *Passenger Tires*, it is true that we did grant a double remedy adjustment for a particular respondent based in part on "a comparison chart 'between the price trends in {the} Top 10 specifications of subject merchandise exported to the U.S. during the {period of review} by sales volume, and the price trends in major inputs which were reported by {a respondent}," but we also relied on "price trending data for the entire POR that demonstrated a downward trend

[21] *See Preliminary Determination* PDM at 33 (quoting *Carbon and Alloy Steel Threaded Rod from China, India, Taiwan, and Thailand*, 84 FR 14971 (April 12, 2019), and accompanying USITC Publication 4885 entitled *Carbon and Alloy Steel Threaded Rod from China, India, Taiwan, and Thailand: Investigation Nos. 701-TA-618-619 and 731-TA-1441-1444 (Preliminary)* (April 2019) (USITC Publication 4885), at page V-7).
[22] *See* USITC Publication 4885 at Table IV-2.
[23] *See Preliminary CVD Determination* PDM at 37-38.
[24] *See Final CVD Determination* IDM at Comment 4.
[25] *See* Junyue's Double Remedy Response, dated May 31, 2019, at Exhibit DR-3.
[26] *Id.* at Exhibit DR-2; *see also* Junyue Final Analysis Memorandum at 2.
[27] *See* Zhongjiang Final Analysis Memorandum at 2-3, for more details that contain Zhongjiang's business proprietary information (BPI).
[28] *Id.*
[29] *Id.*

that is consistent with the trends in the costs of the major raw materials."[30] Here, the facts are different, and – whatever the facts surrounding the top 10 largest sold product specifications were in *Passenger Tires*, which appear to have entailed BPI[31] – we find that Zhongjiang's top 10 largest sold product codes are not sufficiently representative for this final determination. Therefore, based on our analysis, even if we considered Zhongjiang's company-specific data, we find it reasonable to deny Zhongjiang's domestic subsidy pass-through adjustment.

To determine whether to grant a domestic subsidy pass-through adjustment for non-selected separate rate respondents, we rely on the experience of the individually investigated respondents, subject to section 777A(f)(2) of the Act.[32] For the China-wide entity, which received an AFA rate, we would normally adjust the China-wide entity's cash deposit rate by the lowest estimated domestic subsidy pass-through adjustment rate determined for any party in this investigation.[33] Because neither of the mandatory respondents are eligible for a domestic subsidy pass-through adjustment, the non-selected separate rate respondents and the China-wide entity are not eligible for a domestic subsidy pass-through adjustment. Accordingly, we made no domestic subsidy pass-through adjustment in this investigation.

**Comment 2: Export Subsidies**

Zhongjiang's Arguments:

- For the preliminary cash deposit rate adjustment, Commerce did not deduct Zhongjiang's "subsidy on exports" from the dumping margin. Zhongjiang's "subsidy on exports" is an export subsidy program on Zhongjiang's export sales. For the final cash deposit rate adjustment, this export subsidy rate should be subtracted from Zhongjiang's margin.

Petitioner's Rebuttal:

- The petitioner did not respond to Zhongjiang's argument.

**Commerce's Position:** In the final determination of the concurrent CVD investigation, we made no determination that this subsidy is an export subsidy.[34] Accordingly, for the final cash deposit rate adjustment, we did not deduct Zhongjiang's "subsidy on exports" from the dumping margin.

---

[30] *See Passenger Tires* IDM at Comment 2.
[31] *Id.*
[32] *See*, *e.g.*, *Certain Tool Chests and Cabinets from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 82 FR 53456 (November 16, 2017), and accompanying PDM at 33-34, unchanged in *Certain Tool Chests and Cabinets from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 15365 (April 10, 2018).
[33] *See*, *e.g.*, *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019), and accompanying IDM at 13("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.").
[34] *See Final CVD Determination* IDM at Comment 9.

**Comment 3: Alloy Wire Rod**

Petitioner's Arguments:

- The preliminary AUV used in the valuation of wire rod is aberrational because it is based in part on the imports from France within the Romanian import data for HTS subheading 72279095. The value of imports from France is €0.04/kg, which is significantly less than the truck freight cost from Paris to Bucharest. In its surrogate values submission letter, Junyue has also conceded that the Romanian import value for wire rod contains an aberrational quantity and value of imports from France and requested that Commerce exclude the imports from France from the calculation of the Romanian AUV. Commerce's preliminary valuation of wire rod did not address the issue involving the imports from France within the Romanian import data for HTS subheading 72279095.

- If Romania continues to be the primary surrogate country, the Russian AUV should be used to value wire rod. The Romanian AUV is aberrational due to low-priced imports of products under HTS subheading 72279095 from France to Romania. The AUVs for Brazil, Malaysia, and Mexico are non-specific to the wire rod used in the production of subject merchandise.

- Commerce's practice is to decline to use import data as a basis for calculating surrogate values when their AUVs are aberrational compared with benchmark prices. *Activated Carbon* does not support Junyue's proposed adjustment to the Romanian AUV because *Activated Carbon* has information on the record showing that the imports from France were a different type of material than that used in the production of the subject merchandise.[35] Junyue has not done a similar analysis with respect to the imports from France within the Romanian import data. As stated in *Crystalline Silicon Photovoltaic Cells*, Commerce does not make line-level changes.[36]

- HTS subheading 72279095 is specific to the wire rod used in the production of subject merchandise and the AUVs for this HTS subheading is available only from Romania and Russia. Kazakhstan has no imports under this HTS subheading.

---

[35] *See* Petitioner's Case Brief at 8-9 (citing Junyue's Surrogate Values Comments Letter, dated August 20, 2019 (citing *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), and accompanying IDM at Comment 5; *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 51607 (November 7, 2017), and accompanying IDM at Comment 5; *Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 53214 (October 22, 2018), and accompanying IDM at Comment 3 (collectively, *Activated Carbon*))).

[36] *See* Petitioner's Case Brief at 9 (citing *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) (*Crystalline Silicon Photovoltaic Cells*), and accompanying IDM at 47 ("Further, we note that the relevant test is to determine whether the AUV in the aggregate is aberrational. Otherwise, parties would advocate the manipulation of data by removing one or more line items they find objectionable, with the result that we would not be using the average prices for that category, but some subset thereof. Where a party is able to demonstrate that the AUV for an entire category is aberrational or otherwise unreliable, the Department may reject that particular category and use another SV.")).

- Alternatively, Commerce should recalculate an AUV based on the export data for exports from France to the world and to the European Union under HTS subheading 72279095 in lieu of the aberrational Romanian import data from France. If Romania continues to be the primary surrogate country, Commerce should not exclude the data for imports from France.

Mandatory Respondents' Rebuttal:

- The French data within the Romanian import data under HTS 72279095 are aberrational. If Commerce finds that the Romanian AUV is aberrational due to low-priced imports from France to Romania, Commerce can recalculate the Romanian AUV without the French data and raise the Romanian AUV from €0.12 to €0.65 because there is no dispute with respect to the remainder of the Romanian import data for HTS subheading 72279095.[37] This calculation methodology is consistent with prior cases and analogous to *Activated Carbon.*[38] Also, the CIT overturned *Crystalline Silicon Photovoltaic Cells* in *Solarworld Americas, Inc. v. United States*, 273 F. Supp. 3d 1254 (Ct. Int'l Trade Oct. 18, 2017).

- The Russian AUV for HTS 72279095 is based on a miniscule non-commercial quantity of imports of phosphate-coated wire rod in one entry. The Metal Expert data also demonstrates that these are not comparable to wire rods the respondents used. As such, the Russian AUV is distorted and unreliable to value wire rod.

- The Romanian AUV for HTS 72279095 is corroborated by several benchmark prices, including a corresponding Kazakh import AUV. Contrary to the petitioner's assertion, a corroborating benchmark Kazakh AUV exists on the record of this investigation.

- Commerce does not have a policy or precedent of substituting aberrational import data from a country by different non-aberrational data (export or domestic price) reported from such country. Commerce's consistent policy has been to simply exclude such aberrational line item and compute the AUV based on the remainder of the data. For the final determination, the best AUV to value wire rod is the Romanian AUV for HTS 72279095, excluding the aberrational French import data.

[37] *See* Junyue's Surrogate Values Comments Letter, dated August 20, 2019, at 2 and Exhibits SV2-9 and SV2-11; Zhongjiang's Rebuttal Brief at 2; and Junyue's Rebuttal Brief at 10-18. In its rebuttal brief, Junyue does not explicitly state that the Romanian AUV is aberrational but in its SV comments letter, Junyue states that the French data within the Romanian AUV data is aberrational and can be adjusted to €0.65 by excluding the French data from the AUV calculation.

[38] *See* Junyue's Surrogate Values Comments Letter, dated August 20, 2019, at 2; Junyue's Rebuttal Brief at 10-18; and Zhongjiang's Rebuttal Brief at 7-11 (citing, *e.g.*, *Guangdong Chemicals Import & Export Corporation v. United States*, 460 F. Supp. 2d 1365, 1370 (Ct. Int'l Trade Sep. 18, 2006) (*Guangdong Chemicals*); *Hebei Metals & Minerals Import & Export Corporation v. United States*, 28 CIT 1185 (2004) (*Hebei Metals*); *Catfish Farmers of America v. United States*, 641 F. Supp. 2d 1362, 1367 (Ct. Int'l Trade Sep. 14, 2009) (*Catfish Farmers of America*); and *Activated Carbon*).

**Commerce's Position:** For the final determination, we continue to use the preliminary valuation of wire rod. The Romania AUV is from the primary surrogate country and the Russian AUV is not. The Romanian AUV is based on a larger quantity of wire rod imported from multiple countries (Austria, Bulgaria, Czech Republic, France, Germany, Italy, Poland, Slovakia, Spain, and the United States), whereas the Russian AUV is based on a single import from a single country.[39] Therefore, we find that the Romanian AUV represents the best available information because it better reflects a broader market average compared to the Russian AUV.[40] Our continued valuation of this input using the Romanian import data also accords with our regulatory preference to value all FOPs in a single surrogate country.[41]

As the CIT acknowledged, administrative burden is one reason we do not identify and define "what is and what is not aberrational among these thousands of data points spread along a vast spectrum of relatively high and low values" and it is "an impossible task."[42] Another reason to determine whether the AUV is aberrational in aggregate is to prevent parties from advocating "the manipulation of data by removing one or more lines they find objectionable."[43] However, the CIT held that, even if "{a} practice that considers values in the aggregate to avoid administrative burdens may be reasonable," when there was an alleged aberration specific to imports from a specific country within the underlying import data for an AUV, Commerce was required to provide a record-specific explanation.[44]

In this investigation, the petitioner, Junyue, and Zhongjiang identify the same issue with respect to the imports from France within the Romanian import data, and there is no dispute between these parties in defining the nature of this issue. However, we do not have a viable alternative AUV in this investigation, which distinguishes this investigation from *Canadian Solar* and *SolarWorld*.

---

[39] *See* Petitioner's Surrogate Value Rebuttal Letter, dated August 30, 2019, at Data 4. Even without the imports from France, the Romanian AUV is based on a larger quantity of imports into Romania than the Russian AUV is (2,948,000 kgs vs. 2,826 kgs).

[40] *See Preliminary Determination* PDM at 9 ("When evaluating SV data, Commerce considers several criteria including whether the SV data are … broad-market averages, ….").

[41] *See* 19 CFR 351.408(c)(2).

[42] *See SolarWorld Americas Inc. v. United States*, 320 F. Supp. 3d 1341, 1354 (Ct. Int'l Trade May 18, 2018) (*SolarWorld*), (quoting Final Results of Remand Redetermination, January 18, 2018, at 26, pursuant to *SolarWorld Americas, Inc. v. United States*, 273 F. Supp. 3d 1254 (Ct. Int'l Trade Oct. 18, 2017).

[43] *See Canadian Solar Int'l Ltd. v. United States*, 378 F. Supp. 3d 1292, 1304 (Ct. Int'l Trade Apr. 16, 2019) (*Canadian Solar*) (quoting *Crystalline Silicon Photovoltaic Cells* IDM at 47).

[44] *See SolarWorld*, 320 F. Supp. 3d at 1355 ("A practice that considers values in the aggregate to avoid administrative burdens may be reasonable in other cases but, without further explanation, does not appear reasonable on this record."); *see also Canadian Solar*, 378 F. Supp. 3d at 1303-07 ("Commerce's current explanation for not disaggregating data is that it simply does not do so as a matter of policy. It justifies its policy on the grounds of administrative burden and to avoid potentially distortive manipulation of import data. Commerce's justification may be sufficient for most cases. At some point, however, input data may diverge so significantly from other input data that it renders the data set, as a whole, unreliable. Ideally, Commerce, not the court, should identify where that point lies. For module glass, the distortive input data has reached the point where the court cannot say that Commerce selection is reasonable."). On remand in *SolarWorld* and *Canadian Solar*, under respectful protest, we used a Bulgarian surrogate value for the input in question, and the CIT sustained that determination. *See Canadian Solar International Limited v. United States*, Consol. Court No. 17-00173, Slip Op. 19-152 (Ct. Int'l Trade Dec. 3, 2019); *SolarWorld Americas Inc. v. United States*, 355 F. Supp. 3d 1306, 1313, 1314-17 (CIT 2018).

In this investigation, the Russian AUV is unusable as explained above. The Kazakh AUV we have on the record of this investigation has deficiencies similar to the Russian AUV. The Kazakh AUV is not from the primary surrogate country and we find it is also based on a low quantity of a single import from a single country.[45] Also, we do not have information on the record showing that the imports from France within the Romanian import data cover a different type of material than the wire rod used in the production of subject merchandise. The imports from France at issue constitute a vast majority of imports into Romania at 87 percent and are a true representation of market-driven prices, as opposed to low quantity and high value of imports into Thailand from Hong Kong discussed in *Canadian Solar* and *SolarWorld*.[46] Therefore, we do not find that, in this investigation and based on record evidence, there is a basis to adjust the Romanian AUV.

The absence of corroborating information distinguishes this investigation from *Activated Carbon* and the underlying administrative review of *Guangdong Chemicals* because in these two cases, there were data corroborating the claims of aberrational data.[47] Also, in *Crystalline Silicon Photovoltaic Cells*, the underlying AD investigation of *Hebei Metals*, and the underlying administrative review of *Catfish Farmers of America*, the imports in question were identified as aberrational because of a small proportion of imports with values higher than average.[48] That is not the case with wire rod in this investigation because the imports from France constitutes 86.64 percent of the total Romanian imports under HTS subheading 72279095.

Finally, we did not use the French exports of products under HTS 72279095 to the world and the European Union in the valuation of wire rod in any way because using them would go beyond removing the imports from France at issue, which we decided not to do in this investigation. Because Romania is the primary surrogate country, we used the import statistics of Romania to value inputs. We do not use export data even for benchmark purposes because we do "not expect one country's export quantities to be a one-to-one ratio to another country's import data."[49] Therefore, these French export data are not usable data for purposes of valuing wire rod in this investigation. Moreover, neither the world nor the European Union is within the

---

[45] *See* Zhongjiang's Surrogate Values Comments, dated June 28, 2019, at Exhibit 2A. The Kazakh AUV of $0.49 is based on a single import of 19,900 kgs from Russia.

[46] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Results of New Shipper Review; 2012-2013*, 80 FR 41476 (July 15, 2015), and accompanying IDM at Comment 11.D.

[47] *See Guangdong Chemicals*, 460 F. Supp. 2d at 1370 ("On remand, Commerce considered Guangdong's corroborating evidence and its implications for the 'quality' of the Indian government data, which it had previously ignored.").

[48] *See Canadian Solar*, 378 F. Supp. 3d at 1303 ("Hong Kong imports accounted for only 0.4% of the total volume of Thai import data but constituted 60.2% of the total value of Thai imports during the period of review."); *Hebei Metals*, 28 CIT at 1199 ("The price for Swedish steel tube imports, 1,134% greater than the average price from all other countries and representing a fraction of the quantity of total imports, increased the overall average value by 24%."); and *Catfish Farmers of America*, 641 F. Supp. 2d at 1367 ("… there are three data points in the dataset for Japan, Hong Kong, and the Netherlands that should be excluded because they represent aberrationally high prices with low volumes. … Commerce agrees….").

[49] *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 35245 (June 12, 2013), and accompanying IDM at Issue 2.I.A.

bandwidth of the potential surrogate countries from which we selected Romania.[50] The gross national income per capita 2017 for the six potential surrogate countries range from $7,890 to $9,970 and they do not represent the entire world or all members of the European Union.[51] For the final determination, we made no changes to the valuation of wire rod.

**Comment 4: Zinc Powder**

Petitioner's Arguments:

- The preliminary valuation of zinc powder is based on an aberrational Romanian AUV for HTS 790390. The Romanian AUV is aberrational because the price of imports of merchandise under HTS 790390 from Poland to Romania is five to seven times lower than other Romanian imports and the AUV for imports of zinc in the other potential surrogate countries. No other party has submitted benchmarks for zinc powder or suggested a cure for the defective data from Romania.

- Because the Romanian AUV for zinc powder is aberrational and unreliable, Russia is more preferable than Romania as the primary surrogate country. If Commerce continues to choose Romania as the primary surrogate country, Commerce should use the AUV from another comparable surrogate country for the same HTS subheading. For zinc powders, the countries have equal specificity, and Commerce should use the import quantity as the tiebreaker and select the AUV from Malaysia.

Mandatory Respondents' Rebuttal:

- HTS subheading 790390 is a basket category covering zinc powder and zinc flakes, which could be of myriad grades with disparate price data. The petitioner does not dispute that significant price differences of zinc powders or zinc flakes between different grades are not unusual.

- Detailed analysis of import data reported under the Romanian HTS subheading 790390 shows that in July 2018, 826kg of imports from Austria entered at $1.165/kg, which, for a significant quantity, is only 70 percent higher (far less than five to seven times) than the Polish AUV, which undermines the argument that the Polish AUV is aberrationally low. Unless there is record evidence directly impeaching the import data reported from a country, Commerce's policy is to not reject an individual county's data merely because its AUV is at either the higher end or the lower end of the spectrum of AUVs.

- The quantity of zinc powder imported into Romania under HTS subheading 790390 is 547.5 tons, which is significantly higher than the quantities imported into Russia (11.89

[50] *See* Commerce's Letter, "Less-Than-Fair-Value Investigation of Alloy Steel Threaded Rod from the People's Republic of China (A-570-104): Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated April 15, 2019 (Commerce's Request for SC/SV Info), at Attachment I (Memorandum, "List of Surrogate Countries for Antidumping Investigations and Reviews from the People's Republic of China ('China')," dated August 2, 2018).
[51] *Id.*

tons) and Kazakhstan (0.81 tons). The Russian and Kazakhstan data with small quantities and higher AUVs do not undermine the reliability of the Romanian AUV with the much larger quantity of imports into Romania.

- Although Malaysia's import quantity is larger than Romania's import quantity, Romania remains to be a significant importer of zinc powder. Romania's imports of zinc powders from Poland would be highly economical due to the short distance across land, whereas the import data for other potential surrogate countries show that importing zinc powders for each of these countries required a much longer transportation and frequently ocean transportation. Accordingly, normal market principles, rather than aberrancy, would explain the Romanian AUV. Due to the low quantity of imports from Russia and Kazakhstan, the Romanian AUV is the best available information to value zinc powders.

**Commerce's Position:** For the final determination, we continue to use the preliminary valuation of zinc powder. We did not use the Malaysian AUV because the petitioner submitted it for the first time in its surrogate values rebuttal letter on August 30, 2019. The submission of wholly new surrogate value information can "generate the submission of yet more 'rebuttal' information, {and} it has the potential to seriously erode the finality of the record necessary for interested parties to make complete assessments of the record for purposes of the submission of complete briefs."[52] Commerce and interested parties have "an interest in finalizing the record at a stage in the segment of the proceeding when there is adequate opportunity to sufficiently analyze the record facts."[53] Therefore, although we allow interested parties to submit factual information to rebut, clarify, or correct factual information submitted under 19 CFR 351.408(c) to value factors of production, we do not value factors using such rebuttal information, for which we do not provide opposing interested parties with an opportunity to further rebut, clarify, or correct.[54] We reiterated the same in our letter to all interested parties in which we invited comments on the selection of the primary surrogate country and surrogate values.[55] Therefore, information timely submitted to rebut, clarify, or correct factual information submitted to value factors is not timely submitted information for purposes of valuing factors. Because the petitioner submitted the Malaysian AUV as a benchmark for purposes of rebutting the surrogate value information submitted under 19 CFR 351.408(c), in accordance with 19 CFR 351.301(c)(3)(iv), we did not use the Malaysian AUV to value zinc powder.

The petitioner placed the Russian AUV in a timely manner in its surrogate value information letter.[56] We compared the Romanian AUV and the Russian AUV against the AUVs from Brazil, Kazakhstan, Malaysia, and Mexico, which the petitioner submitted in its surrogate value rebuttal letter as benchmarks. Of these six AUVs, the Romanian AUV is the lowest at $0.82/kg and the

---

[52] *See Definition of Factual Information and Time Limits for Submission of Factual Information*, 78 FR 21246, 21247 (April 10, 2013) (quoting *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of the 2009-2010 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 77 FR 14493 (March 12, 2012), and accompanying IDM at Issue 3).
[53] *Id.* at 21247-48.
[54] *See* 19 CFR 351.301(c)(3)(iv) ("Information submitted to rebut, clarify, or correct factual information submitted pursuant to § 351.408(c) will not be used to value factors under § 351.408(c).").
[55] *See* Commerce's Request for SC/SV Info at 2.
[56] *See* Petitioner's Surrogate Value Comments, dated August 20, 2019, at Data 2.

Russian AUV is the highest at $7.91. The AUVs from Brazil, Kazakhstan, Malaysia, and Mexico fall in the middle at $4.52, $5.40, $4.33, and $3.24, respectively.[57] Therefore, we are in a situation similar to one where, with only two competing AUVs, "we are not able to determine which one, if either, is aberrational because we have no other comparison data to determine in one way or another."[58] The existence of a value that is higher or lower than other values on the record does not, by itself, mean that the higher or lower value is aberrational.[59] Based on these benchmark AUVs, we are not able to determine that the lowest AUV is aberrational and the highest AUV is not aberrational, or vice versa.

Moreover, for the Russian AUV, we find that the quantity of imports of zinc powder and flake from Switzerland to Russia constitutes 97.21 percent of all imports of zinc powder and flake to Russia that served as the basis for the Russian AUV.[60] The AUV for imports from Switzerland to Russia is $7.57/kg while the AUVs of imports from other countries to Russia are higher at ranging from $11.34/kg to $233.67/kg, which is 1.5 times to 31 times higher than the AUV for the Switzerland imports.[61] The imports from Poland into Romania constitutes 96.86 percent of all imports into Romania under HTS subheading 790390, which is slightly less than the percentage point for Russia.[62] We find that, for both the Romanian AUV and the Russian AUV, the pattern of the quantity and value of zinc powders and flakes from one exporting country reducing the AUV is similar.

Finally, we note that the Romanian AUV is the AUV from the primary surrogate country and the Russian AUV is not. In addition, the Romanian AUV is based on a larger quantity of zinc powder and flake than the Russian AUV is (573 tons vs. 11.881 tons).[63] Given these facts, we find that the preliminary valuation of zinc powder was reasonable and we have not made any adjustments to it for the final determination.

---

[57] *See* Petitioner's Surrogate Value Rebuttal, dated August 30, 2019, at Data 4.

[58] *See 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), and accompanying IDM at Comment 19; *see also Diamond Sawblades and Parts Thereof from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 32344 (June 8, 2015) (*Diamond Sawblades Final 2012-2013*), and accompanying IDM at Comment 17 ("With these two AUVs from different PORs to compare with no other reliable benchmark prices, we do not find a basis upon which to determine whether the AUV from the prior review period or the instant review period is aberrational and, if so, which one."); *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 38673 (June 14, 2016) (*Diamond Sawblades Final 2013-2014*), and accompanying IDM at Comment 17 ("With these AUVs from only two different PORs to compare with no other reliable benchmark prices, we do not find a basis upon which to determine whether the AUV from the prior review period or the instant review period is aberrational and, if so, which one").

[59] *See Camau Frozen Seafood Processing Import Export Corporation v. United States*, 929 F. Supp. 2d 1352, 1356 n.9 (Ct. Int'l Trade Jul. 31, 2013) ("In this case, AHSTAC does not offer any basis for finding the Bangladeshi labor values aberrational beyond the fact that the Bangladeshi values are the lowest on the record. …. On this record, the Bangladeshi data is not aberrational, it is merely the lowest price in a range of prices.").

[60] *See* Petitioner's Surrogate Value Rebuttal Letter, dated August 30, 2019, at Data 4; and the Final Surrogate Values Spreadsheet, Russian AUV Zinc tab, which is attached to Junyue Final Analysis Memorandum and Zhongjiang Final Analysis Memorandum. This percentage figure is calculated without imports from China to Russia.

[61] *Id.*

[62] *See* Final Surrogate Values Spreadsheet, at Calculated_SV_Data tab.

[63] *Id.* at Calculated_SV_Data tab and Russian AUV Zinc tab.

**Comment 5: Selection of Primary Surrogate Country**

Petitioner's Arguments:

- Commerce should change the primary surrogate country from Romania to Russia because Russia provides better data than Romania does. All interested parties agree that the Romanian AUV for wire rod is aberrational because of the low value of the imports from France within the Romanian import data for this AUV.

- For brokerage and handling and truck freight, the Romanian data predate the POI by two years with no corresponding Romanian inflator on the record of this investigation, whereas the Russian data predates the POI just by two months and appropriately inflated to be contemporaneous with the POI.

- Many Romanian AUVs are based on the import data where there are imports from many countries in which there are many months that show a euro amount being imported but no quantity. Of the 6,493 entries used in the preliminary calculation of surrogate values, 1,893 entries have euro values but no quantity. By contrast, of 23,793 entries that could be used to calculate surrogate values using Russian imports, only 976 have dollar values but zero kilograms of imports. The import data reported on the basis of tons is significantly distorted by the substantial proportion of sales that only add values to the denominator but not to the numerator of the calculation of per unit values. When Commerce has a choice of surrogate countries, the basis on which quantities are reported needs to be a consideration in selecting the primary surrogate country.

- Commerce used the financial statements of two Romanian companies, Mecanica Seghetu and Compa, in the preliminary calculation of surrogate financial ratios. The financial statements of Mecanica Seghetu was de-listed from the Bucharest Stock Exchange before the POI. Zhongjiang explained that its consultants in Bucharest obtained the financial statements from the Romanian National Trade Register Office and provided a web address that cannot be used to obtain Mecanica Seghetu's financial statements.

- Compa does not produce comparable merchandise. Compa produces injection components, turbocharger components, windscreen wiper components, components for steering gears, coiled springs, stamped parts, and air conditioning equipment, which are no more comparable to alloy steel threaded rod than the elevator guides and seat parts produced by other Romanian companies whose financial statements were not used in the preliminary calculation of surrogate financial ratios.

- TMK-ARTROM SA is a wholly private equity company whose majority shareholder is solely owned by a Russian company headquartered in Moscow, Russia. TMK-ARTROM SA is a producer of seamless pipe. Russian producer Evraz's steel bar and rod are more comparable to the subject merchandise than TMK-ARTROM's products are.

- Commerce's preliminary decision not to use the financial statements of Evraz, which is a Russian producer of comparable merchandise, *e.g.*, steel bar and rod, is based on

Commerce's finding that Evraz's financial statements are consolidated and the resulting ratios would be unrepresentative of expenses in any specific stage of production. However, Commerce uses consolidated financial statements based on the comparability of the merchandise, like in *Certain Quartz Surface Products from China*.[64]

Zhongjiang's Rebuttal:

- Commerce should continue to select Romania as the primary surrogate country. Romania provides usable data for valuing all FOPs whereas Russia does not.

- For valuation of wire rod, the adjusted Romanian AUV is usable whereas the Russian AUV is aberrational.

- Zhongjiang obtained the financial statements of Mecanica Sighetu from the Romanian National Trade Register Office. Commerce uses financial statements of publicly listed large companies as well as small companies as long as they are publicly available. Zhongjiang provided the web address of the Romanian National Trade Register Office to reference this Romanian government agency, not to prove that Mecanica Sighetu's financial statements could be downloaded from this website.

- In general, public availability is presumed and Commerce does not require that the parties provide evidence showing how they obtained the financial statements, unless there is a dispute about their provenance. Interested parties routinely submit financial statements without proof of communications with government agencies to obtain financial statements.

- Compa produces comparable merchandise. Also, because TMK-ARTROM SA's manufacturing operations are based in Romania, the existence of its parent company in Russia is irrelevant. TMK-ARTROM produces billets and blooms, which are also comparable to subject merchandise.

- Commerce's preliminary decision not to use Evraz's Russian financial statements is based on two grounds: consolidation and vertical integration. Contrary to the petitioner's assertion, the financial statements Commerce used in *Certain Quartz Surface Products from China* were neither consolidated nor vertically integrated. In that investigation, Commerce used financial statements of a company whose overall production experiences were comparable to the respondents.

- In addition, Evraz is not a Russian company. It is incorporated in the United Kingdom with subsidiaries in several countries including Ukraine, Canada, the United States, and Russia. Commerce does not use consolidated financial statements of a multinational corporation to calculate surrogate financial ratios. Because one of Evraz's subsidiaries is

[64] *See* Petitioner's Case Brief at 7 (citing *Certain Quartz Surface Products from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*Certain Quartz Surface Products from China*), and accompanying IDM at Comment 11).

a petitioner company, Evraz's financial statements pose a potential conflict of interest. Evraz does not produce merchandise comparable to subject merchandise.

- Commerce can place a suitable inflator on the record and inflate the domestic brokerage and handling surrogate value. Also, *Doing Business Romania 2019* is on the record for Commerce to revalue the truck and freight surrogate value.

- Contrary to the petitioner's assertion, because the quantity is a denominator and the value is the numerator, the zero tons in line item imports reduce the denominator and result in increasing, not decreasing, the surrogate values, albeit infinitesimally. For all of Zhongjiang's inputs, Zhongjiang submitted Romanian surrogate values which are based on kilograms. Commerce can download the same import data and use the kilogram-based import data to recalculate surrogate values.

Junyue's Rebuttal:

- Commerce should continue to select Romania as the primary surrogate country. Romania provides usable data for valuing all FOPs whereas Russia does not.

- Evraz is a vertically integrated company and its financial statements are consolidated. Evraz is a global mining and steel producing company headquartered in the United Kingdom, which is not one of the potential surrogate countries or even a comparable economy. Evraz's production experience is not comparable to producers of steel threaded rod. One of Evraz's subsidiaries is one of the petitioners and the petitioner's own financial information is including in Evraz's consolidated financial statements.

- All Romanian financial statements – even the ones Commerce declined to use in the *Preliminary Determination*, are for Romanian producers of merchandise more comparable than Evraz's products. Commerce uses multiple financial statements to reduce possible distortions in one company's financial statements.

- The Russian AUV for wire rod is based on a non-commercial quantity and is not usable. Also, the ton-based Romanian import data is not distortive even with the zero-ton quantity for a small number of line-item imports in the Romanian import data. The ton-based import data does not capture import quantities less than one ton and these unreported import quantities are commercially insignificant.

- For Romania, *Doing Business Romania 2019* provides zero brokerage and handling cost because Romania's border country is Hungary and they are members of the European Union. For this reason, Junyue provided an older *Doing Business Romania* that provides a brokerage and handling cost. Moreover, the Romanian labor, water, and electricity data are superior to the Russian data. Commerce has not in the past found ton-based import data less preferable.

- Commerce has a strong preference to value all inputs from the same primary surrogate country. Romania is the only country that has surrogate values for all inputs on the record of this investigation.

**Commerce's Position:** For the final determination, we continue to use Romania as the primary surrogate country. In the *Preliminary Determination*, we selected Romania over Russia because of the availability of usable financial statements from Romanian producers of comparable merchandise for us to calculate the surrogate financial ratios and because we found that Romania better meets our selection criteria.[65] As we stated in the *Preliminary Determination*, the Russian financial statements on the record of this investigation are consolidated financial statements of Evraz, which is a vertically integrated company engaged in production of semi-finished steel and mining.[66]

In addition, for the final determination, we find that Evraz's financial statements are not Russian financial statements. "Evraz is a global steel and mining company" headquartered in the United Kingdom.[67] The financial statements of Evraz that the petitioner submitted on the record of this investigation are part of Evraz's 2018 Annual Report which "has been prepared in accordance with the information disclosure requirements of the United Kingdom …."[68] Moreover, throughout the 2018 Annual Report, Evraz repeatedly stated that it complied with the Corporate Governance Code of the United Kingdom.[69] Based on its 2018 Annual Report, we find that Evraz is a multinational corporation headquartered in the United Kingdom, not a Russian company.[70] Therefore, we do not have Russian financial statements at all on the record of this investigation.[71]

Mecanica Seghetu is a producer of standard and non-standard fasteners of various sizes.[72] Mecanica Sighetu is a company registered with the Romanian Trade Register Office.[73] Mecanica Sighetu's financial statements are included in the company's 2018 Annual Report.[74] We find that Mecanica Sighetu's 2018 Annual Report is a publicly available document because Mecanica Sighetu made its 2018 Annual Report available online "to properly inform shareholders and potential investors."[75] The independent financial auditor's report of the 2018 Annual Report identifies that the recipients of the 2018 Annual Report are the shareholders of

[65] *See Preliminary Determination* PDM at 10.
[66] *Id.*
[67] *See* Petitioner's Surrogate Values Comments Letter, dated June 28, 2019, at Exhibit 6, at 14, 152.
[68] *Id.* at Exhibit 6, at 1.
[69] *Id.* at Exhibit 6, at 6, 7, 38, 106, 108, 115, 117, 120, 121, 127, 128, 131, 133, and 141.
[70] Moreover, the gross national income per capita 2017 for the United Kingdom is $40,530, which is well above the gross national income per capita 2017 for the six potential surrogate countries range from $7,890 to $9,970. *See* Commerce's Request for SC/SV Info at Attachment I (Memorandum, "List of Surrogate Countries for Antidumping Investigations and Reviews from the People's Republic of China ('China')," dated August 2, 2018).
[71] *See Preliminary Determination* PDM at 10.
[72] *See* Zhongjiang's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit 11B (Annual Report at 7 and 9).
[73] *Id.* at Exhibit 11B (Annual Report at 2).
[74] *Id.* at Exhibit 11B.
[75] *Id.* at Exhibit 11B (Annual Report at 18).

Mecanica Sighetu.[76] Therefore, whether or not Mecanica Sighetu was de-listed from the Bucharest Stock Exchange is irrelevant in determining the availability of Mecanica Sighetu's financial statements. Compa produces injection system components, pinions for steering gears, and intermediate axes for steering columns.[77] TMK-ARTROM SA is a Romanian producer of tubes, pipes, hollow profiles, and related fittings and it specializes in seamless pipe for industrial application.[78] Because TMK-ARTROM SA is located and registered in Romania, we find this company to be a Romanian company.[79] As we did in the *Preliminary Determination*, we continue to find that these three Romanian companies are producers of merchandise comparable to the subject merchandise.[80] Based on the existence of usable financial statements of Romanian producers of comparable merchandise and the absence of any Russian financial statements, we find that our continued selection of Romania as the primary surrogate country is reasonable.

As explained in Comments 3 and 4 of this Issues and Decision Memorandum, the Romanian import data provide more reasonable AUVs than the Russian import data do for the valuations of wire rod and zinc powder. Moreover, the ton-based reporting does not distort the Romanian import data. Of the Romanian import data we used to value inputs, the total value of the line items with zero ton reported is just 0.285 percent of the total value of the entire Romanian import data.[81] Even assuming *arguendo* that the actual quantity is 999kg for each of the line items with zero ton reported, the total missing quantity is just 0.107 percent of the total quantity of inputs in the Romanian import data that we used to value inputs in this investigation.[82] Because the total quantity lost due to the ton-based reporting is miniscule, we do not find the Romanian data distortive such that we should switch the primary surrogate country to Russia or use kilogram-based Romanian import data.

We have *Doing Business Romania 2019* on the record of this investigation.[83] *Doing Business Romania 2019* provides the domestic brokerage and handling and truck freight data as current as May 2018, which, like *Doing Business Russia 2019*, predates the POI by just two months.[84] Contrary to Junyue's assertion, *Doing Business Romania 2019* provides usable export costs for border compliance and documentary compliance, like *Doing Business Romania 2017* does.[85] In the *Preliminary Determination*, we relied on *Doing Business Romania 2017* to value domestic brokerage and handling.[86] For the final determination, we relied on *Doing Business Romania 2019* to value domestic brokerage and handling. For truck freight, *Doing Business Romania*

[76] *Id.* at Exhibit 11B (Independent Financial Auditor's Report of the Annual Report).
[77] *See* Junyue's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit SV2-6 for the pictures and description of these components.
[78] *See* Junyue's Surrogate Values Comments Letter, dated June 28, 2019, at Exhibit SV-3, at 4-5, and 17.
[79] *Id.* at Exhibit SV-3, at 4.
[80] *See Preliminary Determination* PDM at 30.
[81] *See* Final Surrogate Values Spreadsheet, at Calculated_SV_Data tab.
[82] *Id.*
[83] *See* Zhongjiang's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit 7B.
[84] *Id.*
[85] *Compare* Zhongjiang's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit 7B, with Junyue's Surrogate Values Comments Letter, dated June 28, 2019, at Exhibit SV-3.
[86] *See* Junyue's Surrogate Values Comments Letter, dated June 28, 2019, at Exhibit SV-7.

*2019* provides the same cost for the same distance as in *Doing Business Romania 2017*.[87] For the final determination, we used the same preliminary surrogate value for truck freight but we relied on *Doing Business Romania 2019*. We also have the Romanian producer price index on the record of this investigation.[88] We inflated the surrogate values for domestic brokerage and handling and truck freight.[89] Our reliance on *Doing Business Romania 2019* to value domestic brokerage and handling and truck freight is consistent with our recent investigations and administrative reviews in which we selected Romania as the primary surrogate country.[90] For the final determination, Romania continues to be the primary surrogate country.

**Comment 6: Labor**

Petitioner's Arguments:

- The preliminary valuation of labor at 12.70 lei per hour is based on the monthly average net earnings for manufacture of fabricated metal products, except machinery and equipment, in the labor statistics from the Institutul National de Statistica. The same source provides average hourly labor cost per employee at 21.16 lei per hour.

- Calculating the labor cost to the company, instead of the net earnings to the worker, provides a more accurate labor valuation. Because there is no Romanian inflator on the record, the 2017 labor costs would need to be used without adjustment, but this is still better than the preliminary valuation of labor. If Romania continues to be the primary surrogate country, Commerce should value labor at 21.16 lei per hour.

Mandatory Respondents' Rebuttal:

- The petitioner does not justify its preference for the cost to the company, instead of the total net earnings of the employee, as the basis for the valuation of labor. Earnings received by an employee are quintessentially a labor charge, whereas cost to the company could potentially include myriad other charges that could be either unrelated or peripheral to the actual labor cost. The petitioner did not develop the record to prove otherwise.

---

[87] *Compare* Zhongjiang's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit 7B, with Junyue's Surrogate Values Comments Letter, dated June 28, 2019, at Exhibit SV-3.

[88] *See* Petitioner's Surrogate Values Comments Letter, dated August 20, 2019, at Part 1 (Prices, Production, Labor (PPI) tab) and Part 2 (Prices, Production, Labor (PPI) tab).

[89] *See* Final Surrogate Values Spreadsheet, at Surrogate Values tab and PPI tab.

[90] In other recent investigations and administrative reviews in which we selected Romania as the primary surrogate country, we relied on *Doing Business Romania 2019* to value brokerage and handling. *See*, *e.g.*, *Wooden Cabinets and Vanities and Components Thereof From the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 54106 (October 9, 2019), and accompanying PDM at 45 (final determination not yet issued) ("We valued brokerage and handling and inland freight expenses using data from the World Bank Group's *Doing Business – Romania* (*Doing Business*). The value for truck freight in Doing Business is publicly available and current as of 2018."); and *Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017-2018*, 84 FR 55906 (October 18, 2019), and accompanying PDM at 31-32.

Moreover, the petitioner's proposed labor surrogate value is not contemporaneous with the POI.

- The average net earnings data is available on a monthly basis and contemporaneous with the POI, whereas the petitioner's proposed labor surrogate value is only provided on an annual basis. In prior cases, Commerce used the net earnings data when Romania was the primary surrogate country. Moreover, Commerce prefers to use more contemporaneous labor data than even more specific labor data. The average net earnings data is as specific to the industry as the petitioner's suggested alternative.

**Commerce's Position:** For the final determination, we used the average hourly labor cost to value labor with an adjustment using the Romanian producer price index. In *Labor Methodologies*, we decided to change to the use of ILO Chapter 6A from the use of ILO Chapter 5B data, on the rebuttable presumption that Chapter 6A data better account for all direct and indirect labor costs.[91] We did not, however, preclude all other sources for evaluating labor costs in NME AD proceedings. Rather, we continue to select the best available information to determine surrogate values for inputs such as labor.[92] We find that the average hourly labor cost better reflects the full spectrum of labor (*i.e.*, fully loaded, direct and indirect) costs expressed within ILO Chapter 6A data and, in this sense, the average hourly labor cost is preferable.[93]

In *Labor Methodologies*, Commerce found that the ILO Chapter 6A is the primary source of labor cost data, in that these data best account for all direct and indirect labor costs.[94] Since ILO Chapter 6A data for Romania are not on the record of this investigation, we compared the direct and indirect labor cost elements between the average net earnings data and the average labor cost data to the same elements described in the ILO Chapter 6A definition.[95]

The Institutul National de Statistica provides a comprehensive list of labor costs included in the average hourly labor data include labor costs as follows:

> Average hourly labour cost represents all the expenditure of the company for the labour force per hour and per employee. They are direct expenditure: the gross amounts paid from the salary fund for the time worked (bonuses included), for the time not worked, the in kind rights as work remuneration (according to the provisions of the collective labour contracts), the gross amounts paid to employees (as incentives) from the net profit of the unit, the gross amounts paid

[91] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092, 36093 (June 21, 2011) (*Labor Methodologies*).
[92] *See Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination*, 78 FR 13019 (February 26, 2013), and accompanying IDM at Comment 3; and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review; 2013-2014*, 81 FR 1396 (January 12, 2016), and accompanying IDM at Comment 4.
[93] *See Diamond Sawblades Final 2013-2014* IDM at Comment 16.
[94] *See Labor Methodologies*, 76 FR at 36092-93.
[95] *See 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 Comment 13 (where Commerce discusses the ILO Chapter 6A data).

> from other funds (in kind rights included) given according to the legislation in force and indirect expenditure: the employer's contributions to the social security and insurance funds (unemployment, health, work accidents, the left FNUASS after the payment of some rights to the employees, *etc.*), the gross amounts paid to the employees who leave the unit (retire, transfer, relocation, *etc.*), the gross amounts paid for work interruptions not attributable to employees, expenditure for professional training, expenditure for personnel recruitment, expenditure for the protection equipment and other expenditure of the unit with the labour force. The paid time (hours/person) consists: the time actually worked (the time worked according to the normal work programme established by the collective work contract and the extra time, during the working days, after the normal working hours and during week-ends, legal holidays and other non working days and the paid non worked time (the working days from the annual leave, sick leave in case of sickness, work accidents and professional diseases, maternity leave as well as other paid and non worked time.[96]

The average net earnings data do not include the employees' contributions to the social security and the social health insurance.[97] Moreover, when we value labor, we value the cost of labor incurred by the respondents in the production of subject merchandise,[98] not the net earnings of the laborers employed in the production of subject merchandise. The average net earnings data is contemporaneous with the POI,[99] whereas the average labor cost data pre-dates the POI by one year.[100] Although contemporaneity may be a tie-breaker when selecting between equally reliable datasets, we find the average hourly labor cost to be the best information available compared to the average net earnings data.[101] Moreover, we have the Romanian producer price index to adjust the pre-POI labor cost.[102]

In the three recent cases where Junyue claims that we used the Romanian average net earnings data to value labor, whether to use the average net earnings data or the average hourly labor cost was not an issue addressed in the final decisions.[103] This labor cost issue is unique to this

---

[96] *See* Zhongjiang's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit 4.
[97] *See* Junyue's Surrogate Values Comments Letter, dated June 28, 2019, at Exhibit SV-5.
[98] *See Labor Methodologies*, 76 FR at 36093 ("The Department will then use this hourly earnings rate, denominated in U.S. dollars, to value the NME respondent's cost of labor for that proceeding.").
[99] *Id.*
[100] *See* Zhongjiang's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit 4.
[101] *See Blue Field (Sichuan) Food Indus. Co. v. United States*, 949 F. Supp. 2d 1311, 1331 (Ct. Int'l Trade Nov. 14, 2013) ("Commerce may invoke contemporaneity as a tie-breaking factor when choosing between equally reliable datasets. But contemporaneity alone is an insufficient reason for dismissing alternative surrogates when Commerce's own surrogate appears flawed.").
[102] *See* Petitioner's Surrogate Values Comments Letter, dated August 20, 2019, at Part 1 (Prices, Production, Labor (PPI) tab) and Part 2 (Prices, Production, Labor (PPI) tab).
[103] *See 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); *Fresh Garlic from the People's Republic of China: Final Results of the 23rd Antidumping Duty Administrative Review; 2016-2017*, 84 FR 35601 (July 24, 2019); and *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 38002 (August 5, 2019).

investigation because we have two competing Romanian labor data sources on the record of this investigation.

Our decision to value labor with the average hourly labor cost per hour is distinguishable from our prior cases Junyue cites to in its argument. In *Crystalline Silicon Photovoltaic Cells China*, the primary surrogate country was Thailand and the choice was between the 2017 Labor Force Survey data and the 2011 Industrial Census data.[104] In that case, we declined to use the 2011 Industrial Census data not just because it predated the POR by more than five years but also because the 2011 Industrial Census data lacked specificity compared to the 2017 Labor Force Survey data. In other cases where Thailand was the primary surrogate country, we selected the POR-contemporaneous Labor Force Survey data and declined to use the 2011 Industrial Census data, and the CIT sustained our selection.[105] In *Certain Steel Threaded Rod China 2013-2014*, the primary surrogate country was Thailand and Commerce had three sets of labor cost data on the record. In that case, Commerce selected the POR-contemporaneous data not just because the data was contemporaneous with the POR but also the data met Commerce's other selection criteria as a surrogate value.[106] In this investigation, the average hourly labor cost data is not as outdated as the 2011 Industrial census data in *Crystalline Silicon Photovoltaic Cells China*, and the average hourly labor cost data matches categories of labor costs specified in the ILO Chapter 6A labor data more closely than the average net earnings data does. Therefore, we find that our selection of the average hourly labor data to value labor is reasonable and consistent with the *Labor Methodologies.* For the final determination, we have revised the valuation of labor with the average hourly labor data rate per hour with an adjustment using the Romanian producer price index.

**Comment 7: SermaGard**

Petitioner's Argument:

- Commerce's preliminary valuation of SermaGard using the AUV for HTS subheading 320649, which covers "coloring matter of a kind used for coloring any material or used in

[104] *See 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; 2016-2017*, 84 FR 36886 (July 30, 2019) (*Crystalline Silicon Photovoltaic Cells China*), and accompanying IDM at Comment 15.

[105] *See*, *e.g.*, *Diamond Sawblades 2013-2014* IDM at Comment 16 ("While the 2011 Industrial Census data are specific to the relevant industry, they are neither contemporaneous with the POR nor as or more detailed than the 2014 Labor Force Survey in terms of matching categories of labor costs specified in the ILO Chapter 6A labor data."), *aff'd and remanded on unrelated issues*, *Diamond Sawblades Manufacturers' Coalition v. United States*, 301 F. Supp. 3d 1326, 1346-47 (CIT 2018).

[106] *See Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015) (*Certain Steel Threaded Rod China 2013-2014*), and accompanying IDM at Comment 8 ("Instead, we have valued labor using manufacturing-specific data from the quarterly-specific POR data (second and third quarter of 2013) from the Government of Thailand, National Statistical Office, Labor Force Survey of Whole Kingdom. To calculate the total labor cost for employees and private employees in the 'manufacturing' industry for each available quarter of the POR, the Department calculated a total labor cost, which includes average wage, bonus, other income, overtime, food, clothes, housing, and other costs. When compared to the 2011 Thai NSO fabricated metal products data offered by the RMB/IFI Group, the Department finds that the POR labor data are more contemporaneous and *otherwise meet the Department's selection criteria as a surrogate value*…." (emphasis added) (citation omitted)).

the manufacture of coloring preparations (other than paints or enamels)," ignores an industry description of SermaGard as a lubricant. For the final determination, Commerce should value SermaGard as a lubricant using the AUV for HTS subheading 340399.

Zhongjiang's Rebuttal:

- The petitioner confirms that SermaGard is a coating product. The record of this investigation shows that SermaGard is a water-based coating material. As such, SermaGard is similar to a coloring matter used for coating. SermaGard's secondary use in lubrication does not qualify it as a lubricant because its physical characteristic is coating material similar to coloring matter.

- Moreover, in the classification of goods, it is a settled proposition that, in a tariff, the first chapter that covers the input is to be preferred to a subsequent chapter. Based on this hierarchy, HTS subheading 320649 under Chapter 32 is preferable to HTS subheading 340399 under Chapter 34.

**Commerce's Position:** For the final determination, we continue to use the preliminary valuation of SermaGard. In its section D response, Zhongjiang reported that SermaGard 1105 was used as coating material in the production of the subject merchandise.[107] We do not find that the petitioner provided sufficient information to rebut Zhongjiang's assertion. The only evidence provided by the petitioner to link SermaGard to lubrication is an industrial description of SermaGard stating that "SermaGard provides corrosion, lubrication, and release performance characteristic as well as UV resistance in offshore applications."[108] From this sentence, it is not clear whether SermaGard provides lubrication by itself as a lubricant or by providing a coating for a separate lubricant to function. The petitioner provided descriptions for more than one type of SermaGard.[109] The type of SermaGard at issue is SermaGard 1105. The petitioner does not provide evidence that SermaGard 1105 contains lubricants or is used as lubricant. The same industrial description of SermaGard the petitioner relies on describes SermaGard 1105 as a ceramic-metallic sprayed basecoat that contains aluminum flake, without stating whether it contains lubricants or it is used as lubricant.[110] Therefore, we have no basis to find that SermaGard 1105 is a lubricant and should be valued as such. Based on the information on the record of this investigation, we find that SermaGard 1105 is more similar to coloring materials used for coating than to lubricant and we made no changes to the valuation of SermaGard for the final determination.

**Comment 8: Octyl Phenol and Ethylene Oxide Emulsifier**

Petitioner's Arguments:

- Commerce's preliminary valuation of octyl phenol and ethylene oxide emulsifier using the AUV for HTS subheading 340211 ignores information on the record pointing out that

[107] *See* Zhongjiang's Section D Response, dated May 31, 2019, at 3 and Exhibits D-1F and D-2A.
[108] *See* Petitioner's Surrogate Values Rebuttal Letter, dated July 8, 2019, at 13 and Exhibit 4.
[109] *Id.*
[110] *Id.*

this HTS subheading applies to anionic organic surface-active agents, while octyl phenol is a nonionic agent. For the final determination, Commerce should value octyl phenol and ethylene oxide emulsifier using the AUV for HTS subheading 340213 for octyl phenol.

Zhongjiang's Rebuttal:

- The input in question is a mixture of two organic compounds – octyl phenol and ethylene oxide emulsifier. The petitioner provides no information suggesting that ethylene oxide emulsifier also is a nonionic agent.

- Commerce's preliminary decision to consider the mixture of these two compounds as an anionic emulsifier is supported by substantial evidence.

**Commerce's Position:** For the final determination, we continue to use the preliminary valuation of octyl phenol and ethylene oxide emulsifier. The petitioner provided insufficient justification for us to value octyl phenol and ethylene oxide emulsifier as a non-ionic agent. Because the emulsifier at issue is a combination of octyl phenol and ethylene oxide, we do not agree with the petitioner's argument that octyl phenol's non-ionic nature alone justifies valuing this emulsifier as a non-ionic agent. Moreover, the petitioner did not substantiate its argument that octyl phenol is non-ionic. The publication that the petitioner exclusively relies on to support its proposed valuation states that octylphenol polyethoxylate is non-ionic, but this publication does not state whether octyl phenol alone is non-ionic.[111] This publication also does not state a reason why octylphenol polyethoxylate is non-ionic – specifically whether it is because octyl phenol is non-ionic, because polyethoxylate is non-ionic, or because the combination of the two agents makes it non-ionic. The petitioner does not rely on, or provide other information, to support its claim that octyl phenol is non-ionic. Therefore, we have no basis on the record of this investigation to find that the valuation of this emulsifier as non-ionic agent is more accurate than our preliminary valuation of this emulsifier and we made no changes to the valuation of this emulsifier for the final determination.

**Comment 9: Surrogate Financial Ratios**

Mandatory Respondents' Arguments:

*Mechanica's Financial Statements*

- Commerce's preliminary allocation of "adjustment of the value of tangible and intangible non-current assets" under selling, general, and administrative cost (SGA) is inconsistent with Commerce's precedent which excluded such line item from the calculation of surrogate financial ratios, *e.g.*, *Ripe Olives*.[112]

[111] *See* Petitioner's Surrogate Value Rebuttal Letter, dated July 8, 2019, at Exhibit 5, at 1 ("This study explored the potential use of a sulfate radical ($SO^{-}_{4}$)-based photochemical oxidation process to treat the commercial *nonionic surfactant octylphenol polyethoxylate* (OPPE) Triton™ X-45." (Emphasis added.)).
[112] *See* Zhongjiang's Case Brief at 22-23 (citing *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018) (*Ripe Olives*), and accompanying IDM at Comment 26).

- Information on the record does not support Commerce's preliminary allocation of "services from third parties" under overheads. The scope of services or the nature of third parties is absent from the record and there is no evidence that this expense pertains to manufacturing overhead cost. Given the ambiguous nature of this line item, Commerce should exclude this line item from the calculation of surrogate financial ratios.

- Information on the record does not support Commerce's preliminary allocation of "expenses with taxes and similar expenses representing transfers and contributions due according to special regulations" under SGA. The record does not provide any information explaining the nature of taxes or the special regulations. It is unclear whether these taxes were incurred: (1) in the course of general operations; or (2) once outside of and unrelated to Mechanica's general operations. This line item should be excluded from the calculation of surrogate financial ratios.

*Compa's Financial Statements*

- Commerce's preliminary allocation of research and development expenses under SGA is inconsistent with Commerce's practice of allocating research and development expenses under manufacturing overhead. Compa's research and development expenses should be treated as overhead for the final determination.

- Commerce's preliminary surrogate values spreadsheet treats "remaining cost of sales" as manufacturing overhead and cites to note 16 of Compa's financial statements for support. However, note 16 does not provide the line-item for "remaining cost of sales." Commerce self-created this line-item presumably because, in trying to identify individual expenses from the notes 16 and 17 for the income statement that contributed to the total expenses, Commerce fell short by the amount covered by "remaining cost of sales." Commerce then incorrectly attributed "remaining cost of sales" to note 16 and then allocated it entirely under overhead without an explanation. As such, Commerce should exclude "remaining cost of sales" from the calculation of surrogate financial ratios.

- This "remaining cost of sales" is likely subsumed in the "third party services" in the income statements and "current asset value adjustments" in note 16. However, Compa's financial statements do not provide any information about such third-party services or the nature of current asset value adjustments. Moreover, it is unclear how services rendered to third parties could result in an adjustment of Compa's current asset values. Given the ambiguous nature of these two line items, Commerce should exclude them from the calculation of surrogate financial ratios.

Petitioner's Rebuttal:

- With regard to "adjustment of the value of tangible and intangible non-current assets," Zhongjiang only cites to a market economy case where a financial statement was verified. Obviously, in an NME case, the potential surrogate financial statements are not verified, and Commerce can only look to the financial statement itself to evaluate how each line

item is to be characterized. Mecanica's income statement classifies this line item under "Operating Expenses," which carries the presumption that it is not "non-operating expenses."

- With regard to "services from third parties" and "expenses with taxes and similar expenses representing transfers and contributions due according to special regulations," if a financial statement does not supply enough information to be certain what a particular line item is, the default assumption should that the line item should be included in – not excluded from – the calculation of surrogate financial ratios. "Services from third parties" is quite likely something akin to tolling expenses, which are always part of the cost of production. There is no evidence that "expenses with taxes and similar expenses representing transfers and contributions due according to special regulations" are nonoperating expenses.

- With regard to Compa's financial statements, Commerce used Junyue's suggested calculation of surrogate financial ratios with no changes. If the information available does not sufficiently indicate what a particular line item is, excluding it from the surrogate financial ratio calculations is not a default solution.

**Commerce's Position:** For the final determination, we continue to use the surrogate financial ratios we used in the *Preliminary Determination*. We continue to treat Mecanica Sighetu's "adjustment of the value of tangible and intangible non-current assets" and "expenses with taxes and similar expenses representing transfers and contributions due according to special regulations" and Compa's research and development expenses as SGA. We continue to treat Mecanica Sighetu's "services from third parties" and Compa's "remaining cost of sales" as manufacturing overheads.

Mecanica Sighetu's income statement shows that "adjustment of the value of tangible and intangible non-current assets" and "expenses with taxes and similar expenses representing transfers and contributions due according to special regulations" are part of the total operating expenses.[113] However, because these line-item descriptions do not indicate that they were manufacturing expenses, we find it appropriate to categorize these two expenses as SGA for calculation of surrogate financial ratios. Our continued treatment of these two expenses as SGA is distinguishable from *Ripe Olives from Spain*, where the impairment losses on disposal of non-current assets that we excluded were a respondent's impairment losses, and we had information obtained from the respondent showing that these losses relate to investment activities, not general operational activities.[114]

Mecanica Sighetu's income statement shows that "service from third parties" is a part of the total operations expenses.[115] Therefore, we find it reasonable to categorize it as manufacturing overhead, rather than exclude it, for calculation of surrogate financial ratios.

[113] *See* Zhongjiang's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit 11B.
[114] *See Ripe Olives* IDM at Comment 26 ("At verification, we confirmed that the impairment losses in question related to investment activities.").
[115] *See* Zhongjiang's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit 11B.

Because Compa's financial statements record research and development expenses separately from the cost of sales, we find that Compa's research and development is a part of the company's general operations not directly related to manufacturing specific products.[116] Therefore, we find it reasonable to continue to treat Compa's research and development expenses as SGA, not manufacturing overhead.

Zhongjiang believes that Compa's "remaining cost of sales" were subsumed in the "third party services" in the income statement and "current asset value adjustments" in note 16.[117] Either way, the income statement and note 16 (Expenses Type) and note 17 (Operating Result Analysis) indicate that Compa's "remaining cost of sales" is a part of cost of goods sold which cannot be separately identified.[118] Therefore, because these expenses are included in the cost of goods sold, we find it reasonable to treat "remaining cost of sales" as manufacturing overhead, as Junyue suggested in its surrogate values comments letter,[119] rather than exclude it from the calculation of surrogate financial ratios. For the final determination, we made no changes to the calculation of surrogate financial ratios.

**Comment 10: Junyue's Factors of Production**

Petitioner's Arguments:

- As Commerce found during the verification, Junyue does not maintain the production record of inputs used for a particular production run. During the verification, Commerce examined inventory and production records, but while the verification exhibits include inventory records and raw material purchase records, they do not contain production records that show for a particular time period the inputs introduced into production and the outputs produced from those inputs.

- At this stage of the investigation, Commerce cannot ask Junyue to generate new FOPs on the basis of its production records and/or inventory movements to develop control-number-specific FOPs.

- The petitioner recommends that Commerce put respondents on notice that better record-keeping will be required in the event that an antidumping duty order is issued, as often occurs in response to such deficiencies identified during an AD investigation.

Junyue's Rebuttal:

- Junyue properly reported its FOPs. Commerce found no deficiencies in Junyue's reporting of FOPs. The petitioner never submitted any deficiency comments on Junyue's FOP reporting in its responses. Only very late in the investigation, in a pre-verification

[116] *See* Junyue's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit SV2-5, at 46.
[117] *See* Zhongjiang's Case Brief at 24 (citing Junyue's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit SV2-5).
[118] *See* Junyue's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit SV2-5, Pages 7 and 46.
[119] *Id.* at Part 1, Compa Sibiu 2018 tab.

comment, the petitioner briefly requested that Commerce verify whether Junyue is able to report its FOP usage rates on a control-number-specific basis. During the verification, Commerce found no deficiencies with Junyue's reporting of FOPs.

- Nothing on the record of this investigation suggests – and the petitioner points to no evidence – that Junyue's allocation is less accurate than any potential alternative methodology. The petitioner does not suggest an alternative methodology but rather claims that Commerce should require Junyue develop an unspecific more accurate methodology and change its record-keeping. Commerce has no reason to request that Junyue should change its entire record-keeping system that it maintains in its normal business.

**Commerce's Position:** As the petitioner points out, during the verification, we found that "Junyue is not able to determine whether different diameters of finished {threaded rods} were drawn from a particular size of B7 wire rod and B7 round bar."[120] As we did in the *Preliminary Determination*, however, we continue to find that Junyue provided sufficient information for us to calculate the final margin for Junyue, which the petitioner does not dispute. In prior cases, when we found specific deficiencies in certain respondents' information and data, we put those respondents and all other respondents on notice that they need to maintain better records in the event that antidumping duty orders are issued.[121] In the event an antidumping duty order is issued for this case, we expect each respondent under the antidumping duty order to do the best of its ability to maintain full and complete records of relevant data, which includes, *inter alia*, production input and output data and their sizes for each product code and associated control number.[122]

[120] *See* Junyue Verification Report at 14.

[121] *See*, *e.g.*, *Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 81 FR 75042 (October 28, 2016), and accompanying IDM at Comment 15 ("In the event we issue a final AD order, in future proceedings, we expect Hongyuan's U.S. affiliate MAT to modify its recordkeeping system …."); *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 5 ("Finally, we consider that Hongli has cooperated to the best of its ability in the current review. However, the Department intends to require that Hongli and all other future respondents for this case report all FOPs data on a CONNUM-specific basis using all product characteristics in subsequent reviews, as documentation and data collection requirements should now be fully understood by Hongli and all other respondents. Specifically, the Department intends to require Hongli and all other respondents to report all FOPs on an individual CONUM-specific that will reflect the different production costs required to produce the different types of nails. In order to report product-specific FOP ratios for each individual CONNUM, the Department intends to require Hongli and all future respondents to maintain accounting and production records on a monthly, product-specific basis.").

[122] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) ("Compliance with the 'best of its 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…. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.").

**Comment 11: Ocean Freight**

Mandatory Respondents' Arguments:

- Commerce should not have valued ocean freight based on a single destination provided by the petitioner, when there are six usable Descartes ocean freight price quotes provided by Junyue and 12 usable Descartes ocean freight price quotes provided by Zhongjiang. For the final determination, Commerce should value ocean freight on a coast-specific basis using all ocean freight price quotes on the record of this investigation.

- Commerce used the average weight of 20-foot container published by Panjiva in the preliminary valuation of ocean freight without explaining how this weight has any nexus with the weight underlying the Descartes quotes. Descartes freight quotes for 20-foot containers are for a full container load of 28,200kg, which was used in prior cases.

- Commerce should use 28,200kg in its final valuation of ocean freight. In the alternative, Commerce should calculate a simple average of the average weight shipped in 20-foot containers by Junyue and Zhongjiang to value ocean freight.

Petitioner's Rebuttal:

- Commerce should continue to use the preliminary ocean freight surrogate value. In recent cases, to calculate a surrogate value for ocean freight, Commerce has first calculated an average weight per container using Panjiva shipment data. Commerce then divides the average ocean freight charges per container by the average weight per container, yielding an average surrogate value expressed in U.S. dollars per kilogram.

- Zhongjiang does not cite to a precedent showing that Commerce used a weight of 28,200kg per container after 2014. After 2014, Commerce has moved to a more accurate use of Panjiva data to determine average weights that are specific to the subject merchandise rather than rely on the maximum amount that could theoretically be stuffed into a container. There is no reason to return to the old methodology.

- There is no precedent for use of the average of the weights from the 16 sample sales that were presented in the verification exhibits for the mandatory respondents. There is no reason why the average of 16 sample shipments are more accurate than the much broader average of 778 containers for shipments of threaded rod from China to the United States during the POI that were submitted in the Panjiva data.

- Zhongjiang's Descartes ocean freight quotes do not lead to a more accurate valuation of ocean freight than Commerce's preliminary valuation that relied on the largest export port and the largest destination point did.

**Commerce's Position:** For the final determination, we valued ocean freight separately for east coast destinations, west coast destinations, and south coast destinations, using some of the Descartes ocean freight quotes provided by Junyue and Zhongjiang. The coast-based valuation

of ocean freight is consistent with our practice.[123] Given the quantity difference of entries of subject merchandise between the U.S. ports of entries reported by Junyue and Zhongjiang, we find it reasonable to value ocean freight separately on a coast-specific basis.[124]

For this revised valuation of ocean freight for the east coast and the south coast of the United States, we used the average of the freight rates from Descartes in effect during the 15th day of each second month for each quarter of the POI.[125] Using the freight rate in effect during the 15th day of each second month for each quarter of the POI is consistent with our practice.[126] For the west coast, because we do not have the rates for the 15th day of each second month for each quarter, we used the rate in effect on the day closest to the 15th day of each second month for each quarter within the POI.[127] Consistent with *Garlic China*, we averaged the rates to obtain a single POI average freight rate for each coast.

For the final determination, we did not use the average container weight in the Panjiva data because we do not find it reliable. In the Panjiva data, while the shipment origin is China for all listed shipments, the port of lading is not always a Chinese port. For some of the listed shipments, the ports of lading are Kingston, Jamaica; Busan, South Korea; Bremerhaven,

---

[123] *See*, *e.g.*, *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 70 FR 34082 (June 13, 2005) (*Garlic China*), and accompanying IDM at Comment 11 ("{W}e have … pulled both east and west coast rates from each month of the POR and have used a simple average of the east coast rates to value ocean freight to the east coast and a simple average of the west coast rates to value ocean freight to the west coast. Therefore, for the final results, we will value ocean freight for each of the east and west using the revised rate quotes from Maersk."); *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 65 FR 30067 (May 10, 2000), and accompanying IDM at Comment 12 ("For the final results, we derived surrogate ocean freight rates for the U.S. east and west coasts, separately, ….").

[124] *See* Junyue Final Analysis Memorandum at 2; and Zhongjiang Final Analysis Memorandum at 2, for more details and analyses containing the mandatory respondents' BPI.

[125] *See* Junyue's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit SV2-4; and Zhongjiang's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit 8. The petitioner's proposed freight rate was not in effect on the 15th day of the second month of either quarter within the POI. *See* Petitioner's Surrogate Values Comments Letter, dated June 28, 2019, at Exhibit 7.

[126] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 89045 (December 9, 2016), and accompanying PDM at 21 ("We obtained historical freight rates … in effect during the fifteenth day of each second month for each quarter of the POR for shipments of saws and blades for each combination of port of origin/discharge reported by Bosun in this review. We averaged the rates to obtain a single POR-average freight rate."), unchanged in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26912 (June 12, 2017) (*Diamond Sawblades Final 2014-2015*), and accompanying IDM; *see also*, *e.g.*, *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 75854 (December 4, 2015), and accompanying PDM at 22, unchanged in *Diamond Sawblades 2013-2014*; and *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71980 (December 4, 2014), and accompanying PDM at 21, unchanged in *Diamond Sawblades Final 2012-2013*.

[127] *See* Zhongjiang's Surrogate Values Comments Letter, dated August 20, 2019, at Exhibit 8. In the first quarter of the POI alone, we have five Descartes freight quotes just for the west coast. One of these freight quotes is for ocean freight from Shanghai to Columbus, OH, via Long Beach, CA, and another one of these freight quotes for ocean freight from Ningbo to Cleveland, OH, via Long Beach, CA. We did not use these two freight quotes because their final destinations are midwestern cities in the United States and it is possible that these freight rates contain U.S. inland freight expenses for transportation between Long Beach, CA, and the stated final destinations.

Germany; Tokyo, Japan; Manzanillo, Panama; and Balboa, Panama.[128] For these shipments where the ports of lading are non-Chinese ports, the Panjiva data do not appear to include the container weights of the entire shipments all the way from China to the United States. Moreover, the Panjiva data are an information source unrelated to the Descartes price quotes, which clearly identify the Chinese port of origin and the U.S. port of destination for the listed ocean freight price and the container weight. Therefore, we find the container weights in the Panjiva data unreliable for our valuation of ocean freight.

For the final determination, we used the container weight provided in the Descartes ocean freight price quotes because this container weight is specific to the Descartes ocean freight price quotes.[129] Using the container weight in the price quotes to value ocean freight on a per-kilogram basis maintains the relationship between cost and quantity from the same source of information, which is important because the numerator and the denominator are dependent upon one another in the calculation of the surrogate value for ocean freight on a per-kilogram basis.[130] Therefore, we find that it is reasonable to use the container weight in the price quotes "to preserve the internal consistency" of the valuation of ocean freight using the Descartes price quotes.[131] The use of the container weight in the same ocean freight price quote is consistent with our practice of using the container weight, border compliance costs, and documentary compliance costs from the same source documents, *e.g.*, *Doing Business Romania 2019*, in our valuation of domestic brokerage and handling expenses.[132] Because the average container weight in the Panjiva data is unrelated to the Descartes ocean freight price quotes,[133] there was

[128] *See* Petitioner's Surrogate Values Comments Letter, dated June 28, 2019, at Exhibit 7.
[129] *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197 (April 15, 2015), and accompanying IDM at Comment 9 ("For ocean freight, the Department preliminarily used an average of actual container weights from GTC and Double Coin to calculate company-specific shipment weights for valuation of ocean freight. While the Descartes ocean freight quotes are issued on a per-container basis, the quotes also provide an assumed weight for each quoted shipment. Therefore, because the quotes include a weight, we find the weights on the Descartes freight quotes to be more specific to the quotes than the average weights of respondents' own shipments. Thus, for these final results, we are using the ocean freight weights provided in the Descartes international ocean freight quotes, on a weighted-average basis, to derive the overall ocean freight surrogate value, rather than relying upon the average of respondent-specific container weights used for the *Preliminary Results*. (Citations omitted.)").
[130] *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), and accompanying IDM at 34 ("Using 10 MT in the per-unit calculation maintains the relationship between cost and quantity from the survey (which is important because the numerator and the denominator of the calculation are dependent upon one another), makes use of data from the same source, and is consistent with the Department's practice.").
[131] *See Aristocraft of America, LLC v. United States*, 269 F. Supp. 3d 1316, 1330 (Ct. Int'l Trade Sep. 28, 2017) (*Aristocraft 2017*) ("Commerce reasonably explained that it selected the denominator of 10,000 kg per container to preserve the internal consistency of a surrogate B & H calculation using Doing Business figures that were calculated using 10,000 kg as the assumed container weight.").
[132] *See Preliminary Determination* PDM at 29; Memorandum, "Alloy and Certain Carbon Steel Threaded Rod from the People's Republic of China: Surrogate Values for the Preliminary Affirmative Determination of Sales at Less Than Fair Value," dated September 19, 2019, at 5, and Exhibit 2; and Junyue's Surrogate Values Comments Letter, dated June 28, 2019, at Exhibit SV-8.
[133] *See Silicon Metal from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 54563 (September 5, 2012), and accompanying IDM at Issue 5; and *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 34.

no internal consistency in the preliminary valuation of ocean freight. As discussed, for the final determination, we have revised the valuation of ocean freight.

**Comment 12: Surrogate Movement Expenses on a Gross Weight Basis**

Mandatory Respondents' Arguments:

- For the preliminary calculations of domestic brokerage and handling, U.S. brokerage and handling, and U.S. inland freight from the U.S. port of entry to the U.S. customer for each U.S. sales transaction, Commerce calculated these expenses on a gross-weight basis. To do so, Commerce adjusted these movement expenses using a factor of gross weight divided by net weight.

- For the final determination, Commerce should revise the calculation of these movement expenses on a net-weight basis. There is no evidence showing that the surrogate values for brokerage and handling and truck freight are based on a gross-weight basis.

Petitioner's Rebuttal:

- The surrogate values Commerce used in the preliminary calculation of these movement expenses are based on gross weight, not net weight. Therefore, Commerce's preliminary use of the gross weight in these calculations is correct. Commerce should continue to adjust these movement expenses using a factor of gross weight divided by the net weight.

**Commerce's Position:** For the final determination, we continue to calculate these movement expenses on a gross-weight basis using the same factor that we used in the *Preliminary Determination*. If a respondent incurred movement expenses on a gross-weight basis, we calculate the surrogate values for the respondent's movement expenses by applying a ratio between gross weight and net weight.[134] Information on the record of this investigation supports our use of the gross weight to calculate these movement expenses.[135] Also, we used "a standardized shipment of 15 metric tons of containerized auto parts" in *Doing Business Romania 2019* to calculate the surrogate values for brokerage and handling and truck freight on a per-kilogram basis.[136] Because the 15 metric ton we used in these calculation is the weight of products in a container, and based on the record of this investigation that the finished subject merchandise were packed in the production process[137] and shipped to their U.S. customers, we find it reasonable to determine that the 15 metric ton represents gross weight of the subject

[134] *See*, *e.g.*, *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 18; and *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, 14877 (March 23, 2017), and accompanying IDM at Comment 5.
[135] *See* Junyue Final Analysis Memorandum at 2; and Zhongjiang Final Analysis Memorandum at 3, for more detail containing the mandatory respondents' BPI.
[136] *See* Junyue's Surrogate Value Comments Letter, dated June 28, 2019, at Exhibit 7 (*Doing Business Romania 2017*), at 83.
[137] *See* Junyue's Section D Response, dated May 31, 2019, at 14; and Zhongjiang's Section D Response, dated May 31, 2019, at 15-16 and Exhibits D-2A and D-3.

merchandise that includes the weight of packing materials.[138] For the final determination, we made no changes to the weight basis used in the calculation of these movement expenses.

**Comment 13: Zhongjiang's U.S. Inland Freight from Port to Customer**

Zhongjiang's Argument:

- Commerce inadvertently used the surrogate value for U.S. brokerage and handling in the preliminary calculation of the U.S. inland freight from port to customer for Zhongjiang. Commerce should revise this calculation by using the surrogate value for truck freight.

Petitioner's Rebuttal:

- The petitioners did not respond to this argument.

**Commerce's Position:** For the final determination, because they are U.S. inland freight expenses for which Zhongjiang paid an NME freight service provider,[139] we used the surrogate value for U.S. truck freight to correct the calculation of the U.S. inland freight from port to customer for Zhongjiang.[140] We used the U.S. producer price index to inflate the surrogate values for U.S. truck freight as well as U.S. brokerage and handling.[141]

**Comment 14: Differential Pricing**

Mandatory Respondents' Arguments:

- The differential pricing (DP) methodology does not establish "a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time." Commerce is wrongly equating a finding of different pricing with the existence of a pattern of differential pricing. Thus, Commerce's interpretation of the statute that significant price differences alone, without the showing of a pattern, are sufficient to permit use of the average-to-transaction (A-T) method to calculate dumping margins, does not comply with the clear language of the statute and must be rejected.

- Price differences by themselves do not constitute a pattern or identify targeted or masked dumping. This is particularly true for Junyue because all of its U.S. sales were made to order pursuant to individual customers' product specifications. There are price differences between customers because prices negotiations are customer-specific based

[138] *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) (*Cast Iron Soil Pipe Fittings*), and accompanying IDM at Comment 8 ("… the surrogate values for movement expenses were expressed on a gross weight basis.").
[139] *See* Zhongjiang's Section C Response, dated May 31, 2019, at 20.
[140] *See* Zhongjiang Final Analysis Memorandum; and Zhongjiang's Surrogate Values Comments Letter, dated June 28, 2019, at Exhibit 7C (*Doing Business United States 2019*) at 78.
[141] *See* Zhongjiang Final Analysis Memorandum.

on normal market considerations such as supply, demand, product costs, commodity steel pricing fluctuations, capacity utilization, sales terms, *etc.*

- The high percentage of sales that passed the Cohen's *d* test only confirms that the products and sales terms are differentiated but not that there is a pattern of pricing to target dumping. The DP methodology does not account for differences in the grade mix within a specific control number when comparing across different customers, regions, or time periods. NME respondents cannot develop patterns of pricing because they do not know their surrogate values until after the sales are made.

- Commerce also does not review whether the differences in export prices relate to rising or falling prices or the relationship of those price differences to the cost of production or the normal value of comparable merchandise. For instance, Commerce does not differentiate between prices that are higher than the normal value of comparable merchandise and those that are lower than the normal value of comparable merchandise.

- Commerce conducts the Cohen's *d* test to determine: (1) the percentage of sales by value that passed the 0.8 coefficient; and (2) whether to apply the A-T method, which always increases a respondent's margin. However, dumping occurs when a foreign producer sells subject merchandise at less than fair value. Therefore, sales made at more than fair value should not be count as "passed" in the Cohen's *d* test.

Petitioner's Rebuttal:

- Commerce's DP methodology has been repeatedly upheld by the courts[142] in cases. The mandatory respondents have not provided any new reason for re-examining Commerce's well-settled DP methodology.

**Commerce's Position:** The statute does not direct how we measure whether there is a pattern of prices that differ significantly or how we calculate the pooled standard deviation of the Cohen's *d* coefficient. On the contrary, we have exercised our discretion in a reasonable manner as conferred by Congress on this matter.[143]

Our intent is to rely on a reasonable approach that affords predictability and we find that a simple average (*i.e.*, giving equal weight to the test and comparison groups) is the best way to accomplish this goal when we determine the pooled standard deviation. The use of a simple average equally weighs a respondent's pricing practices to each group and the magnitude of the sales to one group does not skew the outcome. This approach is reasonable and consistent with section 777A(d)(1)(B)(i) of the Act.[144]

---

[142] *See* Petitioner's Rebuttal Brief at 9 (citing, *e.g.*, *Dillinger France S.A. v. United States*, 350 F. Supp. 3d 1349, 1369 (Ct. Int'l Trade Oct. 31, 2018)).
[143] *See*, *e.g.*, *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 65182 (November 3, 2014) (*Citric Acid*), and accompanying IDM at Comment 1.D; and *Diamond Sawblades Final 2014-2015* IDM at Comment 9; *see also Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1323-28 (Ct. Int'l Trade Feb. 2, 2016) (*Apex*).
[144] *See Citric Acid* IDM at Comment 1.D; and *Diamond Sawblades Final 2014-2015* IDM at Comment 5.

When the value of a respondent's U.S. sales that "passes" the Cohen's *d* test accounts for more than 33 percent of the value of its total sales, this indicates that a pattern of price differences exists such that we may consider applying the A-T method to a limited amount of the respondent's sales. Likewise, when the value of a respondent's U.S. sales that "passes" the Cohen's *d* test accounts for 66 percent or more of the value of its total sales, this indicates that there exists a pattern of price differences such that we may consider applying the A-T method to all of the respondent's sales. By creating these thresholds, we reasonably identified when price differences are more than just random occurrences, *i.e.*, when a "pattern" exists. To apply A-T to all of a respondent's sales, most of the respondent's sales (roughly two thirds) must pass the Cohen's *d* test, a threshold unlikely to be the result of chance. The CIT sustained this method as a reasonable one for meeting the prerequisite of section 777A(d)(1)(B)(i) of the Act, particularly since the statute gives no guidance as to how we should make our determination.[145]

With respect to the argument that sales at above average prices cannot reasonably be characterized as targeted, the statute does not require that we consider only lower priced sales in the DP analysis. We have the discretion to consider sales information on the record in our analysis and to draw reasonable inferences as to what the data show. It is reasonable for us to consider both lower-priced and higher-priced sales in the Cohen's *d* analysis because higher-priced sales are equally likely as lower-priced sales to create a pattern of prices that differ significantly. Further, higher-priced sales will offset lower-priced sales, either implicitly through the calculation of a weighted-average price or explicitly through the granting of offsets for non-dumped sales that can mask dumping. The statute states that we may apply the A-T method if "there is a pattern of export prices . . . for comparable merchandise that differ significantly among purchasers, regions, or periods of time," and we explain "why such differences cannot be taken into account" using the average-to-average (A-A) method.[146] Further, the SAA states with reference to section 777A(d) of the Act that:

> In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions.[147]

The SAA further states that:

> New section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods, *i.e.*, where targeted dumping may be occurring.[148]

---

[145] *See Stanley Works (Langfang) Fastening Systems Co., Ltd. v. United States*, 333 F. Supp. 3d 1329, 1353 (Ct. Int'l Trade Aug. 13, 2018).
[146] *See* section 777A(d)(1)(B) of the Act.
[147] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 842.
[148] *Id.* at 843.

Therefore, the concept of the pattern of prices that differ significantly is linked to prices that are higher than other prices that may be dumped (*i.e.*, lower prices) as well as to lower prices.[149]

The statute directs us to consider whether there exists a pattern of prices that differ significantly. The statutory language references prices that "differ" and does not specify whether the prices differ by being lower or higher than the remaining prices. The statute does not require that we consider only higher-priced sales or only lower-priced sales when conducting our analysis, nor does the statute specify whether the difference must be the result of certain sales being priced higher or lower than other sales. We have explained that higher-priced sales and lower-priced sales do not operate independently; all sales are relevant to the analysis.[150] By considering all sales, higher priced sales and lower priced sales, we are able to analyze an exporter's pricing practice and to identify whether there is a pattern of prices that differ significantly. Moreover, if we find that such a pattern of prices that differ significantly among purchasers, regions, or periods of time does exist, then this signals that the exporter is discriminating between purchasers, regions, or periods of time within the U.S. market rather than following a more uniform pricing behavior. Where the evidence indicates that the exporter is engaged in discriminatory pricing behavior, there is cause to continue with the DP analysis to determine whether the A-A method or the average-to-transaction (A-T) method can account for such pricing behavior. Accordingly, both higher and lower priced sales are relevant to our analysis of the exporter's pricing behavior when examining the requirement under section 777A(d)(1)(B)(i) of the Act.[151]

Production inputs and surrogate values used in the calculation of normal values in NME cases are not relevant in our DP analysis. In our DP analysis, we include non-dumped U.S. sales that are priced below the average prices. Lower or higher priced sales could be dumped or could be masking other dumped sales. Therefore, normal values calculated using surrogate values and production inputs are not relevant in answering the question of whether there exists a pattern of prices that differ significantly because our DP analysis includes no comparisons with normal values and section 777A(d)(1)(B)(i) of the Act contemplates no such comparisons.[152] Section 777A(d)(1)(B)(i) of the Act refers to a "pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions or periods of time." Such a pattern is strictly between the sale prices in the U.S. market, and has no relationship with

---

[149] *See Citric Acid* IDM at Comment 1.D; and *Diamond Sawblades Final 2014-15* IDM at Comment 9; *see also Apex*, 144 F. Supp. 3d at 1330 ("Therefore, the SAA also supports the view that consideration of both lower and higher-priced sales may be appropriate in determining whether application of A-T is necessary to unmask dumping. For the reasons discussed above, Plaintiffs are unable to demonstrate that Commerce's decision to consider all sales in the ratio test was unreasonable.").

[150] *See Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 26712 (May 9, 2014), and accompanying IDM at Comment 1.C; and *Diamond Sawblades Final 2014-15* IDM at Comment 9.

[151] *See Apex Frozen Foods Private Ltd. v. United* States, 862 F.3d 1337, 1347 (Fed. Cir. 2017) (finding that consideration of both higher and lower priced sales in the "meaningful difference" test is reasonable); *see also Stanley Works Langfang Fastening Sys. Co. v. United* States, 333 F. Supp. 3d 1329, 1357-58 (Ct. Int'l Trade 2018) (finding that the statute does not specify whether prices must "differ" by being priced lower or higher than comparison sales and that consideration of higher priced sales is reasonable); *Citric Acid* IDM at Comment 1.D; and *Diamond Sawblades Final 2014-15* IDM at Comment 9.

[152] *See Diamond Sawblades Final 2013-2014* IDM at Comment 5.

the comparable normal values for these U.S. sales. Accordingly, consideration of whether these U.S. sales are dumped is not part of fulfilling this requirement.[153] Indeed, the lower-priced U.S. sales could be below their normal value, the high-priced U.S. sales could also be below their normal value, or none of the U.S. sales could be below their normal value. Such a determination is not part of this statutory requirement. Therefore, the Cohen's *d* test, in its application to determine whether there exists a pattern of prices that differ significantly, is not required to consider whether these sales are also "dumped."[154]

**Comment 15: Irrecoverable Value-Added Tax**

Mandatory Respondents' Arguments:

- Commerce's decision to reduce Zhongjiang's reported U.S. prices by the unrefunded value-added tax (VAT) amount is inconsistent with the statute and is unsupported by substantial record evidence.

- Pursuant to section 772(c)(2)(B) of the Act, Commerce is authorized to reduce the U.S. price of exported merchandise by "the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States." Thus, according to the statute, the tax, duty or charge must be imposed on the exportation of the subject merchandise, not on input raw materials.

- The legislative history and multiple court cases (*i.e.*, *Qingdao Qihang Tyre Co. v. United States*) indicate that Congress was fully aware of the distinction between an export tax imposed on the exportation of a finished good and a domestic VAT tax imposed on inputs. Commerce cannot treat VAT imposed domestically on materials used in production as an equivalent of an export tax. A reasonable and lawful deduction from the U.S. price should be based on the record that the respondents are paying export tax for exported goods but not for goods sold domestically.

- According to Article 5.3 of Circular No. 39 (*2012 VAT Circular*), exporters are allowed to add an amount equivalent to the irrecoverable VAT tax to their cost of production of the exported merchandise. Specifically, if the VAT refund rate on the exported finished goods is lower than the VAT rate levied on purchased inputs, the Chinese Circular states that "the corresponding differential sum calculated shall be included into the cost of the exported goods and services." As a result, irrecoverable VAT is a cost rather than a tax. Since there is no tax added to the price of the exported merchandise, Commerce's deduction of a non-existing VAT tax from the U.S. price is inaccurate.

---

[153] *See Apex*, 144 F. Supp. 3d at 1330 ("All sales are subject to the differential pricing analysis because its purpose is to determine to what extent a respondent's U.S. sales are differentially priced, not to identify dumped sales. (Citation omitted.) Commerce is not restricted in what type of sales it may consider in assessing the existence of such a pattern so long as its methodological choice enables Commerce to reasonably determine whether application of A-T is appropriate. *See* 19 C.F.R. § 351.414(c)(1).").
[154] *Id.*

- Circular No. 39 does not support Commerce's calculation formula for irrecoverable VAT because this formula is based on the value of finished goods and an irrecoverable VAT is an unrefunded amount of VAT paid on inputs and raw materials. Circular No. 39 does not explain how a formula based on the price of finished goods could determine the portion of VAT paid on purchases of inputs that could not be fully recovered.

- In addition to various CIT precedents concluding that Chinese VAT is a domestic tax related to production tax rather than a tax imposed on exportation that should be included in the calculation of normal value as a production cost, the statute does not require adjusting normal value by taxes or VAT paid on inputs in NME proceedings. According to section 773(c) of the Act, normal value is based on the values of the factors of production. Thus, VATs paid on raw materials – whether recoverable or irrecoverable – have no impact on dumping margins in an NME proceeding.

- The VAT methodology that Commerce uses to deduct VAT from the U.S. price of Zhongjiang's finished products is unlawful due to computational flaws. Commerce made no actual finding that a seven percent to 11 percent VAT was imposed by China on exports of subject merchandise. Instead, similar to *China Mfrs. Alliance, LLC v. United States*, 205 F. Supp. 3d 1325, 1346-1351 (CIT 2017) (*China Mfrs. Alliance*), Commerce simply applied a presumption that goods exported from China are subject to "irrecoverable VAT" in seven percent to 11 percent of the free-on-board value of the exported goods. As the courts have concluded on multiple occasions, VAT adjustments should be based upon the amount of VAT paid rather than the applicable rate in order to prevent a multiplier effect if the rate is applied to a different value.

- Even if Commerce's presumption that Zhongjiang's U.S. sales prices contain an irrecoverable VAT of seven percent to 11 percent of its reported free-on-board values were to be true, being an additional cost of exported goods, Commerce would then be required to consider the consequential benefit gained in terms of income tax saved pursuant to Article 5.3 of Circular no. 39. In other words, Commerce would be required to compute the amount of additional cost embedded in U.S. sale prices by offsetting the amount of irrecoverable VAT computed at seven percent to 11 percent of Zhongjiang's reported FOB values by the amount of income tax saved. Given that Commerce did not make such an adjustment, its methodology for computing the VAT deduction based solely upon applying to FOB value the VAT rate differential instead of the actual amount of VAT incurred, if one is authorized at all, is inaccurate.

Petitioner's Rebuttal:

- Commerce's adjustment to both Zhongjiang and Junyue's U.S. sale prices for un-refunded VAT is consistent with its practice. Junyue and Zhongjiang rely on only certain court cases to support their claims that: (1) Commerce's practice is contrary to the language of the statute; (2) VAT is not an export tax, duty or other charge imposed upon exportation, as covered by 772(c)(2)(B) of the Act; and (3) Commerce did not determine an amount imposed.

- Junyue and Zhongjiang are ignoring the fact that Commerce has consistently rejected these arguments in various instances; and that there are numerous cases that found that Commerce's interpretation of irrecoverable VAT is entitled to deference. In fact, Junyue, for example, recognizes that the decision in *Aristocraft of America, LLC v. United States* undermines its argument, but unconvincingly argues that the facts are different, even though they are not.

**Commerce's Position:** For the reasons explained below, we continue to adjust the respondents' U.S. price for irrecoverable VAT, using the same methodology relied upon in the *Preliminary Determination*.

We disagree with the respondents' 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 current methodology has been in place since 2012, when Commerce announced it would begin adjusting U.S. price for irrecoverable VAT in an NME proceeding in accordance with section 772(c)(2)(B) of the Act.[155] In this announcement, Commerce stated that the statute provides for when an NME government imposes an export tax, duty, or other charge on subject merchandise or on inputs used to produce it, from which the respondent was not exempted, Commerce will reduce the respondent's U.S. price by the amount of the tax, duty or charge paid, but not rebated.[156]

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

A company calculates input VAT and output VAT for "net VAT liability" purposes, *i.e.*, to determine the total amount of money which the company must remit to the government. This calculation is done on a company-wide, not on a transaction-specific, basis, *i.e.*, in the case of input VAT, on the basis of all input purchases regardless of whether used in the production of all

[155] *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) (*Section 772(c)(2)(B) Methodological Change*).
[156] *Id.*, 77 FR at 36483; *see also Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 4875 (January 30, 2014), and accompanying IDM at Comment 5.

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

As noted by the respondents, the Chinese VAT system is governed by the *2008 Chinese VAT Regulation* and *2012 VAT Circular*. A summary of the *2008 Chinese VAT Regulation* is as follows:

> Article 1 of the {*2008 Chinese VAT Regulation*} explains that "All units and individuals engaged in the sales of goods, the provision of processing, repairs and replacement services, and the importation of goods within the territory of the People's Republic of China are taxpayers for value-added tax and shall pay value added tax in accordance with these Regulations." Article 5 states that "For taxpayers that engage in the sales of goods or taxable services, the output tax shall be the value-added tax payable calculated on the basis of the sales amount involved and the tax rates prescribed in Article 2." Article 2.3 confirms that "For taxpayers that export goods, the tax rate shall be zero, unless otherwise provided by the State Council."[157]

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

> Output tax = Sales amount * Tax rate[158]

This formula is also consistent with the general description of a VAT tax system above. The term "output tax" in this formula refers to any transaction between a "taxpayer" (*i.e.*, a company) and its customer, and represents an amount of VAT collected by the taxpayer from the customer on behalf of the government. This "output tax" is identical with the "output VAT" included in the generic description of a VAT system above. The tax amount for the transaction between a supplier and a company (*i.e.*, input VAT) represents the amount of VAT paid by the company to its supplier, as also calculated by this formula (in other words, it is the "output tax" for the

[157] *See* Zhongjiang's Section C Response, dated May 31, 2019, at Exhibit C-5A (*2008 Chinese VAT Regulation*).
[158] *See 2008 Chinese VAT Regulation* at Article 5.

supplier). Input VAT is similar to the term "input tax" used in the Chinese regulations, where "input tax" includes all VAT-related amounts which a party must pay. This includes the input VAT that a company would pay a supplier (as part of the repetitive chain of paying, passing through and collecting VAT) as well as the amount of irrecoverable VAT which a company must bear as a cost as a result of the exportation of goods. As noted above, the input VAT is not born as a cost by the company because the company generally passes through the amount of the input VAT to the next party in the chain of commerce.[159] As discussed below, the amount of irrecoverable VAT must be borne by the company as a cost in its books and records.

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

> Except as provided in Article 13 of these Regulations, for taxpayers engaged in the sales of goods or the provision of taxable services (hereinafter referred to as "the sales of goods or taxable services"), the tax payable shall be the balance of output tax for the current period subtracted by the input tax for current the period. The formula for computing the tax payable is as follows:
>
> Tax payable=Output tax for the current period-Input tax for the current period[160]

Thus, for the current period, the "output tax" is the amount of VAT that a company collects for the benefit of the government; the "input tax" is the amount of VAT that a company must pay to the government (*e.g.*, the VAT tax included in the purchases of inputs); and the "tax payable" is the net VAT liability that a company must remit to the Chinese government.

As noted above in Article 5, Article 2 of the *2008 Chinese VAT Regulation* provides for the rates for calculating VAT. Article 2.1 provides that the normal VAT rate will be 17%, and Article 2.2 provides for an exceptional VAT rate for the prescribed products in Article 2.2 or as otherwise provided for by the State Council.[161] Article 2.3 provides that for "export goods, the tax rate shall be zero, unless otherwise provided by the State Council."[162] Further, Article 25 provides for the refund of VAT for exported goods.

> Taxpayers that export goods to which provisions relating to tax refund (exemption) are applicable shall, upon completion of export procedures with customs authorities, apply for tax refund (exemption) for such goods to the competent taxation authorities on a monthly basis on the strength of export declaration forms and other relevant evidence.[163]

Commerce reasonably concludes based on Articles 2.3 and 25, that a company within China which exports goods is liable for VAT as with domestic sales, and then that amount of VAT is

---

[159] Input VAT is borne as a cost by the party that ultimately consumes the goods.
[160] *See 2008 Chinese VAT Regulation* at Article 4. Article 4 also provides that if the net VAT liability is negative, then the company may carry over that negative amount to the next tax period. Article 13 recognizes the requirements for a party's registration as a taxpayer.
[161] Numerous other provisions in the *2008 Chinese VAT Regulation* provide for exceptions to the general VAT rate provided for in Article 2.1, none of which are relevant in this proceeding.
[162] *See 2008 Chinese VAT Regulation* at Article 2.3.
[163] *Id.* at Article 25.

refunded "upon completion of export procedures." The net result of this "tax refund" is that the VAT rate for exported goods is zero. However, as provided for in Article 2.3, this result may still be altered by the State Council.

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

> For the purposes of making it easier for tax authorities and taxpayers to understand and implement the export taxation policies systemically and accurately, the Ministry of Finance and State Administration of Taxation has sorted out and classified the VAT policies and consumption tax policies on exported goods and foreign-oriented processing, repair and fitting services (hereafter referred to as the "exported goods and services," including the "goods deemed as exported goods") which were enacted successively In the recent years, and clarified the several problems reflected in the actual implementation.[164]

Article 1 defines the "export enterprises," "manufacturing enterprises" and "export goods" that "the policies concerning the exemption and refund of Value-added Tax (hereafter referred to as the 'VAT refund (exemption)') shall be applied."[165] Article 2 provides for the "exemption, offset and refund" of VAT and Article 3 defines the VAT refund rate for exported goods. Article 3.1, consistent with Article 2.3 of the *2008 Chinese VAT Regulation*, states,

> Except for the export VAT refund rate (hereafter referred to as the "tax refund rate") otherwise provided for by the Ministry of Finance and the State Administration of Taxation according to the decision of the State Council, the tax refund rate for exported goods shall be the applicable tax rate. The State Administration of Taxation shall promulgate the tax refund rate through the Tax Refund Rate Catalogue of Exported Goods and Services according to the aforesaid provisions for the implementation of the tax authorities and taxpayers.[166]

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

Articles 4 provides for the calculation of the amount of the VAT refund because of exportation and the basis on which this amount is calculated. The basis for the VAT refund "shall be the actual FOB price, of exported goods and services"[167] or "shall be determined based on the FOB price of the exported goods after having deducted the amount of customs bonded imported materials and parts as included in the exported goods."[168] Consistent with Article 4, Article 5.1

---

[164] *See*, *e.g.*, Zhongjiang's Section C Response, dated May 31, 2019, at Exhibit C-5A (*2008 Chinese VAT Regulation*) (*2012 VAT Circular*).
[165] *See 2012 VAT Circular* at Article 1.
[166] *Id.* at Article 3.1.
[167] *Id.* at Article 4.1.
[168] *Id.* at Article 4.2.

then provides the following formula for the amount of the "Tax which may not be exempted or offset," *i.e.*, the irrecoverable VAT.[169]

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

where,

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

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

Lastly, Article 5.3 provides that "the tax refund rate is lower than the applicable tax rate, the corresponding differential sum calculated shall be included into the cost of the exported goods and services." The amount of irrecoverable VAT must be borne by the exporter just as the VAT must be borne by the ultimate consumer of the goods. In essence, the exporter is the ultimate consumer of the goods in the chain of pay, pass on, and collect the VAT. The exporter breaks that chain of commerce along which the indirect consumption tax is passed through to the ultimate consumer, but unlike an ultimate consumer inside the domestic market, the exporter has the benefit that some or all of the VAT is refunded or exempted by the Chinese government.

Continuing the example from above, when the accumulated export sales amount to P = $200 million, c = 0, $T_1$ = 17% and $T_2$ = 10%, the amount of irrecoverable VAT will be ($200 million - $0) x (17% - 10%) = $200 million x 7% = $14 million. This amount, $14 million, must also be remitted to the Chinese government, and be recorded as a cost of the export sales in the company's books and records. Thus, the exporter incurs a cost equal to $14 million, which is calculated on the basis of FOB export value at the *ad valorem* rate of $T_1 - T_2$. This cost would not be incurred but for the exportation of the goods, and, therefore, functions as an "export tax, duty, or other charge" and is covered by the price of the exported goods. It is for this "export tax, duty, or other charge" that Commerce makes a downward adjustment to U.S. price under section 772(c) of the Act, contrary to the respondents' arguments otherwise.[170]

---

[169] *Id.* at Article 5.1(1).

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

It is important to note that Commerce, in its analysis, has viewed the amount of irrecoverable VAT as a reduction in the amount of creditable input VAT. This amount of creditable VAT is offset against the amount of output VAT collected by the company to reduce the net VAT liability which the company must remit to the Chinese government. Thus, reducing the offset for input VAT will increase the amount which the company must remit. Under Chinese law the reduction in creditable input VAT and determination of the net VAT liability is defined in terms of, and applies to, the company as a whole across all purchases and sales.[171] This company-wide accounting of VAT does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint, not specific products, markets or sales.

The respondents cite the CIT's decisions in *Qingdao Qihang Tyre* and *Guizhou Tyre* in support of their argument that Commerce's practice of deducting VAT from U.S. price is contrary to law.[172] As an initial matter, in Commerce's remand response to *Qingdao Qihang Tyre*, Commerce explained that it made its redetermination under protest.[173] Likewise, Commerce also made its redetermination in *Guizhou Tyre* under protest.[174] Nonetheless, 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."[175] For instance, the CIT explained in *Jacobi Carbons I* that *Qingdao Qihang Tyre*'s holding "was premised on its understanding that Commerce was applying the export tax, duty or other charge language to a domestic tax," but "in this case, Commerce is adjusting for an output VAT charged on the exportation of the merchandise."[176] The CIT recognized that the *2012 VAT Circular* 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 companywide basis.[177]

We continue to find that our long-standing practice of finding VAT to be an "export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise" to be a reasonable interpretation of the statute. As an initial matter, the Act does not define the term(s) "export tax, duty, or other charge imposed" on the exportation of subject merchandise. The Act considers whether U.S. price includes "any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States."[178]

---

the FOB export value as the basis for the calculation. Thus, "irrecoverable input VAT" is in fact, despite its name, an export tax within the meaning of section 772(c)(2)(B) of the Act.

[171] *See*, *e.g.*, *2012 VAT Circular* at Article 5(1).

[172] *See* Zhongjiang's Case Brief at 32, 33, 34, and 39 (citing *Qihang Tyre Co., Ltd. v. United States*, 308 F. Supp. 3d 1329 (CIT 2018) (*Qingdao Qihang Tyre*)), and at 33, 39 (citing *Guizhou Tyre Co. v. United States*, 389 F. Supp. 3d 1350 (CIT 2019) (*Guizhou Tyre*)).

[173] *See Qingdao Qihang Tyre* and Final Results of Redetermination Pursuant to Court Demand at 8 (July 24, 2018).

[174] *See Guizhou Tyre* and *Final Results of Redetermination Pursuant to Court Remand* (September 23, 2019) at 4 (Public Version) (*Guizhou Tyre Remand*).

[175] *See Cast Iron Soil Pipe Fittings* IDM at Comment 9.

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

[177] *Id.*

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

Commerce's reading of section 772(c)(2)(B) of the Act is whether there exists "any export tax, duty, or other charge imposed by the exporting country" included in the U.S. price at the time of exportation; Commerce does not interpret the phrase "on the exportation of the subject merchandise to the United States" to be limited to "by reason of the exportation of the subject merchandise to the United States."[179] To "impose" means to "{t}o charge; impute;" "{t}o subject (one) to a charge, penalty or the like;" "{t}o lay as a charge, burden, tax, duty, obligation, command, penalty, *etc.*"[180] The "imposition" in the case of China's irrecoverable VAT occurs as a result of exportation, which is a permissible interpretation of the statute.[181]

Therefore, we find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales.[182] The CIT has upheld our interpretation as a permissible interpretation of the statute.[183] Additionally, the irrecoverable VAT is set forth in Chinese law, and, therefore, can be considered to be "imposed" by the exporting country upon exportation of subject merchandise. Further, an adjustment for irrecoverable VAT falls under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a tax neutral net U.S. price received by the seller. This deduction is consistent with our longstanding policy, which is in turn consistent with the intent of the statute, that dumping margin calculations be tax-neutral.

Furthermore, as discussed in detail above, the *2008 Chinese VAT Regulations* and *2012 VAT Circular* establish 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 normal value.

Thus, section 772(c)(2)(B) of the Act is squarely applicable to the question at hand. Commerce finds that the comparison of U.S. price with normal value must be tax neutral,[184] in order to ensure a fair comparison.[185] 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 as is the final determination here, "{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 normal value would be to require that it understate the margin of dumping."[186] Furthermore, the *2008 Chinese VAT Regulation* and *2012 VAT Circular* clearly demonstrate that the cost associated with "irrecoverable VAT" is imposed on export sales, including export sales of subject merchandise.

---

[179] *Id.*
[180] *Id.* (citing Webster's New International Dictionary of the English Language Unabridged, at 1251 (2nd ed. 1956)).
[181] *Id.* ("The satisfaction of any such imposition is not necessarily concurrent with the act of imposition, which may occur at any time, and the vagueness of the statutory language neither precludes nor requires such interpretation.").
[182] *Id.*
[183] *See Aristocraft 2017*; *Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159, 1186-88 (CIT 2017) (*Jacobi Carbons 2017*); and *Fushun Jinly*.
[184] *See Jacobi Carbons AB v. United States*, Slip Op. 19-27, at 30-32 (CIT 2019) (*Jacobi Carbons II*) ("{T}he principle that dumping margin calculations should be tax-neutral supports Commerce's adjustment").
[185] *See* section 773(a) of the Act.
[186] *See Jacobi Carbons II* at 33.

Nowhere does the Chinese VAT system provide an exception for the respondents as taxpayers, and the respondents cite to no such exemption. The cost for "irrecoverable VAT" is imposed on the taxpayer as a reduction in the credit which the taxpayer may claim for VAT-in paid to its suppliers. Further, this offset to the taxpayer's VAT-in credit (and consequential increase in the taxpayer's net VAT liability) is on a company-wide basis. Theoretically, a taxpayer could pay no VAT-in for inputs to produce subject merchandise (*e.g.*, VAT-exempt inputs are imported from which subject merchandise is produced and exported) and yet the Chinese VAT system would still impose a cost on the taxpayer for export sales consistent with the *2008 Chinese VAT Regulations* and the *2012 VAT Circular*. This is demonstrated by the deduction of the amount of "Price of duty-free raw materials purchased" in the formula from the *2012 VAT Circular*, which defines the calculation of "irrecoverable VAT."

The appropriate VAT rates were 17 percent prior to May 1, 2018, and 16 percent on and after May 1, 2018.[187] Further, respondents did not report that any inputs were imported under a bonded warehouse scheme.[188] Therefore, as provided for in Article 5.1 of the *2012 VAT Circular*, the companies were liable for irrecoverable VAT equal to the difference between the input VAT rate paid and the refund rate at time of export, as a percent of the FOB value of the subject merchandise.

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

> For taxpayers that export goods, the tax rate shall be zero, unless otherwise provided by the State Council.[189]

Thus, in general, no VAT is collected on exported goods because that VAT is refunded by the Chinese government. However, for the subject merchandise, as respondents have reported, the refund rate is not the full VAT rate of 16 percent, but rather a rate of five percent from the beginning of the POI to September 14, 2018, nine percent from September 15, 2018, to October 31, 2018, and 10 percent on and after November 1, 2018, resulting in irrecoverable VAT rates of 11percent, seven percent, and six percent, respectively.[190] Thus, the respondents had to pay to

[187] *See 2008 Chinese VAT Regulation* at Article 2.1; *see also See* Zhongjiang's Section C Response, dated May 31, 2019, at Exhibit C-5A (*2018 VAT Circular*).
[188] *See* Zhongjiang's Section C Response, dated May 31, 2019, at 29; and Junyue's Section C Response, dated May 31, 2019, at 34.
[189] *See 2008 Chinese VAT Regulation* at Article 2.3.
[190] *See* Junyue's Section C Response, dated May 31, 2019, at 34; and Zhongjiang's Section C Response, dated May 31, 2019, at 31.

the Chinese government six to 11 percent of the FOB value of the subject merchandise because of the exportation of that merchandise, and the respondents must also recognize this as a cost of the export sales. Accordingly, this amount must be recovered within the price of the subject merchandise and constitutes "an export tax, duty or other charge" as discussed above.

Commerce also rejects the respondents' claim that the VAT adjustment is a deduction for VAT paid on the purchase of material inputs. The amount of irrecoverable VAT for which Commerce has adjusted Junyue's and Zhongjiang's U.S. prices is not related to the VAT paid by the respondents for its purchases of material inputs. This amount is calculated based on: (1) the FOB value of the subject merchandise; and (2) the difference between the assessed VAT rate and the VAT refund rate stipulated by the Chinese government. The amount of irrecoverable VAT is only "related" to the amount of VAT paid for inputs (*i.e.*, input VAT) in that both amounts are used with other accounts to determine the net amount which the respondents must remit to the Chinese government. Nonetheless, the amount of irrecoverable VAT is neither impacted by the amount of input VAT nor does the amount of irrecoverable VAT impact the amount of input VAT.

As explained above, the irrecoverable VAT expense is a liability calculated based on the VAT rate and the refund rate specific to the exported good and the FOB value of the subject merchandise. For example, if a firm sells goods that are not subject to the irrecoverable VAT expense (*e.g.*, Company A), it is able to credit the total amount of input VAT paid as a deduction from the amount of output VAT collected from its downstream customers, the difference being its net VAT liability. If a firm sells some goods that are exported and, thus, subject to the irrecoverable VAT expense (*e.g.*, Company B), then it must deduct the irrecoverable VAT amount (*e.g.*, $1.2 million) from the amount of the creditable input VAT before it is permitted to deduct that amount from the amount of output VAT collected from downstream customers. In this example, Company A's output VAT is reduced (*i.e.*, offset) by the full amount of its input VAT paid (*e.g.*, $10 million), and Company B's output VAT is only partially reduced by its input VAT after deducting an amount corresponding to the value of its irrecoverable VAT (*i.e.*, $10 million - $1.2 million = $8.8 million). It is important to note that, but for the deduction of irrecoverable VAT from its input VAT credit, Company B would have been granted a credit equal to its total input VAT paid, effectively recovering 100 percent of its input VAT paid; instead that credit was reduced by $1.2 million to $8.8 million, rendering $1.2 million of its input VAT paid unrecovered and increasing Company B's net VAT liability to the government by $1.2 million. This example illustrates how a firm's irrecoverable VAT results in a payment to the government in the amount of the FOB value of the exported goods times the difference between the VAT rate and the refund rate specific to the exported good.[191] Chinese VAT law instructs firms to record this irrecoverable expense as a cost of goods sold so that the exporter may recover that portion of the input VAT that is forgone as a result of the exportation of the products and the generation of irrecoverable VAT that otherwise would have been fully credited against their output VAT if the product had not been exported.[192] The record demonstrates that the respondents booked the irrecoverable VAT on their exported subject merchandise, based upon

[191] *See 2012 VAT Circular* at Article 5.1(1).
[192] *Id.* at Article 5(3).

FOB export value, to their accounting records and considered it as a cost of sales of the subject merchandise.[193]

As described above, the impact of irrecoverable VAT is plainly evident in the amount of "total deductible tax" available to Company B in the single-month scenario presented. However, the respondents' VAT statements underscore how China's complex system of liabilities, deductions, offsets, and exemptions, with carryover amounts between periods and adjustments reflecting calculations from prior periods, can obscure the impact of irrecoverable VAT on the input VAT credit. Furthermore, it demonstrates that input VAT credits and reductions for irrecoverable VAT are not forgiven in any single month because input VAT credits are carried over from month to month. Notwithstanding these company-wide accounting procedures regarding the net VAT liability to the Government of China, the record demonstrates that the respondents' irrecoverable VAT results in an increased net VAT liability to the government based on a percentage of the value of their FOB sales, and that the existence of this increased net VAT liability is due to the exportation of subject merchandise.[194]

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

If a firm's "total deductible tax" (which is equal to the amount of its input VAT paid plus an amount of its deductible VAT paid carried over from a prior month, minus the amount of its irrecoverable VAT) is greater than the amount of the output VAT collected from its customers, then the amount of its "actual tax deductible" becomes its output VAT and the difference between its output VAT and total deductible tax, *i.e.*, its "Tax retained end of this month," can be credited forward to the next month as its tax "Retained last month."[195] Thus, for an exporter such as the respondents, the difference between its "total deductible tax" and its "actual tax deductible" is transferred to the next month as its tax "retained last month," and the firm's deductible tax is serially transferred from one month to the next, and is continually reduced by the amount of irrecoverable VAT incurred in each period.[196] Thus, the effect of the irrecoverable

[193] *See* Zhongjiang's Section C Response, dated May 31, 2019, at Exhibit C-5D; and Junyue's Section C Response, dated May 31, 2019, at Exhibit C-7.
[194] *Id.*
[195] *See also 2012 VAT Circular* at Article 5.1(3).
[196] A firm's "deductible tax" is the sum of its creditable input VAT plus an amount retained and carried forward from the previous month, minus its irrecoverable VAT. *See, e.g.*, *Certain Fabricated Structural Steel from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 5376 (January 30, 2020), and accompanying IDM at Comment 1.

VAT expense is not isolated to a single month but, rather, continues to affect the offsetting of the input VAT credit in subsequent months. This relationship underscores another reason why the input VAT that the respondents paid is not relevant to the irrecoverable VAT calculation during the POI; not only is irrecoverable VAT calculated on a different basis than input VAT, but the effect of the irrecoverable VAT expense is not tied to input VAT paid in any particular month. Thus, to the extent that Commerce may not be able to link the input VAT to the deduction for irrecoverable VAT on any given record, the input VAT paid is not relevant to the calculation of irrecoverable VAT, consistent with Chinese law. In addition, the amount of irrecoverable VAT is not dependent on either the amount of output VAT or the amount of net VAT liability, but net VAT liability is dependent on the amount of the irrecoverable VAT.

It is important to note that while the interplay between irrecoverable VAT and input VAT has a direct effect on the overall net VAT liability of a firm, we must emphasize that it is not the overall net VAT liability of the respondents with which we are concerned, but the effect of the irrecoverable VAT expense on the exporter's ability to offset its tax liability by its input VAT credit, and the recording of the irrecoverable VAT expense as a cost of goods sold. Most importantly, the effect of the irrecoverable VAT expense on the exporter's ability to offset its net VAT liability by its input VAT credit is not a function of the VAT rate paid on inputs, the value of those inputs, or the aggregate amount of input VAT paid, but is a function of the FOB selling price of the exported goods and the difference in the VAT rate and the VAT refund rate for those exported goods.[197] The Act requires that Commerce reduce the export price or constructed export price used in the antidumping margin calculation by "the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C) …." of the Act.[198] Commerce's irrecoverable VAT adjustment deducts the amount of irrecoverable VAT that was included in the selling price of the subject merchandise sold to the United States and is calculated on the same basis (*i.e.*, percentage of FOB price) that Chinese law requires.[199]

Section 772(c)(2)(B) of the Act authorizes Commerce to deduct from U.S. price the amount, if included in the price, of any "export tax, duty, or other charge imposed by the exporting country on the exportation" of the subject merchandise. If, for example, the Chinese government were to determine that it wanted to either extract higher taxes from the exporters or restrict the exports of the subject merchandise, it could reduce the rebated VAT amount upon export; a reduction of the rebate from 15 percent to five percent would result in an increased cost of 10 percent of FOB value that would have to be booked as a cost and recover though its pricing of export sales. That would equate to a real cost increase of 10 percent of FOB value. Under Chinese law, the cost increase would only apply to exports, since only exports incur irrecoverable VAT. Irrecoverable VAT, as defined in Chinese law, which is supported by evidence on the record, is a net VAT burden that arises solely from, and is specific to, exports.[200]

[197] *See 2012 VAT Circular* at Article 5.1(1).
[198] *See* section 772(c)(2)(B) of the Act.
[199] *See* Junyue's Section C Response, dated May 31, 2019, at 34; and Zhongjiang's Section C Response, dated May 31, 2019, at 31.
[200] *See, e.g.*, *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57508 (September 25, 2014), and accompanying IDM at Comment 7.

Irrecoverable VAT is, therefore, an "export tax, duty, or other charge imposed" on exportation of the subject merchandise to the United States.[201]

We disagree with the respondents' contention that irrecoverable VAT is linked to the cost of production of goods instead of their export sale prices consistent with Article 5.3 of the *2012 VAT Circular*. Article 5.3 states that the irrecoverable VAT "shall be included into the cost of the exported goods and services." Article 5.3 does not specify production costs, and clearly such an expense is caused by the exportation of the subject merchandise and not its production, yet both are reasonably seen as costs of goods sold. Therefore, we disagree that Article 5.3 requires us to consider income tax saved, if any, in connection with the cost of production of goods. The respondents' claim is inapposite.

We disagree with the respondents' claim that the method to calculate the adjustment for irrecoverable VAT is unreasonable. We disagree that the 16 percent VAT rate is only applicable to purchased inputs, and that the VAT adjustment calculated simply as a certain percentage of the FOB value of the subject merchandise is unreasonable. Article 5.1(1) of the *2012 VAT Circular* clearly provides for the formula for the amount of irrecoverable VAT as discussed above. This amount is based on the difference of the VAT rate and the VAT refund rate for the exported goods (*i.e.*, subject merchandise) and the FOB of the exported goods. Further, it is this amount that Article 5.3 stipulates must be recorded as a cost of the goods sold in the exporter's books and records. There is no factual evidence on the record to support the respondents' claim that the amount of irrecoverable VAT is dependent on the purchase value of material inputs.

We also reject the respondents' concept that the VAT is not levied on exported subject merchandise and is only levied on domestically purchased inputs. Article 1 of the *2008 Chinese VAT Regulations* states:

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

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

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

More recently, the *2018 VAT Circular* states:

> "Where a taxpayer engages in a taxable sales activity for the value-added tax (VAT) purpose or imports goods, the previous applicable 17-percent and 11-percent tax rates are adjusted to be 16 percent and 10 percent respectively."[202]

---

[201] *See, e.g.*, *Frontseating Service Valves from the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 71385 (December 2, 2014), and accompanying IDM at Comment 5.
[202] *See 2018 VAT Circular* at I.

Thus, all parties that sell or import goods within China shall pay VAT in accordance with the regulations and that generally the VAT rate is 17 (or 16) percent. There are no provisions, either here or elsewhere in the *2008 Chinese VAT Regulation* or the *2012 VAT Circular* which exempt sales by an individual within China from VAT simply because the goods are exported. Exported goods are subject to VAT just as goods sold to a customer with China. Nonetheless, the VAT paid on exported goods may be eligible for exemption or refund consistent with these regulations. The respondents have failed to demonstrate that sales of subject merchandise are not subject to this requirement to pay VAT on subject merchandise. Rather, respondents may claim a refund of VAT consistent with these regulations, as discussed herein.

We do not find *China Mfrs. Alliance* or *Qingdao Qihang Tyre Co.* to be applicable as binding precedent in this investigation. In both cases, Commerce issued remand redeterminations disagreeing with the Court's opinion.[203] Further, the CIT has recently addressed the issue of the irrecoverable VAT within the *Chevron*[204] framework in several cases.[205] Unlike *China Mfrs. Alliance* and *Qingdao Qihang Tyre Co.*, the *Chevron* analysis in *Fushun Jinly* and *Juancheng* does not interpret the statute to prevent Commerce from finding irrecoverable VAT in U.S. prices in the absence of a finding of an actual imposition of an irrecoverable VAT.[206] *Fushun Jinly* and *Juancheng* held that section 772(c)(2)(B) of the Act affords Commerce broad discretion to calculate deductions for an export tax, duty, or other charge and sustained Commerce's deductions of irrecoverable VAT.[207] Even after *China Mfrs. Alliance*, *Jacobi Carbons 2017* followed *Fushin Jinly* and held that Commerce reasonably interpreted section 772(c)(2)(B) of the Act to deduct irrecoverable VAT from respondents' CEP as a charge imposed by the exporting country on the exportation of subject merchandise.[208] *Diamond Sawblades Manufacturers' Coalition* also upheld our deduction of irrecoverable VAT, notwithstanding *China Mfrs. Alliance.*[209] Our interpretation of the Chinese law to the effect that (1) exportation itself "gives rise to the irrecoverable VAT 'imposed' by {China} on the process of manufacture and on the sale of subject merchandise" and (2) "the 'irrecoverable' amount of VAT is to be calculated by reference to the full FOB export value of subject merchandise" is reasonable and sustained in *Diamond Sawblades Manufacturers' Coalition*.[210]

---

[203] *See* Commerce's Remand Redeterminations, *China Manufacturing Alliance, LLC, et al. v. United States*, Consol. Court No. 15-00124; Slip Op. 17-12 (CIT 2017), Final Results of Redetermination Pursuant to Court Remand, dated June 21, 2017; and *Qingdao Qihang Tyre Co., Ltd., et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-35 (CIT 2018), Final Results of Redetermination Pursuant to Court Remand, dated July 24, 2018.
[204] *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45 (1984) (*Chevron*) (holding that, in the context of agency rulemaking, and assuming the statute is silent or ambiguous, courts should defer to agency understanding of the statute pursuant to which the agency promulgates regulations).
[205] In the chronological order, those cases are *Fushun Jinly Petrochemical Carbon Co. v. United States*, No. 14-00287, slip op. 16-25 at 25 (CIT March 23, 2016) (*Fushun Jinly*); *Juancheng Kangtai Chem. Co. v. United States*, No. 14-00056, slip op. 17-3 at 32-33 (CIT January 19, 2017) (*Juancheng*); *China Mfrs. Alliance*; *Jacobi Carbons 2017*; *Aristocraft 2017*; and *Diamond Sawblades Manufacturers' Coalition.*
[206] *See Aristocraft 2017*, 269 F. Supp. 3d at 1323-24.
[207] *Id.* at 1324.
[208] *Id.*
[209] *See Diamond Sawblades Manufacturers' Coalition*, 301 F. Supp. 3d at 1335-39.
[210] *Id.*

As explained above, where the irrecoverable VAT is a fixed percentage of U.S. price, the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.[211] *Jacobi Carbons 2017* held that this methodology reasonably interpreted vague language in section 772(c)(2)(B) of the Act, including the requirement that such taxes or other charges be imposed by the exporting country.[212] *Aristocraft 2017* described the differences of the *Chevron* analyses between *Juancheng*, *China Mfrs. Alliance*, and *Jacobi Carbons 2017* and stated that "{t}his Court is persuaded by the *Chevron* analysis of *Jacobi Carbons 2017* and *Juancheng*."[213]

We also do not find that *Fine Furniture* is applicable to this investigation.[214] The sole issue in *Fine Furniture* regarding irrecoverable VAT is the appropriate FOB export value to which to apply the irrecoverable VAT rate. In the underlying administrative review of *Fine Furniture*, Commerce did not consider the transfer price between the respondent and the respondent's affiliate headquartered in Singapore to be an appropriate basis for calculating the FOB export value because Commerce treated them as a single entity and their internal transactions as intra-company transactions, not export sales.[215] On remand, Commerce found it more appropriate to calculate the irrecoverable VAT using the transfer price between the respondent and the affiliate in Singapore as the FOB export value.[216] We do not have a similar situation in this investigation.

The respondents and the CIT (*e.g.*, in *Qingdao Qihang Tyre Co.*) both misread the Federal Circuit's decision in *Federal Mogul*.[217] As an initial matter, the law under review in *Federal Mogul* was a prior version of the antidumping statute, and so the nuances of the ruling are not transferrable to the current version of the statute. Additionally, the ruling in *Federal Mogul* addressed adjustments for price-to-price comparisons in a market economy context (*i.e.*, appropriate adjustments for home market prices), rather than adjustments that are appropriate in the NME context which is based upon FOPs. The CIT's decision in *Diamond Sawblades Manufacturers' Coalition* sustained our use of VAT rates to calculate the VAT amounts and distinguished *Federal Mogul* on the basis that *Federal Mogul* was in the context of a market economy's VAT, as explained in *Section 772(c)(2)(B) Methodological Change*.[218] Contrary to the respondents' argument, in *Federal Mogul*, the Federal Circuit's decision regarding how to treat certain taxes provided deference to Commerce's interpretation of the Act ("Commerce's

---

[211] *Id*.
[212] *See Aristocraft 2017*, 269 F. Supp. 3d at 1324; and *Jacobi Carbons 2017*, 222 F. Supp. 3d at 1187-88 ("To understand the parameters of what it means for something to be 'imposed,' and, thus, to determine whether Commerce's statutory construction is permissible, the court considers the term's plain meaning. …. The ordinary meaning of the term 'imposed' demonstrates the reasonableness of Commerce's interpretation.").
[213] *See Aristocraft 2017*, 269 F. Supp. 3d at 1322.
[214] *See* Zhongjiang's Case Brief at 43-44 (citing *Fine Furniture (Shanghai), Ltd. v. United States*, 2016 Ct. Intl. Trade LEXIS 85, 11-15 (Ct. Int'l Trade Sept. 9, 2016) (*Fine Furniture*)).
[215] *See Fine Furniture*, 182 F. Supp. 3d at 1359; *see also* Final Results of Redetermination Pursuant to Court Order in *Fine Furniture*, dated August 28, 2017, at 6, for the location of the affiliate's headquarters.
[216] *See* Final Results of Redetermination Pursuant to Court Order in *Fine Furniture*, dated August 28, 2017, at 8-9.
[217] *See* Zhongjiang's Case Brief at 41 (citing *Federal Mogul v. United States*, F. 3d 1572 (Fed. Cir. 1995) (*Federal Mogul*); and *E. I. du Pont de Nemours & Co. v. United States*, 20 CIT 373, 381 (1996).
[218] *See Diamond Sawblades Manufacturers' Coalition*, 301 F. Supp. 3d at 1336-39 (citing *Section 772(c)(2)(B) Methodological Change*, 77 FR at 36483).

understanding of its duty under the Act, as well as under our international agreements, and the expertise it brings to the administration of the Act, lends support to the position it has taken").[219]

We also disagree with the respondents that the Court's finding in *Dorbest 2010* is relevant here.[220] The statute is ambiguous as to whether unrefunded VAT which would otherwise be refunded or repaid might be an export tax under section 772(c)(2)(B) of the Act. Thus, in *Section 772(c)(2)(B) Methodological Change*, Commerce provided public notification of a clear change in its methodology with regard to unrefunded VAT on export sales from certain NME countries, pursuant to its interpretation of section 772(c)(2)(B) of the Act, and Commerce has implemented the change consistently in all applicable cases initiated after the publication of the notice in the *Federal Register*.[221] Consequently, our application of the VAT rates is in accordance with the respondents' reporting, the applicable Chinese regulations, our methodology in *Section 772(c)(2)(B) Methodological Change*, and the judicial precedent.[222] Our finding of the irrecoverable VAT imposed on the exportation of the subject merchandise is based on the Chinese regulations on the record, not based on presumption.[223]

We disagree with the respondents' notion that *Magnesium Corp.*, *Globe Metallurgical*, and *Bridgestone* have any precedent in this investigation in regard to our treatment of VAT in an NME;[224] Commerce's methodology regarding irrecoverable VAT related to export sales, in the NME context, has changed and was publicly announced in the *Section 772(c)(2)(B) Methodological Change*. We also disagree that *Hebei Metals* is relevant; in that case, the Court held that Commerce has, to the extent practicable, an obligation to provide parties with an opportunity to remedy or explain a deficiency.[225] In this investigation, we afforded the respondents the opportunity to provide information regarding the Chinese VAT system and the irrecoverable VAT incurred upon export in the initial and supplemental questionnaires.[226] Thus, consistent with the Court's finding in *Hebei Metals*, and to the extent practicable, we provided the respondents with multiple opportunities to explain the Chinese VAT system and the irrecoverable VAT it incurred upon export.

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

---

[219] *See Federal Mogul*, at 1582.
[220] *See* Zhongjiang's Case Brief at 31 (citing *Dorbest Ltd. v. United States*, 604 F. 3d 1363, 1371-72 (Fed. Cir. 2010) (*Dorbest 2010*)).
[221] *See Section 772(c)(2)(B) Methodological Change*, 77 FR at 36483.
[222] *Id.* at 15 (citing *Section 772(c)(2)(B) Methodological Change*, 77 FR at 36483).
[223] *Id.* at 15-16.
[224] *See* Zhongjiang's Case Brief at 41 (citing *Magnesium Corp. of Am. v. United States*, 166 F. 3d 1364, 1370-71 (Fed. Cir. 1999) (*Magnesium Corp.*), at 30 (citing *Globe Metallurgical Inc. v. United States*, 781 F. Supp. 2d 1340, 1346-1347 (CIT 2011) (*Globe Metallurgical*)), and at 31, 39 (citing *Bridgestone Ams., Inc. v. United States*, 33 CIT 1040, 1048-50 (2009) (*Bridgestone*)).
[225] *See* Zhongjiang's Case Brief at 43 (citing *Hebei Metals,* 28 CIT at 1193-95).
[226] *See*, *e.g.*, Junyue's Section C Response, dated May 31, 2019; Junyue's Supplemental Response, dated July 15, 2019; and Zhongjiang's Section C Response, dated May 31, 2019.

## IX. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final determination of this investigation and the final dumping margins for all the investigated companies in the *Federal Register*.

| ☒ | ☐ |
|---|---|
| Agree | Disagree |

2/7/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance