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Administrative Review
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April 15, 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: Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China and Rescission, in part; 2017 2018

I. SUMMARY

The Department of Commerce (Commerce) analyzed the comments submitted by interested parties in this administrative review of the antidumping duty (AD) order on certain passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) covering the period of review August 1, 2017 through July 31, 2018.

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

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

Comment 1: Whether Russia Should be the Primary Surrogate Country
Comment 2: Whether to Grant a Separate Rate to Haohua
Comment 3: Whether to Grant Pirelli China a Separate Rate
Comment 4: Whether Commerce has the Authority to Establish a China-Wide Entity Rate

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission, in Part; 2017-2018*, 84 FR 55909 (October 18, 2019) and accompanying Preliminary Decision Memorandum (PDM) (*Preliminary Results*).

Comment 5: Whether to Correct Alleged Errors in New Continent's Margin Calculations
Comment 6: Whether to Correct Certain "Importer or Customer" names in New Continent's Draft Liquidation Instructions
Comment 7: Whether to Continue to Deduct Irrecoverable VAT from New Continent's Gross Unit Price
Comment 8: Whether to Grant a Double Remedy Adjustment to New Continent
Comment 9: Whether to Rescind the Administrative Review of Shandong Hengyu Science & Technology Co., Ltd.

II. BACKGROUND

Commerce published its *Preliminary Results* on October 18, 2019.[2] On October 16, 2019, Shandong Hengyu Science & Technology Co., Ltd. (Shandong Hengyu) filed a request that Commerce remove its name from the list of companies which withdrew their administrative review requests in the *Preliminary Results*.[3]

Between December 2 and 3, 2019, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (the petitioners), mandatory respondent Shandong New Continent Tire Co., Ltd. (New Continent), and separate rate respondents, Pirelli Tyre Co., Ltd. (Pirelli China) and Pirelli Tire LLC (Pirelli Tire USA) (collectively, Pirelli), each submitted case briefs.[4] On December 9, 2019, the mandatory respondent, New Continent, and separate rate respondent, Shandong Haohua Tire Co, Ltd. (Haohua), each submitted rebuttal briefs.[5]

On November 14 and 18, 2019, Pirelli and the petitioners each submitted a hearing request.[6] On March 16, 2020, Pirelli and the petitioners withdrew their requests for a public hearing.[7]

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[2] *See Preliminary Results.*
[3] *See* Shandong Hengyu's Letter, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China - Ministerial Error," dated October 16, 2019 (Shandong Hengyu's Case Brief).
[4] *See* Petitioners' Letter, "Case Brief Submitted on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC," dated December 2, 2019 (Petitioners' Case Brief); and Shandong New Continent Tire Co., Ltd.'s Letter, "Shandong New Continent Tire Co., Ltd. Case Brief in the Third Administrative Review of Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China," dated December 2, 2019 (New Continent's Case Brief); and Pirelli's Letter, "Pirelli's Case Brief Certain Passenger Vehicle and Light Truck Tires from China," dated December 3, 2019. (Pirelli's Case Brief).
[5] *See* Petitioners' Letter, "Rebuttal Brief Submitted on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC," dated December 9, 2019 (Petitioners' Rebuttal Brief); and New Continent's Letter, "Shandong New Continent Tire Co., Ltd. Rebuttal Brief in the Third Administrative Review of Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China," dated December 9, 2019 (New Continent's Rebuttal Brief); and Haohua's Letter, "Passenger Vehicle and Light Truck Tires from China- Comments in Lieu of Rebuttal Case Brief," dated December 9, 2019.
[6] *See* Pirelli's Letters, "Pirelli's Request for Hearing Passenger Vehicle and Light Truck Tires from China," dated November 14, 2019; and November 18, 2019.
[7] *See* Petitioners' Letter, "Passenger Vehicle and Light Truck Tires from China: Withdrawal of Request for Hearing," dated March 16, 2020; and Pirelli's Letter, "Pirelli's Withdrawal of Request for Hearing Passenger Vehicle and Light Truck Tires from China," dated March 16, 2020.

On February 13, 2020, Commerce fully extended the deadline for the final results until April 15, 2020.[8]

III. SCOPE OF THE ORDER

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

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

Prefix designations:

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

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

Suffix letter designations:

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

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

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

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

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

[8] *See* Memorandum, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review – 2017-2018," dated February 13, 2020.

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

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

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

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

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

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

(b) the designation “T” is molded into the tire’s sidewall as part of the size designation, and,

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

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

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

(b) the designation “ST” is molded into the tire’s sidewall as part of the size designation,

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

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

(e) either

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

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

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

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

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

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

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

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

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

The products covered by this order are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.10.10.10, 4011.10.10.20, 4011.10.10.30, 4011.10.10.40, 4011.10.10.50, 4011.10.10.60, 4011.10.10.70, 4011.10.50.00, 4011.20.10.05, and 4011.20.50.10. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.45.10, 4011.99.45.50, 4011.99.85.10, 4011.99.85.50, 8708.70.45.45, 8708.70.45.60, 8708.70.60.30, 8708.70.60.45, and 8708.70.60.60. While HTSUS subheadings are provided for convenience and for customs purposes, the written description of the subject merchandise is dispositive.

IV. DISCUSSION OF THE ISSUES

Comment 1: Whether Russia Should be the Primary Surrogate Country

Petitioners' Case Brief

- Russia should be the primary surrogate country as it meets all the statutory requirements and provides the best surrogate value data for all factors of production.[9]

[9] *See* Petitioners' Case Brief at 1.

- Commerce's assertion that all of New Continent's natural rubber inputs could not be valued using Russian data is incorrect.[10] Russian data provides all needed information for natural rubber.[11]
- New Continent's natural rubber inputs are correctly valued using data for technically specified rubber with New Continent's SV data listing two natural rubber inputs: "Natural Rubber SMR20" and "Natural Rubber STR20".[12] New Continent suggested that both be valued using HTS 400121, which is the classification for natural rubber in smoked sheet.[13] In addition, both are specified grades of natural rubber and not smoked sheets of natural rubber.[14]
- Commerce previously distinguished technically specified grades from smoke sheet grades.[15] As a result, both natural inputs are valued based on the import data for technical specified natural rubber (HTS 400122) and not on the import data of smoked sheets.[16]
- Russian data shows imports of natural rubber under HTS 400122 (technically specified natural rubber) from many countries including Belarus, Cameroon, Guatemala, Cote d'Ivoire, Liberia, Malaysia, Nigeria.[17] As a result, it does not contain the necessary information on all the required natural inputs.[18]
- Voltyre's financial statement is more relevant because it is from a producer of identical merchandise whereas Sun Tyre is not a tire manufacturer but instead focused on re-treading manufacturing.[19]
- The fact that the Voltyre's financial statement is one of a tire manufacturer outweighs the fact that the Sun Tyre's financial statement is more contemporaneous.[20]

New Continent's Rebuttal Brief

- New Continent's proposed HTS 400121 in its surrogate value rebuttal submission from June 12, 2019 was not rebutted by the petitioners.[21]

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[10] *Id*. at 2.
[11] *Id.* at 1.
[12] *Id.* at 2 (citing New Continent's Letter, "New Continent First Surrogate Value Comments: Third Administrative Review of the Antidumping Duty Order on Passenger Vehicle and Light Truck Tires from the People's Republic of China," dated June 3, 2019 (New Continent's June 3, 2019 SV Comments) at Exhibit 1; and Petitioners' Letter, "Passenger Vehicle and Light Truck Tires from the People's Republic of China–Petitioners' Surrogate Value Information," dated June 3, 2019 (Petitioners' June 3, 2019 SV Comments) at Exhibit 1).
[13] *Id.*at 2 (citing New Continent's June 3, 2019 SV Comments at Exhibits 1 and 2).
[14] *Id.* at 2.
[15] *Id.* at 2.
[16] *Id.* at 2-3.
[17] *Id.* at 3.
[18] *Id.* at 3 (citing New Continent's June 3, 2019 SV Comments).
[19] *Id.* at 3 (citing *Preliminary Results,* PDM at 2); and New Continent's Letter, "New Continent Final Surrogate Value Comments: Third Administrative Review of the Antidumping Duty Order on Passenger Vehicle and Light Truck Tries from the People's Republic of China," dated August 19, 2019 (New Continent's August 19, 2019 Supplemental SV Comments) at Exhibit 2B.
[20] *Id.* at 4 (citing Petitioners' June 3, 2019 SV Comments at Exhibit 20); and New Continent's August 19, 2019 Supplemental SV Comments at Exhibit 2B.
[21] *See* New Continent's Rebuttal Brief at 1-2.

- Malaysian data is superior to the Russian data because with respect to HTSHTS 400122, Malaysia imported 147,069,218 kg of rubber from countries that are market economies that don't provide generally available subsidies whereas Russian imported 21,347,777 kg from such countries.[22]
- The surrogate financial ratios of Sun Tyre are better than Voltyre of Russia.[23] There is no difference between tire retreading and tire manufacturing.[24]
- Voltyre submitted a financial statement that is only partially translated into English and Commerce has previously determined that translations are required for it to evaluate financial statements.[25]
- Voltyre's financial statements are potentially distorted by countervailable subsidy benefits from state assistance.[26] Commerce does not utilize data that results from countervailing subsidies when other data is available for calculating surrogate financial ratios.[27]
- Voltyre's financial statement is not contemporaneous because its 2016 financial statement is seven months outside of the POR while the Sun Tyre financial statement is contemporaneous because it overlaps with the POR.[28]

Commerce Position: We have continued to use Malaysia as the primary surrogate country for the final results. However, we have used Malaysian HTS 400122 values for New Continent's "Natural Rubber SMR20" and "Natural Rubber STR20" inputs instead of HTS 400121.

Section 773(c)(1) of the Tariff Act of 1930 as amended (the Act) directs Commerce to base normal value (NV), in most circumstances, on the non-market economy (NME) producer's factors of production (FOPs), valued in a surrogate market economy (ME) country or countries considered to be appropriate by Commerce. Specifically, in accordance with section 773(c)(4) of the Act, in valuing the FOPs, Commerce shall utilize, "to the extent possible, the prices or costs of FOPs in ME countries that are: (A) at a level of economic development comparable to that of the NME country; and (B) significant producers of comparable merchandise."[29] As noted in the *Preliminary Results*, Commerce identified several countries, including Malaysia and

[22] *Id.* at 1-2 (citing Petitioners' June 3, 2019 SV Comments at Exhibit 2).
[23] *Id.* at 4.
[24] *Id.* at 13.
[25] *Id.* at 5 (citing *High Pressure Steel Cylinders from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 26739 (May 7, 2012); and *Third Administrative Review of Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 46565 (September 10, 2009)).
[26] *Id.* at 8 (citing New Continent's August 19, 2019 Supplemental SV Comments at Exhibit 4).
[27] *Id.* at 9-10 (citing *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 73 FR 76336 (December 16, 2008); and *Certain Steel Threaded Rod from the People's Republic of China: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 67332 (November 9, 2012)).
[28] *Id.* at 10.
[29] *See* Commerce Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (Policy Bulletin 04.1) available on Commerce's website at http://enforcement.trade.gov/policy/bull04-1.html.

Russia, as countries at the same level of economic development as China.[30] Section 773(c)(1) of the Act states that "the valuation of the factors of production shall be based on the best available information regarding the values of such factors..." In the *Preliminary Results,* Commerce determined that data from Malaysia offered the best available surrogate value information and rejected the Russian data because data from Malaysia covered each type of FOP used by New Continent, whereas the Russian data covered only some of the natural rubber used by New Continent. Commerce also notes that the Global Trade Atlas (GTA) data for Malaysia used to value all of New Continent's factors of production was tax and duty-exclusive.[31]

Even though Commerce continues to find Malaysian FOP data to be the best data for valuing New Continent's FOPs, we agree with the petitioners that Commerce should use a more appropriate HTS number to value certain rubber inputs utilized by New Continent. The record of this review shows that New Continent used "Natural Rubber SMR20" and "Natural Rubber STR20."[32] In its surrogate value submission, New Continent averred that Commerce should use HTS 400121 (the classification for natural rubber in smoked sheets).[33] However, information on the record shows that "Natural Rubber SMR20" and "Natural Rubber STR20" are technically specified rubber properly classified under HTS 400122.[34] On this basis, we have determined to use HTS 400122 values for New Continent's "Natural Rubber SMR20" and "Natural Rubber STR20" inputs for the final results. The record contains values for HTS 400122, which covers "Natural Rubber SMR20" and "Natural Rubber STR20" from Malaysia and Russia. The record also shows that Malaysia and Russia each imported substantial amounts of rubber under HTS 400122 from market economies that do not provide generally available subsidies.

In addition to still finding that Malaysian data for valuing New Continent's FOPs is still the best option, Commerce also continues to find that the Malaysian financial statement for Sun Tyre is still the best for valuing New Continent's factory overhead, selling, general and administrative expenses, and profit, compared to the financial statements from Russia. In choosing surrogate financial ratios, it is Commerce's practice to use data from market economy surrogate companies based on the "specificity, contemporaneity, and quality of the data."[35] Further, Commerce has a regulatory preference to "value all factors in a single surrogate country," pursuant to 19 CFR 351.408(c)(2), as well as a practice "to only resort to a secondary surrogate country if data from

[30] *See* Commerce's Letter, "Administrative Review of Passenger Vehicle and Light Truck Tires from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated April 15, 2019 at the Attachment.
[31] *See* Memorandum, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Surrogate Value Memorandum," dated October 10, 2019 (Preliminary Surrogate Value Memorandum).at Attachment 2; and Memorandum, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Surrogate Value Memorandum," dated concurrently with the instant memorandum at Attachment 1.
[32] *See* New Continent's June 3, 2019 SV Comments at Exhibit 1.
[33] *Id*.
[34] *See* New Continent's Letter, "Supplemental Questionnaire Responses for Shandong New Continent Tire Co., Ltd.: Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China; 2017-18 AD Administrative Review," dated August 27, 2019 at Exhibit SD-1.
[35] *See Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances*, 71 FR 29303 (May 22, 2006), and accompanying IDM at Comment 1.

the primary surrogate country are unavailable or unreliable."[36] Commerce normally will use non-proprietary information gathered from producers of identical or comparable merchandise, in the surrogate country, to value manufacturing overhead, general expenses, and profit.[37] Additionally, the courts have recognized our discretion when choosing appropriate companies' financial statements to calculate surrogate financial ratios.[38] Moreover, when selecting among the available surrogate financial ratios, Commerce generally will not consider surrogate financial statements which contain evidence of countervailable subsidies when other useable statements are available.[39]

For the *Preliminary Results*, pursuant to 19 CFR 351.408(c)(4), Commerce valued factory overhead, selling, general and administrative expenses, and profit using non-proprietary information gathered from Sun Tyre, a Malaysian tire retreader, for the fiscal year ending October 31, 2017.[40] It is our practice in NME proceedings to obtain surrogate financial ratios using, whenever possible, surrogate-country producers of identical or comparable merchandise, provided that the surrogate data are not distorted or otherwise unreliable.[41] Commerce also selects surrogate financial statements that are publicly available, comparable to the respondent's experience, and contemporaneous with the period being reviewed or investigated.[42] For these final results, we continue to find Sun Tyre's financial statements to be the best available information on the record of this review. Specifically, Sun Tyre's financial statement states that the principal activities of the company are "retreading of tyres, dealing in rubber products and investment holding."[43] Sun Tyre's tire retreading activities indicate that the company has a level of manufacturing capabilities that is similar to tire production. Thus, the retreaded tires produced by Sun Tyre can be considered merchandise comparable to the merchandise under consideration in accordance with 19 CFR 351.408(c)(4).[44] In addition, Sun Tyre's 2017 fully translated financial statement is publicly available and contemporaneous with the POR. Finally, we note that, unlike Voltyre's financial statement, there was no indication in the Sun Tyre's 2017 financial statement that the company received any government subsidies.

[36] *See Jiaxing Brother Fastener Co. v. United States*, 961 F. Supp. 2d 1323, 1335 (CIT 2014) (quoting *Sodium Hexametaphosphate from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 59375 (September 27, 2012), and accompanying IDM at Comment 1).
[37] *See* 19 CFR 351.408(c)(4).
[38] *See, e.g.*, *FMC Corp. v. United States*, 27 CIT 240, 251 (CIT 2003) (holding that Commerce can exercise discretion in choosing between reasonable alternatives), aff'd in *FMC Corp. v. United States*, 87 F. Appx. 753 (Fed. Cir. 2004) and Shandong Huarong, 484, 491–94 (2005); and *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances*, 71 FR 29303 (May 22, 2006), and accompanying IDM at Comment 1.
[39] *See Administrative Review of Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results and Partial Recession of Antidumping Duty Administrative Review*, 75 FR 49460 (August 13, 2010), and accompanying IDM at Comment 9.
[40] *See* Preliminary Surrogate Value Memorandum at 3-4.
[41] *Certain Tissue Paper Products from the People's Republic of China: Final Results and Partial Rescission of the 2007-2008 Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 74 FR 52176 (October 9, 2009) and accompanying IDM (*Tissue Paper Products from China*) at Comment 5.
[42] *See Tissue Paper Products from China* at Comment 5.
[43] *See* New Continent's August 19, 2019 Supplemental SV Comments at Exhibit 2B.
[44] *Id*.

The 2016 financial statements on the record for Voltyre are not contemporaneous with the POR, whereas the period covered by the financial statements for Sun Tyre on the record overlap with the instant POR. Moreover, the Sun Tyre financial statements are fully translated while the Voltyre financial statements are only partially translated.

The record contains a worksheet with Voltyre's profit and loss information on it, including translations of the various line items on the worksheet.[45] However, the majority of the financial statements, including any explanatory notes accompanying these line items, information related to Voltyre's accounting policies, the auditor's opinion, the director's report, the balance sheet, or any other relevant information (including basic, but essential, information, such as the products produced during that fiscal year) were not translated.[46] Given these serious translation deficiencies, Commerce is unable to evaluate the suitability of Voltyre's profit and loss data as a source for the surrogate financial ratios, and we will not rely on these data for purposes of our calculations, consistent with our practice.[47]

Further, even assuming, arguendo, that Voltyre is a producer of identical merchandise, we disagree with the petitioners that it would be appropriate to use their non-contemporaneous financial statements here, given the extremely limited translation provided. Without a complete translation of the financial statements, we are unable to attest to the legitimacy and accuracy of the information that the petitioners used to calculate the ratios proposed in the calculation worksheet. Further, the lack of translation precludes Commerce from assessing other vital information, such as determining if Voltyre received countervailable subsidies, if its statements contain an unqualified auditor's opinion, and whether the petitioners have appropriately categorized, added, and/or removed certain expenses in its calculation worksheet.

In view of these deficiencies, we will not use Voltyre's financial statements to calculate the surrogate financial ratios. Leaving any part of that information untranslated effectively withholds vital information from Commerce and other interested parties. Typically, the footnotes and disclosures included in a company's financial statements are required by generally accepted accounting principles in a company's home country and these disclosures are deemed vital to the users of those financial statements. We equate the leaving of any footnotes or disclosures untranslated to be the same as omitting them completely, leaving them unavailable for the parties to a proceeding to review or comment on them. In this regard, the petitioners have submitted an entirely incomplete and unusable financial statement, lacking the vital information necessary to conduct our analysis.

For the reasons explained above, we have continued to use Malaysia as the primary surrogate country for the final results.

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[45] *See* Petitioners' June 3, 2019 SV Comments at Exhibit 18.
[46] *Id.*
[47] Commerce has an established practice of rejecting incomplete financial statements for the calculation of surrogate financial ratios. *See, e.g.*, *Seamless Refined Copper Pipe and Tube from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 60725 (October 1, 2010) and accompanying IDM at Comment 2; and *Tissue Paper Products from China*, 74 FR at 52176 and accompanying IDM at Comment 5. This practice has recently been upheld in a case before the Court of Appeals for the Federal Circuit. *See CP Kelco US, Inc., v. United States*, CAFC Court No: 19-1207 (February 10, 2020).

Comment 2: Whether to Grant a Separate Rate to Haohua

Petitioners' Case Brief

- Shandong Haohua Tire Co., Ltd. (Haohua) should not be granted a separate rate because Haohua did not demonstrate that it had a suspended entry.[48] In reviews, Commerce determined that separate rates cannot be assigned to exporters without the submission of a U.S. Customs 7501 Entry Summary showing a suspended entry.[49]

Haohua's Rebuttal Brief

- Information on the record shows that Haohua had Type 03 suspended entries during the POR.[50]
- Commerce should continue assigning Haohua a separate rate for the final results.[51]

Commerce Position: Commerce continues to find that Haohua qualifies for a separate rate since information on the record demonstrates that Haohua had Type 03 suspended entries made during the POR which is contrary to the petitioners' argument.[52] Moreover, as stated in the Separate Rate Application (SRA), Commerce does not require that a separate rate applicant submit a U.S. Customs 7501 Entry Summary as part of its separate rate application as long as suspended entries are submitted in the required time period.[53]

Comment 3: Whether to Grant Pirelli China a Separate Rate

Pirelli's Case Brief

- Commerce relied on only one of four criteria in determining the absence of *de facto* control of Pirelli China by the Chinese Government.[54] Commerce is required to consider all four criteria in evaluating whether an exporter is subject to government control. In particular, Commerce is primarily "concerned with central government control and only

[48] *See* Petitioners' Case Brief at 5 (citing Haohua's Letter, "Passenger Vehicle and Light Truck Tires from China: Separate Rate Application," dated November 13, 2018 (Haohua SRA) at 8).
[49] *Id.* at 5 (citing Haohua SRA at 7).
[50] *See* Haohua's Letter, "Passenger Vehicle and Light Truck Tires from China Comments in Lieu of Rebuttal Case Brief," dated December 9, 2019 (Haohua Rebuttal Comments) at 2.
[51] *See* Haohua Rebuttal Comments at 2 (citing section 782(d) of the Act).
[52] *Id.* at 2.
[53] *See* Haohua Rebuttal Comments at 2 (citing Haohua SRA at Appendix B). Haohua made multiple attempts to request an entry summary from its importer. As the 7501 contains importer's confidential data, the importer refused.
[54] *See* Pirelli's Case Brief at 23-25 (citing Policy Bulletin 05.1). The four factors are: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the central, provincial and local governments in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

grants separate rates where an exporter's export activities are shown to be independent of such government control."[55]

- China National Chemical Corporation (Chem China) did not have a majority ownership stake in Pirelli China during most of the POR.[56]
- Chem China did not have a majority indirect ownership in Pirelli China for the majority of the POR. During 10 out of 12 months of the instant POR (*i.e.*, starting from October 4, 2017), Chem China and Silk Road Fund, companies supervised by China's Central State-owned Assets Supervision and Administration Commission of the State Council (SASAC), only had a combined 41.6 percent indirect ownership in Pirelli & C. S.p.A. and 36.9 percent indirect ownership interest in Pirelli China.[57]
- This minority level of ownership of the Chinese state-owned enterprise (SOE) shareholders *per se* does not give rise to the presumption of government control even under Commerce's *Diamond Sawblades* standards.[58]
- The majority of Pirelli & C. S.p.A.'s board (eight out of 15) are independent directors. China National Tire & Rubber Corporation, Ltd. (CNRC) appoints eight directors where four must be independent, Marco Tronchetti Provera & C. S.p.A (MTP) appoints four directors where one must be independent, CNRC and MTP appoint 2 independent directors, and Pirelli & C. S.p.A. appoints on independent director.[59] The independence of these eight directors is evaluated pursuant to Italian law requirements and must be reassessed on an annual basis.[60]
- The majority (11 out of 15) of Pirelli & C. S.p.A.'s board members do not hold any positions with Chem China or the CNRC. Importantly, none of the independent directors hold any positions with Chem China or the CNRC. Moreover, only six out of 15 board members are Chinese nationals.[61]
- There is no evidence that the independent directors violated their duty of independence from the shareholders that appointed them.[62] Thus, Commerce's presumption of Chinese government control of Pirelli China through Pirelli & C. S.p.A.'s board membership is not supported by the record.[63]
- The record makes clear that the Chinese Government did not have the ability to appoint a majority of Pirelli China's Board of Directors during the POR. Pirelli & C. S.p.A. has zero direct involvement in the appointment of Pirelli China's Board of Directors, nor do any of Pirelli China's directors also serve on the Board of Pirelli & C. S.p.A.[64]

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[55] *See* Pirelli's Case Brief at 47 (citing *Hontex Enters. Inc. v. United States*, 248 F. Supp. 2d 1323, 1337 (Ct. Int'l Trade 2003) (*Hontex*)).
[56] *Id.* at 28 (citing Pirelli's Letter, "Pirelli Tyre Co., Ltd. and Pirelli Tire LLC's Letter, "Pirelli's Separate Rate Application – Certain Passenger Vehicle and Light Truck Tires from China," dated November 14, 2018 (Pirelli SRA) at 13 and Exhibit 5).
[57] *Id.* at 28.
[58] *Id.* at 28 (citing *Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China* May 6, 2013 in *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012)).
[59] *Id.* at 28-29 (citing Pirelli SRA at 16-17 and Exhibit 10).
[60] *Id.* at 30-31.
[61] *Id.* at 32.
[62] *Id.* at 31 (citing Pirelli SRA at Exhibits 9 and 16D).
[63] *Id.* at 31.
[64] *Id.* at 36 (citing Pirelli SRA at Exhibits 5 and 16).

- Pirelli & C.S.p.A.'s proprietary know-how is also strictly protected by Pirelli & C. S.p.A.'s Articles of Association (AoA). Article 9 of Pirelli & C. S.p.A.'s AoA requires that any transfer and/or disposal of the "know-how" owned by Pirelli & C.S.p.A., shall be approved by the shareholders' meeting with the favorable vote of at least 90 percent of Pirelli & C.S.p.A.'s outstanding share capital. In light of these protections Chem China, through its indirect ownership alone, cannot change or dispose of certain of Pirelli & C.S.p.A.'s "core values."[65]
- The 2017 Shareholder Agreement further authorizes Mr. Marco Tronchetti Provera to exclusively select Pirelli & C. S.p.A.'s management, preventing the CNRC board members from influencing the company's day-to-day operations.[66]
- As a listed company, Pirelli & C. S.p.A. has to be compliant with all related applicable Italian laws and regulations. In particular, as from its relisting in 2017, the company is no longer subject to the "management and coordination" of the CNRC and is again subject to several constraints aimed to protect the interests of the minority shareholders and to the market.[67]

Petitioners' Rebuttal Brief

- Commerce is not required to address all the criteria in Policy Bulletin 05.1 for determining *de jure* and *de facto* governmental contro1.[68]
- Pirelli China is 90 percent owned by the CNRC/Chem China through the ownership of other companies.[69]

Commerce Position: We have not granted a separate rate to Pirelli China for these final results because it has not rebutted the presumption of *de facto* government control.

Pursuant to section 771(18) of the Act, Commerce has the authority to determine if a country is an NME. In proceedings involving NME countries, such as China, there is a rebuttable presumption that all companies within the country are subject to government control and should be assigned a single, country-wide antidumping duty rate.[70] An exporter will receive the country-wide rate by default unless it affirmatively demonstrates that it enjoys both *de jure* and *de facto* independence from the government over its export activities. Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities under a test established in *Sparklers* as

[65] *Id.* at 38.
[66] *Id.* at 42.
[67] Pirelli claims that, pursuant to Italian law, "management and coordination" is a concept that consists in giving a unitary operational direction to different companies, by applying a common financial policy and strategy and managing them as a unique enterprise, with a view to a better achievement of the goals pursued by the whole group. This happens when there exists a constant flow of instructions relating to the management, the collection of financial resources, the financial statements policies, *etc*., from the company exercising management and coordination activities to the company submitted to these management and coordination activities, *i.e*., in many multinational companies. From a practical perspective, these instructions should be reflected in all decisions of the company that receives them, including in both the board of directors and shareholders. *See* Pirelli's Case Brief at 45.
[68] *See* Petitioners' Rebuttal Brief at 10 (citing Policy Bulletin 05.1 at 2).
[69] *Id.* at 27 (citing Pirelli SRA at 2).
[70] *See Sigma Corp. v. United States*, 117 F. 3d 1401, 1405 (Fed. Cir. 1997) (*Sigma Corp.*).

amplified by *Silicon Carbide*, and further refined in *Diamond Sawblades*.[71] The burden of rebutting the presumption of government control rests with the exporter.[72] The *de jure* criteria are: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.[73] The *de facto* criteria are: (1) whether the export prices are set by or are subject to the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[74]

We preliminary denied Pirelli China a separate rate based on the *de facto* criterion (3), *i.e*., that control over Pirelli's selection of management exists through SASAC entity CNRC. Pirelli's reliance on *Hontex* focuses mainly on *de facto* criterion (1), *i.e*., Pirelli China's ability to set export prices. Such reliance is misplaced in that it ignores that a company must also demonstrate that it selects its management autonomously.

As an initial matter, we disagree with Pirelli that Commerce is required to consider all four criteria in evaluating whether an exporter is subject to *de facto* government control. Commerce "requires that exporters satisfy all four factors of the *de facto* control test in order to qualify for separate rate status."[75] As explained below, given that Pirelli China has not rebutted the presumption as to its autonomy from government control over the selection of management, we find it unnecessary to consider the other *de facto* criteria.[76]

As noted in the company's organization chart submitted with its SRA, Pirelli China is ultimately 36.9 percent indirectly owned by China Chem and the Silk Road Fund, two state-owned enterprises in China supervised by the Central State-owned Assets Supervision and Administration Commission of the State Council (SASAC).[77]

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[71] *See, e.g.*, *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991) (*Sparklers*); *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*); and *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013), and accompanying PDM at 7, unchanged in *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 1.

[72] *See Sigma Corp.*, 117 F. 3d at 1405.

[73] *See Ad Hoc Shrimp Trade Action Comm. v. United States*, 925 F. Supp. 2d 1315, 1320 n. 21 (CIT 2013) (*Ad Hoc Shrimp Trade Action Comm.*); and *Sparklers*, 56 FR at 20589.

[74] *See Ad Hoc Shrimp Action Trade Comm.*, 925 F. Supp. 2d at 1320 n.21; and *Silicon Carbide*.

[75] *See Shandong Rongxin Imp. & Exp. Co., Ltd. v. United States*, Slip Op. 18-107, at 19, 23 (CIT August 29, 2018) ("a respondent must demonstrate that it meets each criterion of the analysis in order to be considered de facto independent of the government").

[76] *See, e.g.*, *Polytetrafluoroethylene Resin from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 48590 (September 26, 2018), and accompanying IDM at Comment 2.

[77] *See* Pirelli SRA at 13 and Exhibit 5. Pirelli's ownership is discussed publicly in the public version of Pirelli's Case Brief at 28. For a complete business proprietary discussion of the Pirelli organization structure see Memorandum, "Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires

A minority indirect ownership does not in and of itself mean an absence of government control over company in an NME. When conducting a separate rate analysis for a company with less than a majority of SOE ownership, Commerce has considered whether the record contains additional indicia of control sufficient to demonstrate that the company lacks independence and therefore should receive the China-wide rate. Commerce's practice is to examine whether the government might also be able to exercise, or have the potential to exercise, control of a company's general operations through minority government ownership under certain factual scenarios.[78]

The record of this review shows that Pirelli & C.S.p.A. is the indirect majority shareholder of Pirelli China and it selects most of its board members.[79] Moreover, as Commerce stated in its initial decision to deny separate rate status to Pirelli China, the Pirelli entities share common board membership and management.[80] Specifically, during the POR Mr. Ren Jianxin was the Chairman and President of SASAC-owned China Chem and the Chairman of the Board of Pirelli & C. S.p.A, which is the 100 percent owner of Pirelli Tyre S.p.A.[81]

Pirelli points to the requirement laid out in Italian laws to support its contention that Pirelli & C.S.p.A. and its subsidiary, Pirelli China, are not subject control by the Chinese government.[82] However, Pirelli's argument that, pursuant to Article 2497 of the Italian Civil Code, Pirelli & C.S.p.A. was no longer subject to the "management and coordination" of the CNRC starting from October 4, 2017, meaning that the company and its subsidiaries are "totally independent and autonomous from its shareholders and not subject to any instructions or guidelines or policies deriving thereby" is unsupported by the record.[83] Article 2497 of the Italian Civil Code is not on the record of this review. Similarly, Pirelli's argument that, pursuant to the Italian Finance Code (TUF), the majority of Pirelli & C. S.p.A.'s board (eight out of fifteen members) are unrelated "independent directors" who are part of the legal structure aimed to protect the interests of the minority shareholders is unsupported by the record.[84] The TUF is not on the record of this review. As such, we are not convinced that the majority of Pirelli & C. S.p.A.'s board are "independent directors" who are part of the legal structure aimed to protect the interests of the minority shareholdersPirelli & C.S.p.A.

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from the People's Republic of China: Final Separate Rate Status," dated concurrently with the instant memorandum at "Pirelli Tyre Co., Ltd. (Pirell**i)"** (Final Separate Rate Memorandum).

[78] *See Certain Steel Wheels from the People's Republic of China: Preliminary Determination of Sales at Less-Than-Fair-Value*, 83 51568 (October 30, 2018), and accompanying IDM at 6 (unchanged in *Certain Steel Wheels from the People's Republic of China: Final Determination of Sales at Less-Than-Fair Value*, 84 FR 11746 (March 28, 2019).

[79] *See* Pirelli SRA at 24.

[80] *See* Memorandum, "Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Separate Rate Status," dated October 10, 2019 (Preliminary SRA Memorandum) at 2.

[81] *See* Preliminary SRA Memorandum at Exhibit 16D (Pirelli & C. S.p.A's Board of Directors and Key Managers Information).

[82] *See* Pirelli SRA at 43-46.

[83] *See* Pirelli's Case Brief at 29.

[84] *Id.* at 29.

The record of this review shows that China Chem is the single largest indirect shareholder in Pirelli & C.S.p.A.[85] Pirelli Group's 2017 annual report states that China National Chemical Corporation is the only party to directly or indirectly hold more than 3 percent of Pirelli & C.S.p.A.'s shares.[86] The explanatory notes of the same financial statements report that:

> Pirelli & C. S.p.A. is directly controlled by Marco Polo International Italy S.p.A. - following the merger which occurred during June 2017 with its subsidiary Marco Polo International Holding Italy S.p.A. - and is in turn therefore indirectly controlled by China National Chemical Corporation ("ChemChina"), a state-owned enterprise (SOE) governed by Chinese law with registered office in Beijing, and which reports to the Central Government of the People's Republic of China.
>
> On February 26, 2018 the Board of Directors authorized the publication of these consolidated Financial Statements.[87]

Also in its 2017 Annual Report, Pirelli & C.S.p.A. stated that the company is "indirectly controlled, pursuant to art. 93 TUF, by ChemChina via CNRC and certain of its subsidiaries, including Marco Polo."[88] Pirelli claims that the "explicit reference to Italian Finance Code (Art. 93 TUF) reflects strict compliance with the dictates of Italian Finance Code (TUF D. Lgs. 58/1998) which identifies from a corporate perspective the controlling shareholder even if such control derives from a shareholders' agreement or is mainly required for consolidation (and therefore accounting) purposes only,[89] as it is the case for Pirelli & C. S.p.A. and Chem China, where, as thoroughly explained above, the latter does not and did not exercise any influence in the management or business of the Pirelli Group as a whole."[90] However, Pirelli's claim that, pursuant to that Article 93 of the Italian Finance Code and Italian Finance Code (TUF D. Lgs. 58/1998), Pirelli & C.S.p.A. must report that it is controlled by Chem China "mainly for consolidation" (*i.e.*, accounting purposes) is unsupported by the record. Neither the Italian Finance Code (Art. 93 TUF) or the dictates of Italian Finance Code (TUF D. Lgs. 58/1998) are on the record of this review. As such, we are not convinced that Pirelli & C.S.p.A. must report that it is controlled by Chem China mainly for accounting purposes pursuant to the Italian Finance Code (Art. 93 TUF) or the dictates of Italian Finance Code (TUF D. Lgs. 58/1998).

Notwithstanding Pirelli's argument that the majority (11 out of 15) of Pirelli & C. S.p.A.'s board members do not hold any positions with Chem China or the CNRC and that only six of the board members are Chinese nationals, the record shows that the CNRC appointed the majority of

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[85] *See* Pirelli SRA at Exhibit 9 (Pirelli Group's 2017 Annual Report at 231).
[86] *Id.* at Exhibit 9 (Pirelli Group's 2017 Annual Report at 231).
[87] *Id.* at Exhibit 9 (Pirelli Group's 2017 Annual Report at 300).
[88] *Id.* at Exhibit 9 (Pirelli Group's 2017 Annual Report at 205).
[89] For example, the Statutory Auditors Report section of the Pirelli & C.S.p.A.'s 2017 Annual Report states that with "with the start of trading all management and coordination activities by Marco Polo International Italy S.p.A. ceased. *See* page 450 of Pirelli & C.S.p.A.'s 2017 Annual Report in Pirelli's SRA at Exhibit 9. The Statutory Auditors Report section of the Pirelli & C.S.p.A.'s 2017 Annual Report also states Marco Polo ended its management and coordination activities on the initial date of trading, without prejudice to the right of CNRC to consolidate Pirelli. *See* Pirelli SRA at Exhibit 9 (Pirelli Group's 2017 Annual Report at 456).
[90] *See* Pirelli SRA at 19-20.

Pirelli & C. S.p.A.'s board.[91] The relevance of the nationalities of the individual board members is unclear. Moreover, Pirelli's claim that there is no evidence that the "independent directors" violated their duty of independence from the shareholders that appointed them is unpersuasive given that the Italian laws and regulations that define the duties of "independent directors" are not on the record. As such, we are not convinced that those members are free from control from China Chem. The SRA fails to adequately explain how the Italian law prohibits a board member's ability to influence decisions regarding management, especially board members appointed by China Chem.

Pirelli's reliance on the 2017 Shareholder Agreement to show that Mr. Marco Tronchetti Provera has the exclusive authority to select Pirelli & C. S.p.A.'s management, thereby preventing board members from influencing the company's day-to-day operations, is misplaced. Information on the record indicates that Pirelli & C.S.p.A. shall be managed by a Board of Directors composed of up to fifteen members.[92] The 2017 Shareholder Agreement also makes clear that Mr. Provera reports directly to Pirelli & C. S.p.A.'s board and that the board "delegated" authority to Mr. Provera in the management of Pirelli & C.S.p.A. In particular, the 2017 Shareholder Agreement shows that Mr. Provera is charged with implementing Pirelli & C.S.p.A.'s business plan and budget which are approved by Pirelli & C.S.p.A.'s board of directors.[93] As such, we are not convinced that Mr. Provera has exclusive authority to select Pirelli & C. S.p.A.'s management, thereby preventing board members from influencing the company's day-to-day operations.

The record supports Pirelli's argument that Pirelli & C.S.p.A.'s proprietary know-how is protected by Pirelli & C. S.p.A.'s 2017 By-laws in that any transfer and/or disposal of the "know-how" owned by Pirelli, shall be approved by the shareholders' meeting with the favorable vote of at least 90 percent of the Pirelli's outstanding share capital.[94] However, it is unclear how this fact alone is a sufficient basis to rebut the presumption of government control of Pirelli China's day-to-day operations or core values.

Notwithstanding Pirelli's claims that Pirelli China operates independently from Pirelli & C. S.p.A. and that Pirelli & C. S.p.A. has zero involvement in the appointment of the Pirelli China Board, the record shows that Pirelli & C. S.p.A. indirectly owned several shares of Pirelli China and had the ability to appoint members of Pirelli China's Board of Directors.[95] As such, we are not convinced that China Chem, through Pirelli & C.S.p.A., does not control Pirelli China.

Thus, we find that Pirelli has not demonstrated on this record that Chem China no longer retains actual or potential control and influence throughout the Pirelli companies' ownership structure (*i.e.*, Pirelli & C.S.p.A. and Pirelli China) and management, including Pirelli China's board and

[91] *Id.* at Exhibit 10B (Pirelli & C.S.p.A By-Laws at Article 4.2.2).
[92] *Id.* at Exhibit 10B (Pirelli & C.S.p.A By-Laws at Article 10.1).
[93] *Id.* at Exhibit 10B (Pirelli & C.S.p.A By-Laws at Articles 4.4 and 4.7).
[94] *Id.* at Exhibit 10B (Pirelli & C.S.p.A By-Laws at Article 8.2); and Final Separate Rate Memorandum at "Pirelli Tyre Co., Ltd. (Pirelli)."
[95] *Id.* at 24 and Exhibit 16A (Letter of Appointment of Pirelli China's Directors); and Final Separate Rate Memorandum at "Pirelli Tyre Co., Ltd. (Pirelli)".

management. On this basis, we continue to find that Pirelli China has failed to rebut the presumption of *de facto* government control.[96]

Comment 4: Whether Commerce has the Authority to Establish a China-Wide Entity Rate

Pirelli's Case Brief

- Commerce lacks any statutory authority to issue a "China-wide NME entity" rate in this review.[97] The only rates Commerce can issue are (1) a specific rate for those companies actually investigated, and (2) a specific rate for all those other companies *not* investigated.[98]
- The China-wide entity rate cannot be an "individually investigated" rate as defined in section 735(c)(1)(B)(i)(I) of the Act.[99] The China-wide entity rate also cannot be an "all others" rate for companies not investigated.[100]
- Commerce cannot determine that a China-wide entity rate stems from its statutory authority to use "facts available" or "adverse inferences" to determine a rate for one or more companies.[101]
- The courts have not approved that Commerce has the authority to issue a China-wide entity rate.[102]
- The *Chevron* defense ("when Congress has spoken, the issue has been resolved, and there is no deference to the agency") does not apply to the China-wide entity rate.[103] In addition, the China-wide entity rate fails the *Chevron* step zero threshold ("*Chevron* does not apply when the agency informally creates a rule out of whole cloth that exceeds the scope of its delegated authority") because the rate is not based on law but instead an informal "policy statement."[104]
- The China-wide entity rate fails the *Chevron* step one threshold.[105] Commerce has no legal basis to apply the country-wide rate concept of the countervailing duty statute to the antidumping statute.[106]

[96] *See* Final Separate Rate Memorandum at "Pirelli Tyre Co., Ltd. (Pirelli)."
[97] *See* Pirelli's Case Brief at 2.
[98] *Id.* at 2.
[99] *Id.* at 10.
[100] *Id.* at 11 (citing section 735(c)(1)(B)(i)(II) of the Act).
[101] *Id.* at 13 (citing sections 735(c)(1)(B)(i)(I) and 735(c)(1)(B)(i)(II) of the Act).
[102] *Id.* at 15-16 (citing *Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997) and *Transcom Inc. v. United States*, 294 F.3d 1371, 1373 (Fed. Cir. 2002) (*Transcom*)).
[103] *Id.* at 17-18 (citing *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 843-44 (1984)).
[104] *Id.* at 19.
[105] *Id.* at 21.
[106] *Id.* at 22 (citing *Click-To-Call Techs., LP v. Ingenio, Inc*., 2018 U.S. App. LEXIS 22839 at 17-18 (Fed. Cir. 2018)).

Petitioners' Rebuttal Brief

- Commerce previously rejected Pirelli's argument that Commerce has no statutory authority to issue a China-wide NME rate and can only determine a margin for each individually investigated exporter and producer and an estimated all other margin.[107]

Commerce Position: Commerce has both statutory and regulatory authority to issue a China-wide rate. Commerce's NME practice has been upheld in the courts on multiple occasions, including its application of a single rate for all NME exporters who do not qualify for a separate rate.[108] Pursuant to section 735(c)(1)(B)(i) of the Act, Commerce may issue (1) a specific rate for those companies actually investigated and (2) a specific rate for all those other companies not investigated. In *Thuan An v. United States*, the CIT held that characterizing an NME-wide rate as an individually investigated rate "reasonably grounds Commerce's determination in its statutory authority."[109] Therefore, as discussed below, Commerce considers the China-wide NME rate as an individually investigated rate pursuant to the Act, and thus within its stautotry authority.

Under section 771(18) of the Act, Commerce considers China to be an NME,[110] and in AD proceedings, Commerce has a long-standing rebuttable presumption that, unless otherwise demonstrated, the export activities of all firms in China are subject to government control and influence. As a result, we apply a rate individually established pursuant to section 735(c)(1)(B)(i) of the Act for the China-wide entity to all imports from exporters who have not established eligibility for a separate rate.[111] In NME proceedings, Commerce places the burden on the exporters to demonstrate eligibility for a separate rate via independence from government control. It is within our authority to employ a presumption of state control in an NME country and place the burden on the exporters to demonstrate an absence of central government control.[112] Under section 771(18)(B)(iv)-(v) of the Act, this burden is reasonable, as it

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[107] *See* Petitioners' Rebuttal Brief at 9 (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2015-2016*, 83 FR 16829 (April 17, 2018) and accompanying IDM at 7-9 and 11-12; and *Truck and Bus Tires from the People's Republic of China, Final Determination of Sales at Less Than Fair Value*, 82 FR 8599 (January 27, 2017) and accompanying IDM at 13-15).

[108] *See, e.g., Sigma Corp, 117 F.3d* at 1405; and *1,1,1,2-Tetrafluoroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value Antidumping Duty Investigation*, 79 FR 62597 (October 20, 2014), and accompanying IDM at Comment 1.

[109] *See Thuan An Production Trading and Service Co., LTD. v. United States*, 396 F. Supp. 3d 1310, 1316 (CIT 2019) (*Thuan An)*.

[110] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) and accompanying PDM at "China's Status as a Non-Market Economy" (unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018)).

[111] *See* 19 CFR 351.107(d) ("in an antidumping proceeding involving imports from a nonmarket economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers").

[112] *See Sigma Corp*, 117 F.3d at 1405-06 ("We agree with the government that it was within Commerce's authority to employ a presumption of state control for exporters in a nonmarket economy, and to place the burden on the exporters to demonstrate an absence of central government control. The antidumping statute recognizes a close correlation between a nonmarket economy and government control of prices, output decisions, and the allocation of

recognizes the correlation between NME economies and government price control, resource allocation, and production decisions.[113] *Transcom* upheld the application of a China-wide rate to all parties not eligible for a separate rate and the use of a rate based on best information available (BIA) as non-punitive.[114] Contrary to Pirelli's assertion, the courts have consistently upheld our authority to apply a presumption of state control in NME countries and to apply a single rate to all exporters that fail to rebut that presumption. The courts have agreed that, once a respondent has been determined to be part of the NME-wide entity, inquiring into said respondent's separate sales behavior ceases to be meaningful.[115]

Comment 5: Whether to Correct Alleged Errors in New Continent's Margin Calculations

New Continent's Case Brief[116]

- Commerce committed two programming errors: (1) double-counting the irrecoverable VAT deduction from New Continent's U.S. net prices; and (2) deducting international ocean freight expenses from not only New Continent's CEP sales, but also from its EP sales.

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resources. Moreover, because exporters have the best access to information pertinent to the 'state control' issue, Commerce is justified in placing on them the burden of showing a lack of state control.") (internal citations omitted).

[113] *See Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States*, 44 F.Supp.2d 229, 243 (CIT 1999), quoting Sigma Corp., 117 F.3d at 1405 ("Under the broad authority delegated to it from Congress, Commerce has employed 'a presumption of state control for exporters in a nonmarket economy'…. Under this presumption, all exporters receive one non-market economy country rate, or country-wide rate, unless an exporter can 'affirmatively demonstrate' its entitlement to a separate, company specific margin by showing 'an absence of central government control, both in law and in fact, with respect to exports."); and *Michaels Stores, Inc. v. United States*, 931 F. Supp. 2d 1308. 1315 (CIT 2013), quoting *SKF USA Inc. v. United States*, 254 F.3d 1022, 1030 (Fed. Cir. 2001) ("The regulations clarify, however, that for nonmarket economies, 'rates may consist of a single dumping margin applicable to all exporters and producers.' Moreover, whenever the statute is silent on a particular issue, it is well-settled that Commerce may 'formulate policy' and make rules 'to fill any gap left, implicitly or explicitly, by Congress.'") (internal citations omitted).

[114] *See Transcom* at 1381-83, "The China-wide rate, and its adverse inference are applicable to all companies which were initiated on yet failed to show their entitlement to a separate rate. "Accordingly, while Section 1677e provides that Commerce may not assign a BIA-based rate to a particular party unless that party has failed to provide information to Commerce or otherwise failed to cooperate, the statue says nothing about whether Commerce may presume that parties are entitled to independent treatment under 1677e in the first place." Id. at 1376. "Instead, the objective of BIA is to aid Commerce in determining dumping margins as accurately as possible." Id. The litigation in *Transcom* covered three periods of review between June 1990 and May 1993. *See Transcom* at 1374-75 and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 65527 (December 13, 1996). BIA is the precursor to facts available and AFA under the current statute. *See, e.g., Transcom* at 1376.

[115] *See Advanced Tech. & Materials Co. v. United States*, 938 F. Supp. 2d 1342, 1351 (CIT 2013) (A*dvanced Technology II*), citing *Watanabe Group v. United States*, 34 CIT 1545, 1551 (2010) ("Commerce's permissible determination that {a respondent} is part of the {China}-wide entity means that inquiring into {that respondent}'s separate sales behavior ceases to be meaningful.") and *Jiangsu Changbao Steel Tube Co., Ltd. v. United States*, 884 F. Supp. 2d 1295, 1312 n.21 (CIT 2012) ("losing all entitlement to an individualized inquiry appears to be a necessary consequence of the way in which Commerce applies the presumption of government control, … applying a countrywide AFA rate without individualized findings of failure to cooperate is no different from applying such a countrywide AFA rate without individualized corroboration").

[116] *See* New Continent's Case Brief at 2-5.

- Commerce should correct both of these errors in the final results calculation.

The petitioners did not comment on this issue.

Commerce Position: Commerce has revised its margin calculations for New Continent with respect to the double-deduction of irrecoverable VAT and the deduction of international ocean freight expenses from New Continent's EP sales in the final results. [117]

Comment 6: Whether to Correct Certain "Importer or Customer" names in New Continent's Draft Liquidation Instructions

New Continent's Case Brief[118]

- Commerce should correct certain "importer or customer" names in the final customs instructions.

The petitioners did not comment on this issue.

Commerce Position: We agree with New Continent's argument. Commerce will correct the "importer or customer" names identified by New Continent in the final liquidation instructions.

Comment 7: Whether to Continue to Deduct Irrecoverable VAT from New Continent's Gross Unit Price

New Continent's Case Brief[119]

- Commerce's decision to deduct eight percent of the gross unit sales price of each of New Continent's reported U.S. sales in order to adjust the U.S. price for the value added tax (VAT) that allegedly had not been refunded at the time of exportation is contrary to the plain language of the statute and is unsupported by record evidence.
- The courts have repeatedly found that Commerce's irrecoverable VAT deduction is not authorized by the plain language of the statute, pursuant to section 772(c)(2)(B) of the Act.[120]
- The purpose of Irrecoverable VAT under Circular 39 is to enable exporters to report a higher cost of production for exported goods.[121] Thus, pursuant to Circular 39, exports

[117] *See* Memorandum, "Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Analysis Memorandum for Shandong New Continent Tire Co., Ltd.," dated October 10, 2019 (New Continent's Preliminary Analysis Memorandum) at Attachment 1.
[118] *See* New Continent's Case Brief at 5-6.
[119] *Id.* at 6-29.
[120] *Id.* at 9-19 (citing *Qihang Tyre Co., Ltd. v. United States*, 308 F. Supp. 3d 1329 (CIT April 4, 2018) (*Qingdao Qihang.*); *Qingdao Qihang and Guizhou Tyre Co. v. United States*, 389 F. Supp. 3d 1350 (Ct. Int'l Trade May 24, 2019) (*Guizhou Tyre*); *China Mfrs. Alliance, LLC v. United States*, 205 F. Supp. 3d 1325, 1344-1351 (CIT Feb. 6, 2017) (China Mfrs. Alliance); and *Fine Furniture (Shanghai), Ltd. v. United States*, 182 F. Supp. 3d 1350 (CIT Sept. 9, 2016)).
[121] *Id.* at 19-20 (citing *Bridgestone Ams., Inc. v. United States*, 33 CIT 1040, 1048-50 (2009)).

trigger a refund of certain VAT amounts previously paid on input purchases when an exporter files its income tax return.[122]

- The methodology used by Commerce for its irrecoverable VAT deduction is unreasonable and contrary to record evidence – any adjustment for export taxes must be based upon the amount of the irrecoverable VAT tax rather than the irrecoverable VAT rate.[123]

Petitioners' Rebuttal Brief[124]

- Commerce's practice of deducting irrecoverable VAT is lawful and New Continent's arguments to the contrary have been rejected many times. No modification of New Continent's margin calculations is required.
- As New Continent itself recognized, Commerce's practice has been affirmed in other CIT decisions.[125] Moreover, Commerce has consistently continued to apply its previous practice.[126]

Commerce Position: New Continent's arguments that our treatment of irrecoverable VAT is both contrary to the plain language of the statute and unsupported by the instant record evidence are misplaced.

Specifically, pursuant to section 772(c)(2)(B) of the Act, Commerce must reduce the export price (EP) and constructed export price (CEP) of subject merchandise by "the amount, if included in

[122] *Id.* at 10.

[123] *Id.* at 20-29 (citing *Federal Mogul v. United States*, 63 F.3d 1572 (Fed. Cir. 1995); *E. I. du Pont de Nemours & Co. v. United States*, 20 C.I.T. 373, 381 (1996); *Hebei Metals & Minerals Imp. & Exp. Corp. v. United States*, 28 C.I.T. 1185, 1193-95 (2004); *Fine Furniture (Shanghai), Ltd. v. United States*, 2016 Ct. Intl. Trade LEXIS 85, 11-15 (Ct. Int'l Trade Sept. 9, 2016); *Jacobi Carbons AB v. United States*, Slip Op. 18-47, 2018 Ct. Intl. Trade LEXIS 51, *51-52; *Aristocraft of Am. v. United States*, Slip Op. 18-97, 2018 Ct. Intl. Trade LEXIS 108, *7-9; and *China Mfrs. Alliance, LLC v. United States*, 205 F. Supp. 3d 1325, 1350).

[124] *See* Petitioners' Rebuttal Brief at 3-6.

[125] *Id.* at 4 (citing *Diamond Sawblades Mfrs.' Coal. v. United States*, 301 F. Supp. 3d 1326, 1331-1339 (CIT March 22, 2018) (*Diamond Sawblades 2018*); *Aristocraft of Am., LLC v. United States*, 269 F. Supp. 3d 1316, 1321-26 (CIT September 28, 2017) (*Aristocraft I*); *Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159, 1183-88 (CIT April 7, 2017) (*Jacobi Carbons I*); *Juancheng Kangtai Chem. Co. v. United States*, 2017 Ct. Intl. Trade LEXIS 3, Slip Op. 2017- 3, pages 25-31 (Jan. 19, 2017) (*Juancheng Kangtai*); and *Fushun Jinly Petrochemical Carbon Co. v. United States*, 2016 Ct. Intl. Trade LEXIS 25, Slip Op. 2016-25, pages 20-25 (Mar. 23, 2016) (*Fushun Jinly*)).

[126] *Id.* at 4-5 (citing *Certain Steel Racks and Parts Thereof from the People's Republic of China*: *Final Affirmative Determination of Sales at Less Than Fair Value*, 84 FR 35595 (July 24, 2019) (*Steel Racks from China 2019*); *Certain Steel Nails from the People's Republic of China*: *Final Results of Antidumping Duty Administrative Review, and Final Determination of No Shipments*; 2016-2017 84 FR 17134 (April 24, 2019) (*Steel Nails from China 2019*); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 6132 (February 26, 2019) (*TRBs from China 2019*); *Certain Plastic Decorative Ribbon from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 84 FR 1055 (February 1, 2019) (*Ribbons from China 2019*); *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 3205 (July 17, 2018); and *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*; 2017-2018, 84 FR 44283 (August 23, 2019) (*OTR Tires from China 2019*), (unchanged in the *Final Results, Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 59770 (November 6, 2019)).

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." Also, in accordance with section 772(c)(2)(B) of the Act, Commerce will reduce the EP in nonmarket economy (NME) dumping margin calculations by "the amount of export taxes and similar charges, including {VATs} not rebated upon export."[127]

With regard to deducting irrecoverable VAT under this statutory provision, Commerce's current methodology has been in place since 2012, when Commerce announced it would begin adjusting for irrecoverable VAT under section 772(c)(2)(B) of the Act.[128] In this announcement, Commerce stated that the statute provides that, 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.[129]

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

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

[127] *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) (*Methodological Change*).
[128] *Id.* at 77 FR at 36482.
[129] *Id.* at 77 FR at 36483; and *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.

buyer with the firm acting only as an intermediary. Thus, the cost of output VAT falls on the buyer of the good, not on the firm.

This would describe the situation under Chinese law except that producers in China, in most cases, do not recover (*i.e.*, are not refunded) the total input VAT they paid. The Chinese VAT system is governed by the 2008 Chinese VAT Regulation and 2012 VAT Circular.[130] Article 1 of the 2008 Chinese VAT Regulation states that "{e}ntities and individuals engaged in the sales of goods, supply of processing, repair and replacement services, and the import of goods within the territory of {China} are taxpayers of value added tax … and shall pay VAT in accordance with this Regulation." Article 5 states that "The VAT tax amount that a taxpayer selling goods or supplying taxable service calculates on the basis of the sales amount and at the tax rate as prescribed in Article 2 of this Regulation and collects from the buyer is the output tax amount." Article 2.1 establishes that for most goods that the VAT rate shall be 17 percent, and Article 2.3 adds "For taxpayers exporting goods, the tax rate shall be zero, except as otherwise prescribed by the State Council."[131] Thus, the Chinese VAT system is consistent with the general description of the VAT tax system above – Entities and individuals …. within the territory of {China} …. shall pay VAT …. at the tax rate as prescribed in Article 2.

Consistent with the general description of a VAT system above, Article 5 further provides that the amount of the VAT shall be:

> "output tax = sales amount * tax rate"[132]

The term "output tax" (*i.e.*, VAT-out) in this formula refers to any transaction between the "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. The tax amount for the transaction between a supplier and a company (*i.e.*, VAT-in) 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" from the supplier's point of view). Article 4 of the *2008 Chinese VAT Regulation* states: "the payable tax amount = the output tax amount for the current period – the input tax amount for the current period."[133] Thus, a taxpayer's obligation to the government of China is to remit an amount equal to the total amount of VAT-out collected on the government's behalf less the total amount of VAT-in that the taxpayer has paid on its purchases.

Lastly, Article 25 of the 2008 Chinese VAT Regulation addresses exportation of merchandise which is eligible for a rebate for, or exemption from, VAT. Article 25 states that "concrete measures shall be formulated by the finance or taxation administrative department of the State Council." These further instructions are provided in the *2012 VAT Circular*.[134]

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

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[130] *See* New Continent's April 22, 2019 Section C Questionnaire Response at 35-36 and Exhibits C-7A (2008 GOC VAT Regulation) and C-7B (2012 GOC VAT Circular) (New Continent's April 22, 2019 CQR).
[131] *Id.* at Exhibit C-7A (2008 GOC VAT Regulation).
[132] *Id.*
[133] *Id.*
[134] *Id.* at Exhibit C-7B (2012 GOC 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.[135]

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."[136] 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.[137]

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."

Article 4.1 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"[138] 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."[139] Consistent with Article 4, Article 5.1 then provides the following formula for the amount of the "Tax which may not be exempted or offset," *i.e.*, the irrecoverable VAT:[140]

> Reduction/Offset = (P – c) x (T1 – T2),
> where,
>
> > P = (VAT-free) FOB value of export sales;
> > c = value of bonded (duty- and VAT-free) imports of inputs used in the production of goods for export;

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[135] *Id.*
[136] *Id.*
[137] *Id.* at Exhibit C-7A (2008 GOC VAT Regulation).
[138] *Id.*
[139] *Id.*
[140] *Id.*

T1 = VAT rate; and
T2 = refund rate specific to the export good.

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 if "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 VAT chain.. 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.
Using the example above, if P = $200 million, c = 0, T1 = 17% and T2 = 10%, then the reduction/offset = ($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.

New Continent argued that Commerce's VAT deduction methodology is unlawful on account of a flawed computation of the amount of irrecoverable VAT. We disagree with New Continent. 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. 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.

We also note that New Continent's argument that there is no evidence that the amount of irrecoverable VAT has anything to do with its export prices is illogical. We note that under a normal business model, companies set their sales prices such that they cover their costs and generate profit. There is no evidence on the record that New Continent operates on a different business model (*i.e.*, one that does not seek to generate a profit). We also note that the ability of exporters like New Continent, under Circular 39, to offset income by an amount of irrecoverable

VAT on exports, thereby enabling them to reduce their overall income tax liability, confirms that the irrecoverable VAT at issue is tied to exports.

We note as well that Commerce's irrecoverable VAT calculation is based on established practice as upheld by the CIT. Specifically, the CIT has repeatedly held that Commerce's adjustment to U.S. price for irrecoverable VAT upon export of subject merchandise to the United States is a reasonable interpretation of section 772(c)(2)(B) of the Act.[141] In *Jacobi Carbons I*, the CIT considered the statute's directive that deductions to export and constructed export price shall be in the amount of any export tax, duty, or other charge.[142] The CIT held that although Commerce did not specifically label the irrecoverable Chinese VAT at issue in the underlying proceeding as a tax, duty, or other charge, that its interpretation was still a permissible construction. Specifically, the CIT stated that:

> {T}he catchall phrase "other charge" captures any financial obligation provided it is "imposed by the exporting country on the exportation of the subject merchandise," regardless of whether the imposing country explicitly labels the charge as one pertaining to exports. Commerce's interpretation of Chinese VAT as, if not an "export tax," an "other charge," is a permissible construction of those statutory terms.[143]

Similarly, the CIT in *Juancheng Kangtai* concluded that the statute does not define the terms "export tax, duty, or other charge imposed" and concluded that Commerce reasonably interpreted "other charge imposed" to include costs such as irrecoverable VAT.[144] The CIT has also repeatedly held that irrecoverable VAT is "imposed by the exporting country on the exportation of the subject merchandise" within the meaning section 772(c)(2)(B) of the Act. In *Juancheng Kangtai,* the CIT accepted Commerce's explanation that, in a typical VAT regime, there is a mechanism for companies to recoup VAT paid on inputs, either through the exportation or sale of merchandise in domestic markets.[145] The CIT recognized that under these regimes, companies either receive a full refund of input VAT upon export, or in the case of domestic sales, recover the input VAT by crediting it against output VAT collected from customers.[146]

The CIT has further recognized in J*uancheng Kangtai* that, in contrast to a typical VAT regime, Chinese law does not grant companies a full refund of input VAT upon exportation of merchandise because a portion of the VAT paid on inputs is not refunded.[147] The CIT therefore concluded that "{b}ecause this irrecoverable VAT is a charge imposed only on exports,

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[141] *See, e.g., Fushun Jinly Petrochemical Carbon Co., Ltd. v. United States*, No. 14-00287, 2016 WL 1170876, (CIT 2016) at *11; *Juancheng Kangtai Chem. Co., Ltd. v. United States*, Slip Op. 17-3, (CIT 2017) at 25-27 (*Juancheng Kangtai*); *Jacobi Carbons AB v. United States*, 222 F. Supp. 3d 1159, 1186-1188 (CIT 2017) (*Jacobi Carbons I*); *Aristocraft of America, LLC v. United States*, 269 F. Supp. 3d 1316, 1324-25 (CIT 2017) (*Aristocraft I*); *Diamond Sawblades Mfrs. Coal. v. United States*, 301 F. Supp. 3d 1326, 1331-35 (CIT 2018); *Jacobi Carbons, AB v. United States*, 365 F. Supp. 3d 1323 (CIT 2019); *Jacobi Carbons, AB v. United States*, 365 F.Supp.3d 1344 (CIT 2019); and *Aristocraft of America, LLC v. United States*, No. 15-00307, 2019 WL 1945553, at *1 (CIT 2019).
[142] *See Jacobi Carbons I*, 222 F. Supp. 3d at 1186-87 (citing section 772 (c)(2)(B) of the Act (emphasis added)).
[143] *Id.*, 222 F. Supp. 3d at 1186-87.
[144] *See Juancheng Kangtai* at 26.
[145] *Id.* at 26-27.
[146] *Id.* at 26-27.
[147] *Id.* at 26-27.

Commerce reasonably concluded that it is a cost imposed 'on the exportation of the subject merchandise'" within the meaning of section 772(c)(2)(B) of the Act.[148] The CIT further reasoned that "the 'irrecoverable' portion of the VAT is perfected by exportation," and "there does not appear to be any practical difference between a new charge imposed at the time of exportation versus a refund that is withheld at the time of exportation."[149] Consequently, Commerce's interpretation of irrevocable VAT as a cost imposed upon exportation of subject merchandise constitutes a reasonable interpretation of section 772(c)(2)(B) of the Act.

We disagree with New Continent that, under Chinese laws, no VAT was imposed on exports of goods (including subject merchandise). As to the record evidence, the reduction/offset description discussed above is defined in terms of, and applies to, total (company-wide) input VAT across purchases of all inputs, whether used in the production of goods for export or domestic consumption. The reduction/offset does not distinguish the VAT treatment of export sales from the VAT treatment of domestic sales from an input VAT recovery standpoint for the simple reason that such treatment under Chinese law applies to the company as a whole, not specific markets or sales.[150] At the same time, however, the reduction/offset is calculated on the basis of the FOB value of exported goods, so it can be thought of as a tax on the company (*i.e.*, a reduction in the input VAT credit) that the company would not incur but for the export sales it makes, a tax fully allocable to export sales because the firm under Chinese law must book it as a cost of exported goods.

New Continent reported that the official VAT rate for exports of subject merchandise was 17 percent from August 1, 2017 to April 30, 2018, and 16 percent from May 1, 2018 to July 31, 2018.[151] The refund rate was nine percent during the POR, under the applicable Chinese regulations.[152] Thus, New Continent incurred an effective VAT rate of eight percent on exports of domestically-produced passenger tires before the change in the VAT rate, and an effective VAT rate of seven percent after the change in the VAT rate. As explained in the *Preliminary Results*, because New Continent paid VAT associated with subject merchandise and it is not refunded at these effective VAT rates, Commerce adjusted New Continent's net price for the un-refunded VAT to calculate EP and CEP net of VAT.[153]

New Continent's reliance on *Qingdao Qihang, Guizhou Tyre, and China Manufacturers Alliance II* to argue that Commerce does not have the authority to deduct irrecoverable VAT from U.S. price under section 772(c)(2)(B) of the Act ignores the fact that the CIT has affirmed Commerce's treatment of VAT in multiple cases. Moreover, New Continent offers no argument as to why Commerce should follow this CIT's rulings in *Qingdao Qihang, Guizhou Tyre*, and *China Manufacturer's Alliance* and disregard the decisions affirming Commerce's adjustment for irrecoverable VAT. Indeed, New Continent has failed to establish that the CIT's evaluation of section 772(c)(2)(B) of the Act in *Fushun Jinly, Juancheng Kangtai, Jacobi Carbons I, Aristocraft I*, and *Diamond Sawblades* was incomplete or contrary to principles of statutory interpretation. In the absence of any demonstration of error by New Continent, we have

[148] *Id.* at 27.
[149] *Id.* at 27.
[150] *See* New Continent's April 22, 2019 CQR at Exhibit C-7B (2012 GOC VAT Circular).
[151] *Id.* at 35 and Exhibit C-1.
[152] *Id.* at 36 and Exhibit C-7C.
[153] *See Preliminary Results*, PDM at "Value Added Tax."

continued to follow the CIT's precedent holding that Commerce has reasonably interpreted the statute as permitting a deduction of irrecoverable VAT to U.S. price for the final results.

New Continent's argument that Commerce's methodology of deriving the amount of irrecoverable VAT rate using the difference between the 17 percent VAT on subject merchandise and nine percent rebate (*i.e.*, eight percent) applied to the FOB value of exported goods is without merit. The CIT considered a similar argument in *Juancheng Kangtai*, in which plaintiffs argued that because the value of raw materials and the FOB value of finished goods were different amounts, Commerce purportedly erred in calculating irrecoverable VAT by simply subtracting a nine percent rebate rate from the 17 percent standard VAT rate.[154] The CIT upheld Commerce's irrecoverable VAT calculation based on a standard VAT rate of 17 percent and nine percent rebate rate on exported goods, explaining that: "Commerce's conclusion that the amount of 'irrecoverable' VAT is properly determined by reference to the VAT refund rate that pertains to the exported product in accordance with {respondent's} submitted tax information does not appear to be an unreasonable interpretation of the available evidence of record, and therefore the court cannot conclude that Commerce's deduction of that 'irrecoverable' amount from the export price was unreasonable."[155]

Similarly, in *Diamond Sawblades*, the CIT held that Commerce's methodology of calculating irrecoverable VAT by deducting a nine percent rebate rate from a 17 percent VAT applied to subject merchandise was reasonable and based on record evidence.[156] The CIT concluded that because Commerce's methodology was based on a reasonable application of Chinese laws and regulations, it would be inappropriate for the CIT "to conclude otherwise . . . {and offer a} substitution of judgment on a conclusion or finding from the record that is within Commerce's domain, which is outside the standard of judicial review."[157] In *Diamond Sawblades*, the CIT also dismissed an argument that Commerce must calculate a tax based on an amount, rather than a rate. As the CIT explained in *Diamond Sawblades*:

> The parties try to make further hay over whether Commerce's methodology was based on the "amount" or a "ratio", . . . but the amount of any tax that is expressed by law as a fractional term will necessarily involve application of the relevant ratio (*i.e.*, by and through calculation) to determine the relevant "amount" of the tax. Indeed, it is difficult to conceive of how one could be expected to arrive at "the amount" of VAT applicable to a particular transaction otherwise than through application of "the formula" that a particular VAT tax would call for.[158]

Consistent with its practice, as upheld by the CIT, Commerce properly used an eight percent rate in this case to determine the amount of irrevocable VAT adjustment to apply to New Continent's U.S. price. Simply put, Commerce's methodology, as applied in the *Preliminary Result*s and which we continue to apply for the final results, is the same that has been previously sustained by the CIT in *Juancheng Kangtai* and *Diamond Sawblades*, and Commerce's calculation of New Continent's irrecoverable VAT is based on record evidence. Specifically, Commerce removed

[154] *See Juancheng Kangtai* at 12-13.
[155] *Id.* at 13.
[156] *See Diamond Sawblades at* 1336-39.
[157] *Id. at* 1336-39.
[158] *Id.* at 1337.

from the price of each U.S. sale (*i.e.*, on a transaction basis) the amount calculated based on the difference between the standard VAT rate and the VAT rebate rate for exports of subject merchandise (*i.e.*, eight percent), applied to the FOB export sales value reported by New Continent. Furthermore, "{{China}'s VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. These are product-specific export taxes, duties, or other charges that are incurred on the exportation of subject merchandise."[159] Commerce analyzed the Chinese tax laws and regulations on the record and determined that the standard VAT levy on exports of subject merchandise is 17 percent and the rebate rate for exports of subject merchandise is nine percent.[160] By analyzing the information on the product-specific VAT regime placed on the record, Commerce fulfilled the regulatory requirement that price adjustments it makes on exports of subject merchandise are "reasonably attributable to the subject merchandise."[161]

As such, the record shows that the Chinese government did not refund eight percent of the FOB value of the exported tires to producers during the POR. There is no information on the record to suggest that the government of China maintained a different VAT rebate rate for New Continent. The irrecoverable VAT expense is a liability calculated based on the VAT rate and the refund rate specific to the exported good, in this situation nine percent. On this basis, we have continued to use the same methodology for calculating New Continent's irrevocable VAT as a downward adjustment to U.S. price under section 772(c)(2)(B) of the Act.[162]

Comment 8: Whether to Grant a Double Remedy Adjustment to New Continent

New Continent's Case Brief

- In accordance with the statute, Commerce's regulations, and Commerce's prior practice in this proceeding (as well as others), New Continent undoubtedly qualifies for an offset for the double-remedies adjustment in this proceeding.[163] Commerce should correct this error in the Final Results.

[159] *Id.* at 1337.
[160] *See* New Continent's April 22, 2019 CQR at Exhibit C-7B (2012 GOC VAT Circular).
[161] *See* 19 CFR 351.401(c).
[162] *See Methodological Change* (citing *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27369 (May 19, 1997) and SAA at 827); and *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Results of Antidumping Administrative Review; 2011-2012*, 78 FR 78333 (December 26, 2013) and accompanying PDM at Issue 9, unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37715 (July 2, 2014).
[163] *See* New Continent's Case Brief at 31 (citing *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission, in Part; 2016–2017*, 83 FR 45,893 (September 11, 2018); and *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 11,690 (March 16, 2018)).

Petitioners' Rebuttal Brief

- Commerce's preliminary denial is consistent with prior practice and the record; New Continent's argument should be rejected.[164]
- Commerce's decision is consistent with other recent decisions of the agency which, in accordance with the requirement of section 777A(f)(1)(B), have examined whether average import prices decreased or not and have disallowed the adjustment if they did not. Further, Commerce examined only whether average import prices had decreased, not whether any increase had been less than it otherwise would have been, as proposed by the respondent.[165]

Commerce Position: Commerce continues to find that New Continent does not qualify for a double-remedy adjustment. Section 777A(f)(1)(B) of the Act requires Commerce to determine whether such countervailable subsidies have been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period. To make this determination, we examined International Trade Commission (ITC) import data for the POR.[166] Based on this information, we found that import prices of the class or kind of merchandise at issue during that relevant period increased.[167] As there was no general decrease in the U.S. average import price during the relevant period, we found that the requirement under section 777A(f)(1)(B) of the Act has not been met, and hence we did not make an adjustment under section 777A(f) of the Act.

The POR import price information New Continent placed on the record did not demonstrate a consistent decrease for its purchases of natural rubber, synthetic rubber, and nylon cord.[168] New Continent argued that the fact the import prices did not decrease does eliminate the possibility that the subsidies caused import prices to be lower than they would have been but for the subsidies. Moreover, New Continent argued that Commerce should have examined its prices, which it claims show a reduction. However, as noted by the petitioners, Commerce's

[164] *See* Petitioners' Rebuttal Brief at 6.
[165] *Id.* at 7-8 (citing *Ceramic Tile from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, and Postponement of Final Determination*, 84 FR 61877 (November 24, 2019) (*Ceramic Tile from China 2019*); *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China, Preliminary Affirmative Determination of Sales at Less than Fair Value*, 84 FR 54106 (October 9 2019) (*Wooden Cabinets from China 2019*); *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*, 83 FR 50379 (September 25, 2019) (*Threaded Rod from China 2019*); *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review; 2017- 2018*, 84 FR 44283 (August 23, 2019) (*OTR Tires from China 2019*); *Steel Racks from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 84 FR 7326 (March 4, 2019) (*Steel Racks from China 2019*); and *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016-2017*, 83 FR 67222 (December 28, 2018) (*Photo Cells from China 2018*)).
[166] *See* New Continent's Preliminary Analysis Memorandum at Attachment III.
[167] *Id.*
[168] *See* New Continent's Letter, "Double Remedies Response for Shandong New Continent Tire Co., Ltd.: Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China; 2017-18 AD Administrative Review," dated April 25, 2019 at Exhibit DR-3.

preliminary decision is consistent with other recent practices and the requirement of section 777A(f)(1)(B) of the Act that we have examined whether average import prices decreased or not and have disallowed the adjustment if they did not. Also, as in previous determinations, Commerce examined only whether average import prices had decreased, not whether any increase had been less than it otherwise would have been, as proposed by the respondent.[169]

Specifically, as noted in the *Preliminary Results*, Commerce has not found a general decrease in the U.S. average import price during the relevant period. Section 777A(f)(1)(B) of the Act requires Commerce to determine whether such countervailable subsidies have been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period. To make this determination, we examined ITC import data for the POR. Based on this information, Commerce continues to find that import prices of the class or kind of merchandise at issue during that relevant period increased. As there was no general decrease in the U.S. average import price during the relevant period, and the requirement under section 777A(f)(1)(B) of the Act has not been met, we will not make an adjustment under section 777A(f) of the Act for these final results.

Comment 9: Whether to Rescind the Administrative Review of Shandong Hengyu Science & Technology Co., Ltd.

Shandong Hengyu's Case Brief

- Commerce incorrectly stated in the *Preliminary Results* that Shandong Hengyu withdrew its respective request for an administrative review. Shandong Hengyu did not withdraw its self-request for an administrative review and Commerce should not rescind its review of Shandong Hengyu.[170]

The petitioners did not comment on this issue.

Commerce Position: In the *Preliminary Results*, we noted that an administrative review was requested for Shandong Hengyu by the company itself and by American Pacific Industries, Inc. (API), a U.S. importer of subject merchandise.[171] Subsequent to the administrative review requests and initiation, API filed a withdrawal requests with respect to Shandong Hengyu and numerous other producers/exporters of passenger tires from China.[172] Also in the interim, Shandong Hengyu filed a separate rate certification (SRC).[173]

Shandong Hengyu did not withdraw its request for self-examination during the instant administrative review. Therefore, for these final results, we will not rescind the administrative

[169] *See, e.g., Ceramic Tile from China 2019*; *Wooden Cabinets from China 2019*; *Threaded Rod from China 2019*; *OTR Tires from China 2019*; *Steel Racks from China 2019*; and *Photo Cells from China 2018*.
[170] *See* Shandong Hengyu's Case Brief at 1.
[171] *See Preliminary Results*, PDM at 2.
[172] *See* API's Letter, "Passenger Vehicle and Light Truck Tires from People's Republic of China: Withdrawal of Request for Administrative Review," dated October 31, 2018.
[173] *See* Shandong Hengyu's Letter, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China – Separate Rate Certification," dated October 19, 2018 (Shandong Hengyu SRC).

review with respect to Shandong Hengyu. In addition, because Shandong Hengyu was previously granted a separate rate, it was entitled to file an SRC.[174] In its SRC, Shandong Hengyu certified that there was still an absence of *de jure* control of its operations because the same ownership structure exists in the current POR as existed when it was originally granted separate rate status; there were no extra governmental laws (national, provincial, or local) that impeded the company's export activities; and there were no changes to any Chinese government laws during the current POR from the prior POR where it was granted separate rate status that changed the company's operational functions.[175] Shandong Hengyu also certified the continued absence of *de facto* control by the Chinese government by noting that its owners continued to have no significant relationships with any level of the Chinese government; the company was still able to negotiate export contracts without government approval; it still maintained independent control over the selection of its management and board of directors; and the company was still able to retain the proceeds of its export sales.[176] Given that there is no conflicting information with respect to Shandong Hengyu's SRC, we have determined that Shandong Hengyu continues to demonstrate the absence of both *de jure* and *de facto* control over its operations by the government and/or governmental agencies of China. Thus, we are granting Shandong Hengyu a separate rate for these final results.

[174] *See* Shandong Hengyu SRC at 6 (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)).
[175] *Id.* at 7-8 and Exhibit 1.
[176] *Id.* at 8-9 and Exhibit 2.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final results of review in the *Federal Register*.

☐ ☐

Agree Disagree

4/15/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance