



A-570-124
Investigation
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March 5, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Certain Vertical Shaft Engines Between 99cc and Up To 225cc,
and Parts Thereof, from the People's Republic of China

I. SUMMARY

The Department of Commerce (Commerce) finds that certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines), from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is July 1, 2019, through December 31, 2019.

We analyzed the comments submitted by interested parties in response to our *Preliminary Determination*.¹ As a result of our analysis, we have not made changes to the margin calculations for Chongqing Kohler Engines Ltd. (Chongqing Kohler) or the Zongshen Companies.² We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this LTFV investigation for which we received comments from interested parties:

¹ See *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the Peoples' Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 85 FR 66932 (October 21, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² Pursuant to section 771(33)(F) of the Act we have found Chongqing Zongshen General Power Machine Co., Ltd. (Chongqing Zongshen), Chongqing Dajiang Power Equipment Co., Ltd., and Chongqing Zongshen Power Machinery Co., Ltd. to be affiliated, and further, we are treating them as a single entity (collectively, the Zongshen Companies) pursuant to 19 CFR 351.401(f). No party commented on these findings from the *Preliminary Determination*; thus, we have not changed our preliminary finding with respect to the treatment of these three companies as the single entity, the Zongshen Companies.



General Comments

- Comment 1: Critical Circumstances
- Comment 2: Whether to Eliminate the Gap Period in the Event of an Affirmative Finding of Material Injury by the U.S. International Trade Commission

Surrogate Values

- Comment 3: Surrogate Value for Flywheels
- Comment 4: Use of Turkish HTS 8409.91.00.00.19
- Comment 5: Surrogate Value for Governor Gear and Other Inputs
- Comment 6: Calculation of the Surrogate Manufacturing Overhead Financial Ratio

Company-Specific Comments

- Comment 7: How to Value Non-Subject Components of the Zongshen Companies' Mounted Engines
- Comment 8: Whether to Grant the Zongshen Companies a By-Product Offset
- Comment 9: Whether to Grant the Zongshen Companies a Double Remedies Offset for Certain Domestic Subsidies
- Comment 10: Whether to Grant Loncin Motor Co., Ltd. a Separate Rate

II. BACKGROUND

On October 21, 2020, Commerce published the *Preliminary Determination* of sales at LTFV of small vertical engines from China.³ On November 9, 2020, Commerce postponed the final determination, pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii).⁴ In October and November, Commerce received supplemental quantity and value questionnaire responses regarding critical circumstances from Chongqing Kohler and the Zongshen Companies.⁵

Commerce was unable to conduct on-site verification in this investigation. However, Commerce took additional steps in lieu of on-site verification and, on December 29, 2020, we issued the Zongshen Companies a post-preliminary questionnaire to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.⁶ We did not issue

³ See *Preliminary Determination* PDM.

⁴ See *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Postponement of Final Determination of Sales at Less Than Fair Value Investigation*, 85 FR 71319 (November 9, 2020) (*Postponement of Final Determination*).

⁵ See Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc {sic}, and Parts Thereof, from China; AD Investigation; Chongqing Zongshen Monthly Q&V Data," dated October 15, 2020; Chongqing Kohler's Letter, "Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof from the People's Republic of China: Chongqing Kohler's Monthly Quantity and Value Data through October 2020," dated November 16, 2020; and Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc {sic}, and Parts Thereof from China; AD Investigation; Chongqing Zongshen Monthly Q&V Data," dated November 16, 2020 (Zongshen Companies' Q&V Data).

⁶ See Commerce's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from

a post-preliminary questionnaire to Chongqing Kohler. On January 15, 2021, the Zongshen Companies responded to the post-preliminary questionnaire.⁷

We invited parties to comment on the *Preliminary Determination*. In January 2020, we received case and/or rebuttal briefs from Briggs & Stratton, LLC (the petitioner); the Zongshen Companies; Loncin Motor Co., Ltd. (Loncin); MTD Products Inc (MTD); and the Toro Company and Toro Purchasing Company (collectively, Toro).⁸ On February 4 and 5, 2021, all parties that had requested a hearing withdrew their requests.⁹ Thus, we did not hold a hearing. However, we held an *ex parte* meeting with counsel for Loncin on February 11, 2021.¹⁰

Based on our analysis of the comments received, as well as our verification findings, we have not revised our calculations of the weighted-average dumping margins for Chongqing Kohler and the Zongshen Companies from our calculations in the *Preliminary Determination*.¹¹

the People's Republic of China: The Zongshen Companies Verification Questionnaire," dated December 29, 2020 (Verification Questionnaire).

⁷ See Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Zongshen Resubmission of Verification Questionnaire Response," dated January 15, 2021 (Zongshen Companies' VQR).

⁸ See Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China," dated January 22, 2021 (Petitioner's Case Brief); Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Chongqing Companies Case Brief," dated January 22, 2021 (Zongshen Companies' Case Brief); Loncin's Letter, "Loncin Motor's Case Brief: Less Than Fair Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China," dated January 22, 2021; MTD's Letter, "Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Letter in Lieu of Case Brief," dated January 22, 2021 (MTD's Letter in Lieu of Case Brief); Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from China / Rebuttal Brief of Briggs & Stratton, LLC," dated January 29, 2021 (Petitioner's Rebuttal Brief); Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Zongshen Companies Rebuttal Brief," dated January 29, 2021 (Zongshen Companies' Rebuttal Brief); Loncin's Letter, "Loncin Motor's Rebuttal Brief: Less Than Fair Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China," dated January 29, 2021 (Loncin's Rebuttal Brief); and Toro's Letter, "Small Vertical Shaft Engines from China: Letter in Lieu of Rebuttal Brief," dated January 29, 2021 (Toro's Letter in Lieu of Rebuttal Brief).

⁹ See Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from China: Withdrawal of Hearing Request," dated February 4, 2021; Toro's Letter, "Small Vertical Engines from China: Withdrawal of Request for Hearing," dated February 4, 2021; Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Zongshen Hearing Request Withdrawal," dated February 5, 2021; and Loncin's Letter, "Loncin Motor Withdrawal of Hearing Request: Antidumping Duty Investigation of Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People's Republic of China," dated February 5, 2021.

¹⁰ See Memorandum, "Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Ex Parte Phone Call with Counsel to Loncin Motor Co., Ltd.," dated February 12, 2021.

¹¹ For an explanation of the methodology used to calculate the respondents' estimated weighted-average dumping margins, see *Preliminary Determination* PDM at 26-36. For the calculations specific to the respondents' estimated weighted average dumping margins, see Memorandum, "Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Analysis Memorandum for Chongqing Kohler Engines Ltd.," dated October 14, 2020 (Chongqing Kohler Preliminary Analysis Memorandum); and Memorandum, "Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China:

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are small vertical engines from China. For a complete description of the scope of this investigation, *see* Appendix I of the accompanying *Federal Register* notice.

IV. USE OF ADVERSE FACTS AVAILABLE

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

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

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

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available (AFA) when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.¹² In doing so, Commerce is not required to

Preliminary Analysis Memorandum for Chongqing Zongshen General Power Machine Co., Ltd.,” dated October 14, 2020 (Zongshen Companies Preliminary Analysis Memorandum).

¹² See section 776(b)(1)(B) of the Act.

determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) provides that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹³

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.”¹⁴ Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency’s inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the “best of its ability” standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.¹⁵ The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains,” and “conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of” its ability to do so.¹⁶ Moreover, further affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.¹⁷

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁸ Further, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

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

¹³ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 870.

¹⁴ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

¹⁵ *Id.* at 1382.

¹⁶ *Id.*

¹⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83.

¹⁸ See SAA at 870.

had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

Selection and Corroboration of the AFA Rate

When using facts otherwise available, section 776(c) of the Act provides that, where Commerce relies on secondary information (such as the Petition)¹⁹ rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²⁰ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value,²¹ although Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.²² To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used, although Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²³

In applying an adverse inference, Commerce may rely on information derived from the Petition, the final determination in the investigation, any previous review, or any other information placed on the record.²⁴ As stated above, in selecting an AFA rate, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.²⁵ In an investigation, Commerce’s practice with respect to the assignment of an AFA rate is to select the higher of: (1) the highest dumping margin alleged in the Petition; or (2) the highest calculated dumping margin of any respondent in the investigation.²⁶

¹⁹ See Petitioner’s Letter, “Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from The People’s Republic of China,” dated March 18, 2020 (the Petition), at Volumes I and II.

²⁰ See SAA at 870.

²¹ *Id.*; see also 19 CFR 351.308(d).

²² See section 776(c)(2) of the Act.

²³ See section 776(d)(3) of the Act; see also, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

²⁴ See SAA at 870.

²⁵ *Id.*

²⁶ See, e.g., *Certain Uncoated Paper from Indonesia: Final Determination of Sales at Less Than Fair Value*, 81 FR 3101 (January 20, 2016).

Application of AFA for the China-wide Entity

In the *Preliminary Determination*, we found that the China-wide entity did not respond to Commerce's requests for information, failed to provide necessary information, withheld information requested by Commerce, failed to provide information in a timely manner, and significantly impeded this proceeding by not submitting the requested information.²⁷ We further determined that, because the non-responsive Chinese companies had not demonstrated their eligibility for separate rate status, these companies are part of the China-wide entity. Finally, Commerce preliminarily assigned a China-wide rate based on the facts otherwise available, pursuant to sections 776(a)(1) and (a)(2)(A)-(C) of the Act, using an adverse inference, pursuant to 776(b) of the Act.²⁸

In the *Preliminary Determination*, when selecting an appropriate rate to apply as AFA, we found that we were able to corroborate the highest dumping margin found in the Petition. Specifically, in attempting to corroborate that rate, we compared the highest petition rate of 541.75 percent to the individually-investigated respondents' highest transaction-specific dumping margins within the appropriate comparison method.²⁹ We found the petition rate to be significantly higher than Chongqing Kohler's highest calculated transaction-specific dumping margins. However, the Zongshen Companies' highest calculated, non-outlier, transaction-specific dumping margin exceeded the highest petition rate.³⁰ Consequently, because we were able to corroborate the highest petition margin of 541.75 percent with individual transaction-specific margins from the respondents, in the *Preliminary Determination*, we assigned a dumping margin of 541.75 percent for the China-wide entity.³¹

For this final determination we continue to find that the China-wide entity failed to cooperate to the best of its ability in responding to Commerce's requests for information. In addition, we have not changed our calculations of Chongqing Kohler's and the Zongshen Companies' estimated weighted-average dumping margins for the final determination. As a result, we continue to rely on the highest calculated, non-outlier, transaction specific dumping margin of the Zongshen Companies to corroborate the highest petition margin of 541.75 percent, pursuant to section 776(c) of the Act. Accordingly, we are continuing to assign the China-wide entity a dumping margin of 541.75 percent, the highest rate found in the Petition, as AFA for the final determination. The China-wide rate applies to all entries of subject merchandise, except for entries from Chongqing Kohler, the Zongshen Companies, and the other producers/exporters combinations receiving a separate rate.

V. CHANGES SINCE THE PRELIMINARY DETERMINATION

We calculated constructed export price (CEP), export price (EP), and normal value (NV) for the respondents using the same methodology as stated in the *Preliminary Determination*.³²

²⁷ See *Preliminary Determination* PDM at 17-19.

²⁸ *Id.* at 18-20.

²⁹ *Id.* at 20.

³⁰ *Id.*

³¹ *Id.*

³² See *Preliminary Determination* PDM at 26-36; see also Chongqing Kohler Preliminary Analysis Memorandum; and Zongshen Companies Preliminary Analysis Memorandum.

However, as discussed in Comment 10, we have determined that Loncin is eligible to receive a separate rate, in a change from our determination in the *Preliminary Determination*.³³

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

As discussed in the *Preliminary Determination*,³⁴ in applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.³⁵ For a subsidy meeting these criteria, the statute requires Commerce to reduce the dumping margin by the estimated amount of the increase in the weighted-average dumping margin due to a countervailable subsidy, subject to a specified cap.³⁶ In conducting this analysis, Commerce has not concluded that the concurrent application of non-market economy (NME) dumping duties and countervailing duties necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.³⁷

In our *Preliminary Determination*, upon consideration of the responses from both mandatory respondents and the relevant statutory criteria, we concluded that an adjustment under section 777A(f) of the Act was not warranted in this investigation.³⁸ The Zongshen Companies challenged Commerce's preliminary determination not to grant them an offset to their cash deposit rates.³⁹ Consistent with our *Preliminary Determination*, we have not made any adjustment under section 777A(f) of the Act to the rates assigned to any of the mandatory respondents, the separate rate respondents, or the China-wide entity in this final determination. For further discussion of this issue with respect to the Zongshen Companies, *see* Comment 9.

VII. ADJUSTMENTS TO CASH DEPOSIT RATES FOR EXPORT SUBSIDIES

As we stated in the *Preliminary Determination*, in an LTFV investigation, where there is a concurrent countervailing duty (CVD) investigation, it is Commerce's normal practice to calculate the cash deposit rate for each respondent by adjusting the respondent's estimated

³³ See *Preliminary Determination* PDM at 15-16; *see also* Memorandum, "Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Separate Rate Memorandum – Loncin Motor Co., Ltd." dated October 14, 2020.

³⁴ See *Preliminary Determination* PDM at 36-37.

³⁵ See sections 777A(f)(1)(A)-(C) of the Act.

³⁶ See sections 777A(f)(1)-(2) of the Act.

³⁷ See, e.g., *Fine Denier Polyester Staple Fiber from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 24740 (May 30, 2018), and accompanying Issues and Decision Memorandum (IDM) at Comment 2.

³⁸ See *Preliminary Determination* PDM at 37-41.

³⁹ See Zongshen Companies' Case Brief at 21-24.

weighted-average dumping margin to account for export subsidies found for each respective respondent in the concurrent CVD investigation.⁴⁰ Doing so is in accordance with section 772(c)(1)(C) of the Act, which states that U.S. price “shall be increased by the amount of any countervailing duty imposed on the subject merchandise... to offset an export subsidy.”⁴¹

Commerce determined in the final determination of the companion CVD investigation that one of the mandatory respondents (*i.e.*, Chongqing Zongshen) benefitted from certain subsidies, including the Export Buyers Credit Subsidy program, the Export Sellers Credit Subsidy program, the International Market Development Assistance program, and the Export Credit Insurance Assistance program, all of which are export contingent,⁴² and whose subsidy rates equal 10.54 percent,⁴³ 1.63 percent,⁴⁴ 0.02 percent,⁴⁵ and 0.34 percent,⁴⁶ respectively. Commerce did not find that the other mandatory respondent, Chongqing Kohler, benefitted from any export contingent subsidies.⁴⁷ Because Commerce calculated the estimated subsidy rate for all other companies in the companion CVD investigation using the simple average of Chongqing Kohler and Chongqing Zongshen’s estimated subsidy rates,⁴⁸ we have calculated a simple average of the export contingent subsidy rates assigned to Chongqing Kohler (*i.e.*, zero) and Chongqing Zongshen (*i.e.*, 12.53 percent) for these subsidy programs to determine a rate of 6.27 percent assigned to all other companies with respect to these programs.

Accordingly, in order to avoid a double remedy as a result of export subsidies that are collected as part of the companion CVD proceeding, and pursuant to section 772(c)(1)(C) of the Act, we must adjust the estimated weighted-average dumping margins by the amount of export subsidies that are countervailed as a result of the companion CVD proceeding. Therefore, Commerce is adjusting the estimated weighted-average dumping margins for this final determination by 0.00 percent for Chongqing Kohler, 12.53 percent for the Zongshen Companies, and 6.27 percent for the non-examined companies that are eligible for a separate rate and the China-wide entity.

VIII. AFFIRMATIVE DETERMINATION OF CRITICAL CIRCUMSTANCES

In the *Preliminary Determination*, Commerce preliminarily determined that critical circumstances existed with respect to the Zongshen Companies and the China-wide entity.⁴⁹ No parties submitted comments regarding our preliminary critical circumstances determination with respect to Chongqing Kohler, the non-individually investigated companies, or the China-wide

⁴⁰ See *Preliminary Determination* PDM at 41.

⁴¹ See *Carbazole Violet Pigment 23 from India: Final Results of Antidumping Duty Administrative Review*, 75 FR 38076, 38077 (July 1, 2010), and accompanying IDM at Comment 1.

⁴² See Unpublished *Federal Register* notice, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination,” dated concurrently with this determination and memorandum (*CVD Small Vertical Engines*), and accompanying IDM at 5-7 and Comment 2.

⁴³ *Id.* at 7.

⁴⁴ *Id.*

⁴⁵ *Id.* at 7, n.30.

⁴⁶ *Id.*

⁴⁷ *Id.* at 6-7, Comment 2, and Appendix I.

⁴⁸ See *CVD Small Vertical Engines* at 5.

⁴⁹ See *Preliminary Determination*, 85 FR at 66933.

entity. However, as discussed in Comment 1, MTD submitted comments with respect to whether critical circumstances exist with respect to the Zongshen Companies.⁵⁰

As an initial matter, because the estimated dumping margins for Chongqing Kohler, the Zongshen Companies, the non-individually investigated companies, and the China-wide entity have not changed, and these estimated dumping margins all exceed the threshold sufficient to impute knowledge of dumping (*i.e.*, 25 percent for EP sales and 15 percent for CEP sales),⁵¹ we continue to find for the final determination that there is reasonable basis to believe or suspect that all producers/importers of small vertical engines from China knew, or should have known, that exporters were selling subject merchandise at LTFV. Moreover, we continue to look to the preliminary injury determination of the ITC to determine whether an importer knew or should have known that there was likely to be material injury caused by such imports. Therefore, because the ITC preliminarily found a reasonable indication that an industry in the United States is materially injured by imports of small vertical engines from China,⁵² Commerce determines that importers knew or should have known that there was likely to be material injury by reason of sales of small vertical engines at LTFV by all producers/exporters of small vertical engines from China.

Consistent with Commerce's practice, for the final determination, we have updated the base and comparison periods to account for the quantity and value data that Chongqing Kohler and the Zongshen Companies reported following the *Preliminary Determination*.⁵³ It is Commerce's practice to base the critical circumstances analysis on all available data, using base and comparison periods of no less than three months.⁵⁴ Further Commerce's practice is to limit the comparison period by the month that Commerce began suspension of liquidation resulting from

⁵⁰ See MTD's Letter in Lieu of Case Brief at 7-16

⁵¹ See, *e.g.*, *Carbon and Alloy Steel Wire Rod from Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Preliminary Determination of Critical Circumstances*, 67 FR 6224, 6225 (February 11, 2002), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Moldova*, 67 FR 55790 (August 30, 2002); and *Affirmative Preliminary Determination of Critical Circumstances: Magnesium Metal from the People's Republic of China*, 69 FR 59187 (October 4, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005).

⁵² See *International Trade Commission Investigation Nos. 701-TA-643 and 731-TA-1493 (Preliminary); Small Vertical Engines from China*, 85 FR 27243 (May 7, 2020).

⁵³ See Chongqing Kohler's Letter, "Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof from the People's Republic of China: Chongqing Kohler's Monthly Quantity and Value Data through October 2020," dated November 16, 2020, at Attachment A; and Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 225cc and 999cc {sic}, and Parts Thereof, from China; AD Investigation; Chongqing Zongshen Monthly Q&V Data," dated November 16, 2020 at Attachment I.

⁵⁴ See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 47111, 47118-19 (August 4, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India*, 69 FR 76916 (December 23, 2004); and *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China*, 69 FR 20594 (April 16, 2004) (*Color Television Receivers from China*), and accompanying IDM at Comment 3.

an affirmative preliminary determination.⁵⁵ However, when, as is the case here, there is a companion CVD investigation, we limit the duration of the comparison period by the month that Commerce began imposing preliminary countervailing duties on subject imports.⁵⁶ The companion CVD investigation published its affirmative preliminary determination in August 2020.⁵⁷ Accordingly, we are continuing to define base and comparison periods within the bounds of our normal practice by extending the comparison period up through the month of the *CVD Preliminary Determination*. For this final determination, we are comparing shipments over a period beginning in April 2020 through August 2020 with the period November 2019 through March 2020.⁵⁸ As we explained in the *Preliminary Determination*, as part of the critical circumstances analysis under section 703(e)(1)(B) of the Act and 19 CFR 351.206(i), Commerce must determine whether there are “massive imports” over a “relatively short period.”⁵⁹ Commerce’s regulations provide that, generally, imports must increase by at least 15 percent during the “comparison period” to be considered “massive.”⁶⁰ As a result of the updates discussed above, we continue to determine that critical circumstances exist for the Zongshen Companies but not for Chongqing Kohler.⁶¹

For the non-individually investigated companies, Commerce attempted to rely on Global Trade Atlas (GTA) data, adjusted to exclude shipments reported by the mandatory respondents, to conduct its massive imports analysis. We used November 2019 through March 2020 as the base period and April 2020 through August 2020 as the comparison period.⁶² However, because the quantity of imports shown in GTA data is smaller than that in the combined mandatory respondents’ data, we find the normal method of subtracting the mandatory respondents’ data (*i.e.*, that of Chongqing Kohler and the Zongshen Companies) from the GTA data to be an unreliable indicator of the experience of all others companies for purposes of the “massive” determination. In the *Preliminary Determination*, we experienced the same circumstances with respect to the GTA data, and, as a result, based the “massive” finding for the non-individually investigated companies on the experience of Chongqing Kohler.⁶³ No party has argued against this methodology for the final determination. Accordingly, we are continuing to base our

⁵⁵ See, *e.g.*, *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32707 (July 9, 2019), and accompanying IDM at “V. Affirmative Determination of Critical Circumstances;” and *Certain Quartz Surface Products from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances*, 84 FR 23767 (May 23, 2019) (*Quartz Surface Products from China*), and accompanying IDM at 2.

⁵⁶ See, *e.g.*, *Quartz Surface Products from China* IDM at Comment 2; and *Truck and Bus Tires from the People’s Republic of China: Final Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances*, 82 FR 8599 (January 27, 2017) (*Truck and Bus Tires from China*), and accompanying IDM at Comment 28.

⁵⁷ See *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 52086 (August 24, 2020) (*CVD Preliminary Determination*).

⁵⁸ See Memorandum, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Critical Circumstances Analysis for the Final Determination,” dated concurrently with this memorandum (Final Critical Circumstances Analysis).

⁵⁹ See *Preliminary Determination* PDM at 20-21.

⁶⁰ See 19 CFR 351.206(i).

⁶¹ See Final Critical Circumstances Analysis.

⁶² *Id.* at Attachment I for our analysis of these data.

⁶³ See *Preliminary Determination* PDM at 24.

determination for whether imports were massive for the non-individually examined companies on the experience of Chongqing Kohler. As a result, we continue to find that the separate rate companies did not have a massive surge of imports and, as such, that critical circumstances do not exist for all non-individually investigated companies.⁶⁴

Because, as explained above, we continue to find that the China-wide entity has been unresponsive and has not cooperated to the best of its ability, we continue to find there to be massive imports for the China-wide entity, pursuant to section 733(e)(1)(B) of the Act and 19 CFR 351.206(c)(2)(i). Thus, we also continue to find that critical circumstances exist for the China-wide entity.

IX. DISCUSSION OF THE ISSUES

General Comments

Comment 1: Critical Circumstances

MTD's Letter in Lieu of Case Brief

- Commerce looks to section 733(e) of the Act in evaluating whether critical circumstances exist. Further, under 19 CFR 351.206(h)(1), Commerce will normally examine the volume and value of imports, seasonal trends, and the share of domestic consumption accounted for by the imports. Unless imports have increased by at least 15 percent during the “relatively short period,” Commerce will not consider the imports to be massive.⁶⁵
- In analyzing seasonal trends, Commerce typically relies on a quantitative analysis of entries spanning the two years prior to the relevant period.⁶⁶ If Commerce determines that seasonality trends for entries existed prior to the filing of the case, Commerce may determine that the massive import quantities were the result of these seasonal trends rather than importers attempting to avoid the suspension of liquidation and imposition of provisional measures.⁶⁷
- At the *Preliminary Determination*, Commerce did not address seasonal trends, in contradiction to its practice, regulations, and case precedent.⁶⁸ Thus, Commerce should

⁶⁴ See Final Critical Circumstances Analysis at Attachment I.

⁶⁵ See MTD's Letter in Lieu of Case Brief at 8.

⁶⁶ *Id.* at 8-9 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Refined Brown Aluminum Oxide (Otherwise known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China*, 68 FR 55589 (September 26, 2003) (*Brown Aluminum Oxide from China*), and accompanying IDM at Comment 2; and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004), and accompanying IDM at Comment 7A).

⁶⁷ *Id.* at 9 (citing *Color Television Receivers from China* IDM at Comment 3).

⁶⁸ *Id.* (citing *Enforcement and Compliance Antidumping Manual*, U.S. Department of Commerce (2015), at Chapter 12: Critical Circumstances at 7; 19 CFR 351.206(h)(1)(ii); and *Utility Scale Wind Towers from Indonesia: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 85 FR 40241 (July 6, 2020), and accompanying IDM at Comment 4).

revise its analysis of critical circumstances to address the impact of seasonal trends in the Zongshen Companies' export patterns, the effect of the COVID-19 pandemic, and the small vertical engines industry's practice of long-term contracts.

- In *Color Television Receivers from China*, Commerce used a two-step methodology to analyze seasonality by: (1) examining import volume and determining those imports followed a seasonal trend; and (2) evaluating whether the seasonality factor accounted for the increase in imports. Ultimately, Commerce concluded that the seasonality factor accounted for the entire increase in the respondent's shipments post-petition.⁶⁹ Further, in *Color Television Receivers from China*, Commerce adjusted the import data used to account for imports during the post-petition period that were backlogged purchase orders delayed by the SARS epidemic.⁷⁰
- The import volumes for subject merchandise from April to July 2020 reflect the seasonal trends of the small vertical engine market and are compounded by the COVID-19 pandemic. When accounting for these factors, imports of subject merchandise during the post-petition period are not massive.⁷¹
- As the petitioner acknowledged in the Petition, peak selling period for vertical shaft engines generally occurs during the first quarter of the year, which corresponds to the peak period to produce and sell lawn mowers (*i.e.*, early spring to early summer). Sales are generally lowest during the third quarter of each year.⁷² Commerce failed to account or discuss these seasonal trends in the *Preliminary Determination*.
- Commerce must consider the effects of the COVID-19 pandemic on the selling season of the small vertical engines industry and on the volume of imports made in the pre- and post-petition periods.⁷³ Commerce has previously considered disruptions to exporting patterns as "extraordinary circumstances" during the SARS epidemic.⁷⁴ COVID-19 has had a substantial effect on China during the first quarter of 2020 (*i.e.*, peak selling season) because production was shut down and Chinese manufacturers were only able to begin shipping backlogged orders in the late spring and summer of 2020.⁷⁵ Like in *Color Television Receivers from China*, Commerce should reclassify shipments supposed to occur during the pre-petition period, but which were delayed until the post-petition period, as part of the pre-petition period for the purposes of determining whether imports

⁶⁹ *Id.* at 11 (citing *Color Television Receivers from China* IDM at Comment 3).

⁷⁰ *Id.*

⁷¹ *Id.* at 12.

⁷² *Id.* (citing the Petition at Volume I at 16-17).

⁷³ *Id.* at 13.

⁷⁴ *Id.* (citing *Color Television Receivers from China* IDM at Comment 3).

⁷⁵ *Id.* (citing Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Zongshen Extension Request for Section A Response," dated May 15, 2020, at 3; and Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Extension Request for Sections C-D Response," dated June 17, 2020, at 3).

were massive.⁷⁶ The effect of COVID-19 is also evident in Zongshen Companies' consolidated inventory levels.⁷⁷

- Commerce has also not considered the impact of long-term purchasing contracts, which impacted the price and volume of shipments and were largely predetermined, as acknowledged in the Petition.⁷⁸ The Zongshen Companies' price and volume of shipments are mostly predetermined for the following year based on negotiations taking place in the fall.⁷⁹
- The critical circumstances provision is meant to deter exporters of subject merchandise from stockpiling imports prior to the *Preliminary Determination* to circumvent the suspension of liquidation and provisional measures.⁸⁰ There is no reason to apply the provision in cases, such as here, where the post-petition imports were not intended to circumvent the imposition of AD duties.

Petitioner's Rebuttal Brief

- MTD's arguments regarding critical circumstances are unsupported by law or fact and should be rejected for the final determination. Commerce followed its regulations and practice when determining critical circumstances exist for the Zongshen Companies in the *Preliminary Determination*.⁸¹
- The framework for Commerce's analysis with respect to whether imports were massive, as proposed by MTD, is inconsistent to Commerce's practice. Rather than actually focusing on seasonal trends (*i.e.*, sales patterns established over a time period), MTD's arguments focus solely on anomalies in those trends, such as a supposed shift in sales due to COVID-19 and long-term contracts.⁸²
- MTD acknowledges that peak selling season for vertical shaft engines is the first quarter of the year and the lowest selling season is the third quarter of the year; however, rather than focusing on these trends, MTD's arguments focus on COVID-19 and long-term contracts, factors which are not part of Commerce's analysis.⁸³
- Even if Commerce were to accept MTD's criteria for assessing critical circumstances, MTD's mischaracterizes the factual record. MTD does not challenge Commerce's

⁷⁶ *Id.* at 13-14.

⁷⁷ *Id.* at 14.

⁷⁸ *Id.* at 14-15 (citing the Petition at Volume I at 15).

⁷⁹ *Id.* at 15 (citing Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from China; AD Investigation; Zongshen Companies Section A Response," dated June 1, 2020 (Zongshen Companies' AQR), at 12-13 and A-I-11 and A-I-12).

⁸⁰ *Id.* (citing *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003) (*Fish Fillets from Vietnam LTFV*), and accompanying IDM at Comment 7).

⁸¹ See Petitioner's Rebuttal Brief at 32-33.

⁸² *Id.* at 34.

⁸³ *Id.*

determination that the Zongshen Companies' imports during the post-petition period were massive in comparison to the pre-petition period nor does it argue that Commerce used incorrect calculations or time periods. Instead, MTD claims that long-term contracts were delayed for almost six months due to COVID-19. MTD cannot point to any evidence on the record (*e.g.*, correspondence, invoicing, or sales documentation) that substantiates its arguments.⁸⁴

- The import data on the record does not show any meaningful trends during the COVID-19 pandemic in China. GTA data shows 68,990 units of small vertical engines exported from China to the United States in February 2020, with shipments declining in the three months following. Then, in June 2020, exports of small vertical engines shot up to 167,330 units and fell in July 2020 to 98,286 units. The Zongshen Companies' data are even more telling.⁸⁵ The data does not show any pattern related to COVID-19 or contracts. MTD also ignores the massive shipments brought in by the Zongshen Companies, which were much larger than the Zongshen Companies' imports in the base period, which reverse the normal seasonal trends.
- MTD's citations to *Color Television Receivers from China* fail on their merit. While Commerce did reclassify certain shipments for a single respondent from the post-petition period to the pre-petition period due to shipping delays related to SARS, Commerce only did so because of well-documented evidence.⁸⁶ Commerce rejected similar requests from other respondents because they did not support their requests with documentation.⁸⁷ MTD has not and cannot point to any record evidence that the Zongshen Companies' shipments were delayed due to COVID-19.
- Commerce has been clear that excluding shipments subject to long-term contracts is inappropriate because these contracts usually provide exporters with "flexibility to increase shipments prior to the suspension of liquidation."⁸⁸
- With respect to MTD's arguments that Commerce must consider the effects of COVID-19 on the selling season of the small vertical engine industry, the record shows that Chongqing Kohler and the non-mandatory respondents did not bring in massive imports during the post-petition period, despite operating in the same markets and under the same conditions as the Zongshen Companies.⁸⁹ Thus, MTD's assertion that delaying sales to the third-quarter of 2020 was an industry-wide phenomenon is wrong. Rather, the Zongshen Companies are the only company to export massive volumes of merchandise after the filing of the petition and before the *Preliminary Determination*.⁹⁰ Thus,

⁸⁴ *Id.* at 34-35 (citing MTD's Letter in Lieu of Case Brief at 12-15).

⁸⁵ *Id.* at 35 (citing Memorandum, "Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Critical Circumstances Analysis," dated October 14, 2020, at Attachment 2).

⁸⁶ *Id.* at 35 (citing *Color Television Receivers from China* IDM at 24).

⁸⁷ *Id.* at 36.

⁸⁸ *Id.* (quoting *Color Television Receivers from China* IDM at 24-25).

⁸⁹ *Id.* (citing *Preliminary Determination* PDM at 24).

⁹⁰ *Id.* at 37.

Commerce should continue to find critical circumstances existed with respect to the Zongshen Companies for the final determination.

Commerce's Position:

We continue to find that critical circumstances exist with respect to the Zongshen Companies in the final determination.⁹¹ In order to conduct a seasonality analysis, Commerce normally relies on a minimum of three years of import data.⁹² In this case, notwithstanding MTD's claims regarding the seasonal nature of the small vertical engines industry, we do not have such evidence on the record of this investigation. Furthermore, Commerce has found in prior cases that the burden of demonstrating seasonality is on the respondents:

When a party has argued that seasonal trends accounted for the increase in its shipments, {Commerce} has required the party to explain why this trend was seasonal, in accordance with 19 CFR 351.206(h). *See Notice of Final Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 50608 (October 4, 2001), accompanying Issues and Decision Memorandum at Comment 2, which articulated that, without evidence from the respondent, {Commerce} will not make a finding of seasonal trends.⁹³

Here, the respondents (*i.e.*, Chongqing Kohler and the Zongshen Companies) neither argued nor placed data on the record demonstrating that trade in small vertical engines is seasonal. Rather, MTD raised the issue of seasonality for the first time in its case brief without pointing to data on the record to support its claim.⁹⁴ Thus, we have not examined the seasonality of the small vertical engines industry in the final determination.

Moreover, we disagree with MTD that we should account for COVID-19's effect on the timing of shipments here, consistent with *Color Television Receivers from China*. In *Color Television Receivers from China*, Commerce did not make a blanket adjustment to the import data due to the effect of the SARS epidemic. Instead, Commerce adjusted the import data for the single respondent that placed information on the record demonstrating that the timing of its shipments was effected by SARS.⁹⁵ In the instant case, MTD does not point to any data demonstrating that COVID-19 caused the delays in the Zongshen Companies' shipments, but instead MTD bases its

⁹¹ For further explanation of our critical circumstances finding for the final determination, *see supra* the section titled "Affirmative Determination of Critical Circumstances."

⁹² *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 76 FR 67688, 67702 (November 2, 2011) (analyzing three years of data to find a consistent pattern of seasonality) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from Mexico*, 77 FR 17422 (March 26, 2012)); and *Quartz Surface Products from China* IDM at Comment 2 (finding that data covering two years is insufficient for purposes of a critical circumstances analysis based on seasonality).

⁹³ *See Brown Aluminum Oxide from China* IDM at Comment 2; *see also Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015), and accompanying IDM at Comment 23.

⁹⁴ *See* MTD's Letter in Lieu of Case Brief at 12.

⁹⁵ *See Color Television Receivers from China* IDM at Comment 3.

argument on conjecture and inference.⁹⁶ Therefore, we find no basis to adjust the Zongshen Companies' data for the effects of COVID-19.

Finally, we disagree with MTD that critical circumstances do not exist for the Zongshen Companies because their imports were made pursuant to long-term contracts. Commerce's long standing practice is to include shipments made pursuant to long-term contracts as part of its critical circumstances determinations "because under the terms of many long-term contracts... respondents have the flexibility to increase shipments prior to the suspension of liquidation, thereby circumventing the imposition of... duties."⁹⁷ In the instant case, MTD does not point to any evidence supporting the notion that the shipment dates for the Zongshen Companies' sales made pursuant to long term contracts were fixed. Thus, we find no basis to exclude any of the Zongshen Companies' shipments made pursuant to long-term contracts from our critical circumstances analysis for the final determination. As a result, we continue to find that critical circumstances exist for the Zongshen Companies in the final determination.

Comment 2: Whether to Eliminate the Gap Period in the Event of an Affirmative Finding of Material Injury by the U.S. International Trade Commission

Petitioner's Case Brief

- If the U.S. International Trade Commission (ITC) reaches a final affirmative determination of material injury—not of threat of material injury—Commerce should exercise the discretion allowed by the statute to eliminate the possibility of a gap period.⁹⁸
- On November 9, 2020, Commerce, at the respondents' request, postponed the final determination and extended the provisional measures period to a period of not more than six months.⁹⁹ Thus, the collection of cash deposits is set to expire on April 19, 2021, which is also the date scheduled for the ITC's final determination.
- Commerce's has generally instructed U.S. Customs and Border Protection (CBP) "to terminate the suspension of liquidation, and to liquidate, without regard to AD duties, unliquidated entries" from "the date on which the provisional measures expired, through the day preceding the date of publication of the ITC's final affirmative injury determinations in the *Federal Register*."¹⁰⁰
- Because the ITC's final determination will likely not be published until at least three days after its final determination, it will create a gap period in which unfairly traded imports of small vertical engines can enter the United States without regard to any potential AD

⁹⁶ See MTD's Letter in Lieu of Case Brief at 14.

⁹⁷ See *Color Television Receivers from China* IDM at Comment 3; see also *Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the Socialist Republic of Romania*, 52 FR 17433, 17438 (May 8, 1987); and *Fish Fillets from Vietnam* LTFV IDM at Comment 7.

⁹⁸ See Petitioner's Case Brief at 8-9 (citing sections 736(a) and (b) of the Act).

⁹⁹ *Id.* at 9 (citing *Postponement of Final Determination*).

¹⁰⁰ *Id.* at 10 (citing *Acetone from Belgium, the Republic of South Africa, and the Republic of Korea: Antidumping Duty Orders*, 85 FR 17866 (March 31, 2020)).

duties and will not be subject to administrative review. Thus, Commerce should use the discretion provided to it to eliminate the gap period.¹⁰¹ Allowing the formation of a gap period will undermine the domestic industry, especially with the upcoming sales season for lawn mowers and other outdoor power equipment incorporating subject merchandise.

- The statute provides Commerce the discretion to eliminate gap period in cases of material injury.¹⁰² The “Special Rule” in section 776(b)(2) of the Act only applies in cases where the ITC makes a final affirmative injury determination on the basis of threat or material retardation, thus confirming that Commerce has discretion when selecting the ITC notification date in cases of material injury.¹⁰³
- In *Corus Staal*, the Court of International Trade (CIT) confirmed that the statute allows Commerce to select dates other than the date of the publication of the ITC’s final determination in the *Federal Register* for the resumption of suspension of liquidation and collection of cash deposits.¹⁰⁴ In *Corus Staal*, Commerce identified the date of the order as the end of the gap period, later claiming that the statute requires the publication date of the ITC’s final determination to be the date that gap period end. The Court disagreed and explained that the statute does not require the publication of the ITC’s final determination to resume suspension of liquidation and collection of cash deposits, stating “setting the end of the gap period to coincide with publication of the final order does not conflict directly with the statute.”¹⁰⁵ The Court also noted previous situations in which Commerce has used a date other than the date of publication of the ITC’s final determination to resume suspension of liquidation and the collection of cash deposits.¹⁰⁶
- On the date of the ITC final determination, the ITC usually provides all information necessary to implement the resumption of suspension of liquidation and collection of cash deposit. Thus, a gap period should be avoided at all cost, and in the event the ITC finds material injury, Commerce should issue an AD order that resumes suspension of liquidation and collection of cash deposits on the date of the ITC’s final determination.¹⁰⁷

Loncin’s Rebuttal Brief

- The petitioner’s assertions that it is being penalized by the formation of a gap period are incorrect. The Act allows the petitioner to take steps to preclude the formation of a gap period by not extending and aligning the CVD and AD duty investigations’ final determinations, which the petitioner did not do here.¹⁰⁸

¹⁰¹ *Id.* at 10-11.

¹⁰² *Id.* at 11 (citing section 776(b) of the Act).

¹⁰³ *Id.* at 12 (citing section 776(b)(2) of the Act).

¹⁰⁴ *Id.* at 13 (citing *Corus Staal BV v. United States*, 279 F. Supp. 2d 1363 (CIT 2003) (*Corus Staal*)).

¹⁰⁵ *Id.* (citing *Corus Staal*, 279 F. Supp. 2d at 1185-86).

¹⁰⁶ *Id.* at 14.

¹⁰⁷ *Id.* at 14-15.

¹⁰⁸ See Loncin’s Rebuttal Brief at 2 (citing *Procelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 54 FR 13093 (March 30, 1989) (*Cooking Ware from Mexico*)).

- Commerce does not have discretion as to when the gap period ends. Instead, the gap period is the result of the Act's prohibition on assessing provisional measures on shipments of subject merchandise entered more than 180 days after the publication of the *Preliminary Determination*, and Commerce's recognition of the fact that the resumption of suspension of liquidation and the collection of cash deposits may only occur after the ITC's final determination is published in the *Federal Register*.¹⁰⁹
- The argument here is not when or how Commerce can end or prevent a gap period in a LTFV investigation, but instead when Commerce is legally authorized to collect AD duties after the expiration of the provisional measures period.¹¹⁰
- Section 733(d)(3) of the Act limits the assessment of AD provisional measures to four months, which can be extended to six months, and section 736(b) of the Act allows for AD duties to be assessed after the provisional measures period has ended.¹¹¹ Section 736(b) of the Act distinguishes assessment of AD duties based on findings of material injury (*i.e.*, the General Rule) and threat of material injury (*i.e.*, the Special Rule). Because the Special Rule stipulates that, post-provisional measures, AD duties can only be assessed on shipments after the date the ITC's notice of affirmative determination is published, this section of the Act confirms that the publication date of the ITC's determination is the starting date for the resumption of suspension of liquidation and collection of cash deposits. Everything prior to this date is considered provisional measures.¹¹²
- This reasoning was confirmed by the Courts in *Wind Tower Trade Coal. I* and *II*, where the Courts' analysis of the relevant statutory provisions demonstrates that any AD or CVD cash deposits required before the publication date of the ITC's final determination are considered provisional measures.¹¹³
- This framework is also supported by the statutory provisions regarding the provisional measures cap in section 737 of the Act, for which 19 CFR 351.212(d) provides further detail.¹¹⁴ In its remand redetermination decision in *Corus Staal*, Commerce explained why it believed that duties could only be assessed on shipments entered after the date of publication of the ITC's final determination.¹¹⁵

¹⁰⁹ *Id.* at 3-4.

¹¹⁰ *Id.* at 4.

¹¹¹ *Id.*

¹¹² *Id.* at 5

¹¹³ *Id.* at 5-7 (quoting *Wind Tower Trade Coal. v. United States*, 904 F. Supp. 2d 1349, 1353 (CIT 2013) (*Wind Tower Trade Coal. I*); *aff'd* *Wind Tower Trade Coal. v. United States*, 741 F.3d 89, 96 (Fed. Cir. 2014) (*Wind Tower Trade Coal. II*)).

¹¹⁴ *Id.* at 7-8.

¹¹⁵ *Id.* at 8-9.

- The history of the gap period, as construed by the Courts and administered by Commerce, prove that the provisional measures period extends until publication of the ITC’s final determination.¹¹⁶
- The end point for Commerce’s ability to collect AD duty cash deposits is limited to 180 days.¹¹⁷ The law is undeniable that the time period between the issuance of the ITC’s final determination and its publication is a gap period where AD duty cash deposits may not be collected and liquidation of entries may not be suspended, and thus this period remains within the provisional measures period. If the law considers this period to be part of the provisional measures period, then Commerce has no discretion to avoid the gap period, and the gap period must be created.¹¹⁸
- “Provisional measures” has one meaning under the Act, and Commerce cannot interpret one meaning for the provisional measures cap and another for the gap period.¹¹⁹
- Since April 30, 2014, when initiating administrative reviews, Commerce has consistently notified interested parties that there will be no assessment of AD or countervailing duties on entries of subject merchandise entered or withdrawn from warehouse, for consumption during the relevant provisional measures ‘gap’ period of the order, if such a gap period is applicable to the period of review (POR).¹²⁰
- The petitioner’s arguments that Commerce should change its practice with respect to the gap period and the end of the provisional measures period should be rejected. *Corus Staal* does not support the petitioner’s claim that Commerce has the discretion to change the effective date of the resumption of suspension of liquidation and the collection of cash deposits.¹²¹
- The announcement of the ITC’s final determination does not serve as public notice to importers that AD duties will be assessed, as publication in the *Federal Register* is the only suitable manner with which to notify the public of AD and CVD liability from the date of publication onward.¹²² All critical dates in AD and CVD proceedings reflect the date the decision is published in the *Federal Register*, not the date on which Commerce

¹¹⁶ *Id.* at 10-13 (citing *Cooking Ware from Mexico*, 54 FR at 13095; *U.S. Steel Corp. v. United States*, 618 F. Supp. 496 (CIT 1985); *Countervailing Duties*, 53 FR 52306, 52353 (December 27, 1988) (codified at 19 CFR 355.20(c)); SAA at sections “Retroactivity” and “Provisional Measures;” *F.Lli De Cecco Di Filippo Fara San Martino S.P.A. v. United States*, 21 CIT 1130, 1130-40 (CIT 1997); and *Light-Walled Rectangular Pipe and Tube from Mexico; Final Results of Antidumping Duty Administrative Review*, 76 FR 9547 (February 18, 2011)).

¹¹⁷ *Id.* at 14 (citing 19 CFR 351.210(e)(2)).

¹¹⁸ *Id.* at 14-15.

¹¹⁹ *Id.* at 15 (citing *Xitronix Corp. v. KLA-Tencor Corp.*, 757 F. App’x 1008, 1009 (Fed. Cir. 2019); and *SKF USA Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001); *aff’d* 332 F.3d 1370 (Fed. Cir. 2003)).

¹²⁰ *Id.* (citing *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 79 FR 24398 (April 30, 2014); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 511 (January 6, 2021)).

¹²¹ *Id.* at 16-17.

¹²² *Id.* at 17 (citing *Diamond Sawblades Mfrs.’ Coal. v. United States*, 11 F. Supp. 3d 1303, 1315-16 (CIT 2014)).

announces that decision. The Federal Circuit has also explained the importance of providing notice through the *Federal Register*.¹²³

- It is too late in this case for Commerce to provide adequate notice of a change in practice with respect to the resumption of suspension of liquidation and the collection of cash deposits, as “{f}airness demands that Commerce provide adequate notice of changes in practice.”¹²⁴
- Commerce can refuse to consider this issue because the petitioner did not make the same claim in the companion CVD proceeding. Because the expiration of the AD provisional measures and the ITC final determination are both scheduled to occur on April 19, 2021, the petitioner seems to state that no CBP instructions are necessary to terminate suspension of liquidation. However, because the gap period started in the companion CVD proceeding on December 22, 2020, Commerce would need to take action in the CVD proceeding as well. Thus, petitioner is arguing in the AD proceeding for Commerce to take specific action in the CVD proceeding.¹²⁵ In *Coated Paper from China*, Commerce explained that concurrent investigations are “separate and distinct” legal proceedings and rejected arguments made on one record but not the other.¹²⁶ However, Commerce should nevertheless reject the petitioner’s argument based on the statutory analysis.

The Zongshen Companies’ Rebuttal Brief

- Commerce should reject the petitioner’s request and continue to follow its practice of resuming the suspension of liquidation on the date of publication of the ITC’s final affirmative material injury determination, if such a determination occurs.¹²⁷
- Commerce is required by statute to terminate suspension of liquidation no later than six months after the publication of its *Preliminary Determination*.¹²⁸ Commerce cannot extend the provisional measures beyond the six months, nor can it reinstate suspension of liquidation based on an unpublished ITC determination, for that would essentially constitute an extension of provisional measures.¹²⁹
- The petitioner concedes that Commerce’s practice is to rely on the date of publication of the ITC’s final affirmative material injury determination as the date on which suspension of liquidation and collection of cash deposits can be resumed, and the petitioner does not provide a compelling reason for Commerce to deviate from this practice. Thus,

¹²³ *Id.* at 17-18 (citing *International Trading Co. v. United States*, 281 F.3d 1268, 1275 (Fed. Cir. 2002) (*International Trading Co.*)).

¹²⁴ *Id.* at 19 (quoting *Sao Ta Foods Joint Stock Co. v. United States*, 475 F. Supp. 3d 1283, 1291 (CIT 2020)).

¹²⁵ *Id.* at 20.

¹²⁶ *Id.* at 20-21 (quoting *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010) (*Coated Paper from China*), and accompanying IDM at Comment 2A).

¹²⁷ See Zongshen Companies’ Rebuttal Brief at 8.

¹²⁸ *Id.* (citing section 733(d)(3) of the Act).

¹²⁹ *Id.* at 9.

Commerce should continue to follow this practice for the final determination if the ITC finds material injury.¹³⁰

Toro's Letter in Lieu of Rebuttal Brief

- Commerce may not change the provisional measures period and alter the date of resumption of AD duty collection to be the issuance of the ITC's final determination because such a decision would be unlawful and contrary to Commerce's established practice. Commerce should also continue its practice of using publication in the *Federal Register* to inform the public of changes in U.S. AD or CVD requirements.¹³¹

Commerce's Position:

Commerce finds the petitioner's request to eliminate a potential gap period in the event of a final determination of material injury by the ITC to be extraordinary and contrary to Commerce's longstanding practice. Under section 733(d) of the Act and 19 CFR 351.210(e), Commerce can only suspend liquidation of entries and collect cash deposits for 120 days (*i.e.*, four months) after the date of publication of the *Preliminary Determination*. This period can be extended to up to 180 days (*i.e.*, six months) upon the request of exporters representing a significant proportion of exports of the subject merchandise.¹³² At this point, if the ITC has not yet published a final injury determination, a gap period begins. Although the Act does not explicitly state when the gap period ends, we find section 737 of the Act and 19 CFR 351.212(d) to be instructive, which indicate that, in AD investigations, the provisional measures cash deposit cap terminates at the date of publication of the ITC's final determination. Thus, it is logical that the gap period would, like the provisional measures cash deposit cap, also end with the publication of the ITC's final determination, though the Act does not explicitly state when the end of the gap period shall end.¹³³

Additionally, we find that *Corus Staal* does not support the petitioner's argument to resume the suspension of liquidation and collection of cash deposits on the date the ITC issues its opinion. The issue in *Corus Staal* was whether the gap period should end on the date of the publication of the order or the date of publication of the ITC's final determination, not whether the gap period should end on the date of issuance of the ITC's final determination.¹³⁴ Furthermore, it was Commerce's position in *Corus Staal* that the gap period should end with the date of publication of the ITC's final determination,¹³⁵ and thus it was Commerce's position that the resumption of suspension of liquidation and collection of cash deposit would be effective also pursuant to the publication date of the ITC's final determination.

¹³⁰ *Id.*

¹³¹ See *Toro's Letter in Lieu of Rebuttal Brief* at 2 (citing *International Trading Co.*, 281 F.3d at 1275).

¹³² See section 733(d) of the Act and 19 CFR 351.210(e)(2).

¹³³ This logic is consistent with our previous determination in *CVD Corrosion Inhibitors in China* in which we found section 707 of the Act to be instructive on this very same issue raised in that investigation. See *Certain Corrosion Inhibitors from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 7537 (January 29, 2021) (*CVD Corrosion Inhibitors from China*), and accompanying IDM at Comment 2. Section 707 of the Act is the corresponding CVD provision to section 737 of the Act.

¹³⁴ See *Corus Staal*, 279 F. Supp. 2d at 1367-70.

¹³⁵ *Id.* at 1367-68.

Moreover, publication in the *Federal Register* is the notice that Commerce considers to appropriately inform the public of potential liability for AD duties. Such notice is required by the Act¹³⁶ and is the “familiar manner” of providing notice to parties in AD proceedings.¹³⁷ Indeed, this idea is clearly evident in the Act. For example, Commerce is only allowed to begin suspension of liquidation and the collection of cash deposits following an affirmative preliminary determination at the later of the publication of the notice of the affirmative preliminary determination in the *Federal Register* or 60 days after the date of publication of the notice of initiation of the investigation in the *Federal Register*.¹³⁸ Thus, the suspension of liquidation and collection of cash deposits is intrinsically linked to notice being provided in the *Federal Register*, and this interpretation would logically extend to the end of the gap period, the resumption of suspension of liquidation, and the publication of the ITC’s final determination in the *Federal Register*.

Consistent with Commerce’s position in *Corus Staal* and the Act, it has been Commerce’s longstanding practice to resume suspension of liquidation and the collection of cash deposits, therefore ending the gap period, on the date of publication of the ITC’s final determination, and not on the date the ITC made its determination. Thus, for the purposes of this final determination, we intend to end any gap period that may occur on the date of publication of the ITC’s final determination in the *Federal Register*, in the event that the ITC’s final determination finds material injury.

Surrogate Values

Comment 3: Surrogate Value for Flywheels

The Zongshen Companies’ Case Brief

- When selecting the “best available information” on the record, Commerce’s practice is to use surrogate values (SVs) which are non-export average values, publicly available, product specific, representative of a range of prices, contemporaneous and non-aberrational, and tax-exclusive.¹³⁹ If Commerce continues to use Turkish data for SVs for the final determination, it must revisit its use of Turkish Harmonized Tariff System (HTS) subheadings to value many of the Zongshen Companies’ factors of production (FOPs) because many of those used in the *Preliminary Determination* were unreasonable, unsupported by substantial record evidence, and contrary to law.
- The statute requires Commerce to base SVs for inputs on the “best available information” on the record.¹⁴⁰ SVs chosen by Commerce “must be suitable to yield accurate dumping

¹³⁶ See section 735(d) of the Act.

¹³⁷ See *International Trading Co.*, 281 F.3d at 1275.

¹³⁸ See, e.g., section 733(d)(2) of the Act.

¹³⁹ See Zongshen Companies’ Case Brief at 3 (citing Memorandum, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Surrogate Value Memorandum for the Preliminary Determination,” dated October 14, 2020 (Preliminary SV Memo), at 2).

¹⁴⁰ *Id.* (citing section 773(c)(1) of the Act).

margins.”¹⁴¹ Where there are multiple sources of information on the record with which Commerce may reasonably value FOPs, Commerce cannot act arbitrarily, and Commerce’s decision will be set aside if “no reasonable mind could conclude that the information relied upon was the best available.”¹⁴²

- The input actually used by the respondent is important, if not controlling, when evaluating which SV to use to value that input¹⁴³ because using SVs that accurately and specifically capture the inputs used by the respondent is essential in calculating accurate AD margins.¹⁴⁴ Thus, the specific inputs used by the Zongshen Companies must be taken into account by Commerce.
- Commerce should use SVs specific to the input at issue, as choosing SV data that does not represent the specific input “undermines the reasonableness of {Commerce’s} reliance on the best available information.”¹⁴⁵ Thus, HTS basket subheadings may not reasonably represent the specific input in question. Moreover, the CIT has found that when alternate, input-specific data are available, Commerce’s reliance on a basket category to value SVs may be found to be unreasonable.¹⁴⁶
- The selected SVs may not render aberrational results and Commerce must be able to defend the reliability of the SVs chosen. The CIT has ruled that Commerce has some discretion in choosing what constitutes the “best available information,” but, when faced with data that undermines the reliability of selected SVs or challenges that the SV data is aberrational, Commerce is required to discuss competing evidence.¹⁴⁷
- Although Commerce clearly sought to select SVs that are non-aberrational for the *Preliminary Determination*, the Zongshen Companies’ preliminary AD margin does not reflect Commerce’s reliance on the “best available information” when selecting SVs, as the Zongshen Companies’ preliminary AD margin was highly aberrational and inaccurate. Many of the SVs used to value the Zongshen Companies’ inputs were grossly overstated, do not bear a reasonable relationship to the actual input used by the Zongshen Companies, and should be changed for the final determination.¹⁴⁸

¹⁴¹ *Id.* (citing *Blue Field (Sichuan) Food Indus. Co., Ltd. v. United States*, 949 F. Supp. 2d 1311, 1317 (CIT 2003) (*Blue Field*) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990) (*Rhone Poulenc*))).

¹⁴² *Id.* at 4 (citing *China First Pencil Co. v. United States*, 721 F. Supp. 2d 1369, 1375 (CIT 2010) (citing *Goldlink Indus. Co. v. United States*, 431 F. Supp. 2d 1323, 1327 (CIT 2006)); and *Blue Field*, 949 F. Supp. 2d at 1326).

¹⁴³ *Id.* (citing *Jacobi Carbons AB v. United States*, 992 F. Supp. 2d 1360, 1370-71 (CIT 2014) (*Jacobi Carbons*)).

¹⁴⁴ *Id.* (citing *Zhengzhou Harmoni Spice Co. v. United States*, 617 F. Supp. 2d 1281, 1297 (CIT 2009) (*Harmoni Spice*); and *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333, 1341 (Fed. Cir. 2011) (*Zhejiang DunAn*)).

¹⁴⁵ *Id.* at 5 (citing *Baroque Timber Indus. (Zongshan) Co., Ltd. v. United States*, 925 F. Supp. 2d 1332, 1344-45 (CIT 2013); and *Zhejiang DunAn*, 652 F.3d at 1343).

¹⁴⁶ *Id.* (citing *Jinan Yipin Corp. Ltd. v. United States*, 526 F. Supp. 2d 1347, 1376-79 (CIT 2007); and *Blue Field*, 949 F. Supp. 2d at 1328).

¹⁴⁷ *Id.* at 5-6 (citing *Blue Field*, 949 F. Supp. 2d at 1633; and *Mittal Steel Galati S.A. v. United States*, 502 F. Supp. 2d 1295, 1308 (CIT 2007)).

¹⁴⁸ *Id.* at 6.

- In the *Preliminary Determination*, Commerce used Turkish HTS subheading 8511.20.00.90.00, with an average unit value (AUV) during the POI of 30.34 European Union Euros (EUR) per kilogram (kg), to value the Zongshen Companies' aluminum and cast iron flywheels.¹⁴⁹ This selection does not represent the "best available information," and no reasonable mind could accept this valuation where the flywheel, whether aluminum or cast iron, represents nearly 20 percent of the total cost of material inputs, as the flywheel is a minor component of small vertical engines.¹⁵⁰
- Turkish HTS 8511.20.00.90.00 is for "Ignition, Dynamo Magnetos, and Magnetic Flywheels for Other Vehicles." While this HTS subheading includes magnetic flywheels, it is heavily weighted by other dissimilar products that have more electrical components and, thus, a higher value.¹⁵¹
- The flywheels reported by the Zongshen Companies are very simple cast iron or aluminum products with small magnet blocks attached, and the magnet blocks make up only a very tiny part of these inputs by weight.¹⁵² Thus, Turkish HTS 8511.20.00.90.00 does not accurately reflect the nature, characteristics, or true value of the Zongshen Companies' flywheel inputs.
- Commerce should find for the final determination that HTS subheadings 7325.99.10.00.00, which represents "Other cast articles of iron or steel: of malleable cast iron," and 7601.20.80.00.00, which represents "Other unprocessed aluminum alloys: in ingots or in liquid state," bear a rational and reasonable relationship to the flywheel inputs used by the Zongshen Companies.¹⁵³ These two HTS subheadings are accurate as to the nature, characteristics, and true value of the flywheel inputs, as the record shows that aluminum or cast iron accounts for the majority of the flywheel input's weight and main characteristics.¹⁵⁴
- Despite competing HTS subheadings on the record, Commerce did not provide an explanation at the *Preliminary Determination* why it chose to use the aberrational HTS subheading proposed by the petitioner (*i.e.*, 8511.20.00.90.00). Further, Commerce did not analyze any of the Zongshen Companies' pre-preliminary comments.¹⁵⁵
- Use of HTS subheading 8511.20.00.90.00 results in the cost of a flywheel representing nearly 20 percent of the total cost of material inputs used to produce a subject small

¹⁴⁹ *Id.* (citing Preliminary SV Memo at Exhibit 1-B).

¹⁵⁰ *Id.* at 7.

¹⁵¹ *Id.*

¹⁵² *Id.* (citing Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and up to 225cc, and Parts Thereof, from China; AD Investigation; Chongqing Zongshen Factual Information and Surrogate Value Submission," dated September 14, 2020 (Zongshen Companies' SV Submission), at Exhibits 12a and 12b).

¹⁵³ *Id.* at 7-8.

¹⁵⁴ *Id.* (citing Zongshen Companies' SV Submission at Exhibit 12).

¹⁵⁵ *Id.* (citing Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Chongqing Zongshen Pre-Preliminary Comments," dated October 6, 2020 (Zongshen Companies' Pre-Preliminary Comments))

vertical engine, which is anomalous and grossly inaccurate.¹⁵⁶ Flywheels, are just one of many parts of a vertical shaft engine. In both Commerce's and the petitioner's own words, flywheels are not a major component of small vertical engines. The scope of the investigation identifies major components that would compose a small vertical engine sub-assembly, and flywheels are not one of the listed components nor listed as a relevant additional component in Commerce's definition of small vertical engine sub-assemblies.¹⁵⁷

- A reasonable mind would not find that an SV for a minor component to be the best available information when it accounts for 20 percent of the total cost of materials. Thus, for the final determination, Commerce should rely on the best available information on the record and value the Zongshen Companies' flywheel inputs using Turkish HTS subheadings 7325.99.10.00.00 and 7601.20.80.00.00.¹⁵⁸

MTD's Letter in Lieu of Case Brief

- When selecting SVs, Commerce's practice is to use SVs which are publicly available, product specific, representative of a broad market average, contemporaneous, and tax-exclusive.¹⁵⁹ When selecting specific HTS codes to value the respondents' FOPs, Commerce is "required to determine which of the competing subheadings constituted the best available information."¹⁶⁰
- Commerce concluded in the *Preliminary Determination* that the Turkish import data was product specific,¹⁶¹ but Commerce's use of Turkish HTS subheading 8511.20.00.90.00 resulted in unreasonable SVs that distorted Commerce's dumping margin calculations.
- Commerce's use of Turkish HTS 8511.20.00.90.00 resulted in the costs of a flywheel, which is a minor component of small vertical engines, representing nearly 20 percent of the total cost of materials.¹⁶² The subheading chosen does not accurately reflect the value of the flywheels used in the production of small vertical engines. The calculated AUV for the subheading used was 30.3410 EUR/kg, which is over 20 times higher than the Zongshen Companies' suggested value using Turkish HTS 7325.99.10.00.¹⁶³

¹⁵⁶ *Id.* at 8-9

¹⁵⁷ *Id.* at 9-10 (citing *Preliminary Determination*, 85 FR at 66934-35 at Appendix I).

¹⁵⁸ *Id.* at 10.

¹⁵⁹ See MTD's Letter In Lieu of Case Brief at 2 (citing *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006), and accompanying IDM at Comment 2).

¹⁶⁰ *Id.* at 2-3 (quoting *Downhole Pipe & Equip., L.P. v. United States*, 776 F.3d 1369, 1379 (Fed. Cir. 2015)).

¹⁶¹ *Id.* at 3 (citing *Preliminary Determination* PDM at 29).

¹⁶² *Id.* (citing Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Chongqing Zongshen Significant Ministerial Error Comments," dated October 26, 2020).

¹⁶³ *Id.* at 4 (citing Preliminary SV Memo at Exhibit 3-A; and Zongshen Companies' SV Submission at Exhibit 1).

- The three HTS codes the petitioner provided in the Petition had AUVs ranging from one-quarter to one-half of the AUV for Turkish HTS 8511.20.00.90.00.¹⁶⁴ Turkish HTS 8511.20.00.90.00 was not even suggested as a potential SV for flywheels until the petitioner submitted its pre-preliminary comments.¹⁶⁵ The disparity between the value of the Zongshen Companies' suggested HTS codes, the HTS codes in the Petition, and the petitioner's suggested HTS code, suggest that Commerce should "reconsider the appropriate basis on which to value this input."¹⁶⁶
- Turkish HTS subheading 8511.20.00.90.00 provides for ignition magnetos, magneto dynamos, and magnetic flywheels for use in any non-aircraft spark ignition engine, regardless of size, the type, or the end-product utilizing the engine, and can include components for spark-ignition combustion engines up to 3,000cc (*i.e.*, 13 to 30 times larger than the subject merchandise). Moreover, ignition magnetos and magneto-dynamos have many more electrical components.¹⁶⁷
- Magnetic flywheels cover a broad range of products, made up of a broad range of materials, and possibly include electrical components not used by the Zongshen Companies, while the Zongshen Companies' flywheels are predominantly cast iron by weight.¹⁶⁸ Thus, Turkish HTS 8511.20.00.90.00 does not reflect the cost of a simple cast iron flywheel used for a "relatively simple lawn mower engine."¹⁶⁹
- Commerce should use Turkish HTS subheading 7325.99.10.00.00 to calculate the SV for flywheels because it covers malleable cast iron articles, and is, thus, representative of flywheel values.
- SVs should demonstrate a rational and reasonable relationship to the FOPs they are valuing,¹⁷⁰ and Commerce should give preference to an HTS subheading that has a more direct relationship with the price of the input.¹⁷¹
- For the *Preliminary Determination*, Commerce chose to value certain cast components as cast metal articles rather than as specific parts. For example, crankcases were valued using Turkish HTS 7616.99.10.00 ("Articles Casted from Aluminum"). Treating flywheels differently is inconsistent and arbitrary.¹⁷²

¹⁶⁴ *Id.* at 4-5 (citing the Petition at Volume II, Exhibit II-9).

¹⁶⁵ *Id.* at 5 (citing Petitioner's Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from China: Petitioner's Comments in Advance of the Preliminary Determination," dated October 2, 2020).

¹⁶⁶ *Id.* at 5.

¹⁶⁷ *Id.* (quoting Zongshen Companies' Pre-Preliminary Comments at 3).

¹⁶⁸ *Id.* at 6 (quoting Zongshen Companies' Pre-Preliminary Comments at 3).

¹⁶⁹ *Id.* at 6.

¹⁷⁰ *Id.* (citing *Harmoni Spice*, 617 F. Supp. 2d at 1297).

¹⁷¹ *Id.* at 7 (citing *Fine Furniture (Shanghai) Limited v. United States*, 353 F. Supp. 3d 1323, 1346 (CIT 2018) (*Fine Furniture*)).

¹⁷² *Id.* at 7 (citing Preliminary SV Memo at Exhibit 1-B).

Petitioner's Rebuttal Brief

- When choosing SVs for magnetic flywheels, Commerce “considered surrogate value submissions from all interested parties” and selected SVs “that satisfied all of Commerce’s criteria.”¹⁷³ The Zongshen Companies and MTD’s arguments with respect to the SV for magnetic flywheels should be rejected because Commerce appropriately found Turkish HTS 8511.20.00.90.00 to be the best information available to value this FOP and no new information has been placed on the record since the *Preliminary Determination* that would change this conclusion.¹⁷⁴
- The starting point of SV analysis is understanding the input at issue. Both respondents report using magnetic flywheels in the production of subject small vertical engines, and Chongqing Kohler refers to these items as magnetic flywheel assemblies.¹⁷⁵ A magnetic flywheel is an assembly composed of several sub-components.¹⁷⁶
- A magnetic flywheel is a key component in small vertical engines, as it is required to start the small vertical engines.¹⁷⁷ After ignition, the magnetic flywheel maintains an electrical current, pushes cooling air through the engine block, and contributes to the distribution of power to the engine.¹⁷⁸
- When challenged by the Zongshen Companies’ on its valuation of magnetic flywheels, Commerce already explained that Turkish HTS 8511.20.00.90.00’s description specifically included magnetic flywheels, and “is more relevant to the input in question.”¹⁷⁹ Unlike other Turkish HTS subheadings, magnetic flywheels are expressly included under Turkish HTS 8511.20.00.90.00, and official guidance from the World Customs Organization confirms that this subheading contains magnetic flywheels and is not a basket category, but instead limited to engine parts related to ignition.¹⁸⁰ Thus, the import data for Turkish HTS 8511.20.00.90.00 are the best available information on the record.
- Valuing magnetic flywheels using Turkish HTS 8511.20.00.90.00 is also consistent with Commerce’s determinations in *Large Vertical Engines from China*, which involved the

¹⁷³ See Petitioner’s Rebuttal Brief at 6 (quoting Preliminary SV Memo at 5-6).

¹⁷⁴ *Id.* at 6-7.

¹⁷⁵ *Id.* at 7 (citing Chongqing Kohler’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People’s Republic of China: Chongqing Kohler’s Third Supplemental Section D Questionnaire Response,” dated September 24, 2020 (Chongqing Kohler’s 3SDQR)).

¹⁷⁶ *Id.* at 7-8 (citing Zongshen Companies’ SV Submission at Exhibit 12a and 12b).

¹⁷⁷ *Id.* at 8 (citing Petitioner’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Petitioner’s Comments and Information on Surrogate Values,” dated August 3, 2020 (Petitioner’s 1st SV Submission) at Exhibit 38).

¹⁷⁸ *Id.* (citing Petitioner’s 1st SV Submission at Exhibits 37 and 38).

¹⁷⁹ *Id.* at 9 (citing Memorandum, “Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Allegation of Ministerial Errors in the Preliminary Determination,” dated November 30, 2020 (Preliminary Ministerial Error Memo) at 4).

¹⁸⁰ *Id.* (citing Petitioner’s 1st SV Submission at Exhibit 37).

similar products and in which the Zongshen Companies were also a respondent.¹⁸¹ Because there is a nearly identical fact pattern in the instant investigation, as in *Large Vertical Engines from China*, Commerce should continue to use Turkish HTS 8511.20.00.90.00 to value the respondents' magnetic flywheel FOPs.

- The Zongshen Companies and MTD argue that Commerce cannot use Turkish HTS 8511.20.00.90.00 because they believe the SV is too high and “grossly overstated.” Instead of providing evidence of anomalous SV data, the Zongshen Companies and MTD’s arguments rely on benchmarking Chinese production costs to benchmark the SV for magnetic flywheel against, which is wholly unreliable.¹⁸²
- When Commerce determines that the subject merchandise is produced in an NME country, it is determining that the NME country “does not operate on market principles of cost of pricing structures.”¹⁸³ The fundamental basis of Commerce’s SV practice is to value the FOPs for subject merchandise on factors in a market economy country.¹⁸⁴ Where surrogate values cannot be used, Commerce is directed to rely on the sales price of merchandise in other market economy countries.¹⁸⁵ Neither the Act nor Commerce’s regulations allow Commerce to consider NME costs or prices to establish or benchmark SVs or NV.¹⁸⁶
- The Zongshen Companies and MTD’s emphasis on jurisprudence is misplaced with respect to the general principle requiring a reasonable determination by Commerce. None of the cases cited by the Zongshen Companies and MTD address costs that occurred in an NME, and these cases do not oblige Commerce to compare SVs against Chinese costs of production. Also, in *Large Vertical Engines from China*, Commerce already rejected arguments by the Zongshen Companies and MTD to benchmark SVs against Chinese costs, and such a determination is equally applicable in the instant case.¹⁸⁷
- The Zongshen Companies and MTD have attempted to redefine the physical characteristics of magnetic flywheels. However, there are numerous pictures and physical descriptions of magnetic flywheels on the record that demonstrate that magnetic flywheels are multi-component, multi-function, magnetic flywheel assemblies.¹⁸⁸

¹⁸¹ *Id.* at 9-10 (citing *Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Critical Circumstances Determination*, 86 FR 1936 (January 11, 2021) (*Large Vertical Engines from China*), and accompanying IDM at 14-17; and Petitioner’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Petitioner’s Final Submission of Information on Surrogate Values,” dated September 14, 2020 (Petitioner’s 2nd SV Submission) at Exhibit 4).

¹⁸² *Id.* at 10-11.

¹⁸³ *Id.* at 11 (citing section 771(18)(A)).

¹⁸⁴ *Id.* at 11-12 (citing section 773(c) of the Act).

¹⁸⁵ *Id.* at 12 (citing section 773(c)(2) of the Act).

¹⁸⁶ *Id.* at 12.

¹⁸⁷ *Id.* at 14 (citing *Large Vertical Engines from China* IDM at 15).

¹⁸⁸ *Id.* at 15.

- MTD’s argument that Turkish HTS 8511.20.00.90.00, while specifically covering the input in question, is inappropriate and unrepresentative because it covers other ignition related products is erroneous. This argument is predicated on the mischaracterization that flywheels are simple cast iron articles.¹⁸⁹
- Turkish HTS 8511.20.00.90.00 is not a basket category as claimed by MTD and the Zongshen Companies, and Commerce has previously calculated SVs on much broader HTS subheadings, including subheadings covering products “not elsewhere specified.”¹⁹⁰
- The Zongshen Companies and MTD provide no evidence for their arguments that the Turkish import data is distorted by engine components for engines with displacements greater than 225cc and other “disparate products,” and the record shows no indication that the import data for Turkish HTS 8511.20.00.90.00 is problematic or otherwise unrepresentative of magnetic flywheels.¹⁹¹ The Zongshen Companies had numerous opportunities to provide such evidence to support their claims, but they did not. In *Large Vertical Engines from China*, Commerce rejected this same argument because of a lack of supporting evidence on the record.¹⁹²
- *Zhejiang DunAn*, despite the Zongshen Companies’ arguments, is not applicable in the instant case because there is no evidence that items imported into Turkey under Turkish HTS 8511.20.00.90.00 were improperly classified.¹⁹³
- MTD is mistaken to rely on *Fine Furniture*, which is focused on the physical characteristics of the subject merchandise and involves a very different fact pattern from that in the instant case.¹⁹⁴ The decision in *Fine Furniture* supports the use of Turkish HTS 8511.20.00.90.00, which specifically identifies flywheel and similar items.¹⁹⁵
- Neither of Turkish HTS 7325.99.10.00.00 or 7601.20.80.00.00 include magnetic flywheels, and, thus, they are not the best available information to value magnetic flywheels. Turkish HTS 7325.99.10.00.00 covers articles of malleable cast iron and is a basket category. There is no functional limit on this HTS subheading, and it is not clear that it covers anything like magnetic flywheels.¹⁹⁶ Turkish HTS 7601.20.80.00.00, proposed to cover aluminum flywheel assemblies, is even more extreme as this HTS subheading covers unprocessed aluminum in liquid or ingot state.¹⁹⁷

¹⁸⁹ *Id.* at 15-16.

¹⁹⁰ *Id.* at 16 (citing *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), and accompanying IDM at 33).

¹⁹¹ *Id.* at 16-17.

¹⁹² *Id.* at 17 (citing *Large Vertical Engines from China* IDM at 15).

¹⁹³ *Id.* at 18 (citing *Zhejiang DunAn*, 652 F.3d at 1340 and 1343-45).

¹⁹⁴ *Id.* at 20.

¹⁹⁵ *Id.* (citing *Fine Furniture*, 353 F. Supp. 3d at 1346).

¹⁹⁶ *Id.* at 19

¹⁹⁷ *Id.*

- In *Large Vertical Engines from China*, Commerce rejected the use of Turkish HTS 7325.99.10.00.00 to value magnetic flywheels because it is a basket category covering a large range of goods made from iron or steel.¹⁹⁸

Commerce's Position:

Commerce continues to find that Turkish HTS 8511.20.00.90.00, which specifically covers magnetic flywheels, constitutes the best information available for the Zongshen Companies' aluminum and cast-iron flywheel FOPs (hereafter, collectively referred to as the Zongshen Companies' magnetic flywheel inputs).

In the *Preliminary Determination*, we found that Turkey was at a level of economic development comparable to China,¹⁹⁹ a significant producer of comparable merchandise,²⁰⁰ and that the Turkish SV data on the record were the best available SV data to value the respondents' FOPs.²⁰¹ Thus, we chose Turkey as the primary surrogate country.²⁰² For the final determination, no party has argued that Turkey is not an appropriate surrogate country for which to value the respondents' FOPs. Accordingly, we have continued to rely on the Turkish SV data on the record to value the respondents' FOPs for the final determination.

When evaluating SV data and data sources, Commerce considers several factors, including whether the SVs are publicly available, contemporaneous with the POI, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.²⁰³ There is no hierarchy among these criteria.²⁰⁴ Commerce's preference is to satisfy the breadth of these aforementioned selection criteria.²⁰⁵ Moreover, it is Commerce's practice to carefully consider the available evidence in light of the particular facts regarding the industry under consideration when undertaking its analysis of valuing the FOPs.²⁰⁶ Commerce must weigh the available information with respect to each input value and make a product-specific and case-specific decision as to what constitutes the "best" available SV for each input.²⁰⁷

In *Jacobi Carbons*, the CIT found that "the factors of production actually used by a respondent are important, if not controlling, when determining normal value."²⁰⁸ The record of this

¹⁹⁸ *Id.* at 20-21 (citing *Large Vertical Engines from China* IDM at 16-17).

¹⁹⁹ See *Preliminary Determination* PDM at 9.

²⁰⁰ *Id.* at 10.

²⁰¹ *Id.* at 11.

²⁰² *Id.*

²⁰³ 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 <https://enforcement.trade.gov/policy/bull04-1.html>.

²⁰⁴ See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) (*Mushrooms from China*), and accompanying IDM at Comment 1.

²⁰⁵ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews, 2010-2011*, 78 FR 17350 (March 21, 2013) (*Fish Fillets from Vietnam 2010-2011 AR*), and accompanying IDM at Comment I(C).

²⁰⁶ See Policy Bulletin 04.1.

²⁰⁷ See *Mushrooms from China* IDM at Comment 1; see also section 773(c) of the Act.

²⁰⁸ See *Jacobi Carbons*, 992 F. Supp. 2d at 1370.

investigation shows that the flywheels used in the production of the subject small vertical engines are magnetic.²⁰⁹ Moreover, the record shows that both respondents used composite, magnetic flywheels in the production of subject merchandise.²¹⁰ A magnetic flywheel is a key component required for starting vertical shaft engines and, after ignition, the magnetic flywheel maintains an electric current, turns the crankshaft, and pushes cooling air through the engine block.²¹¹

Turkish HTS 8511.20.00.90.00 covers “Ignition, Dynamo Magnetos and Magnetic Flywheels for Other Vehicles.”²¹² Information on the record demonstrates that Turkish HTS 8511.20.00.90.00 contains magnetic flywheels that “consist of a magnetic device fitted to a flywheel to produce a low-tension current for ignition purposes.”²¹³ Thus, contrary to the respondents and MTD’s argument that Turkish HTS 8511.20.00.90.00 is a basket category that covers a broad, disparate set of goods, the description of items falling into Turkish HTS 8511.20.00.90.00 aligns with the function and purpose of magnetic flywheels evident in the respondents’ questionnaire responses. This subheading is limited to engine parts related to ignition, such as magnetic flywheels for internal combustion engines.²¹⁴ As the Federal Circuit noted in *Home Meridian*, “the data on which Commerce relies to value inputs must be the ‘best available information,’ but there is no requirement that the data be perfect.”²¹⁵ Thus, we continue to find that this HTS subheading is the best available information on the record because it is the HTS subheading that most closely aligns with the actual magnetic flywheel FOP used by the respondents

The Zongshen Companies and MTD’s reliance on *Harmoni Spice*, *China First Pencil*, *Baroque Timber*, *Zhejiang DunAn*, and *Jinan Yipin*, is misplaced. Turkish HTS 8511.20.00.90.00 is not a basket category but instead covers certain engine parts related to ignition for internal combustion engines. Moreover, the subheading is specific to the inputs used by the respondents, as it explicitly covers magnetic flywheels, such as those used by the Zongshen Companies. Thus, this subheading “evidences a rational and reasonable relationship to the {FOP} that it represents.”²¹⁶ Moreover, we have closely examined the sources of information on the record and the competing SVs provided when determining the best available information to value the Zongshen Companies’ magnetic flywheel inputs. Thus, our determination not to use the Zongshen Companies’ suggested HTS subheadings was not arbitrary, because, as explained below, the

²⁰⁹ See Petitioner’s SV Submission at Exhibit 38; Zongshen Companies’ Pre-Preliminary Comments at 3; and Zongshen Companies’ SV Submission at Exhibit 12a.

²¹⁰ See Chongqing Kohler’s Letter, “Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof from the People’s Republic of China: Chongqing Kohler’s Fourth Supplemental Section D Questionnaire Response,” dated October 6, 2020, at Exhibit FSD-1 (describing multiple flywheel inputs as “flywheel assembly”); and Zongshen Companies’ Case Brief at 7 (“{T}he flywheel inputs reported in Zongshen Companies’ FOP data are mainly a very simple, cast iron or aluminum product with small magnet blocks attached.”). See also Memorandum, “Proprietary Information in the Final Determination of the Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China – The Zongshen Companies,” dated concurrently with this memorandum (Proprietary Analysis Memo for the Zongshen Companies), at Note 1.

²¹¹ See Petitioner’s 1st SV Submission at Exhibit 37 and 38.

²¹² *Id.* at Exhibit 1.

²¹³ *Id.* at Exhibit 37.

²¹⁴ *Id.* at Exhibit 37.

²¹⁵ See *Home Meridian v. United States*, 772 F.3d 1289, 1296 (Fed. Cir. 2014).

²¹⁶ See *Harmoni Spice*, 617 F. Supp. 2d at 1297.

Zongshen Companies have not submitted suitable alternative input-specific SVs on this record to value their magnetic flywheel inputs.

Further, unlike the scenarios in *Baroque Timber* and *Zhejiang DunAn*, there is no evidence on the record of this investigation suggesting that imports into Turkey under HTS 8511.20.00.90.00 include magnetic flywheels that are not comparable to those used in subject merchandise. MTD's arguments that the import data could include magnetic flywheels for engines up to 30 times larger than the subject small vertical engines is merely speculation and is unsupported by the record. There is no evidence on the record that the import data for Turkish HTS 8511.20.00.90.00 included materials that were not representative of the Zongshen Companies magnetic flywheel inputs.

We disagree with the Zongshen Companies and MTD's arguments that Commerce cannot use Turkish HTS 8511.20.00.90.00 merely because it results in a high SV for magnetic flywheels. This argument is predicated on the comparison of acquisition cost of magnetic flywheels in China relative to the Zongshen Companies' overall cost of subject merchandise manufactured in China. Commerce does not use NME costs or prices to establish or benchmark SVs.²¹⁷ Doing so would run counter to the rationale of Commerce's NME methodology. The respondents' reliance on jurisprudence regarding the general principle requiring "reasonable" determinations by Commerce is misplaced in this instance, as none of the cases addressed costs incurred in an NME or require Commerce to measure SVs against Chinese costs of production.

MTD's reliance on *Fine Furniture* is inappropriate. In *Fine Furniture*, Commerce analyzed the physical characteristics of the product and based its SV on the more specific data source.²¹⁸ Here, as in *Fine Furniture*, Commerce has analyzed the characteristics of the magnetic flywheels and has selected a SV based on a more specific data source; thus, *Fine Furniture*, supports Commerce's selection of Turkish HTS 8511.20.00.90.00, which specifically identifies magnetic flywheels. The case does not suggest that Commerce should select SVs that approximate the non-market price of Chinese inputs.²¹⁹ As explained above, Commerce considers the quality, specificity, and contemporaneity of the SV information on the record. Absent record evidence that Turkish HTS 8511.20.00.90.00 contains aberrational data, which we do not have here, the relative value of SVs is not a sufficient basis upon which to exclude a particular SV,²²⁰ especially as it relates to the Zongshen Companies' own NME costs.

²¹⁷ See, e.g., *Large Vertical Engines from China* IDM at Comment 1; *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012-2013*, 80 FR 33241 (June 11, 2015), and accompanying IDM at Comment 2.B ("Because {China} is an NME, {Commerce} does not rely on {Chinese} import prices or {Chinese} domestic prices as surrogate values or benchmarks, and thus we do not believe that these are appropriate price comparisons.")

²¹⁸ See *Fine Furniture*, 353 F. Supp. 3d 1323.

²¹⁹ *Id.*

²²⁰ See, e.g., *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 26; see also *Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 2012-2013*, 80 FR 13332 (March 13, 2015), and accompanying IDM at Comment 5.

Further, we have satisfied the requirements described in *Downhole Pipe*, as cited by MTD. This case recognizes that Commerce has discretion in choosing surrogate values from HTS categories, but it does not direct Commerce to select surrogate values from HTS subheadings that are not specific to the FOP.²²¹ Here, the Zongshen Companies clearly use composite, magnetic flywheels that are specifically covered by Turkish HTS 8511.20.00.90.00.²²² Thus, Commerce has satisfied its requirement to determine which competing subheading constituted the best available information on the record to value the Zongshen Companies' magnetic flywheel inputs.

Consistent with *Blue Field* and *Jinan Yipin*, we have analyzed the other SV information on the record for this final determination. We disagree with the Zongshen Companies and MTD's arguments that Turkish HTS 7325.99.10.00.00 and/or 7601.20.80.00.00 are the best available information to value the Zongshen Companies' magnetic flywheel inputs because the magnetic flywheel inputs are largely composed of cast iron or aluminum. Turkish HTS 7325.99.10.00.00 covers "other articles of iron or steel: of malleable cast iron"²²³ and is a basket category covering a wide range of goods made of iron or steel with no apparent connection to the composite, magnetic flywheels used by the Zongshen Companies. Turkish HTS 7601.20.80.00.00 covers "other unprocessed aluminum alloys: in ingots or in liquid state."²²⁴ This HTS subheading is also a basket category with no apparent connection to the magnetic flywheels used by the Zongshen Companies because the record shows that these magnetic flywheels are processed metal products and not ingots or in liquid state. Moreover, it is not evident on the record how iron articles or unprocessed aluminum alloys covered by Turkish HTS subheadings 7325.99.10.00.00 and 7601.20.80.00.00 would be able to perform the principal functions of the flywheels used by the Zongshen Companies.²²⁵ Thus, our decision not to use Turkish HTS 7325.99.10.00.00 or 7601.20.80.00.00 because they are basket categories that are not specific to the Zongshen Companies' magnetic flywheel inputs, and because we have an alternative input-specific SV on the record (*i.e.*, Turkish HTS 8511.20.00.90.00), is supported by *Blue Field* and *Jinan Yipin*.²²⁶

Finally, we find MTD's argument unavailing that our decision to value the Zongshen Companies' magnetic flywheel inputs with Turkish HTS 8511.20.00.90.00 is inconsistent and arbitrary because we chose to value the Zongshen Companies' crankcase input with Turkish HTS 7616.99.10.00.00 ("Articles Casted from Aluminum"). Commerce values each input with an SV that is specific to the input. We chose Turkish HTS 7616.99.10.00.00 because it was the most specific SV with which to value the Zongshen Companies' crankcase input. Likewise, as demonstrated above, Turkish HTS 8511.20.00.90.00 is the most specific SV with which to value the Zongshen Companies' magnetic flywheel inputs. As such, our decision to value the Zongshen Companies' magnetic flywheel inputs with Turkish HTS 8511.20.00.90.00 is neither arbitrary nor inconsistent but is justified based on our stated practice of selecting the most specific SV for each of the respondents' FOPs.

²²¹ See *Downhole Pipe*, 776 F.3d at 1379.

²²² See Zongshen Companies' Case Brief at 7.

²²³ See Zongshen Companies' SV Submission at Exhibit 1.

²²⁴ *Id.*

²²⁵ See Zongshen Companies' SV Submission at Exhibit 12a.

²²⁶ See *Blue Field*, 949 F. Supp. 2d at 1328; and *Jinan Yipin*, 526 F. Supp. 2d at 1376-79.

Accordingly, there is no basis on the record to justify using Turkish HTS 7325.99.10.00.00 or 7601.20.80.00.00 to value the Zongshen Companies' magnetic flywheels. Therefore, we continue to determine that Turkish HTS 8511.20.00.90.00, which specifically covers magnetic flywheels, constitutes the best information available to value the FOPs for magnetic flywheels.

Comment 4: Use of Turkish HTS 8409.91.00.00.19 to Value Certain of the Zongshen Companies' Inputs

The Zongshen Companies' Case Brief

- In the *Preliminary Determination*, Commerce valued nearly 70 of the Zongshen Companies' FOPs on Turkish HTS 8409.91.00.00.19, which covers "Other parts and parts for gasoline piston engines in positions 8407 or 8408 (except aircraft)," which is a basket category.²²⁷ Commerce should revise its valuation of surrogate values for these inputs, as the record contains HTS subheadings that specifically capture the inputs at issue and are therefore the best available information.
- Turkish HTS 8409.91.00.00.19 is a basket category containing many disparate products and is not specific to any of the Zongshen Companies' FOPs for which it was used to value. For example, the Zongshen Companies recommended Turkish HTS 7326.20.00, which covers "Articles of Iron or Steel, {not elsewhere specified or included}," to value their cylinder liner input, which is made of cast iron. Commerce should use Turkish HTS 7326.20.00 because this specific HTS subheading appropriately captures the input's chemical characteristics and bears a rational relationship to the FOP.²²⁸
- Commerce should rely on the best available information on the record, and the best available information should not cause aberrational and inaccurate dumping margins. Commerce having valued the cylinder liner FOP with Turkish HTS 8409.91.00.00.19 led to clearly aberrant results that no reasonable mind would consider the best available information from which to derive an accurate dumping margin.²²⁹
- For air filter cover, Commerce should use HTS subheading 3926.90.92.00.19, which provides for "Other Articles Made of Plastic Sheets," because the record evidence shows that the air filter cover used by the Zongshen Companies is completely made of plastic.²³⁰
- For the throttle linkage, Commerce should use HTS subheading 7326.19.10.00.00, which provides for "Other articles of iron or steel: Forged or stamped, but not further worked: Other: Open-die forged," because the record shows that this product was made entirely of steel wire.²³¹

²²⁷ See Zongshen Companies' Case Brief at 10-11 (citing Preliminary SV Memo at Exhibit 1-B).

²²⁸ *Id.* at 12.

²²⁹ *Id.* at 13.

²³⁰ *Id.* (citing Zongshen Companies' SV Submission at Exhibit 12a).

²³¹ *Id.*

- For each of the inputs for which Commerce valued using Turkish HTS 8409.91.00.00.19, the Zongshen Companies provided alternate Turkish HTS subheadings that are specific to the input.²³² Despite this, Commerce provided no explanation at the *Preliminary Determination* as to why it used a “one size fits all” HTS subheading to value vastly different inputs. For the final determination, Commerce should instead use the SVs provided by the Zongshen Companies in their September 14, 2020 SV submission at Exhibit 1.

Petitioner’s Case Brief

- For the *Preliminary Determination*, Commerce considered the evidence and conducted its normal analysis to select SVs for FOPs based on the best available information. The record has not changed with respect to these SVs since the *Preliminary Determination*, and, therefore, Commerce should not change its SV selections for the final determination.²³³
- Many parts and subassemblies used to produce small vertical engines are not mentioned in an HTS subheading. To the extent that those parts and subassemblies are dedicated to use in small vertical engines, they should be treated as parts of the engine when selecting SVs.²³⁴
- In the *Preliminary Determination*, Commerce valued these parts and subassemblies using Turkish HTS 8409.91.00.00.19, a subheading for parts and assemblies for small vertical engines, because it is the best way to classify these dedicated parts. The fact that subassemblies are designed for a specific product is more important to its classification than is the material that it is made out of.²³⁵ In *Washers from China*, Commerce acknowledged that, in cases with complex machinery and numerous mechanical parts, “it is not appropriate to value these parts based on the primary material composition... because each part contains more than one component made up of different materials, and these components {make up} the assembled part.”²³⁶ Further, Commerce found that this extended to individual parts as well because those parts were incorporated into the merchandise.²³⁷
- The evidence on the record provided by the respondents show that the parts that Commerce valued using Turkish HTS 8409.91.00.00.19 are parts with a dedicated design for use in small vertical engines.²³⁸ The Zongshen Companies specifically list numerous FOPs as having a “dedicated design.”²³⁹ The fact that the Zongshen Companies argue

²³² *Id.*

²³³ See Petitioner’s Rebuttal Brief at 21.

²³⁴ *Id.* at 21-22.

²³⁵ *Id.* at 22.

²³⁶ *Id.* (citing *Large Residential Washers from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 90776 (December 15, 2016) (*Washers from China*), and accompanying IDM at 25).

²³⁷ *Id.* (citing *Washers from China* IDM at 32).

²³⁸ *Id.* at 23.

²³⁹ *Id.* (citing Zongshen Companies’ SV Submission at Exhibit 12a).

that these inputs are vastly different and made up of different materials is the very reason to use Turkish HTS 8409.91.00.00.19 as this subheading captures engine parts with no specific applicable subheading and made of many materials.

- The Zongshen Companies' claims that other subheadings constitute the best available information are inconsistent with Commerce's practice. For example, the Zongshen Companies claim that their air filter cover FOP should be classified under a subheading for "other articles made of plastic sheets," but there is no evidence on the record that this FOP is made of plastic sheets.²⁴⁰ However, Turkish HTS 8409.91.00.00.19 is specific to these sorts of engine parts.
- While the Zongshen Companies claim use of Turkish HTS 8409.91.00.00.19 to value these parts caused aberrant results because it is distortive, the Zongshen Companies ignore that the SV may be understated by parts that have low-cost components.²⁴¹
- The Zongshen Companies claim that Commerce should use Turkish HTS 7326.20.00 to value their cylinder liner FOPs because this subheading "appropriately captures the input's chemical characteristics and bears a rational relationship to the input."²⁴² There is no information on the record regarding the chemical characteristics of the Zongshen Companies' cylinder line FOP, but the record does establish that the cylinder liner is part of an internal combustion engine and should be valued using Turkish HTS 8409.91.00.00.19.

Commerce's Position:

We have not changed our SV choices with respect to these inputs. We have continued to value all FOPs found in Exhibit 1 of the Zongshen Companies' Case Brief with Turkish HTS 8409.91.00.00.19 for the final determination of this investigation.

The Zongshen Companies challenge our decision in the *Preliminary Determination* to value 69 of their inputs using Turkish HTS 8409.91.00.00.19, which covers "Other parts and parts for gasoline piston engines in positions 84.07 or 84.08 (excluding aircraft)."²⁴³ For 17 of these inputs, Zongshen did not provide any suggested SVs, much less HTS subheadings specific to each of these inputs.²⁴⁴ These FOPs were used to manufacture the mounted merchandise in which the subject merchandise was incorporated.²⁴⁵ Moreover, while we assigned Turkish HTS 8409.91.00.00.19 to these inputs at the *Preliminary Determination*, we did not value them using this subheading. As explained in the Preliminary SV Memo:

For the preliminary determination, rather than value these material inputs using GTA data, we revised the gross unit price for finished mounted merchandise by a

²⁴⁰ *Id.* at 23.

²⁴¹ *Id.* at 24.

²⁴² *Id.* at 25 (citing Zongshen Companies' Case Brief at 12).

²⁴³ See Petitioner's 1st SV Submission at Exhibit 1.

²⁴⁴ See Zongshen Companies' SV Submission at Exhibit 1.

²⁴⁵ See Preliminary SV Memo at 6.

ratio of the input costs of small vertical engines to the total input cost of the mounted merchandise. However, we have still assigned surrogate values to these direct material inputs, although we are not using them to calculate the Zongshen Companies' antidumping duty margin for the preliminary determination.²⁴⁶

As we have continued to use the ratio of the input costs of small vertical engines to the total input cost of the mounted merchandise to revise the gross unit price for the Zongshen Companies' finished mounted merchandise,²⁴⁷ for the final determination, we have continued to not use these FOPs to calculate the Zongshen Companies' AD margin. In fact, as explained above, we have calculated CEP, EP, and NV for the Zongshen Companies using the same methodology as stated in the *Preliminary Determination*. Accordingly, the Zongshen Companies' arguments with respect to these 17 FOPs are moot because these FOPs have not been valued or used for the final determination.

With respect to the remaining 52 FOPs, we disagree with the Zongshen Companies. Many of the FOPs used to build a small vertical engine are dedicated for use in small vertical engines and are not specifically mentioned in an HTS subheading.²⁴⁸ Contrary to the Zongshen Companies' assertions, Turkish HTS 8409.91.00.00.19 is specific to the FOPs for which it is being used to value because it covers parts for use in gasoline piston engines. Moreover, this HTS is specific to parts for engines covered by the scope of the investigation. While the description of the merchandise under investigation is dispositive, the scope identifies Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8407.90.10.10, 8407.90.10.20, 8407.90.90.40, and 8407.90.90.60 as HTSUS subheadings under which subject merchandise can enter the United States. Because Turkish HTS 8409.91.00.00.19 covers parts for engines under HTS 8407, it is specific to the small vertical engines under investigation and, thus, specific to parts used to manufacture the subject merchandise. Further, HTSUS 8409.91.99.90 is also listed in the scope as the HTSUS subheading under which small vertical engine subassemblies can be imported into the United States. Both HTSUS 8409.91.99.90 and Turkish HTS 8409.91.00.00.19 fall under HTS subheading 8409.91, which covers "parts, suitable for use solely or principally with spark-ignition internal combustion piston engines (for other than aircraft),"²⁴⁹ further confirming that Turkish HTS 8409.91.00.00.19 is an appropriate classification for FOPs that are parts (*i.e.*, not base raw materials) used in the production of subject merchandise.

The Zongshen Companies argue that Commerce should value their FOPs mainly based around the materials that compose the FOPs.²⁵⁰ Commerce's practice is to value inputs on the basis of their physical description, which includes the material composition and/or their function (*e.g.*, general purpose).²⁵¹ However, in cases similarly involving machinery made from numerous

²⁴⁶ *Id.*

²⁴⁷ See Comment 7, *infra*.

²⁴⁸ See Petitioner's Rebuttal Brief at 21-22.

²⁴⁹ See Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Chongqing Zongshen Comments on Selection of Primary Surrogate Country," dated July 10, 2020, at Exhibit 1.

²⁵⁰ See, *e.g.*, Zongshen Companies' Case Brief at 13 ("{F} or air filter cover, Commerce should use HTS subheading 3926.9092.0019m, which provides for 'Other Articles Made of Plastic Sheets.' As the record evidence shows that the air filter cover used by Zongshen Companies is completely made of plastic.").

²⁵¹ See *Washers from China* IDM at Comment 7.

parts and materials, Commerce has determined that the fact that the parts were dedicated for use in the subject merchandise was more important than the fact that the parts were composed of certain materials.²⁵² Here, the Zongshen Companies have reported numerous FOPs as having a dedicated design and use.²⁵³

Accordingly, we continue to find that Turkish HTS 8409.91.00.00.19 remains the best information on the record for the SV for the Zongshen Companies' cylinder liner input, and we have continued to value cylinder liners using Turkish HTS 8409.91.00.00.19 for this final determination.²⁵⁴

We also continue to find that the Zongshen Companies' air filter cover and throttle linkage FOPs are appropriately valued using Turkish HTS 8409.91.00.00.19. While the record demonstrates that the air filter cover is made of plastic and the throttle linkage is made from steel wire,²⁵⁵ the record does not support the conclusion that these FOPs are appropriately valued using the Zongshen Companies' suggested HTS subheadings.²⁵⁶ The Zongshen Companies' suggested HTS subheadings are basket categories: Turkish HTS 3926.90.92.00.19 is limited to articles manufactured out of plastic sheet, and Turkish HTS 7326.19.10.00.00 is limited to other articles of iron or steel which are forged or stamped but not further worked. However, there is no information on the record to show how the air filter cover and throttle linkage FOPs are manufactured, nor is there information on the record that establishes that the Zongshen Companies' suggested subheadings include the specific FOPs. In contrast, the record shows that these FOPs are part of the small vertical engines.²⁵⁷ Consequently, we continue to find that Turkish HTS 8409.91.00.00.19 is the best available source of SV information with respect to these FOPs.

Finally, we note that the Zongshen Companies did not make input-specific arguments with respect to multiple FOPs shown in Exhibit 1 of their case brief that we valued using Turkish HTS 8409.91.00.00.19 in the *Preliminary Determination*. For these FOPs, the Zongshen Companies merely argue that Commerce should use the Turkish HTS subheadings provided by the Zongshen Companies as they specifically capture the inputs at issue and, therefore, constitute the "best available information."²⁵⁸ However, the Zongshen Companies failed to explain how these HTS subheadings include these inputs; thus, we have not made any changes to our surrogate value selection for these FOPs.

²⁵² *Id.* at Comment 7 and 11; *see also* Proprietary Analysis Memorandum for the Zongshen Companies at Note 2.

²⁵³ *See* Zongshen Companies' SV Submission at Exhibit 12a.

²⁵⁴ Because the Zongshen Companies claimed business proprietary treatment for most of the information concerning their cylinder line inputs, *see* Proprietary Analysis Memorandum for the Zongshen Companies at Note 3 for a discussion of our decision to continue valuing the Zongshen Companies' cylinder liners using Turkish HTS 8409.91.00.00.19.

²⁵⁵ *See* Zongshen Companies' SV Submission at Exhibit 12a.

²⁵⁶ *Id.* at Exhibit 1.

²⁵⁷ *See, e.g.,* Zongshen Companies' SV Submission at Exhibit 12a; and Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99 cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Zongshen Second Supplemental Response," dated September 18, 2020, at Exhibit PV2-2.

²⁵⁸ *See* Zongshen Companies' Case Brief at 11- 14.

Accordingly, we continue to find that Turkish HTS 8409.91.00.00.19 is the appropriate SV with which to value those FOPs listed in Exhibit 1 of the Zongshen Companies' Case Brief.

Comment 5: Surrogate Value for Governor Gear and Other Inputs

The Zongshen Companies' Case Brief

- In addition to the unreasonable SVs the Zongshen Companies previously mentioned,²⁵⁹ Commerce used many other Turkish HTS subheadings that do not reasonably reflect the inputs they are being used to value, rendering aberrant results that do not constitute the best available information.²⁶⁰
- For example, in the *Preliminary Determination*, Commerce used Turkish Harmonized System (HS) subheading 8483.40, with an AUV of 20.59 EUR/kg, for the Zongshen Companies' governor gear input.²⁶¹ The Zongshen Companies' governor gear input is mainly steel with plastic components, but the subheadings under this HS code cover many disparate products.²⁶² The import data for Turkish HS 8483.40 shows unit values for imports ranging from \$9.66 to \$16,475.31/kg.²⁶³ Thus, Commerce should value the Zongshen Companies' governor gear input using Turkish HS 7326.19.10.00.00, which is specific to the major component of the governor gear.²⁶⁴
- Many of Commerce's choices of SVs for the *Preliminary Determination* are not specific or inappropriately represent the inputs used by the Zongshen Companies. Because the CIT is instructive on Commerce's requirement to use input-specific and reasonable SVs as the best available information, Commerce should use the SVs provided in Exhibit 1 of the Zongshen Companies September 14, 2020 SV submission.²⁶⁵

Petitioner's Rebuttal Brief

- Commerce should reject the Zongshen Companies' request to change the SV selections and continue to rely on the selections made at the *Preliminary Determination* for the final determination because the Zongshen Companies' arguments are predicated on factual inaccuracies and a misunderstanding of how Commerce approaches its SV analysis.²⁶⁶
- Commerce correctly valued the Zongshen Companies' governor gear input using Turkish HS 8483.40, which covers "gears {and} gearing (excluding toothed wheels, chain sprockets, and other transmission elements presented separately)," and is specific to the FOP.²⁶⁷ The Zongshen Companies' preferred SV is Turkish HTS 7326.19.10.00.00,

²⁵⁹ See Comments 3 and 4, *supra*.

²⁶⁰ See Zongshen Companies' Case Brief at 14.

²⁶¹ *Id.* (citing Preliminary SV Memo at Exhibit 1-B).

²⁶² *Id.* at 15.

²⁶³ *Id.* (citing Zongshen Companies' Pre-Preliminary Comments at Exhibit 1).

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 15.

²⁶⁶ See Petitioner's Rebuttal Brief at 25.

²⁶⁷ *Id.* at 26 (citing Preliminary SV Memo at Exhibit 1).

which covers “other articles of iron or steel: forged or stamped, but not further worked: other: open-die forged;” however, this HTS subheading is a general heading for iron and steel items and does not cover governor gears.²⁶⁸

Commerce’s Position:

We have continued to use Turkish HTS 8483.40 as the source of the SV for the Zongshen Companies’ governor gear FOP for the final determination. In addition, we have not changed any other SVs we used to value the Zongshen Companies’ inputs.

The record of this investigation shows that the Zongshen Companies use governor gears made from steel with plastic components when producing small vertical engines.²⁶⁹ Turkish HTS 8483.40 covers “Gears & gearing (excl. toothed wheels, chain sprockets & other transmission elements presented sep.); ball/rol”²⁷⁰ or “Gears; Ball or Roller Screws; Gear Boxes, etc.”²⁷¹ Thus, the record demonstrates that this subheading specifically covers governor gears. In contrast, Turkish HTS 7326.19.10.00.00 covers “Other articles of iron or steel: Forged or stamped, but not further worked: Other: Open-die forged.”²⁷² This subheading is a basket category for iron and steel items, it is not specific to governor gears, and there is no record evidence that governor gears would fall under this subheading. Thus, we continue to find that Turkish HTS 8483.40 is the best available information with which to value the Zongshen Companies’ governor gear input.

Further, we note that the Zongshen Companies did not make any input-specific arguments with respect to multiple FOPs, whether in general or as shown in Exhibit 1 of their brief. For these FOPs, the Zongshen Companies merely argue that Commerce should use the HTS subheadings provided by the Zongshen Companies as they specifically capture the inputs at issue and, therefore, constitute the “best available information.”²⁷³ For the final determination, we have not made any changes to our surrogate value selection for the FOPs for which the Zongshen Companies did not make input specific arguments and continue to rely on the SVs used to value these inputs in the *Preliminary Determination*.²⁷⁴

Comment 6: Calculation of the Surrogate Manufacturing Overhead Financial Ratio

The Zongshen Companies’ Case Brief

- In the *Preliminary Determination*, Commerce valued the line item for “Cost of Services Sold” in the financial statements of Alarko Carrier Sanayi ve Ticaret A.S. (Alarko) as manufacturing overhead.²⁷⁵ If Commerce continues to use the financial statements of

²⁶⁸ *Id.*

²⁶⁹ See e.g., Zongshen Companies’ Case Brief at 15 (citing Zongshen Companies’ SV Submission at Exhibit 12a).

²⁷⁰ See Petitioner’s 1st SV Comments at Exhibit 1.

²⁷¹ See Preliminary SV Memo at Exhibit 3-A.

²⁷² *Id.*; and Zongshen Companies’ SV Submission at Exhibit 1.

²⁷³ See Zongshen Companies’ Case Brief at 14-15.

²⁷⁴ All SVs used to value the Zongshen Companies’ inputs can be found in the Preliminary SV Memo. See Preliminary SV Memo at Exhibit 1-B.

²⁷⁵ See Zongshen Companies’ Case Brief at 16 (citing Preliminary SV Memo at Exhibit 15).

Alarko to calculate the surrogate financial ratios for the final determination, Commerce should exclude from its calculation of the manufacturing overhead ratio the “Cost of Services Sold” line item.²⁷⁶

- The “Cost of Services Sold” line item is not related to manufacturing production and is not reflective of the Zongshen Companies’ manufacturing experience. Alarko’s financial statements demonstrate that the “Cost of Services Sold” line item represents the company’s after-sales services, which include spare parts, mounting, repair and maintenance materials sales, and clearly do not represent the manufacturing operations of Alarko.²⁷⁷ Thus, the “Cost of Services Sold” line item should not be included in the surrogate manufacturing overhead ratio. Moreover, Commerce can easily separate the line item from other manufacturing costs in Alarko’s financial statements.²⁷⁸
- In the final determination of *Large Vertical Engines from China*, Commerce agreed with the respondents that “Alarko’s cost of services sold consist of ‘maintenance, repair, installation and commissioning services provided.’”²⁷⁹ Commerce also found that the record did not contain evidence that Chongqing Zongshen and its affiliates provide “maintenance, repair, installation, or commissioning services to their U.S. customers.”²⁸⁰ Thus, in *Large Vertical Engines from China*, Commerce excluded Alarko’s “Cost of Services Sold” line item from its calculations of the surrogate financial ratios.²⁸¹ Commerce should reach the same conclusion here.
- Thus, in the final determination, Commerce should exclude “Cost of Services Sold” from the numerator while using the material costs of finished and semi-finished goods manufacturing as the denominator in the calculation of manufacturing overhead for the Zongshen Companies.²⁸²

Petitioner’s Rebuttal Brief

- Commerce relied on the financial statements of Alarko, a Turkish machinery manufacturer, as the data source for SVs for financial ratios for the initiation of this investigation.²⁸³ At the *Preliminary Determination*, Commerce reviewed multiple financial statements of the record and found that Alarko’s constituted the best available information.²⁸⁴ No new information has been placed on the record, and, thus, Alarko’s

²⁷⁶ *Id.* at 15-16.

²⁷⁷ *Id.* at 15 (citing Zongshen Companies’ SV Submission at Exhibit 9b).

²⁷⁸ *Id.* at 16.

²⁷⁹ *Id.* at 17 (citing *Large Vertical Engines from China* IDM at Comment 10).

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ See Petitioner’s Rebuttal Brief at 26-27 (citing *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People’s Republic of China: Initiation of Less-Than-Fair-Value-Investigation*, 85 FR 20670, 20673 (April 14, 2020)).

²⁸⁴ *Id.* at 17 (citing *Preliminary Determination* PDM at 33).

financial statements remain the best available information for valuing Chinese producers' production experience.²⁸⁵

- The Zongshen Companies are wrong to challenge Commerce's methodology for calculating the surrogate financial ratios. Commerce previously included service costs in its calculation of surrogate financial ratios, and it should continue to do so here.²⁸⁶ In *Wooden Bedroom Furniture from China*, the respondent argued that Commerce could not use financial statements where cost of services were present and that such costs should be excluded from the surrogate financial ratios because they did not relate to the respondent's manufacturing business.²⁸⁷ Commerce disagreed and found that the presence of the cost of services in the financial statements did not require Commerce to "exclude it as a surrogate." Moreover, Commerce found that there was "no basis to exclude all line items under Cost of Services from the surrogate financial ratios."²⁸⁸
- The Zongshen Companies make the same arguments here as the respondents made in *Wooden Bedroom Furniture from China*. Commerce should follow its practice and reject the Zongshen Companies' arguments and continue to include the cost of services in its calculation of the surrogate manufacturing overhead financial ratio. This is especially true when aftermarket service or replacement small vertical engines are within the scope of this investigation.²⁸⁹

Commerce's Position:

As detailed below, for the final determination, we have continued to include the "Cost of Services Sold" line item from Alarko's 2019 financial statements in our calculations of the surrogate financial ratios.

In the *Preliminary Determination*, we used the 2019 financial statements from Alarko to calculate the surrogate financial ratios for our mandatory respondents because we determined Alarko's 2019 financial statements were the best available information with which to derive the surrogate financial ratios (*i.e.*, manufacturing overhead, selling, general and administrative expenses (SG&A), and profit).²⁹⁰ In our calculation of manufacturing overhead for the *Preliminary Determination*, we included a line item for "Cost of Services Sold" in the numerator.²⁹¹

²⁸⁵ *Id.* at 17.

²⁸⁶ *Id.*

²⁸⁷ *Id.* (citing *Wooden Bedroom Furniture from the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992 (August 18, 2010) (*Wooden Bedroom Furniture from China*), and accompanying IDM at 95-96).

²⁸⁸ *Id.* at 27-28 (citing *Wooden Bedroom Furniture from China* IDM at 96; and *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2012-2013*, 80 FR 33246 (June 11, 2015), and accompanying IDM at 5-7).

²⁸⁹ *Id.* at 28.

²⁹⁰ See *Preliminary Determination* PDM at 32-33.

²⁹¹ See *Preliminary SV Memo* at Exhibit 15.

As an initial matter, the petitioner argues that Commerce should continue to use Alarko's 2019 financial statements to calculate the surrogate financial ratios because they remain the best available information for valuing the Chinese producers' production experience for manufacturing small vertical engines.²⁹² We agree with the petitioner. As explained in the *Preliminary Determination*:

According to 19 CFR 351.408(c)(4), Commerce is directed to value overhead, {SG&A}, and profit using non-proprietary information gathered from producers of merchandise that is identical or comparable to the merchandise under consideration in the surrogate country. Commerce's preference is to derive surrogate overhead expenses, SG&A, and profit using financial statements that cover a period that is contemporaneous with the POI, show a profit, are from companies with a production experience similar to the respondents' production experience, and are not distorted or otherwise unreliable, such as financial statements that indicate the company received countervailable subsidies.²⁹³

Five financial statements for companies located in the surrogate country, Turkey, were placed on the record, including those of Alarko.²⁹⁴ All of these financial statements were publicly available, contemporaneous with the POI, showed a profit, were not distorted or otherwise unreliable, and were for companies that produce merchandise comparable to the merchandise under consideration.²⁹⁵ Thus, Commerce looked to other criteria of specificity and comparability to the respondent's production experience, concluding that Alarko's production experience was most similar to that of our respondents'.²⁹⁶ The record has not changed and no party has challenged our use of Alarko's financial statements to calculate the surrogate financial ratios, only the calculations themselves. Thus, we have continued to use the Alarko's 2019 financial statements to calculate the surrogate financial ratios for the final determination.

The Zongshen Companies argue that we should exclude the "Cost of Services Sold" from the calculation of the surrogate financial ratios because it does not relate to manufacturing and the costs contained within the line item do not reflect the Zongshen Companies' operations.²⁹⁷ The Zongshen Companies explain that the "Cost of Services Sold" line item relates to Alarko's after-sales services, which include spare parts, mounting, repair and maintenance materials sales. According to the Zongshen Companies, these after-sales services are not reflective of the Zongshen Companies' manufacturing operations,²⁹⁸ which include the manufacturing of submersible motors, gas-powered heaters and equipment, radiators, residential and commercial

²⁹² See Petitioner's Rebuttal Brief at 26-27.

²⁹³ See *Preliminary Determination* PDM at 32 (citing *Fish Fillets from Vietnam 2010-2011 AR* IDM at Comment 1; *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 28801 (May 16, 2013), and accompanying IDM at Comment 2; and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review*, 78 FR 5414 (January 25, 2013), and accompanying IDM at Comment 1.)

²⁹⁴ See Petitioner's 1st SV Submission at Exhibits 14-17; and Zongshen Companies' SV Submission at Exhibit 9.

²⁹⁵ See *Preliminary Determination* PDM at 32.

²⁹⁶ *Id.* at 32-33.

²⁹⁷ See Zongshen Companies' Case Brief at 16.

²⁹⁸ *Id.* (citing Zongshen Companies' SV Submission at Exhibit 9b).

air conditioners, and related accessories.²⁹⁹ Further, the Zongshen Companies assert that, in *Large Vertical Engines from China*, Commerce, using these same financial statements, excluded the “Cost of Services Sold” line item from its calculation of the surrogate financial ratios because it found that the Zongshen Companies do not provide those after-sales services to its U.S. customers.³⁰⁰ The Zongshen Companies assert that this line item is easily excludable from the calculation of the surrogate financial ratios.³⁰¹ Thus, the Zongshen Companies conclude that Commerce should “exclude ‘Cost of Services Sold’ from the numerator while using the material costs of finished and semi-finished goods manufacturing as the denominator in the calculation of manufacturing overhead for {the} Zongshen Companies.”³⁰²

We disagree with the Zongshen Companies. First, we note that while this case is for a similar product as *Large Vertical Engines from China*, the records and subject merchandise are not the same. Regarding the “Cost of Services Sold” line item, Alarko’s 2019 financial statements state: “The cost of service{s} sold consists of the costs of maintenance, repair, installation and commissioning services provided” (i.e., after-sales services).³⁰³ In *Large Vertical Engines from China*, in which the Zongshen Companies were also a mandatory respondent, Commerce found that there was no information of the record to suggest that either mandatory respondent provided after-sales services to their U.S. customers; therefore, we excluded Alarko’s cost of services from the surrogate financial ratios for the final determination because such services were not representative of the respondents’ production experience.³⁰⁴

However, record evidence in this investigation indicates that some respondent companies do provide after-sales services for small vertical engines. Chongqing Kohler’s business license in effect during the POI shows that Chongqing Kohler’s scope of business includes “{t}he development, manufacturing, marketing and sales of multipurpose horizontal and vertical shaft gasoline engines, ... , related equipment and components, accessories and parts for such products; and providing related service.”³⁰⁵ Other producers/exporters of small vertical engines also include after-sales services within their scope of business on their business licenses.³⁰⁶

²⁹⁹ See *Preliminary Determination* PDM at 32.

³⁰⁰ See Zongshen Companies’ Case Brief at 17 (citing *Large Vertical Engines from China* IDM at Comment 10).

³⁰¹ *Id.* at 17.

³⁰² *Id.*

³⁰³ See Petitioner’s 1st SV Submission at Exhibit 14; see also Zongshen Companies’ SV Submission at Exhibit 9b.

³⁰⁴ See *Large Vertical Engines from China* IDM at Comment 10.

³⁰⁵ See Chongqing Kohler’s Letter, “Certain Vertical Shaft Engines Between 99cc and 225cc, and Parts Thereof from the People’s Republic of China: Chongqing Kohler’s Section A Initial Questionnaire Response,” dated May 28, 2020; see also Memorandum, “Proprietary Information in the Final Determination of the Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China – Chongqing Kohler Engines Ltd.,” dated concurrently with this memorandum, at Note 1.

³⁰⁶ See, e.g., Changzhou Kawasaki and Kwang Yang Engine Co., Ltd.’s Letter, “Antidumping Duty Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc and Parts Thereof from the People’s Republic of China: Separate Rate Application,” dated May 14, 2020, at Exhibit 3; and Chongqing Chenhui Electric Machinery Co., Ltd.’s Letter, “Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People’s Republic of China; Separate Rate Application,” dated May 21, 2020, at Exhibit 3.

Moreover, the scope of the investigation specifically covers aftermarket service and replacement engines.³⁰⁷

Contrary to the Zongshen Companies' assertions, Commerce need not replicate the exact production experience of the respondents when choosing and calculating SVs. Section 773(c)(1) of the Act directs Commerce to calculate normal value "on the basis of the value of the {FOPs} utilized in producing the merchandise and to which shall be added an amount for general expenses and profit, ...{and} the valuation of the {FOPs} shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate." The statute thus instructs Commerce to use the "best available information" on the record to value the respondents FOPs. It does not require Commerce to replicate the respondents' exact production experience. The Federal Circuit explained this in *Nation Ford*:

As aptly stated by the {CIT}, while "a surrogate value must be as representative of the situation in the NME country as is feasible," Commerce need not "duplicate the exact production experience of the Chinese manufacturers at the expense of choosing a surrogate value that most accurately represents the fair market value of {the foreign like product} in a hypothetical market-economy China."³⁰⁸

As detailed above, in the *Preliminary Determination*, we explained our criteria for selecting the best available information with which to calculate the surrogate financial ratios. We chose the financial statements of Alarko because they are the best available information on the record with which to value the surrogate financial ratios because "Alarko's production experience is more similar to our respondents' production experience" than the other financial statements on the record.³⁰⁹ Thus, Alarko's financial statements are "as representative of the situation in the NME country as is feasible," without Commerce needing to duplicate the exact production experience of Chongqing Kohler or the Zongshen Companies.

Moreover, pursuant to its established practice, Commerce does not perform a line-by-line analysis of the expenses included in each category within the manufacturing overhead surrogate financial ratio to determine whether the respondents incurred similar expenses during the POI. As explained in *Wooden Bedroom Furniture from China*:

{Commerce's} practice is not to attempt to adjust the surrogate producer's overhead figures to account for potential cost differences between the surrogate companies and the respondent. Specifically {Commerce} has explained that its

³⁰⁷ See the accompanying *Federal Register* notice at Appendix I; see also Memorandum, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Final Determination," dated concurrently with this memorandum, at Comment 3.

³⁰⁸ See *Nation Ford Chemical Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1999) (*Nation Ford*) (citing *Nation Ford Chemical Co. v. United States*, 985 F. Supp. 133, 137 (CIT 1997); and *Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994) (*Lasko Metal*)); see also *Dorbest Ltd. v. United States*, 462 F. Supp. 2d 1262, 1293 (CIT 2006) ("Indeed, the court in *Nation Ford* explicitly approved the notion of creating a 'hypothetical' market economy to approximate the production experience of {China}") (citing *Nation Ford*, 166 F.3d at 1378).

³⁰⁹ See *Preliminary Determination* PDM at 33.

practice is “to not make adjustments to the financial statements data, as doing so may introduce unintended distortions into the data rather than achieving greater accuracy.... In calculating overhead and SG&A, it is {Commerce’s} practice to accept data from the surrogate producer’s financial statements *in toto*, rather than performing a line-by-line analysis of the types of expenses included in each category.”³¹⁰

Accordingly, we have not excluded Alarko’s “Cost of Services Sold” line item for our calculation of the surrogate financial ratios. Further, no party has argued that the “Cost of Services Sold” line item should be included somewhere other than under overhead in our calculations. Consequently, we have continued to treat “Cost of Services Sold” as manufacturing overhead, and, we have not made any changes to our calculations of the overhead, SG&A, and profit surrogate financial ratios for the final determination.

Company-Specific Comments

Comment 7: How to Value Non-Subject Components of the Zongshen Companies’ Mounted Engines

Petitioner’s Case Brief

- Although the scope covers small vertical engines whether mounted or unmounted on outdoor power equipment, only the portion of the mounted merchandise consisting of subject merchandise is covered by the scope of the investigation.³¹¹
- In the *Preliminary Determination*, Commerce modified the U.S. price of mounted small vertical engines sold by the Zongshen Companies using unverified NME costs to account for the non-subject portion of the mounted merchandise, despite the availability of SVs on the record and that Commerce made other adjustments to U.S. sales using SVs.³¹²
- The basic premise of Commerce’s NME methodology is that the cost of inputs in an NME country do not reflect market condition and the country “does not operate on market principles of cost or pricing structures.”³¹³ Thus, section 773(c) of the Act directs Commerce to value FOPs based on the SVs for such factors from an appropriate market economy (ME) country. Moreover, the only exception to this rule is where Commerce can rely on the sales prices of subject merchandise in other ME countries.³¹⁴ The Act does not in any instance direct Commerce to consider NME country costs to adjust U.S. price.

³¹⁰ See *Wooden Bedroom Furniture from China* IDM at Comment 30.A.ii (citing *Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 74 FR 41374 (August 17, 2009), and accompanying IDM at Comment 15).

³¹¹ See Petitioner’s Case Brief at 1 (citing Preliminary Scope Decision Memorandum at 13).

³¹² *Id.* at 2.

³¹³ *Id.* at 3 (citing section 771(18)(A)).

³¹⁴ *Id.* (citing section 773(c)(2) of the Act).

- In *Large Vertical Engines from China*, in response to arguments by Chongqing Zongshen that Commerce should consider NME costs when identifying SVs to calculate NV, Commerce explained that it does not consider NME costs to establish or benchmark SVs.³¹⁵
- Introducing NME costs of manufacturing into Commerce’s dumping margin analysis would undermine the very reason Commerce identifies and relies on SVs, *i.e.*, that NME costs are so distorted that they cannot be used in dumping margin calculations.³¹⁶
- There is no evidence that the costs of production for the non-subject portion of the merchandise are reliable, as when Commerce designates a country to be an NME, that designation extends to the entire country and all costs of production, not just the inputs for subject merchandise. Moreover, a ratio approach that is based on the NME costs of subject and non-subject merchandise is based on the false assumption that all NME costs are distorted to the same extent.³¹⁷
- Commerce should use SVs from an ME country to calculate the dumping margin, including for U.S. price. Commerce has selected Turkey as the surrogate country, and it is relying on Turkish import data for goods or services procured in China or from Chinese companies.³¹⁸ Additionally, the record contains SV information for the non-subject FOPs of the Zongshen Companies’ mounted merchandise.³¹⁹ Thus, the Zongshen Companies’ NME costs would be the least reliable source for determining how to allocate U.S. price between the subject and non-subject portions of the subject merchandise.
- The calculation memorandum for *Wooden Cabinets and Vanities from China*, placed on the record by the Zongshen Companies, is not applicable here, as Commerce’s methodology in that case “was a response to a problematic methodology proposed by a respondent that focused on estimating U.S. prices based on product characteristics.” The ratios in that case were also used in conjunction with the application of AFA.³²⁰ Further, the public record from *Wooden Cabinets and Vanities from China* does not make clear all of the considerations that played into Commerce’s decision to use the ratio methodology. Finally, in *Wooden Cabinets and Vanities from China*, the Commerce rejected certain cost information used to calculate the ratio found at verification to be unreliable.³²¹ In the instant case, the Zongshen Companies’ costs reported for the ratio methodology were not subject to verification.³²²

³¹⁵ *Id.* at 4 (citing *Large Vertical Engines from China* IDM at 15).

³¹⁶ *Id.* at 4-5.

³¹⁷ *Id.*

³¹⁸ *Id.* at 5 (citing *Preliminary Determination* PDM at 8-12).

³¹⁹ *Id.* (citing Petitioner’s 2nd SV Submission at Exhibits 1-3).

³²⁰ *Id.* at 6 (citing *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 11953 (February 28, 2020) (*Wooden Cabinets and Vanities from China*), and accompanying IDM at 63-64).

³²¹ *Id.* (citing *Wooden Cabinets and Vanities from China* IDM at 58).

³²² *Id.* (citing Verification Questionnaire).

- Using NME costs presents respondents with an opportunity to manipulate dumping margins because an NME producer could choose to report high costs for the subject merchandise portion of mounted small vertical engines to create a higher ratio for the U.S. price adjustment.³²³ The U.S. price would then be artificially higher, which in turn would lead to artificially low dumping margins for those transactions.
- Instead of using the NME-cost based ratios to adjust U.S. price, Commerce has two options to calculate the dumping margins. First, Commerce could calculate the Zongshen Companies' dumping margin based on the reported U.S. price and the entire NV for the mounted equipment (*i.e.*, the NV for both the subject and non-subject portions of the merchandise) using the SVs on the record, with the resulting duty rate only assessed on the subject merchandise.³²⁴ This approach is consistent with Commerce's standard methodology.
- Alternatively, to the extent Commerce continues to use a ratio to adjust U.S. price for mounted subject merchandise, it should do so using SVs. Commerce could build up the NV of the subject and non-subject portions the merchandise using SVs and calculate a ratio based on those FOP buildups. Then that ratio can be used to adjust the U.S. price, and the dumping margins would be calculated on the basis of adjusted U.S. price compared to the NV of the subject merchandise.³²⁵

The Zongshen Companies' Rebuttal Brief

- The petitioner's arguments and suggested alternative methodologies are flawed and should be rejected. Instead, Commerce, in its final determination, should continue to apply the ratios provided by the Zongshen Companies to the Zongshen Companies' gross unit price for their sales of mounted small vertical engines.³²⁶
- The petitioner's arguments that introducing NME costs to the dumping margin analysis will distort the margin calculation are baseless. The ratios provided by the Zongshen Companies are the cost of subject inputs divided by the total cost of inputs.³²⁷ In using the Zongshen Companies' ratios to allocate U.S. price between subject and non-subject merchandise, Commerce avoids using NME costs in calculating the dumping margins because, while Commerce may consider NME costs distorted, the ratio is not being compared to U.S. price but applied to U.S. price.³²⁸
- The ratios are accurate representations of the Zongshen Companies' relative actual costs for the non-subject merchandise within the same NME as the cost of the subject

³²³ *Id.* at 6-7.

³²⁴ *Id.* at 7-8

³²⁵ *Id.* at 8.

³²⁶ See Zongshen Companies' Rebuttal Brief at 2-3.

³²⁷ *Id.* at 3 (citing Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Zongshen 3rd Supplemental Response," dated October 1, 2020 (Zongshen Companies' 3SQR), at 26 and Exhibit 3SD-1).

³²⁸ *Id.* at 3-4.

merchandise. Moreover, Commerce is not authorized by the Act to base U.S. price on SVs.³²⁹

- Both of the petitioner's suggested approaches are illogical. The scope of the investigation only covers small vertical engines, not the products upon which they may be mounted.³³⁰ Thus, the U.S. pricing of the non-subject portion of the merchandise is immaterial to the calculation of the dumping margins because Commerce must calculate dumping margins only for subject merchandise, which Commerce recognized in the *Preliminary Determination* by using the Zongshen Companies' ratios to determine the portion of the gross unit price representative of the subject merchandise.
- In the petitioner's suggested approaches, Commerce would have to rely on SVs to determine the portion of U.S. price accounted for by non-subject merchandise. However, Commerce's SV methodology is authorized in section 773(c)(1) of the Act, which governs NV, not U.S. price. The Act does not authorize Commerce to use SVs and FOPs on the U.S. price side of the equation and doing so would distort Commerce's dumping margin calculations.³³¹
- In the *Wooden Cabinets and Vanities Preliminary Determination*, when faced with similar facts of subject imports containing both subject and non-subject merchandise, Commerce specifically requested the respondent to provide ratio calculations of the cost of subject merchandise to the total cost of the finished merchandise.³³² Thus, Commerce's ratio methodology for the *Preliminary Determination* is consistent with Commerce's normal practice.
- The petitioner's objection to the methodology employed in *Wooden Cabinets and Vanities from China* because of the use of AFA is misplaced. In that case, Commerce clearly stated that its AFA findings were not related to the ratio methodology because the respondent's ratio worksheets were verified. Instead, the application of AFA was to account for unreported, non-subject merchandise and inaccurately reported sales.³³³
- The petitioner's characterization of the Zongshen Companies' cost of manufacturing information as "unverified" is without merit. The Zongshen Companies provided a full explanation and supporting data to show how the ratios for each CONNUM were derived.³³⁴ Moreover, Commerce fully verified the Zongshen Companies' cost and consumption reporting in the Verification Questionnaire, to which the Zongshen

³²⁹ *Id.* at 4.

³³⁰ *Id.* (citing Preliminary Scope Decision Memorandum).

³³¹ *Id.* at 5.

³³² *Id.* at 5-6 (citing *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Extension of Provisional Measures*, 84 FR 54106 (October 19, 2019) (*Wooden Cabinets and Vanities Preliminary Determination*), and accompanying PDM at 5 and Attachment 4; and *Wooden Cabinets and Vanities from China* IDM at 60).

³³³ *Id.* at 6 (citing *Wooden Cabinets and Vanities from China* IDM at 60).

³³⁴ *Id.* at 6-7 (citing Zongshen Companies' 3SQR at 26 and Exhibit 3SD-1).

Companies provided a full response.³³⁵ The petitioner has not provided any evidence that the Zongshen Companies' ratios are inaccurate or otherwise unreliable in any way.

Commerce's Position:

As explained below, for the final determination, we have continued to use the ratios supplied by the Zongshen Companies³³⁶ to derive the portion of the reported gross unit price attributable to the subject merchandise for their sales of mounted merchandise.

The scope of the investigation covers small vertical engines, whether or not mounted on non-hand-held outdoor power equipment, including but not limited to walk-behind mowers and pressure washers.³³⁷ However, only the small vertical engine portion of the imported mounted equipment is subject to this investigation.³³⁸ The Zongshen Companies reported selling subject merchandise that was mounted on finished equipment (*i.e.*, lawn mowers and pressure washers).³³⁹ Because Commerce must compare the U.S. price and NV for only subject merchandise, for the *Preliminary Determination*, Commerce revised the Zongshen Companies' reported gross unit price of the mounted merchandise by multiplying that gross unit price by a ratio of the Zongshen Companies' input costs of small vertical engines to the total input costs of the mounted merchandise (*i.e.*, the total input costs of all inputs for both the subject and non-subject portions of the merchandise).³⁴⁰ In calculating the NV for the mounted merchandise, Commerce used only the SVs related to the manufacture of small vertical engines.³⁴¹

The petitioner argues that the ratio methodology used for the *Preliminary Determination* introduces NME costs into the dumping margin analysis and distorts the dumping margin calculations, contrary to Commerce's NME practice and the Act.³⁴² We disagree. The petitioner is correct that when Commerce determines that a country is an NME,³⁴³ we do not use NME costs to calculate NV or to adjust U.S. price when accounting for movement expenses and other services.³⁴⁴ However, we are not adjusting U.S. price with NME costs by applying the ratio to the Zongshen Companies' gross unit price for mounted merchandise.

³³⁵ *Id.* at 7 (citing Zongshen Companies' VQR at 3-12 and Exhibits VE5 through VE8).

³³⁶ See Zongshen Companies' 3SQR at Exhibit 3SD-1.

³³⁷ See Appendix I of the accompanying *Federal Register* notice.

³³⁸ *Id.*

³³⁹ See Zongshen Companies' AQR at Volume II, at 2.

³⁴⁰ See *Preliminary Determination* PDM at 26 and 27; see also Zongshen Companies' Preliminary Analysis Memorandum at 3.

³⁴¹ See *Preliminary Determination* PDM at 28-29.

³⁴² See Petitioner's Case Brief at 3.

³⁴³ See *Preliminary Determination* PDM at 7 (citing *Antidumping Duty Determination 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), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018) (*Aluminum Foil from China*)), where we state that Commerce considers China to be an NME.

³⁴⁴ See section 773(c)(1) of the Act, which directs Commerce to use SVs to value the factors of production to determine NV.

Section 772 of the Act defines EP and CEP as the price at which the *subject merchandise* is first sold in the United States to an unaffiliated purchaser. Because of this, where subject merchandise is sold to the United States incorporated into or including merchandise that is not subject to the investigation, Commerce must determine what portion of the price of the merchandise sold in the United States is allocable to the subject merchandise. After we ascertain what portion of the gross unit price of the merchandise sold in the United States is representative of the subject merchandise, we can then make adjustments to price under sections 772(c) and (d) to deduce EP and CEP, respectively. Thus, by applying the Zongshen Companies' ratios to the gross unit price of the Zongshen Companies' mounted merchandise, we are not making an adjustment to price using NME costs, which would be contrary to our practice, we are revising the gross unit price to determine the portion of that gross unit price that is allocable to the subject merchandise. Simply put, we are only determining the gross unit price of the subject merchandise, as if such merchandise had never been mounted, within the gross unit price of the mounted merchandise. Consequently, we are not adjusting U.S. price using NME costs or otherwise introducing NME costs into the dumping margin calculation. Instead, we are merely arriving at the first point under which the Act allows us to consider U.S. price (*i.e.*, exclusive of any non-subject components) by applying the ratio of the cost of subject inputs over the cost of all inputs for the mounted merchandise to the gross unit price of the Zongshen Companies' mounted merchandise.

Moreover, the ratio methodology we used for the *Preliminary Determination* was based upon the best available information to determine the price attributable to the subject merchandise incorporated into the mounted merchandise because the petitioner's suggested alternative methodologies are either inconsistent with the Act or potentially distortive.

First, the petitioner suggests comparing the total U.S. price of the mounted merchandise (inclusive of any adjustments under section 772(c) or (d) of the Act) to the NV of the entire mounted merchandise (*i.e.*, the NV of both the subject and non-subject merchandise), using SVs to determine NV pursuant to section 773(c) of the Act.³⁴⁵ However, this approach is inconsistent with the Act. As discussed above, section 772 of the Act requires EP and CEP to be reflective of only subject merchandise. Moreover, section 773 of the Act directs Commerce to make "a fair comparison" between EP or CEP and NV, where NV is at the same level of trade as EP or CEP.³⁴⁶ For this reason, because the Act requires EP or CEP to only reflect the subject merchandise, it necessitates Commerce to determine NV only for the subject merchandise as well. Further, if we were to use this methodology, contrary to the petitioner's assertions, it is inherently problematic that any dumping margins calculated for the respondent may be attributable, at least in part, to the non-subject portion of the mounted merchandise, which would distort the dumping margin calculations.³⁴⁷ Commerce is required to calculate the dumping margins for respondents as accurately as possible.³⁴⁸ Thus, it would be unacceptable

³⁴⁵ See Petitioner's Case Brief at 7-8.

³⁴⁶ See section 773(a) of the Act.

³⁴⁷ In such a situation, if the NV for the portion of the mounted merchandise that is not subject to this investigation exceeds the portion of U.S. price attributable to the non-subject portion of the mounted merchandise, the dumping margins would, in whole or in part, be attributable to this excess in NV for the non-subject portion of the mounted merchandise.

³⁴⁸ See, *e.g.*, *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1379 (Fed. Cir. 2013) ("An

to allow a companies' dumping margin to be based, even in part, on non-subject merchandise where such a situation was possible to avoid because that margin would not be accurate with respect to the respondents' sales of subject merchandise during the period examined. Accordingly, this methodology suggested by the petitioner is not an appropriate method with which to account for the non-subject portion of the Zongshen Companies' mounted merchandise.

Alternatively, the petitioner suggests calculating surrogate ratios based on the NVs of the subject and non-subject portion of the merchandise, using our NME SV methodology, and then applying it to the Zongshen Companies' gross unit price of the mounted merchandise.³⁴⁹ However, this methodology may also lead to significant distortions in the dumping margin calculations because it has the potential to overstate or understate the U.S. price attributable to the subject merchandise. For example, if the value of the subject engines determined with SVs is substantially higher as a proportion of the total NV based on SVs than the relative costs actually incurred to produce the merchandise in China, applying the derived surrogate ratio from the NVs based on SVs would lead to overstated U.S. prices (for the subject engines) and artificially low dumping margins. Likewise, if the opposite is true, it would lead to understated U.S. prices and artificially high dumping margins. Further, because the NVs used to calculate the ratios are determined using SVs sourced from a ME country, the surrogate ratio would be entirely dependent on which ME was chosen as the primary surrogate country, as imports prices for FOPs can vary depending on the potential surrogate country.³⁵⁰ Commerce is required to calculate dumping margins as accurately as possible, and this methodology would not fulfil Commerce's statutory mandate in this instance, where there is another method available to ascertain the portion of U.S. price attributable to the subject merchandise that is less likely to lead to significant distortions in the dumping margin calculations.

As noted by the petitioner and the Zongshen Companies, we have used the ratio methodology used in the *Preliminary Determination* to determine the U.S. price of subject merchandise in previous cases, both ME and NME, where subject merchandise is imported into the United States mixed with non-subject merchandise.³⁵¹ For example, in *Wooden Cabinets and Vanities*

overriding purpose of Commerce's administration of antidumping laws is to calculate dumping margins as accurately as possible."); *Shakeproof Assembly Components, Division of Illinois Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 1991); and *Lasko Metal*, 43 F.3d at 1446 (citing *Rhone Poulenc*, 899 F.2d at 1185).

³⁴⁹ See Petitioner's Case Brief at 8. Put simply, the price attributable to the subject merchandise would be as follows: $GRSUPRU \text{ of subject merchandise} = GRSUPRU \text{ of mounted merchandise} *$

$\frac{NV \text{ of subject merchandise}}{NV \text{ of mounted merchandise}}$, where the NVs of the subject and mounted merchandise are determined using our SV methodology.

³⁵⁰ For example, compare the Zongshen Companies' suggested SVs for their glue input. Turkish import data for HS 3506.10 for the POI has an average unit value (AUV) of 47.91 Turkish Lira per kg (*i.e.*, \$8.37/kg), while Mexican import data for HS 3506.10 for the POI has an AUV of 238.00 Mexican Pesos per kg (*i.e.*, \$12.34/kg). See Zongshen Companies' SV Submission at Exhibits 1 and 13. Such differences compound across the respondents' inputs when calculating NV and could potentially result in significantly different dumping margins depending on the ME country selected as the primary surrogate country.

³⁵¹ See *Certain Fabricated Structural Steel from Canada: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 84 FR 47481 (September 10, 2019), and accompanying PDM at "XII. Export Price/Constructed Export Price" ("We determined the portion of the price for fabricated structural steel based on the ratio of the costs of production of the subject merchandise to the total cost of producing

Preliminary Determination, we revised the reported gross unit price to account for only the price of the subject merchandise where a respondent's sales of combination kits included certain non-subject components.³⁵² Specifically, we stated that we were "preliminarily using a ratio of these costs: subject inputs divided by total cost of material inputs, to calculate a ratio for determining a revised gross unit price for combination kits."³⁵³ Commerce continued to use this methodology for the final determination in that investigation.³⁵⁴

The petitioner argues that the methodology used in *Wooden Cabinets and Vanities Preliminary Determination* is not applicable because Commerce developed the methodology in "response to a problematic methodology proposed by a respondent that focused on estimating U.S. prices based on product characteristics."³⁵⁵ However, the petitioner has misrepresented Commerce's reasons for applying the ratio methodology in that case. Commerce explained that the respondent had reported sales of combination kits that contained both subject and non-subject components.³⁵⁶ The respondent tried to adjust its gross unit price for its combination kits using the width of the cabinets and vanities, in an attempt to identify the portion of U.S. price attributable to the subject components.³⁵⁷ However, because the respondent only accounted for the width of the combination kits, and "not the various other features of the merchandise," Commerce found the respondents methodology to be distortive.³⁵⁸ Commerce then requested the respondent to provide the cost of raw material inputs for the combination kits and to identify which costs were for the subject and non-subject inputs and then applied the ratio methodology explained above.³⁵⁹ Thus, while Commerce derived its ratio methodology in response to the respondents' "problematic methodology," it was also in response to a recognition by both Commerce and the respondent that U.S. price must be reflective of subject merchandise only. Further, the means by which Commerce arrived at such a methodology does not negate the underlying reasons for which Commerce employed that methodology.

The petitioner further objects to any reliance on *Wooden Cabinets and Vanities from China* because Commerce ultimately applied its ratio methodology in conjunction with AFA for the final determination.³⁶⁰ However, Commerce merely adjusted some of the reported data used to

the completed project."), unchanged in *Certain Fabricated Structural Steel from Canada: Final Determination of Sales at Less Than Fair Value*, 85 FR 5373 (January 30, 2020), and accompanying IDM at Comment 3. We note that Commerce made slight changes to its calculation of the ratios for the final determination, but the underlying principle of using a ratio based on the respondents' incurred costs to produce of the subject merchandise over the respondents' incurred costs to produce the merchandise sold in the United States to determine the portion of the price representative of the subject merchandise remained unchanged. *See also Wooden Cabinets and Vanities Preliminary Determination* PDM at 39, unchanged in *Wooden Cabinets and Vanities from China* IDM at Comment 13.

³⁵² *See Wooden Cabinets and Vanities Preliminary Determination* PDM at 39.

³⁵³ *See* Memorandum, "Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Preliminary Results Analysis Memorandum for Rizhao Foremost Woodwork Manufacturing Company Ltd.," dated October 2, 2019 (*Wooden Cabinets and Vanities Analysis Memorandum*), at 5-6 (contained in Zongshen Companies' SV Submission at Exhibit 10).

³⁵⁴ *See Wooden Cabinets and Vanities from China* IDM at Comment 13.

³⁵⁵ *See* Petitioner's Case Brief at 6.

³⁵⁶ *See Wooden Cabinets and Vanities Analysis Memorandum* at 5.

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.* at 5-6.

³⁶⁰ *See* Petitioner's Case Brief at 6.

calculate the ratios using AFA to account for certain unreported non-subject inputs sold in the combination kits, as well as EP sales of combination kits incorrectly reported as non-combination kits (*i.e.*, sales of exclusively subject merchandise).³⁶¹ Commerce adjusted its ratio calculations, but the methodology remained the same. Moreover, contrary to the petitioner's assertions, Commerce found the respondent's reported information to be "reliable and verified."³⁶² Accordingly, we find *Wooden Cabinets and Vanities from China* to be instructive on this issue, as it demonstrates that Commerce has previously used a respondent's NME costs to revise the reported gross unit price for subject merchandise mixed with non-subject components in an almost identical manner as in the instant case.

The petitioner contends that the Zongshen Companies' ratio calculations and cost data cannot be relied upon because they are unverified.³⁶³ However, at the *Preliminary Determination*, we stated that, because we are currently unable to conduct on-site verification, we would take additional steps in lieu of on-site verification.³⁶⁴ Accordingly, we issued the Zongshen Companies the Verification Questionnaire, to which the Zongshen Companies timely and fully responded.³⁶⁵ Section 781(i) of the Act directs Commerce to verify all information relied upon in making a final determination in an investigation. However, section 781(i) of the Act does not require that Commerce must verify each and every piece of information placed on the record by a respondent.³⁶⁶ Verification is not an exhaustive audit of a company's responses. Rather, verification is a spot check whereby Commerce tests the information provided by a respondent for accuracy and completeness.³⁶⁷ The Courts have consistently agreed with Commerce's practice with respect to verification.³⁶⁸ We reviewed the Zongshen Companies' verification questionnaire response and did not find anything to indicate that the Zongshen Companies' submitted information was incorrect or otherwise unreliable. Therefore, we consider the Zongshen Companies' submitted information, including their cost of manufacturing ratios for their mounted merchandise, to be sufficiently verified, pursuant to section 781(i) of the Act.

Finally, the petitioner argues that using NME costs to revise the gross unit price of mounted merchandise presents respondents with opportunities to manipulate the dumping margins because a respondent could choose to report high costs for the subject merchandise portion of mounted engines to attribute more of the gross unit price to the subject merchandise.³⁶⁹ First, we note that there is no indication that the Zongshen Companies did so here. As explained

³⁶¹ See *Wooden Cabinets and Vanities from China* IDM at Comment 13.

³⁶² *Id.*

³⁶³ See Petitioner's Case Brief at 6.

³⁶⁴ See *Preliminary Determination*, 85 FR at 66934.

³⁶⁵ See Zongshen Companies' VQR.

³⁶⁶ See *Utility Scale Wind Towers from Indonesia: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 85 FR 40231 (July 6, 2020), and accompanying IDM at Comment 8.

³⁶⁷ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 56739, 56744 (October 21, 1999); and *Wooden Cabinets and Vanities from China* IDM at Comment 13 (citing *FAG Kugelfischer Georg Schafer AG v. United States*, 131 F. Supp. 2d 103, 133 (CIT 2001) (*Schafer*)).

³⁶⁸ See, e.g., *Bomont Indus. v. United States*, 733 F. Supp. 1507, 1508 (CIT 1990) (*Bomont*); *Schafer*, 131 F. Supp. 2d at 133; *Geneva Steel v. United States*, 914 F. Supp. 563, 590 (CIT 1996); and *Micron Technology, Inc. v. United States*, 117 F.3d 1386, 1396 (Fed. Cir. 1997) (citing *Monsanto Co. v. United States*, 698 Supp. 275, 281 (CIT 1998) and *Bomont*, 733 F. Supp. at 1508)).

³⁶⁹ *Id.* at 6-7.

above, we verified the Zongshen Companies' submitted information and found it to be reliable. Second, the petitioner's concerns are speculation and not based on any evidence on the record of this proceeding. We also note that companies' submitted information is subject to verification, and, if Commerce determines that a company has falsified or otherwise misreported its data, Commerce has the authority to apply AFA, pursuant to section 776(b) of the Act.

Accordingly, for the final determination, we have continued to rely on the Zongshen Companies' cost of manufacturing ratios for their mounted merchandise to determine the portion of the gross unit price for mounted merchandise that is allocable to the subject merchandise. We find that this methodology is the best available information given the facts on our record and the arguments of the parties; however, we intend to further examine this issue in the first administrative review should a similar fact pattern arise.

Comment 8: Whether to Grant the Zongshen Companies a By-Product Offset

The Zongshen Companies' Case Brief

- Commerce should reverse its decision in the *Preliminary Determination* to deny the Zongshen Companies a by-product offset for their production of aluminum scrap and grant the Zongshen Companies such an offset for the final determination.³⁷⁰
- The Zongshen Companies reported that aluminum scrap was a by-product generated in the production of certain inputs, the scrap was sold, and sales revenue associated with those sales was booked.³⁷¹ The Zongshen Companies' reported aluminum scrap generation makes a clear connection between the POI-generated scrap and the revenue that the Zongshen Companies obtained during the POI for sales of scrap.
- The Zongshen Companies provided a by-product worksheet and a sales voucher supporting the quantity of scrap generated.³⁷² This documentation demonstrates the quantity generated and the quantities sold.
- The Zongshen Companies book the quantity and value of scrap at the time it was sold, and the Zongshen Companies confirmed that all scrap generated in the production process is sold.³⁷³ No evidence suggests that the quantity of scrap sold was greater than the quantity produced. The by-product sales voucher confirms that the sales revenue of the aluminum scrap offset production costs.³⁷⁴

³⁷⁰ See Zongshen Companies' Case Brief at 18 (citing *Preliminary Determination* PDM at 33.)

³⁷¹ *Id.* (citing Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99 cc {sic} and Up To 225cc, and Parts Thereof, from China; AD Investigation; Zongshen Companies Section D Response," dated June 26, 2020 (Zongshen Companies' DQR), at D-22).

³⁷² *Id.* (citing Zongshen Companies' DQR at Exhibits D-29 and D-30).

³⁷³ *Id.* (citing Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99 cc {sic} and Up To 225cc, and Parts Thereof, from China; AD Investigation; Zongshen Supplemental Sections A, C-D Response," dated August 18, 2020 (Zongshen Companies' SACDQR)).

³⁷⁴ *Id.* at 18-19 (citing Zongshen Companies' DQR at D-23).

- The Zongshen Companies provided substantial record evidence and a detailed explanation of the aluminum scrap that is generated and tracked in the Zongshen Companies' books and records.³⁷⁵ Thus, Commerce's preliminary determination that the claimed production reported was unsupported by substantial record evidence is incorrect.
- Commerce's preliminary determination that a by-product offset cannot be granted because the Zongshen Companies did not book the production of aluminum scrap is contrary to its practice.³⁷⁶ Other documentation can support that a respondent generated a by-product and establish the quantity and value of the by-product produced. Commerce is not limited to granting a by-product offset only based on record evidence of generation of the by-product at the time of production.³⁷⁷
- In *Large Vertical Engines from China*, Commerce granted the Zongshen Companies the same by-product offset based on identical record evidence. In other investigations and reviews, Commerce has granted by-product offsets based on record evidence that demonstrates the quantity and value of by-product production even where the respondent did not separately track the inventory of scrap.³⁷⁸

Petitioner's Rebuttal Brief

- In the *Preliminary Determination*, Commerce denied the Zongshen Companies a by-product offset because the Zongshen Companies did not provide documentation of actual generation of aluminum scrap, which is consistent with Commerce's practice.³⁷⁹
- The Zongshen Companies' argument that Commerce should grant the Zongshen Companies a by-product offset purely based on records of aluminum scrap sales is contrary to Commerce's practice.³⁸⁰
- The Zongshen Companies' reporting methodology is flawed. Because the Zongshen Companies explain that information submitted with respect to their claimed by-product is identical to the record evidence in *Large Vertical Engines from China*, the Zongshen Companies have reported combined scrap offset information for large and small vertical engines. Parts going into large vertical engines would generate more scrap, and a portion of that would be incorrectly allocated to small vertical engines subject to the instant investigation.³⁸¹

³⁷⁵ *Id.* at 19 (citing Zongshen Companies' DQR at D-22 and Exhibits D-29 through D-31).

³⁷⁶ *Id.* at 19.

³⁷⁷ *Id.* at 19-20.

³⁷⁸ *Id.* at 20 (citing *Certain Steel Nails from the Sultanate of Oman: Final Results of Antidumping Duty Administrative Review*; 2017-2018, 84 FR 71372 (December 27, 2019) (*Steel Nails from Oman*), and accompanying IDM at Comment 4).

³⁷⁹ See Petitioner's Rebuttal Brief at 28 (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review and Final Results of the New Shipper Review*, 80 FR 4244 (January 27, 2015) (*TRBs from China 12-13*), and accompanying IDM at Comment 3).

³⁸⁰ *Id.* at 28.

³⁸¹ *Id.* at 28-29.

- To avoid a distorted outcome, where scrap production is skewed to small vertical engines, Commerce should continue to deny the Zongshen Companies a by-product offset for their aluminum scrap.³⁸²

Commerce's Position:

As reflected in Commerce's AD questionnaire issued to the Zongshen Companies, Commerce's practice is to only grant by-product offsets "for merchandise that is either sold or reintroduced into production during the POI, up to the amount of that by-product/co-product actually produced during the POI."³⁸³ Accordingly, to be eligible for a by-product offset, a respondent must provide evidence to substantiate: (1) the quantity of the by-product it generated from the production of subject merchandise during the POI; and (2) that the by-product has commercial value.³⁸⁴ To that end, Commerce requested in the AD Questionnaire that the Zongshen Companies "{p}rovide production records demonstrating production of each by-product/co-product during one month of the POI," and, "{i}f sold, provide evidence of the sales."³⁸⁵ Consistent with our practice, we continue to deny the Zongshen Companies' claims for a by-product offset for their sales of aluminum scrap because the Zongshen Companies have not provided evidence to substantiate the quantity of aluminum scrap generated from the production of subject merchandise during the POI.

Commerce finds that this methodology ensures the accuracy of Commerce's dumping calculations. Specifically, providing the production quantity is important because, in considering a by-product offset, Commerce examines whether the by-product was produced from the quantity of the FOPs reported and whether the respondent's production process for the merchandise under consideration actually generated the amount of the by-product claimed as an offset. Commerce has stated that "{s}crap sold but not produced during the POI should not be included within the scrap offset because it would be unreasonable to offset the cost during the POI for scrap produced prior to the POI."³⁸⁶ Furthermore, Commerce's practice ensures that a respondent does not receive a by-product offset for scrap generated in the production of non-subject merchandise. Therefore, we are following this methodology for the final determination in this investigation, consistent with our general practice in NME proceedings before Commerce.³⁸⁷

In the *Preliminary Determination*, we denied the Zongshen Companies' requested by-product offset for their sales of aluminum scrap, finding that "the Zongshen Companies did not maintain

³⁸² *Id.* at 29.

³⁸³ See Commerce's Letter, Initial AD Questionnaire, dated April 30, 2020 (AD Questionnaire) at D-9.

³⁸⁴ See, e.g., *TRBs from China 12-13* IDM at Comment 3.

³⁸⁵ See AD Questionnaire at D-9.

³⁸⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman*, 77 FR 64480 (October 22, 2012), and accompanying IDM at Comment 3.

³⁸⁷ See, e.g., *TRBs from China 12-13* IDM at Comment 3; *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 77 FR 74644 (December 17, 2012), and accompanying IDM at Comment 2; and *Utility Scale Wind Towers from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 77 FR 75992 (December 26, 2012), and accompanying IDM at Comment 17.

records demonstrating the production quantity of the aluminum scrap during the POI.”³⁸⁸ In support of the claimed offset, the Zongshen Companies submitted sales documentation consisting of sales vouchers for aluminum scrap sold in December 2019, screenshots of the accounts in which the Zongshen Companies tracks their sales of aluminum scrap for those sales made in December 2019,³⁸⁹ an allocation calculation worksheet,³⁹⁰ and photos of the aluminum scrap.³⁹¹ The Zongshen Companies claim that the evidence they provided of their sales demonstrates the quantity of POI-generated scrap.³⁹² The record does not support that conclusion. While we find that this sales documentation demonstrates that the aluminum scrap has commercial value, nothing submitted by the Zongshen Companies demonstrates the quantity of aluminum scrap they generated from the production of subject merchandise during the whole POI. Rather, the evidence on the record merely demonstrates that the Zongshen Companies sold aluminum scrap during one month of the POI,³⁹³ and there is no basis to conclude that the aluminum scrap sold during the POI was generated during the period under consideration. The Zongshen Companies admit that they do not track the production of aluminum scrap in the normal course of business.³⁹⁴ Moreover, the Zongshen Companies admit that the reported “production” quantities³⁹⁵ are just the sales quantities serving as a “proxy” for actual production quantities.³⁹⁶ It is the respondent’s burden to demonstrate its eligibility for a requested by-product offset.³⁹⁷ The Zongshen Companies have not satisfied that burden here. Thus, we continue to find that the Zongshen Companies submitted information does not substantiate the production quantity of their claimed by-product generated during the POI.

The Zongshen Companies argue that our decision to deny them a by-product offset for their aluminum scrap is contrary to our practice, citing *Large Vertical Engines from China* and *Steel Nails from Oman*. The Zongshen Companies contend that in *Large Vertical Engines from China*, Commerce granted the Zongshen Companies a by-product offset based on identical information.³⁹⁸ However, this proceeding is distinct from *Large Vertical Engines from China*, and we can only base our determination on the information on our record. Moreover, record information in other cases is reliant on the facts, information, and timing therein, and does not dictate the instant case. Neither the calculation memoranda to which the Zongshen Companies cite, nor the information Commerce relied on in making its by-product determination for the Zongshen Companies in *Large Vertical Engines from China* are on the record of this investigation. Thus, we find the Zongshen Companies’ reference to *Large Vertical Engines from China* to be unsupported argument.

³⁸⁸ See *Preliminary Determination* PDM at 34.

³⁸⁹ See Zongshen Companies’ DQR at Exhibits D-30 and D-31.

³⁹⁰ *Id.* at Exhibit D-29.

³⁹¹ See Zongshen Companies’ SACDQR at Exhibit D-16.

³⁹² See Zongshen Companies’ Case Brief at 18-19.

³⁹³ See Zongshen Companies’ DQR at Exhibits 30-31.

³⁹⁴ See Zongshen Companies’ SACDQR at 18.

³⁹⁵ See Zongshen Companies’ DQR at Exhibit D-29.

³⁹⁶ See Zongshen Companies’ SACDQR at 18.

³⁹⁷ See, e.g., *TRBs from China 12-13 IDM* at Comment 3; and *Utility Scale Wind Towers from the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012), and accompanying IDM at Comment 2 (“CSWG has not provided a meaningful way of allowing {Commerce} to determine a reasonable aluminum scrap offset and the burden rests with the respondents to substantiate by-product offsets by providing {Commerce} with sufficient information to support their claims.”).

³⁹⁸ See Zongshen Companies’ Case Brief at 20.

Further, the Zongshen Companies' reliance on *Steel Nails from Oman* is unavailing. In that case, while the respondent did not track inventory of the scrap generated in its accounting system, it did track the quantity of scrap generated on a daily basis.³⁹⁹ Thus, Commerce was able to determine that the quantity of scrap sold was less than the quantity generated, resulting in Commerce granting the respondent a by-product offset.⁴⁰⁰ Here, the Zongshen Companies does not track any generation of the aluminum scrap by-product, whether in their accounting system or otherwise. As reported by the Zongshen Companies:

In the company's daily operations, Chongqing Zongshen does not book the actual generation of aluminum scrap. Only at the time the aluminum scrap is sold does the company book the quantity and value of sales.⁴⁰¹

Thus, the Zongshen Companies are unable to tie the quantity and value of their aluminum scrap sales to the actual production of their aluminum scrap-by product. Therefore, it is not possible at this juncture and based on the current record for Commerce to determine whether the amount sold exceeds the quantity produced during the POI. The Zongshen Companies describe their aluminum scrap sales quantities as "a reasonable proxy for the output quantities."⁴⁰² We disagree. Because Zongshen only tracks their sales of aluminum scrap, none of the documentation the Zongshen Companies have submitted speaks to the quantity of scrap produced during the POI, and, thus, the sales quantities are not a reasonable proxy.⁴⁰³

Moreover, Commerce has consistently denied respondents' claimed by-product offsets where companies do not track production of the by-product. For example, in *Quartz Surface Products from China*, Commerce denied by-product offsets for multiple respondents because those companies reported, just like the Zongshen Companies, that they did not track the production of the by-products, only sales records.⁴⁰⁴ Likewise, in *TRBs from China 12-13*, we denied by-product offsets where the respondents did not provide data of their by-product production during the POR, and we only granted a by-product offset where the respondent was able to demonstrate that its by-product was produced during the POR.⁴⁰⁵ Thus, our determination to deny the Zongshen Companies' a by-product offset because they have not met the burden of providing sufficient information to support their claimed POI production quantities of aluminum scrap is in accordance with our practice.

³⁹⁹ See *Steel Nails from Oman* IDM at Comment 4.

⁴⁰⁰ *Id.*

⁴⁰¹ See Zongshen Companies' SACDQR at 18.

⁴⁰² *Id.*

⁴⁰³ For more information, see Proprietary Analysis Memo for the Zongshen Companies at Note 4.

⁴⁰⁴ See *Certain Quartz Surface Products from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 83 FR 58540 (November 20, 2018), and accompanying PDM at 34 ("In addition, CQ International stated that it does not keep production records for its scrap slabs, only sales records; in other instances where companies have been unable to provide POI production records to support their claims, we have not granted a scrap or by-product offset," and "Specifically, Hercules Quartz did not maintain records demonstrating the production quantity of either by-product during the POI; rather, it provided an allocation calculation to support its claimed production of used kraft paper and photographs to support its claimed production of quartz mud,"; unchanged in *Quartz Surface Products from China*).

⁴⁰⁵ See *TRBs from China 12-13* IDM at Comment 3.

Accordingly, for the reasons stated above, we have continued to deny the Zongshen Companies a by-product offset for their aluminum scrap for the final determination in this investigation.

Comment 9: Whether to Grant the Zongshen Companies a Double Remedies Offset for Certain Domestic Subsidies

The Zongshen Companies' Case Brief

- The Zongshen Companies were not granted double remedy adjustments for domestic subsidies in the *Preliminary Determination*.⁴⁰⁶ For the final determination, Commerce should make pass-through double remedy adjustments for the provision of inputs, electricity, and land for less than adequate remuneration (LTAR) programs, as required by the Act.
- Commerce is required by law to adjust a respondent's U.S. price upward by the CVD rate for applicable subsidies received in the companion CVD investigation if the countervailable subsidies have been provided to the subject merchandise, the subsidies have been demonstrated to have "reduced the average price of imports for the class or kind of merchandise during the relevant period," and Commerce can reasonably estimate the extent to which these subsidies have increased the dumping margin.⁴⁰⁷
- Commerce erroneously found in the *Preliminary Determination* that the Zongshen Companies did not meet the requirements for an offset for domestic subsidies.⁴⁰⁸ In the companion CVD investigation, Commerce preliminarily calculated subsidy rates of 1.67 percent for the provision of unwrought aluminum for LTAR, 0.1 percent for the provision of electricity for LTAR, and 0.22 percent for the provision of land-use rights for LTAR.⁴⁰⁹ Record evidence shows that the costs of unwrought aluminum, electricity, and land have a direct impact on the Zongshen Companies' pricing of sales of small vertical engines.
- The Zongshen Companies noted that aluminum alloy ingot is the primary factor Chongqing Zongshen considers when setting the price of subject merchandise.⁴¹⁰ The Zongshen Companies provided incontrovertible evidence that aluminum alloy ingots price fluctuations affect pricing and play a major role when the company negotiates contract prices for small vertical engines with its U.S. customer.⁴¹¹ The Zongshen Companies also provided a discussion regarding the personnel and business units that monitor aluminum costs and set prices.⁴¹² The Zongshen Companies' accounting

⁴⁰⁶ See Zongshen Companies' Case Brief at 21 (citing *Preliminary Determination* PDM at 41).

⁴⁰⁷ *Id.* (citing 777A(f)(1) of the Act).

⁴⁰⁸ *Id.* (citing *Preliminary Determination* PDM at 28).

⁴⁰⁹ *Id.* at 21-22.

⁴¹⁰ *Id.* at 22 (citing Zongshen Companies' Letter, "Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from China; AD Investigation; Zongshen Companies Section C Response," dated June 26, 2020, at Appendix XII (Zongshen Companies' Double Remedies Response) at 2-3).

⁴¹¹ *Id.* (citing Zongshen Companies' Double Remedies Response at 3-4).

⁴¹² *Id.*

classification further demonstrates that changes in the price of aluminum impacts the Zongshen Companies' cost of production.⁴¹³

- With respect to the provision of electricity and land-use rights for LTAR programs, the Zongshen Companies demonstrated that they record the cost of electricity and the amortization of land-use rights in accounts that impact the Zongshen Companies' cost of production and are built into the price of subject engines.⁴¹⁴
- The Zongshen Companies have demonstrated that the subsidies received for the provision of inputs at LTAR have a direct impact on the cost of production and those costs are passed through to the price of the subject small vertical engines. Thus, Commerce should make the proper pass-through double remedy adjustment for these programs for the final determination.⁴¹⁵

Petitioner's Rebuttal Brief

- Commerce correctly denied the Zongshen Companies a double remedies pass-through adjustment at the *Preliminary Determination*, and the Zongshen Companies have failed to identify any information that would warrant a change for the final determination.⁴¹⁶
- At the *Preliminary Determination*, Commerce noted that it intended to review price trends of the subject merchandise.⁴¹⁷ Although import price data from the ITC is not on the record, the Zongshen Companies' price trend data for most of the POI is. This price trend data show that the Zongshen Companies do not meet the requirements under section 777A(f)(1)(B) of the Act.⁴¹⁸
- Further, with respect to the provision of electricity and land-use rights for LTAR, Commerce found at the *Preliminary Determination* that the Zongshen Companies had "failed to demonstrate that these subsidies resulted in a change to their {costs of manufacturing} during the relevant period."⁴¹⁹ Thus, these subsidies did not meet the requirements under section 777A(f)(1)(C) of the Act.
- The Zongshen Companies' Double Remedies Response and arguments for the final determination do not substantiate the required subsidies-to-cost and cost-to-price linkages.⁴²⁰ The Zongshen Companies' assertions that their Double Remedies Response demonstrate their pricing is impacted by costs and subsidies are unsubstantiated by the record. Rather, contrary to Commerce's directions, the Zongshen Companies' Double

⁴¹³ *Id.* at 22-23 (citing Zongshen Companies' Double Remedies Response at 7 and Exhibit DR-2).

⁴¹⁴ *Id.* at 23 (citing Zongshen Companies' Double Remedies Response at 7 and Exhibit DR-2).

⁴¹⁵ *Id.* at 23-24.

⁴¹⁶ See Petitioner's Rebuttal Brief at 29.

⁴¹⁷ *Id.* at 30 (citing *Preliminary Determination* PDM at 36-37).

⁴¹⁸ *Id.* at 30.

⁴¹⁹ *Id.* (citing *Preliminary Determination* PDM at 39).

⁴²⁰ *Id.* at 31 (citing *Aluminum Foil from China* IDM at Comment 9).

Remedies Response does not contain documentation generated in the normal course to demonstrate either of the required linkages.⁴²¹

- The Zongshen Companies provided monthly costs for aluminum and electricity and showed how these costs, and the amortization of land-use rights, are recorded in their accounting records. However, according to Commerce's practice, this information does not show that the subsidies had an impact on cost of manufacturing.⁴²² Thus, the Zongshen Companies have not demonstrated the required linkages, and their request should be denied.⁴²³

Commerce's Position:

As explained below, Commerce continues to find that the Zongshen Companies do not qualify for a pass-through double remedy adjustment for the provision of unwrought aluminum, land use-rights, or electricity for LTAR.

As explained in the *Preliminary Determination*:

In applying section 777A(f) of the Act, Commerce examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise; (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period; and (3) whether Commerce can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.⁴²⁴ For a subsidy meeting these criteria, the statute requires Commerce to reduce the dumping margin by the estimated amount of the increase in the weighted-average dumping margin due to a countervailable subsidy, subject to a specified cap.⁴²⁵

In conducting this analysis, Commerce has not concluded that concurrent application of dumping duties and countervailing duties necessarily and automatically results in overlapping remedies. Rather, a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.⁴²⁶

⁴²¹ *Id.* at 31-32 (citing Zongshen Companies' Double Remedies Response).

⁴²² *Id.* at 32 (citing *Wood Mouldings and Millwork Products 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*, 85 FR 48669 (August 12, 2020), and accompanying PDM at 32).

⁴²³ *Id.* at 32.

⁴²⁴ See section 777A(f)(1)(A)-(C) of the Act.

⁴²⁵ See section 777A(f)(1)-(2) of the Act.

⁴²⁶ See, e.g., *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances*,

In evaluating section 777(f)(1)(B) of the Act, Commerce's usual practice is to examine the U.S. import price data contained in the ITC's preliminary report to determine whether or not there was a decrease in import prices during the relevant period.⁴²⁷ In the *Preliminary Determination*, we stated that more time was needed to examine the ITC's import price data with respect to the provision of unwrought aluminum for LTAR for the Zongshen Companies.⁴²⁸

We have examined the ITC's preliminary report for the final determination. Although specific import price data is redacted, the ITC's preliminary report still denotes overall import price trends. Specifically, the ITC's preliminary report states:

Most of the pricing data for China was reported for product 2 (** percent) with the remaining ** percent reported for product 3.... Import prices decreased by ** percent for product 2 and increased by ** percent for product 3.⁴²⁹

Therefore, the average price of imports did not generally decrease over the relevant time period, and section 777A(f)(1)(B) is not satisfied. Moreover, we examined the Zongshen Companies' quantity and value data submitted as part of our critical circumstances analysis, which covers most of the POI.⁴³⁰ These data support our finding that the requirement under section 777A(f)(1)(B) has not been met.⁴³¹

As there is no general decrease in the average import price of subject merchandise during the relevant period, we find that the requirement under section 777A(f)(1)(B) of the Act was not met for any subsidies for which the Zongshen Companies have claimed a pass-through double remedy offset. Accordingly, we continue to find that the Zongshen Companies do not qualify for a pass-through double remedy adjustment for the provision of unwrought aluminum, land use-rights, or electricity for LTAR under section 777A(f) of the Act. With respect to the arguments made by the Zongshen Companies regarding section 777A(f)(1)(C) of the Act (*i.e.*, regarding subsidies-to-cost and cost-to-price linkages), we find them to be moot because the statute requires all three criteria (*i.e.*, sections 777A(f)(1)(A), (B), and (C)) to be met to grant a pass-through double remedies adjustment; if any one criteria is not met, then an adjustment cannot be granted.

in Part, 82 FR 28629 (June 23, 2017), and accompanying PDM at 43, unchanged in *Certain Hardwood Plywood Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part*, 82 FR 53460 (November 16, 2017).

⁴²⁷ See, e.g., *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), and accompanying IDM at Comment 5.

⁴²⁸ See *Preliminary Determination* PDM at 39.

⁴²⁹ See *Small Vertical Engines from China*, USITC Pub. 5054, Inv. Nos. 701-TA-643 and 731-TA-1493 (Preliminary) (May 2020) at V-14.

⁴³⁰ See Zongshen Companies' Q&V Data.

⁴³¹ For further discussion, see *Proprietary Analysis Memo for the Zongshen Companies* at Note 5.

Comment 10: Whether to Grant Loncin Motor Co., Ltd. a Separate Rate

Loncin's Case Brief

- In proceedings involving NME countries, Commerce presumes that all companies are subject to government control unless the company can demonstrate the absence of both *de jure* and *de facto* control over its export activities, and, since 1991, the main focus of Commerce's analysis has been on export activities.⁴³² Further determinations over the years confirm that Commerce's separate rate test is based on whether government control exists over companies' export activities,⁴³³ and government ownership is not determinative if a company can demonstrate that said ownership does not influence the company's export activities.⁴³⁴
- Commerce's separate analysis continues to focus on "evaluating the extent to which a government controls an entity's pricing, selling and purchasing decisions as they relate to the company's export activities," and the CIT has affirmed this practice.⁴³⁵ In fact, Commerce cited this same practice in the *Preliminary Determination*.⁴³⁶ Thus, Commerce may not deny Loncin a separate rate without finding that Loncin's export activities are subject to government control.
- In the *Preliminary Determination*, Commerce found an absence of *de jure* control over Loncin's export activities,⁴³⁷ but it further found that Loncin was subject to *de facto* government control over Loncin's export activities. However, the record does not support this determination as Loncin provided sufficient information to rebut this finding:

⁴³² See Loncin's Case Brief at 4-5 (citing *See 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*)).

⁴³³ *Id.* at 5 (citing *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*); *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995) (*Furfuryl Alcohol from China*); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams from the People's Republic of China*, 66 FR 67197, 67199 (December 28, 2001), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from the People's Republic of China*, 67 FR 35479 (May 20, 2002)).

⁴³⁴ *Id.* at 5-6 (citing *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China*, 66 FR 49632 (September 28, 2001), and accompanying IDM at Comment 1; and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China*, 59 FR 55625 (November 8, 1994)).

⁴³⁵ *Id.* at 7-8 (citing *De Facto Criteria for Establishing a Separate Rate in Antidumping Proceedings Involving Non-Market Economy Countries*, 78 FR 40430, 40432 (July 5, 2013); *Jiangsu Jiasheng Photovoltaic Tech. Co. v. United States*, 121 F. Supp. 3d 1263, 1339 (CIT 2015) (*Jiasheng II*); *Sigma Corp. v. United States*, 117 F.3d 1401, 1405 (Fed. Cir. 1997); *Tianjin Mach. Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1014 (CIT 1992); *AMS Assocs. v. United States*, 719 F.3d 1376, 1379 (Fed. Cir. 2013); and *Advanced Tech. & Materials Co. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*)).

⁴³⁶ *Id.* at 8 (quoting Memorandum, "Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Separate Rate Memorandum – Loncin Motor Co., Ltd.," dated October 14, 2020 (Loncin SR Memo) at 2).

⁴³⁷ *Id.* at 8-9 (citing Loncin SR Memo at 4).

- Loncin certified that its export prices are not set by, approved by, or in any way controlled by a government.⁴³⁸ Loncin provided price negotiation email correspondence with its U.S. customer, its price list, quotation sheet, and purchase order from its customer demonstrating independence in price negotiations and signing contracts.⁴³⁹
- Loncin submitted considerable evidence that it has autonomy from the government in the selection of management. Commerce did not appear to consider at the *Preliminary Determination* that Loncin's articles of association (AoAs) show that all shareholders of publicly-traded companies must adhere to the procedures that apply to any investor and that Loncin strictly followed these procedures when selecting its board of directors and management.⁴⁴⁰ Moreover, Loncin elected its board of directors at the Loncin shareholder's meeting, and the chairman of the board and Loncin's senior management are selected by the board of directors.
- Contrary to Commerce's preliminary finding, Loncin's AoAs provide the procedures Loncin follows when selecting board members and senior management which are no different than a typical U.S. corporation.⁴⁴¹ Loncin's shareholders, including its ultimate shareholder Tu Jianhua, cannot appoint board members outside of the prescribed procedures available to all shareholders, and the board of directors can only be elected through a shareholders' meeting.⁴⁴² Furthermore, Loncin's AoAs provide for cumulative voting, which strengthens minority shareholders' votes, in electing its board of directors.⁴⁴³
- Loncin's AoAs also establish procedures for the selection of senior management. Each director on the board has one vote, and a meeting of the board of directors may not be held unless attended by at least half of the directors.⁴⁴⁴ Moreover, the AoAs establish that the controlling shareholder shall not interfere in the selection and appointment of senior management, may not directly appoint or remove senior management, and that company personnel shall be independent of the controlling shareholder.⁴⁴⁵
- Loncin certified that it retained the proceeds of its sales and made independent decisions with respect to the disposition of profits or financing of losses. Moreover, Loncin did not make any payments to government accounts other than for taxes or government-provided

⁴³⁸ *Id.* at 9-10 (citing Loncin's Letter, "Loncin Separate Rate Application: Antidumping Duty Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China," dated May 21, 2020 (Loncin SRA) at 13).

⁴³⁹ *Id.* (citing Loncin SRA at Exhibit 8; and Loncin's Letter, "Loncin Motor Separate Rate Application Supplemental Questionnaire Response: Antidumping Duty Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China," dated October 6, 2020 (Loncin Supp SRA) at Exhibit 5).

⁴⁴⁰ *Id.* at 11 (citing Loncin SRA at Exhibit 7).

⁴⁴¹ 11-13 (citing Loncin SRA at Exhibit 7 pages 22, 26-27, and 63, and Exhibit 9; and Loncin Supp SRA at Exhibit 2).

⁴⁴² *Id.* at 13.

⁴⁴³ *Id.* (citing Loncin SRA at Exhibit 7 pages 47-48).

⁴⁴⁴ *Id.* at 14 (citing Loncin SRA at Exhibit 7 pages 64-66).

⁴⁴⁵ *Id.* at 14-15 (citing Loncin SRA at Exhibit 7 pages 68-69).

goods or services.⁴⁴⁶ In addition, Loncin provided a complete list of its bank accounts and its audited financial statements covering the POI,⁴⁴⁷ as well as supporting documentation showing that its profit distribution was decided by its shareholders' meeting.⁴⁴⁸

- The establishment of a Chinese Communist Party (CCP) committee within Loncin's majority shareholder, Loncin Holdings Co., Ltd. (Loncin Holdings), does not constitute evidence that Loncin is ineligible for a separate rate.⁴⁴⁹ Commerce's preliminary findings fail to account for the distinction between a country's political and economic structures. *Policy Bulletin 05.1* shows that Commerce recognizes that a company in a country with a one-party political regime can be eligible for a separate rate if it can meet the *de jure* and *de facto* requirements.⁴⁵⁰ Nothing on the record indicates that the CCP had any influence on Loncin's export activities.
- To find *de facto* control, the CIT has held that actual government control is required, not merely the potential for government control.⁴⁵¹ The record does not indicate potential or actual control of Loncin by the government of China (GOC), and Loncin did not conduct CCP activities in 2019.⁴⁵²
- The establishment of a CCP committee in Loncin Holdings to carry out CCP activities is the equivalent of an organization carrying out labor union activities. However, a company facilitating the establishment of such an organization does not mean the CCP controls the company's operations. Loncin Holdings' 2019 CCP Development and Working Plan does not indicate that the CCP controls Loncin Holdings, and there is no mention in the plan of CCP control over Loncin.⁴⁵³ The language in the plan does not constitute substantial evidence that the CCP controls Loncin.
- Loncin is not government controlled by virtue of having two affiliates with shareholders related to state universities.⁴⁵⁴ The state universities do not own or control Loncin Motor, and, thus, they cannot cause the company to be found to be government controlled.⁴⁵⁵
- Mr. Tu's memberships in the National People's Congress (NPC), the People's Congress of Chongqing (PCC), and the PCC Finance and Economy Committee all predate the

⁴⁴⁶ *Id.* at 15 (citing Loncin SRA at 17).

⁴⁴⁷ *Id.* (citing Loncin SRA at Exhibits 6 and 11).

⁴⁴⁸ *Id.* (citing Loncin Supp SRA at Exhibit 3).

⁴⁴⁹ *Id.* at 18.

⁴⁵⁰ *Id.* at 19 (citing *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, (April 5, 2005) (*Policy Bulletin 05.1*), available on Commerce's website at <https://enforcement.trade.gov/policy/bull05-1.pdf>).

⁴⁵¹ *Id.* at 20 (citing *Jiangsu Jiasheng Photovoltaic Tech Co. v. United States*, 28 F. Supp. 3d 1317, 1348-50 (CIT 2014)).

⁴⁵² *Id.* at 20 (citing Loncin Supp SRA at 1).

⁴⁵³ *Id.* (citing Loncin Supp SRA at 1 and Exhibit 1).

⁴⁵⁴ *Id.* at 21 (citing Loncin's Letter, "Loncin Rebuttal Comments: Antidumping Duty Investigation of Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China," dated June 15, 2020 (Loncin SRA Rebuttal Comments), at 10).

⁴⁵⁵ *Id.* at 21.

POI.⁴⁵⁶ The CIT has rejected Commerce’s attempts to rely on facts that were no longer true in the POI or POR to establish government control.⁴⁵⁷ Thus, Commerce cannot look back to Mr. Tu’s pre-POI memberships to deny Loncin a separate rate because Commerce’s separate rate analysis is focused on whether government control existed during the POI.

- Being a representative in the NPC or PCC does not make a person a GOC official or employee. The NPC and PCC are not government agencies, and government officials are not allowed to work for companies.⁴⁵⁸
- The People’s Political Consultative Conference National Committee (CPPCC) and the All-China Federation of Industry and Commerce (ACFIC) are not part of the CCP or the GOC, and Mr. Tu is not a member of the CCP or a GOC official.⁴⁵⁹ None of the official organization charts of the GOC and CCP include either organization. Thus, Mr. Tu is not under control of the CCP or GOC.
- Membership in the CPPCC does not make a person a government official⁴⁶⁰ because the CPPCC is not “a body of state power nor a policymaking organ” or limited to CCP members; a U.S. Congressional study even recognized that the organization is essentially powerless and membership is of an honorific nature.⁴⁶¹
- The ACFIC is also not part of the CCP or GOC. The ACFIC is a part of the CPPCC, but neither body has the ability to pass or make rules or regulations.⁴⁶² The ACFIC is described as a chamber of commerce—a bridge linking the government with people in the private economy and as an assistant to the government in managing and serving the private economy.⁴⁶³ The Chongqing CFIC is a regional branch of the ACFIC and likewise cannot be considered a part of the CCP or GOC.
- Although the ACFIC “plays an active role in advancing government policies” under the leadership of Chinese President Xi Jinping, this role does not make ACFIC members subject to government control or government employees. Instead, the CPPCC and ACFIC are similar to Commerce’s own advisory committees.⁴⁶⁴

⁴⁵⁶ *Id.* at 22 (citing Loncin SRA at 14-15).

⁴⁵⁷ *Id.* (citing *Can Tho Import-Export Joint Stock Co. v. United States*, 415 F. Supp. 3d 1187, 1194-95 (CIT 2019) (*Can Tho*)).

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.* at 23 (citing Loncin SRA at 14-15).

⁴⁶⁰ *Id.* (citing Loncin SRA Rebuttal Comments at 5 and Exhibit 3).

⁴⁶¹ *Id.* at 23-24 (citing Loncin SRA Rebuttal Comments at Exhibits 3A, 3B, 3C, and 3D).

⁴⁶² *Id.* at 26 (citing Petitioner’s Letter, “Small Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China: Petitioner’s Comments and Information Regarding the Separate Rate Applications of Loncin Motor Co., Ltd., and Chongqing Rato Technology Co., Ltd.,” dated June 4, 2020 (Petitioner SRA Comments) at 7).

⁴⁶³ *Id.* (citing Petitioner SRA Comments at Exhibit 6; and Chongqing Rato Technology Co., Ltd.’s (Chongqing Rato’s) Letter, “Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People’s Republic of China; Submission of Rebuttal Comments and New Factual Information to Petitioner’s Comments,” dated June 9, 2020 (Chongqing Rato SRA Rebuttal Comments) at 4-5).

⁴⁶⁴ *Id.* at 27 (citing Loncin SRA Rebuttal Comments at 9 and Exhibits 4B and 4C).

- Commerce has never before determined that membership in CPPCC and ACFIC is indicative of government control.
- While Commerce begins with a rebuttable presumption of government control, the Federal Circuit has held that this presumption vanishes when a party submits minimum evidence to the contrary.⁴⁶⁵ Indeed, the CIT has held that a separate rate denial was invalid because the AoAs covering the examined period contain minority shareholder protections.⁴⁶⁶
- Loncin provided ample evidence that it was independent from government control over its export activities, including: (1) certified statements; (2) AoAs; (3) price negotiation email correspondence; (4) price lists; (5) quotation sheet and purchase order; (6) a complete list of its bank accounts; (7) audited financial statements covering the POI; and (8) board meeting documentation covering periods before, during, and after the POI.⁴⁶⁷
- Because Loncin submitted a “minimum quantum of evidence” to genuinely dispute Commerce’s presumption of government control, that presumption must “completely vanish.” Thus, Commerce is required to find that Loncin is entitled to a separate rate, unless Commerce can demonstrate through substantial evidence that Loncin was controlled by the GOC.⁴⁶⁸ At the *Preliminary Determination*, Commerce only speculated that the majority shareholder would have the ability to control a company, which does not demonstrate that either Mr. Tu or Loncin are controlled by the CCP or GOC.⁴⁶⁹
- As recently affirmed by the CIT, Commerce requires additional indicia of control where the government is a minority shareholder of the respondent to conclude that a company could not rebut the presumption of *de facto* control.⁴⁷⁰ Loncin has no government ownership. Moreover, the CIT recently invalidated a separate rate denial where Commerce improperly equated the presence of a union with government control.⁴⁷¹
- Commerce’s preliminary denial of a separate rate for Loncin is contrary to the longstanding analysis of *Sparklers* and *Silicon Carbide*.⁴⁷² Commerce’s denial only references two of the four *de facto* criteria,⁴⁷³ but Commerce’s practice requires an examination of the totality of the circumstances.⁴⁷⁴

⁴⁶⁵ *Id.* at 28 (citing *Aukerman Co. v. R.L. Chaides Constr. Co.*, 960 F.2d 1020, 1037 (Fed. Cir. 1992) (*Aukerman*)).

⁴⁶⁶ *Id.* (citing *Can Tho*, 415 F. Supp. 3d at 1194-95).

⁴⁶⁷ *Id.* at 29 (citing Loncin SRA and Loncin Supp SRA).

⁴⁶⁸ *Id.* (citing *Aukerman*, 960 F.2d at 1037).

⁴⁶⁹ *Id.* at 29-30 (citing Loncin SR Memo at 6).

⁴⁷⁰ *Id.* at 30 (citing *An Giang Fisheries Imp. & Exp. Joint Stock Co. v. United States*, 284 F. Supp. 3d 1350, 1359 (CIT 2018) (*An Giang II*)).

⁴⁷¹ *Id.* at 31 (citing *Zhejiang Mach. Imp. & Exp. Corp. v. United States*, 471 F. Supp. 3d 1313, 1346-49 (CIT 2020)).

⁴⁷² *Id.* (citing Loncin SR Memo at 2-3 and FN. 5-6 and 9-10).

⁴⁷³ *Id.* (citing Loncin SR Memo at 6).

⁴⁷⁴ *Id.* (citing *Small Diameter Graphite Electrodes from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 81 FR 62474 (September 9, 2016) (*SDGEs from China*), and accompanying IDM at Comment 1; *Jiasheng I*, 28 F. Supp. 3d at 1339 n.60; *Jiasheng II*, 121 F. Supp. 3d at 1266).

- By failing to consider all requisite criteria and using a binary consideration of Mr. Tu's political affiliations, Commerce has instituted a new separate rate test. The CIT has rejected Commerce's decisions where a separate rate denial has failed to consider all the factors under the established separate rate test.⁴⁷⁵
- Commerce's preliminary denial disregarded the connections to export activities that are the center of its separate rate analysis.⁴⁷⁶ Moreover, Commerce's preliminary denial diverged from its practice by finding government control of Loncin with no government interest owning any shares, which Commerce has never done before, and did so with misplaced reliance on *Advanced Technology I*.⁴⁷⁷ However, in that case, the CIT found that the respondent should not be granted a separate rate because of majority government ownership,⁴⁷⁸ which is not present in the instant case.
- Instead, Commerce's preliminary denial was based on the potential for control, but the CIT has required separate rate denials to be based on actual government control, not merely potential.⁴⁷⁹ The political activity of company officials in non-governmental organizations is not the same as government control over a company. There is no record evidence that Mr. Tu's decisions were made for the benefit of or controlled by the GOC.
- The preliminary denial of a separate rate for Loncin is contrary to Commerce's practice to grant separate rates to respondents with CCP affiliations in the NPC, such as in *SDGEs from China*.⁴⁸⁰ Moreover, the preliminary denial is directly contradictory to the fact that Commerce granted Loncin a separate rate in *Large Vertical Engines from China*, which involved the exact same POI.⁴⁸¹ This constitutes arbitrary actions by Commerce.⁴⁸² Commerce may only change its practice when such changes are adequately explained, or such a change constitutes unacceptable agency practice.⁴⁸³

Petitioner's Rebuttal Brief

- In the *Preliminary Determination*, Commerce correctly found that Loncin did not rebut the presumption of government control and denied Loncin a separate rate.⁴⁸⁴

⁴⁷⁵ *Id.* at 32 (citing *Shandong Rongxin Imp. & Exp. Co. v. United States*, 203 F. Supp. 2d 1327, 1348 (CIT 2017)).

⁴⁷⁶ *Id.*

⁴⁷⁷ *Id.* at 33 (citing Loncin SR Memo at 3 n.11-12).

⁴⁷⁸ *Id.* (citing *Advanced Technology I*; and *Advanced Tech. & Materials Co. v. United States*, 938 F. Supp. 2d 1342, 1344 and 1353 (CIT 2013)).

⁴⁷⁹ *Id.* at 34 (citing *Jiasheng I*, 28 F. Supp. 3d at 1348-50; and *An Giang I*, 203 F. Supp. 3d at 1291-92).

⁴⁸⁰ *Id.* at 35 (citing *SDGEs from China* IDM at 12).

⁴⁸¹ *Id.* at 35-36 (citing *Large Vertical Engines from China*, 86 FR at 1937).

⁴⁸² *Id.* at 36 (citing *SKF USA, Inc. v. United States*, 263 F.3d 1369, 1382 (Fed. Cir. 2001)).

⁴⁸³ *Id.* (citing *Nakornthai Strip Mill Pub. Co. v. United States*, 587 F. Supp. 2d 1303, 1307-08 (CIT 2008); *SKF USA, Inc. v. United States*, 630 F.3d 1365, 1373 (Fed. Cir. 2011); *WelCom Prods., Inc. v. United States*, 865 F. Supp. 2d 1340, 1347 (CIT 2012); and *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

⁴⁸⁴ See Petitioner's Rebuttal Brief at 37.

- The goal of Commerce’s analysis of the *de facto* control criteria is to determine the government’s “capacity to influence” a company and whether that company is “sufficiently independent” from the government.⁴⁸⁵ In this case, Loncin has close business and economic ties to the CCP and GOC such that it has not rebutted the presumption of government control.⁴⁸⁶
- In the *Preliminary Determination*, Commerce identified a number of factors demonstrating that the CCP “is embedded in Loncin” and that Loncin does not meet the *de facto* criteria, including Loncin’s AoAs, Loncin Holdings’ CCP Development and Working Plan, Loncin’s joint ventures with GOC affiliated universities, and Mr. Tu’s participation in a number of government entities.⁴⁸⁷
- Loncin is incorrect that Commerce must only focus on a company’s export activities. In reality, Commerce has much more discretion.⁴⁸⁸ In *Advanced Technology I*, the CIT stated that it was impermissible for Commerce to narrow the separate rate test to traditional criteria.⁴⁸⁹
- Even if Commerce were to limit its analysis to export-related matters, Commerce found that the GOC influences Loncin through its majority shareholder and, thus, influences Loncin’s export activities.⁴⁹⁰
- Loncin provides no basis to conclude that Commerce’s preliminary denial of a separate rate was flawed. Loncin had an opportunity to provide additional evidence with respect to the CCP’s and GOC’s influence over Loncin, but it could not rebut the presumption of control.⁴⁹¹
- Loncin is incorrect in claiming that *Large Vertical Engines from China* is binding in this case because the record is different and more expansive in the instant case and Commerce has more information about Loncin’s and Mr. Tu’s ties to the CCP.⁴⁹²

Commerce’s Position:

After examining the record evidence and considering the arguments of the parties, we find that Loncin has rebutted the presumption of *de jure* and *de facto* government control in this investigation because, as explained below, the record does not support the conclusion that Loncin was actually, or that there was the potential to be, controlled by the CCP or GOC during the POI. Accordingly, for our final determination, we have granted Loncin a separate rate.

⁴⁸⁵ *Id.* (citing Commerce’s Remand Redetermination in *Diamond Sawblades Mfrs. Coal. v. United States*, Court No. 13-00241, Slip Op. 14-112 (CIT September 23, 2014), dated May 18, 2015).

⁴⁸⁶ *Id.* at 38.

⁴⁸⁷ *Id.* at 38-39 (citing Loncin SR Memo at 4-6).

⁴⁸⁸ *Id.* at 39-40.

⁴⁸⁹ *Id.* at 40 (quoting *Advanced Technology I*, 885 F. Supp. 2d at 1350).

⁴⁹⁰ *Id.* at 40-41.

⁴⁹¹ *Id.* at 41 (citing Loncin Supp SRA at Exhibit 1).

⁴⁹² *Id.*

In proceedings involving NME countries, Commerce begins with a rebuttable presumption that all companies within the NME country are subject to government control and, thus, should be assessed a single AD rate.⁴⁹³ In the *Initiation Notice*,⁴⁹⁴ Commerce notified parties of the application process by which exporters may obtain separate-rate status in NME proceedings. It is Commerce's policy to assign all exporters of merchandise under investigation that are in an NME country a single weighted-average dumping margin unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports.⁴⁹⁵ To establish that a company is independent of government control and, therefore, entitled to a separate rate, Commerce analyzes each exporting entity in an NME under the test established in *Sparklers*,⁴⁹⁶ as further developed in *Silicon Carbide*.⁴⁹⁷ Together, these tests require a respondent to demonstrate an absence of both *de jure* and *de facto* government control with respect to exports.⁴⁹⁸ The consequences of failing to do so mean the exporter will be assigned the single rate given to the NME-wide entity.⁴⁹⁹ If, however, Commerce determines that a company is wholly foreign-owned, then analysis of the *de jure* and *de facto* criteria are not necessary to determine whether it is independent from government control and, therefore, eligible for a separate rate.

Under the separate rates test, Commerce considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) legislative enactments decentralizing control over export activities of the companies; and (3) other formal measures by the government decentralizing control over export activities of companies.⁵⁰⁰

Further, Commerce typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by,

⁴⁹³ See *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China*, 71 FR 53079, 53082 (September 8, 2006); see also *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303, 29307 (May 22, 2006).

⁴⁹⁴ See *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 85 FR 20670 (April 14, 2020).

⁴⁹⁵ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part*, 77 FR 63791, 63793 (October 17, 2012), and accompanying IDM.

⁴⁹⁶ See *Sparklers*, 56 FR at 20589 ("We have determined that exporters in nonmarket economy countries are entitled to separate, company-specific margins when they can demonstrate an absence of central government control, both in law and in fact, with respect to export activities.").

⁴⁹⁷ See *Silicon Carbide*, 59 FR 22585.

⁴⁹⁸ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, and Rescission of New Shipper Review*; 2014-2015, 82 FR 4844 (January 17, 2017), and accompanying IDM at Comment 3.

⁴⁹⁹ The Court of Appeals for the Federal Circuit has upheld the application of the "NME presumption," in *Sigma Corp.*, 117 F.3d at 1405-06. In setting forth its NME policy, "Commerce made clear the consequences to an exporter of not rebutting the presumption of state control and establishing its independence: the exporter would be assigned the single rate given to the NME entity. Shortly thereafter, the Court of International Trade acknowledged and sustained Commerce's NME policy." *Transcom Inc. v. United States*, 294 F.3d 1371, 1381-82 (Fed. Cir. 2002) (citation omitted).

⁵⁰⁰ See *Sparklers*, 56 FR at 20589.

or are subject to the approval of, a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁵⁰¹

As a result of litigation challenging Commerce's separate rate determinations in the diamond sawblades from China proceedings, Commerce continues to evaluate its practice with regards to analyzing separate rates and evaluating NME companies' *de facto* independence from government control.⁵⁰² In particular, we note that, in litigation involving the diamond sawblades proceedings, the CIT found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-controlled entity had significant ownership in the respondent exporter.⁵⁰³ We have concluded that where a government entity holds a majority equity ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises, or has the potential to exercise, control over the company's operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate.⁵⁰⁴ Consistent with normal

⁵⁰¹ See *Silicon Carbide*, 59 FR at 22586-89; and *Furfuryl Alcohol from China*, 60 FR at 22545.

⁵⁰² See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) (*Diamond Sawblades Redetermination*), pursuant to *Advanced Technology I*, affirmed in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>. See also *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.

⁵⁰³ See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {State-owned Assets Supervision and Administration Commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing and inputs into finished product for export."); *id.* at 1357 ("AT&M itself identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control over nomination.") (footnotes omitted).

⁵⁰⁴ See *Multilayered Wood Flooring from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission; 2015-2016*, 83 FR 35461 (July 26, 2018), and accompanying IDM at Comment 2; *Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances* 81 FR 42314 (June 29, 2016), and accompanying IDM at Comment 8; *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 75 (January 4, 2016), and accompanying PDM at 15; unchanged in *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35316 (June 2, 2016); *1,1,1,2-Tetrafluoroethane (R-134a) from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Affirmative Determination*

business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership where necessary.

In the *Preliminary Determination*, we found that the evidence provided by Loncin supported a preliminary finding of an absence of *de jure* government control.⁵⁰⁵ No party has challenged this finding for the final determination. Thus, we continue to find for the final determination that Loncin has sufficiently rebutted the presumption of *de jure* government control.

In the *Preliminary Determination*, we found that Loncin failed to rebut the presumption of *de facto* control based on: (1) Loncin's joint partnership with state-owned universities; (2) the company's AoAs, which created a CCP organization embedded in the company; and (4) Loncin's majority shareholder's positions in various political organizations. However, as explained below, we no longer find that this information demonstrates that the government exercises *de facto* control over Loncin.

As an initial matter, two of the reasons Commerce preliminarily denied Loncin a separate rate in this proceeding were: (1) its joint-ventures with state-controlled institutions; and (2) that Loncin's AoAs provide for the establishment of a CCP organization, the existence of Loncin Holdings' CCP Committee, and the 2019 CCP Development and Working Plan.⁵⁰⁶ We no longer find that these facts indicate government control over Loncin.

In the *Preliminary Determination*, Commerce found that Loncin and its parent company, Loncin Holdings, were involved in joint-ventures with two "double-first class" universities.⁵⁰⁷ Because "double-first class" universities are controlled by the GOC,⁵⁰⁸ we initially concluded that these joint-ventures demonstrated Loncin's close ties to the government.⁵⁰⁹ Upon further examination of the record, we find that these joint-ventures do not indicate that the CCP or GOC controls, or has the potential to exert control, over Loncin. Loncin is a shareholder in the joint ventures;⁵¹⁰ however, neither the joint venture companies nor the state institutions involved are shareholders in Loncin, either directly or indirectly.⁵¹¹ Thus, these state institutions are unable to select Loncin's management or otherwise exert control over Loncin's business decisions in the normal course of business.⁵¹² While these joint ventures demonstrate Loncin's economic ties to certain government-controlled entities, they are not in themselves indicative of government control over Loncin's export activities.

of Critical Circumstances, in Part, 82 FR 12192 (March 1, 2017), and accompanying IDM at Comment 1; and *Truck and Bus Tires from China* IDM at Comment 2.

⁵⁰⁵ See *Preliminary Determination* PDM at 15; see also Loncin SR Memo at 4.

⁵⁰⁶ See Loncin SR Memo at 4-5.

⁵⁰⁷ *Id.* at 5 (citing Loncin SRA at Exhibit 6 pages 168 and 188, and Petitioner SRA Comments at Exhibits 8-10).

⁵⁰⁸ See Petitioner SRA Comments at Exhibit 9.

⁵⁰⁹ See Loncin SR Memo at 5.

⁵¹⁰ See Loncin SRA at Exhibit 6.

⁵¹¹ *Id.* at Exhibit 4A.

⁵¹² *Id.* at Exhibit 7 (where Loncin's AoAs detail the procedures for shareholders to select the board of directors and enumerate the powers held by Loncin's shareholders, board of directors, and its senior management, which control the day to day functions of Loncin).

With respect to Loncin's AoAs, Article 1.2 states that, "{i}n accordance with the Party Constitution and relevant regulations, the Company established an organization of the {CCP} to carry out party activities. {Loncin} shall provide necessary conditions for the activities of the party organization."⁵¹³ Loncin also reported that its majority shareholder, Loncin Holdings, "has established a Communist Party of China Committee that is charged essentially with educating its corporate divisions including Loncin's employees who are {CCP} members in the doctrines and philosophy of CCP and promoting Loncin's corporate culture and brand recognition in the market place."⁵¹⁴ As part of this, Loncin Holdings had a 2019 CCP Development and Working Plan (Development Plan). In the *Preliminary Determination*, we found that these facts show that the CCP is "embedded within Loncin."⁵¹⁵

However, Loncin reported that it did not conduct CCP activities in 2019 and the CCP is not involved in the operations of Loncin.⁵¹⁶ Other than in Article 1.2, Loncin's AoAs do not mention the CCP organization. In fact, the Loncin internal documentation submitted to the record does not contain any other mention of the CCP organization. Further, the CCP organization does not appear in Loncin's shareholder structure.⁵¹⁷ Moreover, Loncin's AoAs meticulously stipulate the procedures under which Loncin's board and management are selected and enumerate the powers of the shareholders, the board of directors, and the senior management of Loncin.⁵¹⁸ Nowhere in these provisions do Loncin's AoAs grant power directly or indirectly through its procedures to the CCP or GOC. Thus, record evidence does not support the contention that the CCP organization within Loncin could control its export activities and day-to-day business decisions.

The only information on the record regarding the CCP Committee within Loncin's parent company, Loncin Holdings, is the Development Plan and Loncin's explanation that the CCP Committee is charged with educating employees who are CCP members in the "doctrines and philosophy" of the CCP.⁵¹⁹ The record does not show that the Loncin Holdings' CCP Committee holds any power within the company, or that it is able to influence Loncin's business decisions through Loncin Holdings. The Development Plan does not contain any indication that the CCP is able to control Loncin. Rather, the document is akin to a mission statement that broadly promotes socialist corporate culture. However, promotion of socialist corporate culture does not constitute *de facto* government control. Accordingly, we do not find that the CCP organizations established within Loncin and Loncin Holdings, nor the existence of the Development Plan, to be indicative of government control of Loncin.

The remainder of our analysis in the *Preliminary Determination* that led to our preliminary denial of a separate rate for Loncin centered around Loncin's controlling shareholder, Tu

⁵¹³ *Id.* at Exhibit 7 page 5.

⁵¹⁴ See Loncin Supp SRA at 1.

⁵¹⁵ See Loncin SR Memo at 5.

⁵¹⁶ See Loncin Supp SRA at 1.

⁵¹⁷ See Loncin SRA at Exhibit 4A.

⁵¹⁸ *Id.* at Exhibit 7; see also Loncin SRA Supp at 1-4 for a selection of Articles in Loncin's AoAs specifying the functions and powers of each of Loncin's general shareholders, board, and general manager.

⁵¹⁹ See Loncin Supp SRA at 1 and Exhibit 1.

Jianhua, and his various activities before and during the POI.⁵²⁰ Mr. Tu's ownership stake in Loncin is as follows:

- Loncin's majority shareholder is Loncin Holdings, which has a 50.07 percent ownership stake in Loncin.
- Loncin Holdings, in turn is owned 98 percent by Loncin Group Co., Ltd. (Loncin Group), and 2 percent by Mr. Tu.
- Mr. Tu holds a 98 percent ownership stake in Loncin Group.⁵²¹

Thus, the record establishes that Mr. Tu, by virtue of being the majority and controlling shareholder in Loncin Group, is able to control Loncin through Loncin Group's stake in Loncin Holdings. As stated above, and in the *Preliminary Determination*, we would expect any majority shareholder to have the ability to control, and an interest in controlling, the operations of the company, including the selection of management and the profitability of the company.⁵²²

Loncin argues that Mr. Tu cannot unilaterally control Loncin because of: (1) Loncin's system of cumulative voting in determining its board; and (2) other procedures provided for in its AoAs.⁵²³ Loncin carefully outlined the rights of its shareholders and the procedures under which the management is selected in its AoAs.⁵²⁴ Further, we recognize that Loncin abides by its procedures established in its AoAs.⁵²⁵ We disagree that Mr. Tu cannot control Loncin's activities. Contrary to Loncin's assertions, the cumulative voting system employed by Loncin to determine its board of directors does not strengthen the minority shareholders' voting power. Loncin provides this description of its cumulative voting system: "For example, if the election is established to fill three vacancies on the board, a shareholder with 100 shares (*i.e.*, 100 votes) could cast 300 votes for a single candidate rather than simply casting 100 votes for three separate candidates."⁵²⁶ Though this procedure theoretically gives the minority shareholder(s) the ability to dump all of their votes into a single or a few candidates and ensure their election, a majority shareholder holds more than 50 percent of the shares—and thus more than 50 percent of the votes; therefore, a majority shareholder can never fail to elect at least half of the board of directors, except willingly, simply by wielding their greater share of votes. Moreover, if the minority shareholder(s) fails to allocate their votes properly, the majority shareholder could potentially appoint the entire board of directors. Neither Mr. Tu's majority stake in Loncin nor this method of voting is inherently indicative of *de facto* government control unless the GOC or SASAC is, or controls, the majority shareholder. Thus, while we find that Mr. Tu is indeed capable of controlling Loncin through his majority ownership stakes in Loncin Group and Loncin Holding, the fact that Mr. Tu is the majority shareholder in Loncin, through Loncin Holdings, is not indicative in and of itself of government control, unless it is determined that Mr. Tu is a government official or otherwise controlled by the government.

⁵²⁰ See Loncin SR Memo at 5-7.

⁵²¹ See Loncin SRA at Exhibit 4A.

⁵²² See Loncin SR Memo at 4.

⁵²³ See Loncin's Case Brief at 11-15.

⁵²⁴ See Loncin SRA at Exhibit 7.

⁵²⁵ See, *e.g.*, Loncin Supp SRA at Exhibits 2-4.

⁵²⁶ See Loncin Case Brief by 14.

In our *Preliminary Determination*, as part of our decision to deny Loncin a separate rate, we noted Mr. Tu's various affiliations to and participation in government linked institutions as indicative of government control.⁵²⁷ The organizations in which Mr. Tu participates/participated, and the positions he holds/held, include as representative to the NPC, representative to the PCC, member of the PCC Finance and Economy Committee, Vice Chairman of the Chongqing CFIC, a member of the CPPCC, Chairman of the Chongqing CFIC, and Standing Committee Member of the Executive Committee of the ACFIC.⁵²⁸

The record demonstrates that Mr. Tu is not a member of the CCP.⁵²⁹ In addition, Mr. Tu's time as a representative to the NPC and the PCC predates the POI by over a year.⁵³⁰ Facts that were no longer present during the POI are usually insufficient to establish government control during the POI without further explanation how those facts continue to support such an inference.⁵³¹

The record does not establish how Mr. Tu's past service in the NPC and PCC supports an inference of government control during the POI. Nothing on the record demonstrates that Mr. Tu was, or continued to be, beholden to the CCP or the GOC during the POI as a result as his past membership in these organizations. As such, we cannot conclude in the instant case that this is a factor demonstrating *de facto* control during the POI.

The record also does not show how Mr. Tu's current positions in the CPPCC, ACFIC, and Chongqing CFIC lead to the CCP's or GOC's control over Loncin through Mr. Tu. Information on the record demonstrates that these organizations have no real power, serve in advisory or other unofficial roles, and do not have any policymaking ability. Moreover, none of these organizations appear on the organizational charts of the CCP or GOC,⁵³² indicating that these organizations are not government agencies.

With respect to the CPPCC, the record shows that it "is neither a body of state power nor a policymaking organ."⁵³³ The CPPCC is described as a "collection of advisers that gives party and government bodies suggestions on economic, political, cultural and social issues."⁵³⁴ The CPPCC is also not limited to CCP members; its members include people without political affiliation; of various ethnic minorities; from fields such as academia, law, and business; and representatives from Hong Kong, Macau, and Taiwan.⁵³⁵ The record also states that the CPPCC "earned... the tag 'flower vase'... pointing to its obviously very limited meaning and mere window-dressing function."⁵³⁶ We noted at the *Preliminary Determination* that a U.S. Congressional Study that stated that the CPPCC was "created by the {CCP} and exercises 'democratic supervision' at the direction of the {CCP},"⁵³⁷ but this same study also agreed with the "flower vase" characterization of the CPPCC:

⁵²⁷ See Loncin SR Memo at 5-6.

⁵²⁸ See Loncin SRA at 15-16.

⁵²⁹ *Id.* at 16.

⁵³⁰ *Id.* at 15-16.

⁵³¹ See *Can Tho*, 415 F. Supp. 2d at 1194-95 (citing *An Giang II*, 284 F. Supp. 3d at 1361 n.17).

⁵³² See Loncin SRA Rebuttal Comments at Exhibit 2.

⁵³³ *Id.* at Exhibit 3A.

⁵³⁴ *Id.* at Exhibit 3B.

⁵³⁵ *Id.* at Exhibits 3A and 3B.

⁵³⁶ *Id.* at Exhibit 3D.

⁵³⁷ See Loncin SR Memo at 6.

In practice, the CPPCC system gives select prominent citizens, including non-Communists, an approved platform to make suggestions about aspects of public policy, but does not oblige the Communist Party to act upon these suggestions. The institution can thus ignite and influence policy debates, but is essentially powerless. The Chinese government refers to CPPCC member as “political advisors.”⁵³⁸

We do not have any information on the record to indicate that members of the CPPCC are considered government officials or government employees. Moreover, the record does not establish how the CCP and GOC are able to exert control over CPPCC members merely through their participation in the organization.

The AFCIC is a “mass organization” under the CPPCC.⁵³⁹ The petitioner submitted evidence that describes the ACFIC, and the Chongqing CFIC, which functions as a regional branch of the ACFIC, as organizations similar to chambers of commerce that serve as a “bridge” linking the CCP with people in private economic activities.⁵⁴⁰ Moreover, the ACFIC’s website states that its purpose is to promote the development of the private sector.⁵⁴¹ Nothing on the record indicates that members of these bodies are controlled by the CCP or GOC or are otherwise government officials or employees. The ACFIC website describes it as having “non-governmental characteristics.”⁵⁴²

We note that Commerce has not before found that membership in the CPPCC or ACFIC constituted government control. We have, however, previously determined that the fact that shareholders or company officials were past or present members of the above organizations did not render the respondent company ineligible for a separate rate. In *Photovoltaic Cells from China 14-15*, evidence on the record demonstrated that a separate rate respondent’s founder and chairman was a former member of the NPC and All-China Youth Federation Standing Committee and a current member of the ACFIC Standing Committee and Zhejiang Federation of Industry and Commerce, in addition to other roles.⁵⁴³ Nevertheless, we granted that company, a separate rate during the administrative review.⁵⁴⁴ A similar fact pattern also exists in this investigation for another separate rate applicant, Chongqing Rato. The petitioner placed evidence on the record that Chongqing Rato’s executive director and legal representative was a member of the PCC and Vice Chairman of the Chongqing CFIC during the POI,⁵⁴⁵ however,

⁵³⁸ See Loncin SRA Rebuttal Comments at Exhibit 3C.

⁵³⁹ See Petitioner SRA Comments at Exhibit 4.

⁵⁴⁰ *Id.* at Exhibit 6.

⁵⁴¹ *Id.*

⁵⁴² *Id.*

⁵⁴³ See Chongqing Rato SRA Rebuttal Comments at Appendix 2.

⁵⁴⁴ See *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; 2014-2015*, 81 FR 93888, 93890 (December 22, 2016), unchanged in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033, 29035 (June 27, 2017) (*Photovoltaic Cells from China 14-15*).

⁵⁴⁵ See Petitioner SRA Comments at 11.

Commerce assigned Chongqing Rato a separate rate at the *Preliminary Determination*.⁵⁴⁶ Notably, no party, including the petitioner, challenged Commerce’s determination with respect to Chongqing Rato for the final determination, despite the similar fact pattern to Loncin, and we have continued to grant Chongqing Rato a separate rate for this final determination.

The record does not demonstrate how the relationship between Mr. Tu; Loncin; the CPPCC, ACFIC, or Chongqing CFIC; and the GOC/CCP allows the GOC and CCP to exert influence over Loncin’s business decisions and export activities. Consequently, we do not find that Mr. Tu’s affiliations and memberships in various political organizations make him a government official or employee, nor do they warrant a finding of government control over Loncin through Mr. Tu.

In such situations where the government is a minority shareholder in a company, either directly or indirectly, “Commerce has required additional indicia of control prior to concluding that a respondent company could not rebut the presumption of *de facto* control.”⁵⁴⁷ Likewise, where there is no government ownership in a company, such as Loncin, it is reasonable to conclude that additional indicia of control would also be required. Further, as stated by the Federal Circuit in *Aukerman*:

{A} presumption is not merely rebuttable but completely vanishes upon the introduction of evidence sufficient to support a finding of the nonexistence of the presumed fact. In other words, the evidence must be sufficient to put the existence of a presumed fact into genuine dispute. The presumption compels the production of this minimum quantum of evidence from a party against whom it operates, nothing more.⁵⁴⁸

The record here is bereft of any additional indicia. Moreover, Loncin has provided the sufficient level of evidence required to rebut the presumption of *de facto* government control through certified statements and documentary evidence. Given our above findings, and pursuant to our practice as developed in *Silicon Carbide*,⁵⁴⁹ Loncin provided evidence that: (1) its export prices are not set by, and are not subject to the approval of, a government agency;⁵⁵⁰ (2) it has the authority to negotiate and sign contracts and other agreements;⁵⁵¹ (3) it has autonomy from the government in making decisions regarding the selection of management;⁵⁵² and (4) it retains the proceeds of its export sales and makes independent decisions regarding the disposition of profits or financing of losses.⁵⁵³ Accordingly, we find that Loncin has rebutted the presumption of *de facto* government control and is thus eligible to receive a separate rate.

⁵⁴⁶ See *Preliminary Determination*, 85 FR at 66935 (Appendix III of the *Federal Register* notice).

⁵⁴⁷ See *An Giang II*, 284 F. Supp. 3d at 1359.

⁵⁴⁸ See *Aukerman*, 960 F.2d at 1037 (citing *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254-55 (1980); and *Del Vecchio v. Bowers*, 296 U.S. 280, 286-87 (1935)).

⁵⁴⁹ See *Silicon Carbide*, 59 FR at 22586-89. See also *Furfuryl Alcohol from China*, 60 FR at 22545.

⁵⁵⁰ See Loncin SRA at 13 and Exhibit 8; and Loncin Supp SRA at Exhibit 5.

⁵⁵¹ *id.*

⁵⁵² See Loncin SRA at Exhibits 7 and 9; and Loncin Supp SRA at Exhibit 2.

⁵⁵³ See Loncin SRA at 17 and Exhibit 11; and Loncin Supp SRA at Exhibits 3-4.

The petitioner argues that Commerce may not limit itself to “narrow indicia based on traditional criteria.”⁵⁵⁴ However, we have not imposed any such limitation;⁵⁵⁵ instead, we have applied our standard separate rates analysis in light of the totality of the record evidence.⁵⁵⁶ As stated above, and consistent with our separate rates practice, we have examined the level of government ownership in Loncin, as well as the Chinese government’s capacity to influence and control Loncin through Mr. Tu’s and the company’s affiliations and extracurricular memberships. However, none of these factors results in Loncin being controlled by the government. This analysis is consistent with our continued evaluation of our practice with regards to analyzing separate rates and NME companies’ *de facto* independence from government control.⁵⁵⁷ The petitioner has not provided any further precedent, case law, or relevant statutory or regulatory provisions, to justify its arguments that Loncin is undeserving of a separate rate. Instead, the petitioner rests its arguments on Commerce’s discretion to examine more than just the export activities of a company.⁵⁵⁸ However, we do not find that the record evidence points to government control of Loncin because the record does not substantiate the supposed links between Mr. Tu and Loncin and the GOC and CCP. Furthermore, the petitioner’s arguments do not explain how the Chinese government is able to control Loncin through its AoAs, CCP Committee, joint ventures, or Mr. Tu’s positions in political organizations. Consequently, we find the petitioner’s arguments unavailing. Thus, for the above reasons, we have determined to grant Loncin a separate rate for the final determination.

⁵⁵⁴ See Petitioner’s Rebuttal Brief at 40 (quoting *Advanced Technology I*, 885 F. Supp. 2d at 1350).

⁵⁵⁵ See *Advance Technology I*, 885 F. Supp. 2d at 1350

⁵⁵⁶ See *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 18733 (April 21, 2017), and accompanying IDM at Comment 1.

⁵⁵⁷ See *Diamond Sawblades Redetermination*.

⁵⁵⁸ See Petitioner’s Rebuttal Brief at 39-40.

X. RECOMMENDATION

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

☒

Agree

☐

Disagree

3/5/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance