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Investigation  
POI: 01/01/2020-06/30/2020  
**Public Document**  
E&C/OI: Team

May 11, 2021

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

**FROM:** Scot Fullerton  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Certain Chassis and Subassemblies Thereof from the People's  
Republic of China: Issues and Decision Memorandum for the  
Final Affirmative Determination of Sales at Less Than Fair Value

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## I. SUMMARY

The Department of Commerce (Commerce) determines that imports of certain chassis and subassemblies thereof (chassis) 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 estimated weighted-average dumping margins are shown in the "Final Determination" section of the accompanying *Federal Register* notice.

As a result of our analysis and consideration of comments submitted by interested parties, we have not made changes to the *Preliminary Determination*.<sup>1</sup> We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is a complete list of issues for which we received comments from interested parties:

Comment 1: Whether Total Adverse Facts Available (AFA) is Warranted for CIMC  
Comment 2: Whether CIMC is Eligible for a Separate Rate

## II. BACKGROUND

On March 4, 2021, Commerce published its *Preliminary Determination* in the antidumping duty (AD) investigation of chassis from China.<sup>2</sup> The two mandatory respondents are: (1) CIMC

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<sup>1</sup> See *Certain Chassis and Subassemblies Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 85 FR 12616 (March 4, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See *Preliminary Determination* PDM.



Vehicles (Group) Co., Ltd., responding on behalf of mandatory respondents Dongguan CIMC Vehicle Co., Ltd., and Qingdao CIMC Special Vehicles Co., Ltd. (collectively, CIMC); and (2) Guangdong Fuwa Heavy Industries Co., Ltd. (Fuwa). On April 5, 2021, CIMC requested a public hearing.<sup>3</sup> CIMC and the Coalition of American Chassis Manufacturers (the petitioner) submitted case briefs on April 5, 2021.<sup>4</sup> CIMC and the petitioner submitted rebuttal briefs on April 12, 2021.<sup>5</sup> On April 22, 2021, we held a virtual public hearing.<sup>6</sup>

### **III. PERIOD OF INVESTIGATION**

The period of investigation (POI) is January 1, 2020, through June 30, 2020. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was August 2020.<sup>7</sup>

### **IV. SCOPE OF INVESTIGATION**

The products covered by this investigation are chassis from China. For a full description of the scope of the investigation, see the accompanying *Federal Register* notice at Appendix I.

### **V. ADJUSTMENT UNDER SECTION 777A(f) OF THE ACT**

As discussed in the *Preliminary Determination*,<sup>8</sup> 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 normal value (NV) determined pursuant to section 773(c) of the Act, has increased the weighted-average dumping margin for the class or kind of merchandise.<sup>9</sup> 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.<sup>10</sup> In conducting this analysis, Commerce has not concluded that concurrent

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<sup>3</sup> See CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Hearing Request," dated April 5, 2021.

<sup>4</sup> See CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Case Brief," dated April 5, 2021 (CIMC's Case Brief); and Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Case Brief," dated April 5, 2021 (Petitioner's Case Brief).

<sup>5</sup> See CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: CIMC Rebuttal Brief," dated April 12, 2021 (CIMC's Rebuttal Brief); see also Petitioner's Letter, "Certain Chassis and Subassemblies from the People's Republic of China: Petitioner's Rebuttal Case Brief," dated April 12, 2021 (Petitioner's Rebuttal Brief).

<sup>6</sup> See Hearing Transcript, "Less Than Fair Value Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China," dated April 22, 2021.

<sup>7</sup> See 19 CFR 351.204(b)(1); see also Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Petitions for the Imposition of Antidumping and Countervailing Duties," dated July 30, 2020 (Petition).

<sup>8</sup> See *Preliminary Determination* PDM at 25-29.

<sup>9</sup> See section 777A(f)(1)(A)-(C) of the Act.

<sup>10</sup> See sections 777A(f)(1)-(2) of the Act.

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.<sup>11</sup>

In our *Preliminary Determination*, we indicated that because there has been no demonstration on the record that an adjustment for domestic subsidies is warranted, Commerce is not making any such adjustment to the rate being assigned to the China-wide entity, which includes CIMC and Fuwa. No party challenged Commerce's preliminary determination not to grant an offset to parties' cash deposit rates. Therefore, consistent with our *Preliminary Determination*, we have not made an adjustment under section 777A(f) of the Act to the rates assigned to the China-wide entity, which includes the mandatory respondents, CIMC and Fuwa in this final determination.

## **VI. ADJUSTMENT TO CASH DEPOSIT RATE FOR EXPORT SUBSIDIES**

Pursuant to section 772(c)(1)(C) of the Act, Commerce normally adjusts for countervailable export subsidies. In our *Preliminary Determination*, we deducted 5.77 percent *ad valorem* from the China-wide entity dumping margin to determine the estimated weighted-average dumping margin adjusted for export subsidies.<sup>12</sup> For the final determination of the concurrent CVD investigation, we determined that total export subsidy amount included in the subsidy rate calculated for CIMC was 11.00 percent.<sup>13</sup> Accordingly, for the final determination of this AD investigation, we are adjusting the weighted-average dumping margin calculated for the China-wide entity, which includes CIMC and Fuwa and which is based on total AFA, by 11.00 percent, to determine the cash deposit rate for the China-wide entity.

## **VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES**

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provides that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party

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<sup>11</sup> 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.

<sup>12</sup> See *Preliminary Determination PDM* at 18. The 5.77 percent amount was the export subsidy amount found in the preliminary determination of the concurrent CVD investigation of chassis. See *Certain Chassis and Subassemblies Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 85 FR 56 (January 4, 2021), and accompanying PDM at 30-39.

<sup>13</sup> See *Chassis and Subassemblies Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 86 FR 15186 (March 22, 2021) (*Final CVD Determination*), and accompanying IDM.

submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

Section 776(b) of the Act provides that in selecting from among the facts otherwise available, Commerce may use an inference that is adverse to the interests of a party if that party has failed to cooperate by not acting to the best of its ability to comply with a request for information.<sup>14</sup> In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>15</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, previous administrative review, or other information placed on the record. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”<sup>16</sup> Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference in selecting from the facts available.<sup>17</sup>

It is Commerce’s practice to consider, in employing adverse facts available (AFA), the extent to which a party may benefit from its own lack of cooperation.<sup>18</sup> The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel*, provided an explanation of the meaning of failure to act to “the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that “ability” refers to “the quality or state of being able.”<sup>19</sup> Thus, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum that it is able to do.<sup>20</sup> The CAFC acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate inquiries to respond to agency questions may suffice as well.<sup>21</sup> Hence, compliance with the “best of its ability” standard is determined by assessing whether a respondent has put

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<sup>14</sup> See 19 CFR 351.308(a); *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

<sup>15</sup> See section 776(b)(1)(B) of the Act.

<sup>16</sup> See, SAA, H.R. Doc. 103-316, vol. 1 (1994) at 870; and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

<sup>17</sup> See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); *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); and *Preamble*.

<sup>18</sup> See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying IDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

<sup>19</sup> See *Nippon Steel*, 337 F.3d at 1382.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 1380.

forth its maximum effort to provide Commerce with full and complete answers to all inquiries in a segment of a proceeding.<sup>22</sup>

In the *Preliminary Determination*, we relied on AFA in determining the dumping margin for the China-wide entity, which, as indicated above, includes both mandatory respondents CIMC and Fuwa.<sup>23</sup> In the *Preliminary Determination*, we relied on the Petition rate of 188.05 percent as the rate applicable to the China-wide entity, and corroborated this rate.<sup>24</sup> As such, for the final determination, we continue to base the China-wide rate on the Petition rate of 188.05 percent.<sup>25</sup>

With respect to Fuwa, as we explained in the *Preliminary Determination*, Fuwa had two opportunities to provide information on all shareholders and ultimate shareholders, and Fuwa did not provide this information.<sup>26</sup> Thus, we continue to find that Fuwa is not eligible for a separate rate.

As discussed further under Comment 1, for this final determination, we continue to find CIMC submitted its sections A through E supplemental questionnaire response in an untimely manner.<sup>27</sup> Therefore, we continue to determine that necessary information is not available on the record because CIMC failed to provide the necessary information by the deadline for submission of the information.<sup>28</sup> Accordingly, we continue to find, pursuant to sections 776(a)(1) and 776(a)(2)(A)-(C) of the Act, that the use of facts available is warranted.<sup>29</sup> Further, because the necessary information is not available on the record, we continue to find that CIMC failed to provide information by the applicable deadlines and in the form and manner requested, in accordance with sections 776(a)(1) and (2)(B) of the Act. As such, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce continues to determine that the use of an adverse inference is warranted when selecting from among the facts otherwise available.<sup>30</sup>

As discussed further under Comment 2, given that we continue to apply total AFA to CIMC, and continue to find that we do not have all of the information on the record to determine whether CIMC is eligible for a separate rate, we thus continue to find that CIMC is not eligible for a separate rate.

## **VIII. DISCUSSION OF THE ISSUES**

### **Comment 1: Whether Total AFA is Warranted for CIMC**

As noted above, CIMC submitted its sections A through E supplemental questionnaire response in an untimely manner.<sup>31</sup> Because this submission was untimely filed, we rejected it from the

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<sup>22</sup> *Id.* at 1382.

<sup>23</sup> See *Preliminary Determination* PDM at 13 and 14.

<sup>24</sup> *Id.* at 17 and 18; see also Petition.

<sup>25</sup> See *Preliminary Determination* PDM at 14-16.

<sup>26</sup> *Id.* at 15.

<sup>27</sup> *Id.* at 8.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 11.

<sup>31</sup> *Id.* at 8.

record.<sup>32</sup> Therefore, the record does not contain a timely supplemental questionnaire response from CIMC.

*CIMC's Comments:*

- Commerce improperly applied AFA to CIMC in the *Preliminary Determination* because CIMC did not fail to cooperate to the best of its ability.<sup>33</sup>
- In the final determination, Commerce should accept CIMC's supplemental sections A through E supplemental questionnaire response because Commerce's rejection of its submissions was prejudicial and arbitrary.<sup>34</sup>
- Commerce's authority to apply FA is subject to the additional requirements delineated in section 782(d) of the Act. Commerce must "promptly" notify the party "of the nature of the deficiency;" provide it with an opportunity to remedy that deficiency; and may only then reject the submission subject to additional, further requirements.<sup>35</sup>
- Only after "Commerce determines that the conditions established by subsections 776(a), 782(d) and 782(e) are met, and that resort to FA is appropriate," may it apply an adverse inference.<sup>36</sup>
- The CAFC has stated that, "{b}efore making an adverse inference, Commerce must examine a respondent's actions and assess the extent of the respondent's abilities, efforts, and cooperation in responding to Commerce's request for information."<sup>37</sup>
- While Commerce has discretion to set and enforce deadlines, it may not abuse its discretion in doing so, particularly in cases, such as here, where "the interests of accuracy and fairness outweigh the burden placed on the Department."<sup>38</sup>
- In determining whether Commerce has abused its discretion in rejecting an untimely filing, the Courts are "guided first by the remedial, and not punitive purpose of the antidumping statute { } and the statute's goal of determining margins 'as accurately as possible.'"<sup>39</sup>
- The Courts also "weigh { } 'the burden imposed upon the agency by accepting the late submission, '... and' 'the need for finality at the final results stage.'"<sup>40</sup> Furthermore, Commerce's justification for denying an extension request must be valid and comport with the facts. For example, in *Artisan Mfg. Corp. v. United States*, the Court found that Commerce's rejection of a submission made the next business day because Commerce

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<sup>32</sup> See Commerce's Letter, "Antidumping Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Rejection of Untimely Filed Submission," dated February 3, 2021.

<sup>33</sup> See CIMC's Case Brief at 2.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (CAFC 2003)).

<sup>38</sup> See CIMC's Case Brief at 3 (citing *Grobest & I-Mei Indus. (Vietnam) Co., v. United States*, 815 F. Supp. 2d 1342, 1365 (CIT 2012)).

<sup>39</sup> See CIMC's Case Brief at 3 (citing *Chaparral Steel Co., v. United States*, 901 F.2d 1097, 1103-04 (CAFC 1990) and quoting *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (CAFC 1990)).

<sup>40</sup> See CIMC's Case Brief at 3 (quoting *Usinor Sacilor v. United States*, 872 F. Supp. 1000, 1008 (CIT 1994) and *Timken U.S. Corp. v. United States*, 434 F. 3d 1345, 1353 (CAFC 2006)).

needed to complete the investigation within the statutory deadline was “not a valid reason.”<sup>41</sup>

- In *Artisan Mfg. Corp. v United States*, the Court of International Trade (CIT) held that Commerce’s rejection of a quantity and value questionnaire made one day after the deadline was an abuse of discretion, in part, because accepting the late filing “would have been inconsequential to the Department’s conducting of the investigation.”<sup>42</sup>
- Similarly, Commerce granting CIMC’s request for an extension or request for reconsideration in this case would have been inconsequential to Commerce’s conduct of this investigation.<sup>43</sup>
- However, Commerce’s decision to reject CIMC’s submission and as justification for its application of FA (and total AFA) had significant consequences for CIMC, which, as the CIT has found, is another factor demonstrating that Commerce abused its discretion.<sup>44</sup>
- The CIT has also held that Commerce’s rejection of an interested party’s submission filed after a deadline is an abuse of discretion when the facts demonstrate that the interested party was diligent in seeking to address the delay.<sup>45</sup>
- CIMC did not “significantly impede the investigation” because the delay in finalizing the submission was due to unexpected technical difficulties with ACCESS when filing the public and final confidential versions of CIMC’s supplemental questionnaire response.<sup>46</sup>
- Accordingly, for the final determination, Commerce should take CIMC’s supplemental questionnaire response into consideration.<sup>47</sup>
- **Application of AFA is unwarranted because CIMC cooperated to the best of its ability**
  - CIMC demonstrated cooperation when it responded to Commerce’s December 23, 2020, supplemental questionnaire by submitting the bracketing-not-final version of its response by the required filing deadline of 5:00pm on January 15, 2021.<sup>48</sup>
  - In CIMC’s original request for an extension, it explained that counsel for CIMC began uploading the submissions at approximately 4:00pm on January 19, 2021, and experienced slowness with the ACCESS system, and that it contacted Commerce prior to the 5:00pm deadline informing Commerce it was experiencing slowness with the ACCESS system.<sup>49</sup> In addition, counsel contacted the ACCESS help desk prior to the 5:00pm deadline but received no response.<sup>50</sup>
  - Commerce’s statement that “CIMC could have submitted an extension request once it became aware that the ACCESS portal was performing unusually slow” between 4:15pm

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<sup>41</sup> See CIMC’s Case Brief at 4 (citing *Artisan Mfg. Corp. v. United States*, 978 F. Supp. 2d 1334, 1345 (CIT 2014) (*Artisan Mfg. Corp. v. United States*)).

<sup>42</sup> See CIMC’s Case Brief at 4 (citing *Artisan Mfg. Corp. v United States*, 978 F. Supp. 2d at 1345).

<sup>43</sup> See CIMC’s Case Brief at 5.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 6 (citing *Grobtest & I-Mei Indus.*, 815 F. Supp. 2d at 1367 (finding that Commerce’s rejection of a separate rate certification that was submitted ninety-five days after the deadline was an abuse of discretion because (1) enough time remained in the proceedings such that finality was not an issue and (2) the respondent was “diligent in seeking to correct the omission” in its separate rate certification” as soon as it discovered the omission”)).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 8.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 9.

and 4:35pm ignores that the delay in submitting an extension request was due to CIMC's counsel's efforts to comply with Commerce's instruction to identify the circumstances concerning ACCESS.<sup>51</sup>

- Under normal circumstances, it takes approximately one minute or less to upload a batch of documents to ACCESS.<sup>52</sup> Thus, under normal circumstances, the bracketing final and public submissions should have taken only approximately ten to twelve minutes total to upload to ACCESS.<sup>53</sup>
- As such, by beginning to upload the submissions at approximately 4:00pm, a full hour before the end of the business day, CIMC's counsel provided itself more than an adequate amount of time to file under normal circumstances.<sup>54</sup> However, on the afternoon of January 19, individual batches took over ten minutes to upload, due to an unforeseeable technical issue with ACCESS and through no fault of CIMC's counsel.<sup>55</sup>
- The availability of multiple counsel staff to assist on the filing is evidence that CIMC's counsel not only knew that they "would be required to submit its response to Commerce's supplemental questionnaire in a timely manner," but also that they dedicated sufficient time and resources to do so under normal circumstances.<sup>56</sup>
- As detailed in their declarations and documented with real time internal chat conversations, counsel staff were working remotely from different locations, and all experienced slow uploading to ACCESS between 4:00pm and 5:00pm on January 19, 2021.<sup>57</sup>
- Counsel staff for CIMC began filing the submissions prior to the deadline and the bracketing not final version of the supplemental questionnaire response was uploaded to ACCESS in complete form by 5:04pm and the public version was filed in its entirety by 5:15pm.<sup>58</sup>
- Thus, the application of AFA is not warranted because record evidence demonstrates that the delay in the ACCESS upload did not "significantly impede the proceeding."<sup>59</sup>
- **Commerce's rejection of CIMC's supplemental questionnaire response to apply AFA was prejudicial and arbitrary**
  - Commerce should also decline to apply AFA because doing so is prejudicial to CIMC and arbitrary. In this case, whereas accepting CIMC's supplemental questionnaire response would not prejudice any parties, denying accepting the supplemental questionnaire was prejudicial to CIMC.<sup>60</sup>
  - All parties had a full opportunity to review CIMC's supplemental questionnaire response due to Commerce's delay in rejecting CIMC's request for extension.<sup>61</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 10.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 11.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 12.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*



- Commerce also should not apply AFA because Commerce’s rejection of CIMC’s supplemental questionnaire response was arbitrary. As explained in CIMC’s request for reconsideration, Commerce previously permitted respondents in other cases to refile questionnaire responses in light of additional evidence and in circumstances involving technical issues with ACCESS that was not under the respondent’s control.<sup>62</sup> For example, in May 2020, Commerce allowed a respondent to resubmit a supplemental questionnaire response because a technical issue with ACCESS triggered the need for a resubmission after the filing deadline had passed.<sup>63</sup>
- Commerce’s rejection of CIMC’s supplemental questionnaire response is also arbitrary given that Commerce granted the petitioner’s extension request for a similar issue within the same investigation and has provided inconsistent reasons for treating requests from the petitioner and CIMC differently.<sup>64</sup>
- Commerce’s distinction in the *Preliminary Determination* regarding the deadline for surrogate values is inconsistent with the reasoning it provided in its decision denying CIMC’s December 3, 2020, extension request.<sup>65</sup>
- **AFA is not warranted because CIMC reported all U.S. sales and further manufacturing costs incurred during the POI**
  - Commerce should not apply AFA with respect to CIMC’s reported CEP sales and further-manufacturing costs because CIMC cooperated fully to the best of its ability in reporting complete U.S. sales information, both with respect to CIMC’s direct sales to unaffiliated customers in the United States (*i.e.*, export price or “EP” sales), and with respect to sales by CIMC’s U.S. affiliates, CIE Manufacturing, LLC (CIE) and Vanguard National Trailer Corporation (Vanguard) – to their unaffiliated customers in the United States (*i.e.*, constructed export price or “CEP” sales).<sup>66</sup>
  - Furthermore, both CIE and Vanguard also provided Commerce complete information regarding the minor further-manufacturing costs the companies incurred during the POI with respect to a handful of chassis sold to the companies’ unaffiliated customers in the United States.<sup>67</sup>
  - Even if Commerce continues to reject CIMC’s supplemental questionnaire response, Commerce has on the record seven complete and fully documented databases that, when used in combination, provide Commerce with a complete and reliable set of data that can be used to calculate a dumping margin for CIMC for the purpose of the final determination
  - Accordingly, Commerce should calculate a dumping margin for CIMC using the seven databases on the record in the final determination.

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<sup>62</sup> *Id.* at 13.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 14.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 21.

<sup>67</sup> *Id.*

*Petitioner's Arguments:*

- Commerce correctly determined that Fuwa and the non-responding companies receiving quantity and value questionnaires should be included in the China-wide entity and receive total AFA rate due to their lack of cooperation.<sup>68</sup>

*Petitioner's Rebuttal:*

- Commerce's decision to apply total AFA was consistent with its authority where a respondent has failed to provide requested information.<sup>69</sup>
- Sections 776(a)(1) and (2) of the Act provide that, where the necessary information is not available on the record or an interested party, *inter alia*, fails to provide such information by the deadlines for submission of the information, Commerce shall use facts otherwise available to reach its determination.<sup>70</sup>
- Where Commerce further finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference that is adverse to the non-cooperative party.<sup>71</sup>
- Further, Commerce is not required to make any adjustment to a dumping margin based on what information the non-cooperating party would have provided. In instances where there are "pervasive and persistent deficiencies that cut across all aspect of the data," as is the case in this proceeding, total AFA is appropriate.<sup>72</sup>
- As such, Commerce "has broad discretion to establish its own rules governing administrative procedures, including the establishment and enforcement of time limits."<sup>73</sup> Commerce's "{s}trict enforcement of time limits and other requirements is neither arbitrary nor an abuse of discretion when {the Department} provides a reasoned explanation of its decision."<sup>74</sup>
- Under this authority, Commerce has routinely rejected untimely-filed submissions where a respondent fails to demonstrate good cause.<sup>75</sup> For example, "the Federal Circuit determined that {the Department} permissibly found that a company lacked good cause for a late filing, which it explained was due to difficulties communicating between American counsel and the Chinese client, computer problems, and a Chinese holiday."<sup>76</sup>
- Even if CIMC was having difficulty filing its supplemental questionnaire response, Commerce's practice and regulations required CIMC to request for an extension in writing prior to the deadline.<sup>77</sup>
- Finally, CIMC references to *Artisan Manufacturing Corp v. United States* are unavailing. The CIT finding in *Artisan Manufacturing Corp v. United States* was highly fact specific and not analogous to this case. In that case, Commerce originally found that the late filing of a quantity and value response disqualified a respondent from receiving a

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<sup>68</sup> See Petitioner's Case Brief at 13.

<sup>69</sup> See Petitioner's Rebuttal Brief at 2.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 3.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 8.

separate rate because denying this submission would be unfair to the other parties that timely filed their quantity and value questionnaires.<sup>78</sup>

- **The record is incomplete, such that Commerce has no choice but to rely on total AFA to calculate a margin**
  - As an initial matter, Commerce applied total AFA to CIMC because it failed to provide its questionnaire on a timely basis. Further, the respondent's status as an SOE demonstrates that it has not reported critical sales and cost information for the China-wide entity.<sup>79</sup>
  - In short, CIMC's reporting has left the record so incomplete that Commerce has no choice but to apply total AFA based on information contained in the Petition.<sup>80</sup>

**Commerce's Position:** We continue to find that because CIMC submitted its sections A through E supplemental questionnaire response in an untimely manner, failing to cooperate to the best of its ability, and therefore, selection from among the facts otherwise available, with an adverse inference (total AFA) is necessary.<sup>81</sup>

The facts surrounding this conclusion are as follows. On December 23, 2020, Commerce issued a supplemental questionnaire addressing issues in sections A through E of the initial questionnaire response to CIMC.<sup>82</sup> The supplemental questionnaire response was initially due on January 6, 2021.<sup>83</sup> On January 4, 2021, CIMC requested a 14-day extension to respond to Commerce's supplemental questionnaire; we granted a 7-day extension.<sup>84</sup> Therefore, the supplemental questionnaire response was due on January 13, 2021.<sup>85</sup> On January 11, 2021, CIMC requested an extension of five days to respond to our supplemental questionnaire; we granted CIMC an extension of two additional days.<sup>86</sup> Therefore, overall, we provided CIMC with 23 days to submit its supplemental questionnaire response.

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 16.

<sup>80</sup> *Id.*

<sup>81</sup> See *Preliminary Determination* PDM at 8 through 11.

<sup>82</sup> See Commerce's Letter, "Antidumping Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Supplemental Questions for Sections A through E and the Double Remedy Questionnaire for CIMC Vehicles (Group) Co., Ltd., Dongguan CIMC Vehicle Co., Ltd., and Qingdao CIMC Vehicles Co., Ltd.," dated December 23, 2020 (Supplemental Questionnaire).

<sup>83</sup> *Id.*

<sup>84</sup> See CIMC's Letter "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Extension of Deadline to Respond to the December 23, 2020 Supplemental Questionnaire," dated January 4, 2021 (CIMC's Extension Request 1).

<sup>85</sup> *Id.*

<sup>86</sup> See CIMC's Letter "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Second Request for Extension of Deadline to Respond to the December 23, 2020 Supplemental Questionnaire," dated January 11, 2021 (CIMC's Extension Request 2); see also Commerce's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Partial Extension to Respond to Commerce's Supplemental Questionnaire," dated January 12, 2021 (Commerce's Extension Request Response 2).

We point out that in our December 23, 2020, supplemental questionnaire, we notified CIMC of the specific deadline by which the information was to be provided and if applicable, of when the extension request should be filed.<sup>87</sup> Specifically, we noted the following:

**Section 351.302(c) of Commerce’s regulations requires that all extension requests be in writing and state the reasons for the request.** Any factual statements made in support of such reasons must be accompanied by the certifications required under section 351.303(g) of the regulations. An extension request submitted without a proper certification for any factual information contained therein will be considered improperly filed and, as with any other improperly filed document, will not be accepted. Any extension granted in response to your request will be in writing; otherwise the original deadline will apply.

**If we do not receive either the requested information or a written extension request before the established deadline, we may conclude that your company has decided not to cooperate in this proceeding. Commerce will not accept any requested information submitted after the deadline. As required by 19 CFR 351.302(d), we will reject such submissions as untimely. Therefore, failure to request extensions for all or part of a questionnaire response properly may result in the application of partial or total facts available pursuant to section 776(a) of the Tariff Act of 1930, as amended, which may include adverse inferences, pursuant to section 776(b) of the Act.**

On January 15, 2021, CIMC filed its supplemental questionnaire response, but opted to finalize its submissions on January 19, 2021, due to the Bracketing Not Final/1 Day Lag Filing rule.<sup>88</sup> We point out that in our letter in response to CIMC’s second extension request, we noted the following:<sup>89</sup>

**As noted in our December 23, 2020, supplemental questionnaire, we requested information that should have been submitted in your original questionnaire response.** Further, your extension request letter cited many of the same reasons considered by Commerce that led to a prior extension of the deadline to respond to your supplemental questionnaire. However, because of the COVID outbreak at your facility over the last two weeks, we are willing to grant you an additional two days. As we noted in our last letter in response to your previous extension request, we cannot grant any further extensions because we may need to issue further supplemental questionnaires and prepare the preliminary determination by the statutory deadline.

On January 19, 2021, at 4:55 pm, counsel for CIMC contacted the Commerce case analyst alerting him that the company was having difficulty uploading all of the documents in the ACCESS portal and claimed that ACCESS was abnormally slow between 4:00 pm and 5:00

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<sup>87</sup> See Supplemental Questionnaire.

<sup>88</sup> See CIMC’s Extension Request 2; *see also* 19 CFR 351.303(c).

<sup>89</sup> See CIMC’s Letter “Certain Chassis and Subassemblies Thereof from the People’s Republic of China: Request for Reconsideration of Extension on Supplemental Section A through E Submission and Request to Refile,” dated February 5, 2021 (Request for Reconsideration Letter).

pm.<sup>90</sup> The Commerce case analyst requested that counsel reach out to the ACCESS personnel to determine whether there were issues with the ACCESS portal system.<sup>91</sup> On January 19, 2021, CIMC filed parts 11 through 14 of the business proprietary information (BPI) version of its supplemental questionnaire response, and the entire public version of its supplemental questionnaire response in an untimely manner because those sections came in after 5:00 pm.<sup>92</sup> As such, CIMC did not file a timely and complete supplemental questionnaire response prior to the deadline for the bracketing final BPI version and the public version (*i.e.*, 5:00 pm on January 19, 2021).<sup>93</sup> CIMC does not dispute that it filed parts of its sections A through E supplemental questionnaire in an untimely manner.<sup>94</sup>

On January 21, 2021, CIMC submitted an *untimely* request for an extension of 15 minutes explaining that extraordinary circumstances stemming from technical difficulties outside of CIMC's control existed when it attempted to finalize its submissions by 5:00 pm on January 19, 2021 (emphasis added).<sup>95</sup> Again, CIMC does not dispute the fact that it filed its extension request after the final bracketed version and the public version were due under the One Day Lag Filing rule deadline.<sup>96</sup> CIMC argues again in its case brief, that due to technical difficulties it was unable to submit its sections A through E supplemental questionnaire in a timely manner, but it does not allege that due to technical difficulties, it was unable to file an extension request in a timely manner.<sup>97</sup>

In its request(s) for information, Commerce notifies parties of the specific deadline by which the information is to be provided.<sup>98</sup> If the information has not been filed by the established deadline, per 19 CFR 351.302(d), Commerce will not accept the untimely information absent a timely-filed extension request or an untimely extension request that demonstrates that an extraordinary circumstance exists under 19 CFR 351.302(c).

Section 351.302(c) states: "An untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists." The regulation defines "extraordinary circumstance" as "an unexpected event that: (1) could not have been prevented if reasonable measures had been taken, and (ii) precludes a party or its representative from timely filing an extension request through all reasonable means." The preamble to Commerce's regulations provides:

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<sup>90</sup> *Id.*

<sup>91</sup> See Memorandum, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Placement of Email Exchanges Between Case Analyst and ACCESS Personnel," dated February 3, 2021 (Email Exchange Memorandum).

<sup>92</sup> See *Preliminary Determination* PDM at 8.

<sup>93</sup> *Id.* at 8 and 9.

<sup>94</sup> See CIMC's Case Brief at 11.

<sup>95</sup> See CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Extension for January 19, 2021 Submission of Final BPI and Public Versions of Response to Supplemental Questionnaire Response," dated January 21, 2021 (CIMC's Extension Request 3); see also Request for Reconsideration Letter at 3.

<sup>96</sup> *Id.*

<sup>97</sup> See CIMC's Case Brief at 17.

<sup>98</sup> See Supplemental Questionnaire.

Examples of extraordinary circumstances include a natural disaster, riot, war, *force majeure*, or medical emergency. Examples that are unlikely to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due.<sup>99</sup>

Computer/technical issues are not extraordinary circumstances within the meaning of our regulations. Moreover, we find that CIMC failed to demonstrate that the circumstances: (1) could not have been prevented if reasonable measures had been taken; or (2) precluded the law firm from timely filing an extension request through all reasonable means within the meaning of 19 CFR 351.302(c)(2). Because CIMC's extension request was untimely filed and no extraordinary circumstances existed which would have prevented CIMC from timely filing another extension request or the response itself, we find that acceptance of CIMC's untimely sections A through E supplemental questionnaire response or its untimely extension request was and is not warranted.

Specifically, we find evidence on the record supports our conclusion that CIMC failed to demonstrate that the circumstances could not have been prevented if reasonable measures had been taken. For instance, contrary to CIMC's contention, we continue to find that CIMC waited until the end of the business day to file its supplemental questionnaire response.<sup>100</sup> According to information placed on the record, CIMC did not begin filing its sections A through E supplemental questionnaire response until 4:15pm, not 4:00pm as it has argued.<sup>101</sup> In addition, CIMC indicated that the public submissions consisted of eleven pdf files and the final bracketing submission consisted of fourteen pdf files and 26 data files.<sup>102</sup> According to CIMC, because of the file size restrictions on ACCESS, it is able to upload a "batch" of five files at a time and the submissions consisted of twelve batches total.<sup>103</sup> Further, according to CIMC, "under normal circumstances, the bracketing final and public submissions should have taken only approximately ten to twelve minutes total to upload to ACCESS."<sup>104</sup> Information placed on the record indicates that at 4:15pm on January 19, 2021, Ms. Figueroa, a practice assistant and member of counsel's team representing CIMC, began to upload parts of CIMC's sections A through E supplemental questionnaire response and between 4:15pm and 4:35pm, she became aware that each batch of files was taking longer than 10 minutes to upload, and that she was still working on her second batch.<sup>105</sup> In other words, at 4:35pm, more than 15 minutes after Ms. Figueroa started uploading CIMC's 12 batches of files, Ms. Figueroa was only able to completely upload one batch and was still working on the second batch.<sup>106</sup> Further, on January 19, 2021, at 4:41pm, Ms. Figueroa conveyed to her colleagues that she had been only able to upload approximately two batches to ACCESS.<sup>107</sup>

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<sup>99</sup> See *Extension of Time Limits: Final Rule*, 78 FR 57790, 57793 (September 20, 2013).

<sup>100</sup> See CIMC's Case Brief at 10.

<sup>101</sup> See Request for Reconsideration Letter.

<sup>102</sup> *Id.* at 3.

<sup>103</sup> *Id.* at 3 and 4.

<sup>104</sup> See CIMC's Case Brief at 10.

<sup>105</sup> See Request for Reconsideration Letter at 5.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

Information placed on the record further indicates that Ms. Figueroa appeared to have contacted Ms. Yoon, a legal assistant and member of counsel's team representing CIMC, at 4:41pm, and Tim McCumber, another legal assistant, shortly thereafter requesting assistance with the outstanding filings.<sup>108</sup> According to CIMC, Ms. Figueroa, Ms. Yoon, and Mr. McCumber are experienced in filing via ACCESS and routinely file documents on ACCESS.<sup>109</sup> As the record indicates, CIMC waited until 4:15pm to start uploading to ACCESS, 11 public version files, 14 BPI files and an additional 26 data files, with a total 51 files altogether or 12 batches.<sup>110</sup>

As we indicate above, CIMC states that based on its experience, it takes approximately one minute or less to upload a batch of files and it should have taken only approximately ten to twelve minutes to upload twelve batches of files to ACCESS.<sup>111</sup> Assuming this is true, CIMC should have been able to file all 51 files or 12 batches by 4:27pm at the latest. Ms. Figueroa, however, became aware between 4:15pm and 4:35pm that each batch of files was taking more than 10 minutes to upload.<sup>112</sup> Based on our reading of Ms. Figueroa's message to her colleagues, she was still working on her second batch of files at 4:35pm, and thus, still had 10 more batches of files to upload to ACCESS.<sup>113</sup> Given CIMC's assertion that its counsel and staff routinely upload documents to ACCESS, it is reasonable to expect that once it was abundantly clear at 4:35pm that the filing of documents to ACCESS was not going according to plan, CIMC should have known that it needed to submit a written extension of time request to file its supplemental questionnaire response prior to the 5:00pm deadline, as required by Commerce's regulations, and as stipulated in Commerce's December 23, 2020, supplemental questionnaire cover letter.<sup>114</sup> As the record indicates, CIMC did not file its extension request until January 21, 2021.<sup>115</sup> We point out that although CIMC again argued in its extension request that it was unable to submit its final BPI and public versions of its supplemental questionnaire response due to "extraordinary circumstances stemming from technical difficulties outside of CV's control," it did not argue that the technical difficulties impeded its ability to submit an extension request by the 5:00pm deadline.<sup>116</sup>

Further, record evidence indicates that Ms. Kao, counsel to CIMC, contacted her colleague, Mr. Keir Whitson, Senior Trade Analyst, at 4:43pm on January 19, 2021, stating that "it sounds like there are some technical difficulties with filing the supp. QR."<sup>117</sup> It wasn't until 4:55pm (more than 10 minutes after Mr. Whitson first became aware of the issue), that Mr. Whitson contacted the Commerce case analyst to inform him of the alleged difficulties his team appeared to have in filing its sections A through E supplemental questionnaire response via ACCESS on January 19, 2021.<sup>118</sup> We point out that nowhere in CIMC's Request for Reconsideration Letter

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<sup>108</sup> *Id.* at 4.

<sup>109</sup> *Id.* at 3 and 4.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at 5.

<sup>113</sup> *Id.*

<sup>114</sup> *See* Supplemental Questionnaire.

<sup>115</sup> *See* CIMC's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Extension for January 19, 2021 Submission of Final BPI and Public Versions of Response to Supplemental Questionnaire Response," dated January 21, 2021 (CIMC's Extension Request).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

is there any evidence that CIMC ever considered filing an extension request prior to the 5:00pm deadline, as stipulated in the sections A through E supplemental questionnaire cover letter, once it became aware of the difficulties it claims to have experienced in filing the 51 files or 12 batches of files to ACCESS.<sup>119</sup> As we indicated in the *Preliminary Determination*, counsel for CIMC is familiar with Commerce's reporting requirements, and it was well aware of the importance of submitting requested information by the deadlines established by Commerce, which includes submitting written extension requests prior to the established deadline set by Commerce.<sup>120</sup>

Further, as we indicate above, although we don't recognize computer/technical issues as extraordinary circumstances within the meaning of our regulations, Commerce nonetheless, investigated with the ACCESS personnel whether there were any issues regarding the ACCESS portal between 4:00pm and 5:00pm on January 19, 2021.<sup>121</sup> As we indicate in the *Preliminary Determination*, the ACCESS Help Desk stated that, "the system was operating normally on January 19, 2021."<sup>122</sup> As such, record evidence indicates that CIMC failed to demonstrate that the circumstances could not have been prevented if reasonable measures had been taken, and therefore, we continue to find that rejection of CIMC's untimely request for extension was warranted. Further, because CIMC's late filing arose from a failure to begin filing until the end of the day, we also continue to find that CIMC failed to act to the best of its ability pursuant to section 776(b) of the Act.

We disagree with CIMC's reliance on the CIT's finding in *Artisan Mfg. Corp. v. United States* because the holdings in *Artisan Mfg. Corp. v. United States* were fact-specific and do not apply to the case at hand. Moreover, it stands in contrast to recent CAFC rulings. Specifically, in *Artisan Mfg. Corp. v. United States*, Commerce originally found that the late filing of a quantity and value response disqualified a respondent from receiving a separate rate because denying this submission would be unfair to other interested parties that timely filed their quantity and value questionnaires.<sup>123</sup> In *Artisan Mfg. Corp. v. United States*, the CIT found that Commerce's deadline was ambiguous and its policy on extensions was unclear and that the consequence of an unexcused late filing was particularly severe.<sup>124</sup> In this case, however, as we indicate above, it is clear when the BPI and public versions of CIMC's sections A through E supplemental questionnaire were due, and it is also clear that CIMC was required to file an written extension request prior to the deadline set by Commerce.<sup>125</sup> In addition, as we indicated in our January 12, 2021, letter to CIMC, and above, "As noted in our December 23, 2020, supplemental questionnaire, we requested information that should have been submitted in your original questionnaire response."<sup>126</sup>

We also disagree with CIMC's reliance on the CIT's finding in *Grobest & I-Mei Indus.* for similar reasons. The Court in that case held that Commerce abused its discretion by rejecting an

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<sup>119</sup> See Request for Reconsideration Letter.

<sup>120</sup> See *Preliminary Determination* PDM at 9; see also Supplemental Questionnaire.

<sup>121</sup> See *Preliminary Determination* PDM at 9.

<sup>122</sup> *Id.*; see also Email Exchange Memorandum.

<sup>123</sup> See *Artisan Mfg. Corp. v. United States*, 978 F. Supp. 2d at 1347.

<sup>124</sup> *Id.* at 1347-49.

<sup>125</sup> See Commerce's Extension Request Response 2; see also Supplemental Questionnaire.

<sup>126</sup> See Commerce's Extension Request Response 2.



untimely filed separate-rate certification in part because the burden of reviewing the separate-rate certification was not great and because the separate-rate certification was filed seven months prior to the deadline for Commerce's preliminary determination.<sup>127</sup> Unlike the respondent in *Grobtest & I-Mei Indus.*, CIMC untimely submitted a *supplemental questionnaire*, a document which requires much more time and attention than a separate-rate certification. Additionally, CIMC's untimely submission was filed less than two months before the deadline for Commerce's *Preliminary Determination*, leaving Commerce with less time to consider a more burdensome document than that discussed in *Grobtest*.

The CAFC's ruling in *Dongtai Peak* is more relevant to this investigation. In that case, the CAFC held that Commerce properly rejected the respondent's untimely-filed extension requests and untimely-filed supplemental questionnaire response, despite the respondent's claim that it encountered debilitating computer system malfunctions and difficulties in overseas communication between the rurally-located respondent and its U.S.-based counsel.<sup>128</sup> The CAFC also concluded that Commerce reasonably determined that the respondent was capable of at least submitting an extension request on time, but simply failed to do so and, therefore, found that good cause did not exist to extend the deadline retroactively.<sup>129</sup>

As in *Dongtai Peak*, the untimely-filed response filed by CIMC contained vital information.<sup>130</sup> As we indicated in the *Preliminary Determination*, parts of CIMC's January 15, 2021, supplemental questionnaire response which came in after 5:00 pm included critical data and information: (1) worksheets demonstrating its calculation of indirect selling expenses, and warranty expenses; (2) POI sales reconciliations which were incomplete in the initial response; (3) material input data and supporting documentation and calculations; (4) steel scrap offset calculation and supporting documentation; (5) energy monthly consumption data for electricity, natural gas and water; (6) POI labor hours calculation data and supporting documentation; (7) CIMC and CIE inventory movement data, and quantity reconciliation; and (8) DCVC 2019 Audited Financial Statements.<sup>131</sup> As the CAFC held in *Dongtai Peak* with respect to the need for fairness and accuracy, Commerce's rejection of an untimely-filed questionnaire response does not violate any due process rights of a respondent such as CIMC, because the respondent had notice of the deadline and the opportunity to respond to the sections A through E supplemental questionnaire in a timely manner, or file an extension request prior to the 5:00pm deadline on January 19, 2021.<sup>132</sup> As we indicate above, the sections A through E supplemental questionnaire cover letter emphasized the importance of submitting the response in a timely manner, and highlighted that the consequences for failing to do so might result in the application of AFA.<sup>133</sup> As such, CIMC was afforded notice regarding the consequences of its actions.

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<sup>127</sup> See *Grobtest & I-Mei Indus.*, 815 F. Supp. 2d at 1367.

<sup>128</sup> See *Dongtai Peak Honey Industry Company v. United States*, 777 F. 3d 1343 (CAFC 2015) (*Dongtai Peak*).

<sup>129</sup> *Id.* at 1352.

<sup>130</sup> See *Preliminary Determination* PDM at 9.

<sup>131</sup> *Id.*

<sup>132</sup> See *Dongtai Peak*, 777 F.3d at 1352.

<sup>133</sup> See Supplemental Questionnaire.

The CAFC issued a similar opinion in *PSC VSMPO*.<sup>134</sup> In that case, the CIT ordered Commerce to accept untimely factual information because the circumstances were “not typical.” However, the CAFC reversed this decision and explained:

The {CIT} improperly intruded upon Commerce’s power to apply its own procedures for the timely resolution of antidumping reviews. The role of judicial review is limited to determining whether the record is adequate to support the administrative action. A court cannot set aside application of a proper administrative procedure because it believes that properly excluded evidence would yield a more accurate result if the evidence were considered.<sup>135</sup>

Thus, the CAFC in *PSC VSMPO* recognized that maintaining Commerce’s ability to set and enforce time limits supersedes any concern over ensuring increased accuracy in computed dumping margins. Commerce must weigh its duty to administer all its trade remedy proceedings with calculating accurate dumping margins.

Regarding CIMC’s assertion that it demonstrated cooperation when it responded to Commerce’s December 23, 2020, supplemental questionnaire by submitting the bracketing-not-final version of its response by the required filing deadline of 5:00pm on January 15, 2021, we disagree. Section 351.303(c)(2)(ii) of the Act states the following:

(c) Filing of business proprietary documents and public versions under the one-day lag rule; information in double brackets.

(1) *In general.* If a submission contains information for which the submitter claims business proprietary treatment, the submitter may elect to file the submission under the one-day lag rule described in paragraph (c)(2) of this section. A petition, an amendment to a petition, and any other submission filed prior to the initiation of an investigation shall not be filed under the one-day lag rule. The business proprietary document and public version of such pre-initiation submissions must be filed simultaneously on the same day.

(2) *Application of the one-day lag rule—*(i) *Filing the business proprietary document. A person must file a business proprietary document with the Department within the applicable time limit.*

(ii) Filing of final business proprietary document; bracketing corrections. By the close of business one business day after the date the business proprietary document is filed under paragraph (c)(2)(i) of this section, a person must file the complete final business proprietary document with the Department. The final business proprietary document must be identical in all respects to the business proprietary document filed on the previous day except for any bracketing corrections and the omission of the warning “Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing” in accordance with paragraph (d)(2)(v) of this section. A person must serve other persons with the complete final business proprietary document if there are bracketing corrections. If there are no

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<sup>134</sup> See *PSC VSMPO-Avisma Corp. v. United States*, 688 F.3d 751, 761 (Fed. Cir. 2012) (*PSC VSMPO*).

<sup>135</sup> *Id.*

bracketing corrections, a person need not serve a copy of the final business proprietary document.

**(iii) *Filing the public version.* Simultaneously with the filing of the final business proprietary document under paragraph (c)(2)(ii) of this section, a person also must file the public version of such document (see §351.304(c)) with the Department.**

Thus, as our regulations indicate, “A person must file a business proprietary document with {Commerce} within the applicable time limit.”<sup>136</sup> Moreover, as we indicate above, which CIMC acknowledges, CIMC did not file its bracketing-not-final version of its sections A through E supplemental questionnaire response by the established deadline as required by our regulations. Further, 19 CFR 351.303(c)(2)(ii) indicate that, “The final business proprietary document must be identical in all respects to the business proprietary document filed on the previous day except for any bracketing corrections and the omission of the warning “Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing” in accordance with paragraph (d)(2)(v) of this section.” CIMC argues that it was able to file the bracketing-not-final version of its response by the required filing deadline of 5:00pm on January 15, 2021. Thus, the only two things CIMC was required to do by 5:00pm on January 19, 2021, was to ensure that its bracketing was accurate, make any necessary bracketing corrections, and remove the warning “Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing” in accordance with paragraph (d)(2)(v) of this section.” Given that the January 15, 2021, sections A through E supplemental questionnaire submission was already bracketed, it shouldn’t have required an experienced counsel with numerous experienced support staff most of the business day on January 19, 2021, to make any necessary bracketing corrections.<sup>137</sup>

Regarding CIMC’s argument that its untimely filing did not impede Commerce’s investigation, especially because the immaterial delay in uploading the submissions to ACCESS did not result in any prejudice to Commerce or interested parties, we disagree. Commerce establishes deadlines so that it can conduct this and, simultaneously, numerous other trade remedy proceedings in an efficient manner within its statutory and regulatory deadlines. Therefore, it is critical that parties file documents by the established deadline, or timely request an extension of such a deadline so that Commerce can provide a considered response. Timely filings and timely extension requests contribute to Commerce’s efficient administration of the numerous cases before it and the antidumping and countervailing duty laws. Conversely, untimely filings and last-minute extension requests hinder the efficient conduct of our proceedings and require that Commerce devote additional time and resources to addressing such untimely filings and last-minute requests. Additionally, although the burden associated with a single untimely-filed questionnaire response may be perceived as minimal, that burden is not minimal when aggregated across all proceedings and respondents.

Further, due to CIMC’s failure to comply with our regulations and timely filing parts of its BPI supplemental questionnaire response and the public version of the response, Commerce had the

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<sup>136</sup> See section 351.303(c)(2) of the Act.

<sup>137</sup> As documented on the record, counsel for CIMC did not begin filing the supplemental questionnaire response until 4:15pm on January 19, 2021. See Request for Reconsideration Letter at 5.

added burden of conducting an internal review to determine whether ACCESS was functioning slow on January 19, 2021. This activity diverted valuable resources, significantly impeding the investigation process. Accordingly, the efficient conduct of Commerce's proceedings requires that parties adhere to the deadlines established by Commerce. For the foregoing reasons, we are not revisiting our decision to reject CIMC's untimely-filed sections A through E supplemental questionnaire response.

With regard to CIMC's argument that Commerce's rejection of CIMC's supplemental questionnaire was arbitrary given that it granted the petitioner's extension request for a similar issue in the same investigation and has provided inconsistent reasons for treating requests from the petitioner and CIMC differently, we disagree. We recognize that there are a limited number of prior instances in which Commerce has accepted untimely extension requests. Commerce evaluates such requests on a case-by-case basis, based on the circumstances unique to each case. As we indicated in the *Preliminary Determination*, and reiterate here, one key difference between the petitioner's late submission and CIMC's late submission is that the petitioner's late submission concerned surrogate values for which there was a later deadline under which the petitioner could have submitted the surrogate value information. Specifically, Commerce sets a deadline for submitting surrogate values for use in the *Preliminary Determination*, but under 19 CFR 351.301(c)(3), interested parties may submit publicly available information to value factors of production no later than 30 days before the scheduled date of the *Preliminary Determination*.<sup>138</sup> Thus, the petitioner's December 31, 2020 surrogate value submission was late under the deadline set for consideration in the *Preliminary Determination*, but it was *timely* under 19 CFR 351.301(c)(3) (emphasis added).

In addition, we point out that on November 6, 2020, Commerce granted CIMC an extension of time to submit rebuttal comments to the petitioner's section A comments, although its extension request was filed untimely.<sup>139</sup> Specifically, in that circumstance, CIMC indicated via an email to the case analyst, and also left a voice message with the case analyst, that it was having difficulties in filing rebuttal comments in ACCESS due to an issue with the Adobe PDF feature when it attempted to split the large pdf into smaller file size to conform with Commerce's data file size limitations.<sup>140</sup> We recognized the issue that CIMC was having with the Adobe PDF feature, and although we did not receive CIMC's extension request until after the 5:00pm deadline on November 5, 2020, we found good cause existed to extend the deadline for filing rebuttal comments.<sup>141</sup> Thus, we granted CIMC until 10:00am the next business day to submit its rebuttal comments.<sup>142</sup> The difficulties surrounding the petitioner's late filing of surrogate

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<sup>138</sup> See Commerce's Letter, "Less-Than-Fair-Value Investigation of Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated October 21, 2020. The deadline for consideration in the preliminary determination was later extended; see also Commerce's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Request for Extension of Deadline to Submit Rebuttal Comments Regarding the Primary Surrogate Country and to Provide Surrogate Value Information for Valuing the Factors of Production," dated December 23, 2020.

<sup>139</sup> See Memorandum, "Extension Request to File Rebuttal Comments," dated November 6, 2020 (Memo to the File – CIMC).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

value information was very similar to the difficulties CIMC was having on November 5, 2020.<sup>143</sup> For example, the petitioner explained that a malfunction prevented Adobe Acrobat from creating ACCESS-ready PDF subparts, and that this malfunction could not have been prevented, and therefore, it was unable to create PDFs of a size that ACCESS would accept.<sup>144</sup> Thus, the reasons that led to CIMC's inability to file its rebuttal comments in a timely manner were essentially the same reasons that led the petitioner to file its surrogate value information in a untimely manner as well.<sup>145</sup> Thus, contrary to CIMC's claim, Commerce has not treated CIMC and the petitioner differently when the reasons cited for the untimely submission or untimely extensions requests are essentially the same.<sup>146</sup> We point out, however, the reasons that led to CIMC's untimely filing of its sections A through E supplemental questionnaire were not the same as the reasons outlined in Memo to the File – the petitioner nor the reasons outlined in Memo to the File – CIMC.<sup>147</sup> Further, as we indicate above, CIMC failed to demonstrate that the circumstances could not have been prevented if reasonable measures had been taken, and therefore, we continue to find that it failed to act to the best of its ability pursuant to section 776(b) of the Act.

With regard to CIMC's argument that if Commerce continues to reject CIMC's supplemental questionnaire response, Commerce has complete and fully documented databases on the record that can be used to calculate a dumping margin for CIMC for purposes of the final determination; we disagree. As we indicate above, on December 23, 2020, we issued CIMC a sections A through E supplemental questionnaire which included 47 questions addressing deficiencies in CIMC's initial reporting of Commerce's standard AD questionnaire.<sup>148</sup> Specifically, we requested confirmation that the quantity and value information for three of CIMC's affiliates was reported accurately, identification of CIMC's ultimate shareholders, questions regarding separate rates, information confirming the date of sale reported, complete documentation of certain U.S. sales transactions, explanation of reported negative credit expenses in the sales database, documentation for supporting freight revenue calculations, documentation for the calculations of inventory carrying costs, documentation supporting CIMC's FOP database calculations, an explanation of conflicting reporting regarding further manufacturing, inventory movement schedules for further manufactured chassis, a request to provide one consolidated FOP cost databases instead of two, a complete cost reconciliation as requested in Appendix VI of Commerce's AD questionnaire, a request for fully translated name, full description, and field database name for material inputs used to produce the merchandise under consideration, documentation supporting CIMC's scrap calculation, documentation of how CIMC derived the totals reported for natural gas, electricity, and tolling service, documentation of how CIMC derived the total reported for each type of labor reported, and the DCVC 2019 Audited Financial Statement.<sup>149</sup> As we indicate above, many of the questions outlined in our supplemental questionnaire requested information that was not included in CIMC's initial AD questionnaire

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<sup>143</sup> *Id.*; see also Memorandum, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Extension of Deadline for Surrogate Value Information Due to Extraordinary Circumstance," dated January 5, 2021 (Memo to the File – Petitioner).

<sup>144</sup> See Memo to the File –Petitioner.

<sup>145</sup> *Id.*; see also Memo to the File – CIMC.

<sup>146</sup> *Id.*

<sup>147</sup> See Request for Reconsideration Letter; see also Memo to the File – Petitioner; and Memo to the File – CIMC.

<sup>148</sup> See Supplemental Questionnaire.

<sup>149</sup> *Id.*

response. As such, contrary to CIMC's assertion, we find that we don't have on the record a complete and reliable record from which to base an accurate dumping margin.

## **Comment 2: Whether CIMC is Eligible for a Separate Rate**

### *CIMC's Comments:*

- **Existing evidence demonstrates CIMC is eligible for a separate rate and there is sufficient record evidence to calculate a dumping margin**
  - Even if Commerce continues to reject CIMC's supplemental questionnaire response, Commerce should calculate an individual dumping margin for CIMC for the final determination because record evidence demonstrates that it is eligible for a separate rate and there is sufficient evidence on the record for Commerce to calculate a dumping margin.<sup>150</sup>
  - In the *Preliminary Determination*, Commerce noted that CIMC responded to the separate rate questionnaire but preliminarily found that there is information on the record that calls into question CIMC's eligibility for a separate rate.<sup>151</sup> However, as extensively documented in CIMC's previous submissions, there is an absence of *de jure* and *de facto* Government control over CIMC's export activities. Accordingly, Commerce should approve CIMC's application for a separate rate, and calculate a company-specific dumping margin for the company.<sup>152</sup>
- **CIMC Group is not majority-owned by the Government**
  - Contrary to Commerce's *Preliminary Determination*, Commerce has information on the record to determine that CIMC is eligible for a separate rate.<sup>153</sup> Commerce's finding in the *Preliminary Determination*, that "there is information on the record that calls into question whether CIMC is eligible for a separate rate," is based on allegations made by the petitioner, which CIMC has already addressed in prior submissions to Commerce.<sup>154</sup>
  - As explained in CIMC's pre-preliminary comments and section A rebuttal comments, the petitioner's claims are based on inaccurate characterizations of the evidence and faulty calculations of share ownership.<sup>155</sup>
  - Therefore, CIMC Vehicles (which is directly and indirectly majority-owned by CIMC Group), and Dongguan CIMC Vehicle Co., Ltd. (DCVC) (which is a wholly owned subsidiary of CIMC Vehicles) are not majority-owned by the Government of China (GOC).<sup>156</sup>
  - In addition, the petitioner's reliance on a 2015 determination from *53-Foot Containers from China* to argue that CIMC Group is a state-owned entity is based on an incorrect interpretation of the term "substantial shareholder."<sup>157</sup>

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<sup>150</sup> See CIMC's Case Brief at 17.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at 17 and 18.

<sup>155</sup> *Id.* at 18.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*; see also *53-Foot Domestic Dry Containers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 80 FR 21209 (April 17, 2015), and accompanying IDM (*53-Foot Containers from China*).

- The petitioner’s argument is flawed because (1) Commerce’s interpretation of the term “substantial shareholder” was incorrect, and (2) the shareholding percentages for CIMC Group during the POI are different than the shareholding percentages at issue in *53-Foot Containers from China*.<sup>158</sup> In particular, treating an ownership stake held by Hony Group Management Limited as ownership by an State Owned Entity (SOE) is based on a misreading of the term “substantial shareholder.”<sup>159</sup>
- For the reasons detailed in CIMC’s section A rebuttal comments, China COSCO Shipping and China Merchants are not “substantial shareholders” of Hony Group Management Limited.<sup>160</sup>
- Additionally, the State-Owned Assets Supervision and Administration Commission of the State Council’s (SASAC) indirect ownership of CIMC Group through LONG HONOUR INVESTMENT LIMITED; COSCO Container Industry Limited; COSCO Container Industries Limited; and China Merchants Group Limited does not exceed 50 percent.<sup>161</sup>
- In fact, as detailed in CIMC’s section A rebuttal comments, SASAC’s indirect ownership of the CIMC Group through these three companies is only 33.46 percent.<sup>162</sup>
- Moreover, SASAC’s indirect ownership of CIMC Vehicles through CIMC Group constitutes only 18.01 percent because (1) SASAC indirect ownership share in CIMC Group is only 33.46 percent and (2) CIMC Group’s ownership share in CIMC Vehicles is only 53.82 percent. Thus, with respect to DCVC, the SASAC’s indirect ownership is also only 18.01 percent.<sup>163</sup>
- As detailed in CIMC’s previous submissions, DCVC and CIMC Vehicles have independent authority to set export prices and sign contracts; DCVC and CIMC Vehicles have autonomy in the selection of management; and DCVC and CIMC Vehicles retain proceeds from sales and make independent decisions regarding disposition of profits or financing of losses.<sup>164</sup>
- **Record Evidence Demonstrates there is no state control over the CIMC Group and CIMC Vehicles**
  - For the final determination, Commerce should find that even if CIMC Group is minority-owned by the GOC, there is evidence demonstrating that DCVC qualifies for a separate rate because the petitioner’s attempts to show other modes of government control over CIMC Vehicles or DCVC are without merit.<sup>165</sup>
  - As explained in CIMC’s section A rebuttal comments, and pre-preliminary comments, the petitioner’s claim that a CIMC shareholder should be treated as a government-controlled entity, and certain directors appear to be CCP members, are unfounded and should be rejected. CIMC responded in detail to the petitioner’s arguments regarding alleged government control of CIMC Group, CIMC Vehicles, and DCVC.<sup>166</sup>

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<sup>158</sup> See CIMC’s Case Brief at 18.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 19.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 19 and 20.

<sup>165</sup> *Id.* at 20.

<sup>166</sup> *Id.*

- CIMC explained and provided documentation that as part of its due diligence for its spin-off from the CIMC Group and listing on the Hong Kong Stock Exchange, CIMC demonstrated in its Prospectus that it operates independently from CIMC Group.<sup>167</sup>
- Accordingly, in the final determination, Commerce should find that CIMC Vehicles/DCVC are eligible for a separate rate.

*Petitioner's Arguments:*

- **The Record shows that CIMC entities are SOEs that are not entitled to a separate rate**
  - The petitioner supports Commerce's decision to apply total AFA based on the particular facts surrounding CIMC's failure to timely submit its supplemental questionnaire. However, the petitioner also contends that the available information plainly demonstrates that CIMC and its subsidiaries are SOEs which are not entitled to a separate rate.<sup>168</sup>
  - There is substantial record evidence that respondents are majority-owned and controlled by companies that are ultimately owned by the SASAC. As such, even without relying on total AFA, Commerce has sufficient information to determine that the CIMC respondents are not entitled to separate rates and should be included in the China-wide rate.<sup>169</sup>
  - Record evidence demonstrates that the majority of CIMC's shares are indirectly owned by the GOC through SASAC, and Commerce is, therefore, precluded from a finding of *de facto* autonomy. Even if Commerce does not find that CIMC is majority-owned by the GOC, ample record information demonstrates that CIMC Vehicles and CIMC Group (*i.e.*, CIMC Vehicles' parent company, which owns the majority of CIMC Vehicles' shares) are part of the GOC's strategic development of its shipping logistics industry and are part of a chain of ownership that gives GOC's strategic development of its shipping logistics industry and are part of a chain of ownership that gives GOC-owned shareholders all meaningful control.<sup>170</sup>
- **CIMC Vehicles and the CIMC Group are ultimately majority-owned by the GOC**
  - Because CIMC Group is an SOE and has a majority-ownership share of CIMC Vehicles, the CIMC respondents are not entitled to a separate rate.<sup>171</sup> CIMC Vehicles reports that CIMC Group has a 37.67 percent ownership stake in CIMC Vehicles.
  - Further, CIMC Vehicles reports that China International Marine Containers (Hong Kong) Limited holds 16.15 percent shares and that this company is wholly owned by CIMC Group.<sup>172</sup> Consequently, CIMC Group owns a combined 53.82 percent of CIMC Vehicles and is the controlling shareholder.<sup>173</sup>
  - Because CIMC Vehicles is majority owned by CIMC Group, which Commerce previously found was an SOE and did not qualify for a separate rate in *53-Foot Containers from China*, CIMC Vehicles also does not qualify for a separate rate.<sup>174</sup>

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<sup>167</sup> *Id.* at 20 and 21.

<sup>168</sup> *See* Petitioner's Case Brief at 2.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 5.

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*



Likewise, in the accompanying CVD investigation, Commerce found in its final determination that the CIMC Group and CIMC Vehicles are SOEs.<sup>175</sup>

- The CIMC Group's 2019 annual report at page 188 lists the top ten shareholders of the CIMC Group and the nature of each shareholder, and the CIMC's 2020 interim report at pages 164-167 lists the same, which corresponds to the end of the POI.<sup>176</sup>
- Both China Securities Finance Corporation Limited and Central Huijin Asset Management Ltd. are listed as "state-owned legal person," indicating they are owned by the GOC.<sup>177</sup>
- COSCO, China Merchants Group, China Securities Finance Corporation Limited, Central Huijin Asset Management Ltd. are all state-owned entities and hold a combined 50.88 percent of CIMC Group according to CIMC's financial statements.<sup>178</sup> Because CIMC Group is majority owned by the GOC, it does not qualify for a separate rate. Even without including the Hony Group Limited's shares, which should be included, CIMC Group is clearly majority owned by the GOC.<sup>179</sup>
- However, record evidence demonstrates that Hony Group Management's shares are also within the GOC's control. CIMC has not presented any new evidence that contradicts Commerce's determination in *53-Foot Containers from China* that Hony Capital is controlled by SASAC. Nor has it explained why the definitions regarding substantial shareholder explain how these shares are not controlled by the two known substantial shareholders (COSCO and China Merchants Group (CMG)).<sup>180</sup>
- In *53-Foot Domestic Dry Containers from China*, Commerce partially relied on evidence from CIMC Group's Articles of Association to establish SASAC's control over that company. Specifically, Commerce found that, under Article 62, SASAC qualified as the controlling shareholder through its control of CMG and COSCO.<sup>181</sup>
- Finally, finding that CIMC Group is an SOE not entitled to a separate rate is consistent with Commerce's finding in the concurrent CVD investigation. In *Final CVD Determination*, Commerce used record information that Hony Management is the successor-in-interest to Hony Capital and record information that CMG and COSCO are SOEs to find that CIMC Group and any cross-owned affiliates are SOEs as well.<sup>182</sup>
- While the CVD investigation and the AD investigation involve the same factual issue (*i.e.*, whether CIMC Group is an SOE), the bar for such a finding is lower in this investigation because the burden is on the respondent to prove an absence of *de facto* control when applying for a separate rate.<sup>183</sup> Thus, it would be consistent for Commerce to find that CIMC Group has, at minimum, not met its burden of proving an absence of *de facto* control in this investigation, given that Commerce found that CIMC Group and all cross-owned affiliates are SOEs in the concurrent CVD investigation.<sup>184</sup>

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<sup>175</sup> *Id.* at 5 and 6; *see also Final CVD Determination*.

<sup>176</sup> *Id.* at 6.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

<sup>179</sup> *Id.* at 6 and 7.

<sup>180</sup> *Id.* at 7 and 8.

<sup>181</sup> *Id.* at 9.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 12 and 13; *see also Final CVD Determination*.

*CIMC's Rebuttal Arguments:*

- **Record evidence shows that DCVC is not a state-owned or state-controlled entity and is entitled to a separate rate**
- Commerce should reject the petitioner's arguments and find in the final determination that DCVC is not a state-owned or state-controlled entity and is entitled to a separate rate because (1) CIMC Vehicles and the CIMC Group are not state-owned; (2) CIMC Vehicles and DCVC demonstrated a lack of *de facto* government control; and (3) the petitioner's arguments to the contrary are purely speculative and do not demonstrate government control over CIMC Vehicles and DCVC.<sup>185</sup>
- DCVC previously certified that there are no government laws or regulations at either the national or sub-national levels of government that control DCVC's export activities, and the petitioner does not contend otherwise.<sup>186</sup>
- Record evidence demonstrates that (1) CIMC Vehicles is not majority-owned by the GOC, and (2) DCVC qualifies for a separate rate because it demonstrated both a lack of *de facto* governmental control and evidence of legal separation from CIMC Group.<sup>187</sup>
- The petitioner incorrectly alleges that Commerce should continue to find that, because CIMC Group is an SOE and has a majority-ownership share of CV or CIMC Vehicles, the CIMC respondents are SOEs and unentitled to a separate rate.<sup>188</sup>
- Specifically, the petitioner alleges that, because CIMC Vehicles is majority owned by CIMC Group, which Commerce determined in a separate investigation to be an SOE, CIMC Vehicles is also an SOE that does not qualify for a separate rate.<sup>189</sup>
- We point out as an initial matter that DCVC, as the manufacturer and exporter, is the separate rate applicant; CIMC Vehicles and CIMC Group are not the separate rate applicants because they are not the exporter.<sup>190</sup>
- Additionally, contrary to the petitioner's assertions, CIMC Vehicles has demonstrated that there is an absence of *de facto* government control over DCVC's export activities.<sup>191</sup>
- Accordingly, Commerce should approve DCVC's application for a separate rate, and calculate a company-specific dumping margin for the company.

*Petitioner's Rebuttal:*

- **Record evidence demonstrates that DCVC is a state-owned entity that is ineligible for a separate rate**
- Notwithstanding Commerce's reliance on total AFA, there is ample record evidence that DCVC is an SOE or, at minimum, ultimately controlled by the GOC, such that it is ineligible for a separate rate.<sup>192</sup>
- CIMC's argument for its independence from the GOC hinges on whether CIMC Group, CIMC Vehicle's parent company, is an SOE, or otherwise controlled by the GOC.

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<sup>185</sup> See CIMC's Rebuttal Brief at 2.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at 3 and 4.

<sup>192</sup> See Petitioner's Rebuttal Brief at 9.

Therefore, if CIMC Group is found to be majority-owned or controlled by SOEs, CIMC Vehicles is also an SOE not entitled to a separate rate.<sup>193</sup>

- That said, Commerce can also find that SOEs, COSCO and CMG, control Hony Group's shares. While CIMC failed to provide information on Hony Group's ownership necessary to demonstrate its GOC-ownership, Hony Capital's shares are controlled by CIMC Group's substantial shareholders – COSCO and CMG. CIMC claims that “treating an ownership stake held by Hony Group Management Limited as ownership by an SOE is based on a misreading of the term ‘substantial shareholder.’”<sup>194</sup>
- In essence, CIMC is asking Commerce to not only disregard its previous finding on an identical issue in *53-Foot Domestic Dry Containers from China* but also to ignore the plain language of CIMC Group's financial statements.<sup>195</sup>
- CIMC Group's annual and interim reports explain that “Hony Group Management Limited, through various subsidiaries (including Broad Ride Limited), had an interest in the H shares of the company, and 258,244,615 H Shares (L) were held in the capacity as interested of corporation controlled by the substantial shareholder ...”<sup>196</sup>
- This language plainly indicates that these Hony Group shares are ultimately controlled by COSCO and CMG, the substantial shareholders. This is precisely what Commerce found in *53-Foot Domestic Dry Containers from China*.<sup>197</sup>
- As such, Commerce should take CIMC Group's annual report at face value and include Hony Capital's shares controlled by the SOE substantial shareholders when determining the GOC's ultimate ownership of the CIMC Group.<sup>198</sup>
- Finally, CIMC claims that there is no additional evidence that CIMC Group controls CIMC Vehicles. Because CIMC Group is majority-owned by GOC-owned entities, Commerce should maintain its presumption that CIMC Vehicles is also a state-owned or controlled entity because the CIMC Group owns a majority of CIMC Vehicle's shares.<sup>199</sup> Additional evidence or indicia of state control is unnecessary, and clarifying information about CIMC Group's control of CIMC Vehicles is largely missing from the record. However, the information that is on the record demonstrates that CIMC Group does exercise control over CIMC Vehicles.<sup>200</sup>

**Commerce's Position:** In proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within the country are subject to government control and, therefore, should be assessed a single weighted-average dumping margin.<sup>201</sup> In the *Initiation Notice*, Commerce notified parties of the application process by which exporters may obtain separate rate status in this investigation.<sup>202</sup> The process requires exporters to submit a

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<sup>193</sup> *Id.* at 10.

<sup>194</sup> *Id.* at 11 and 12.

<sup>195</sup> *Id.* at 12.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.*

<sup>200</sup> *Id.* at 15.

<sup>201</sup> See *Certain Plastic Decorative Ribbon from the People's Republic of China; Final Affirmative Determination in the Less-Than-Fair Value Investigation*, 84, FR 1055 (February 1, 2019), and accompanying IDM.

<sup>202</sup> See *Initiation Notice*.

separate rate application (SRA)<sup>203</sup> and to demonstrate an absence of both *de jure* and *de facto* government control over their export activities.

Commerce's policy is to assign all exporters of merchandise under consideration that are in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.<sup>204</sup> Commerce analyzes whether each entity exporting the merchandise under consideration is sufficiently independent under a test established in *Sparklers* and further developed in *Silicon Carbide*.<sup>205</sup> According to this separate rate test, Commerce will assign a separate rate in NME proceedings if a respondent can demonstrate the absence of both *de jure* and *de facto* government control over its export activities. If, however, Commerce determines that a company is wholly foreign-owned, then a separate rate analysis is not necessary to determine whether that company is independent from government control and eligible for a separate rate.

Commerce continues to evaluate its practice with regard to the separate rates analysis in light of the *Diamond Sawblades from China* AD proceeding, and its determinations therein.<sup>206</sup> In particular, in litigation involving the *Diamond Sawblades from China* proceeding, the CIT found Commerce's existing separate rates analysis deficient in the circumstances of that case, in which a government-owned and controlled entity exercised control over the respondent exporter.<sup>207</sup> Following the CIT's reasoning, in recent proceedings, we have concluded that where a government entity holds a majority equity ownership, either directly or indirectly, in the respondent exporter, this interest in and of itself means that the government exercises or has the

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<sup>203</sup> See Policy Bulletin 05.1: Separate Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005), available at <http://enforcement.trade.gov/policy/bull05-1.pdf>.

<sup>204</sup> 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*).

<sup>205</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*).

<sup>206</sup> See *Final Results of Redetermination pursuant to Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012) (*Advanced Technology I*), and available at <http://enforcement.trade.gov/remands/12-147.pdf>, *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013), *aff'd Advanced Technology & Materials Co., Ltd., et al. v. United States*, Case No. 2014-1154 (Fed. Cir. 2014); 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.

<sup>207</sup> See, e.g., *Advanced Technology I*, 885 F. Supp. 2d at 1349 (CIT 2012) ("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).

potential to exercise control over the company's operations generally.<sup>208</sup> This may include control over, for example, the selection of board members and management, key factors in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with our normal separate rate practice, any ability to control, or possess an interest in controlling, the operations of the company including the selection of board members, management, and the profit distribution of the company by a government entity is subject to Commerce's rebuttable presumption that all companies within the NME country are subject to government control.

As we indicated in the *Preliminary Determination*, CIMC submitted information about its eligibility for a separate rate in its responses to section A of the AD questionnaire.<sup>209</sup> We indicated further that because we do not have all of the information on the record to determine whether CIMC is eligible for a separate rate, CIMC is not eligible for a separate rate.<sup>210</sup> Specifically, we based this decision on the fact that we found information on the record that calls into question whether CIMC is eligible for a separate rate.<sup>211</sup> The record indicates that CIMC Vehicles is directly and indirectly majority-owned by CIMC Group, and DCVC is a wholly-owned subsidiary of CIMC Vehicles.<sup>212</sup> Based on record evidence, CIMC Group owns a combined 53.82 percent of CIMC Vehicles.<sup>213</sup> On October 27, 2020, the petitioner submitted comments arguing that Commerce previously investigated CIMC Group in *53-Foot Containers from China* and determined that "CIMC Group is an SOE based on the GOC's 53.45{ % } aggregate share of ownership through entities ultimately owned by SASAC, namely COSCO and China Merchants (CIMC) Investment Ltd., inclusive of the stake held by Hony Capital, which is in turn owned primarily by these two entities ..."<sup>214</sup> Specifically, Commerce explained in *53-Foot Containers from China* that:

Based on the record of this investigation and consistent with our Preliminary Determination, we continue to find for this final determination that CIMC Group is an SOE based on the GOC's 53.45{ % } aggregate share of ownership through entities ultimately owned by SASAC, namely COSCO Container Industries Limited (COSCO) and China Merchants (CIMC) Investment Ltd., inclusive of the stake held by Hony Capital, which is in turned owned primarily by these two entities, as further discussed below.

We disagree with CIMC's argument that no record evidence exists to support the inclusion of Hony Capital's ownership in CIMC in our SOE analysis. First, the record

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<sup>208</sup> See *Carbon and Certain Alloy Steel Wire Rod from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Preliminary Affirmative Determination of Critical Circumstances, in Part*, 79 FR 53169 (September 8, 2014), and accompanying PDM at 5-9.

<sup>209</sup> See *Preliminary Determination* PDM at 14.

<sup>210</sup> *Id.*

<sup>211</sup> See Petitioner's Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: Comments on CIMC Vehicles' Section A Initial Questionnaire Response," dated October 27, 2020; (Petitioner's Section A Comments); see also CIMC Letter, "Certain Chassis and Subassemblies Thereof from the People's Republic of China: New Factual Information and Rebuttal to Petitioner's Comments to CV's Section A Questionnaire Response," dated November 5, 2020.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> See *53-Foot Containers from China* IDM at 40-41.

details Hony Capital's ownership in CIMC. Furthermore, page 100 of CIMC's 2013 Annual Report states that "Honey Capital Management Limited through various subsidiaries, had an interest in the H shares of the Company, all of which 137,255,434 H shares (long position) were held in its capacity as interest of corporation controlled by the substantial shareholder." ... Our interpretation of the footnote and CIMC's clarification of said footnote is that Hony Capital is controlled by the "Substantial Shareholders" of CIMC which, as noted in the CIMC Preliminary Calculations Memorandum, are COSCO and China Merchants (CIMC) Investment Ltd. are Chinese SOEs with ultimate ownership by SASAC. Thus, we continue to find for this final determination that Hony Capital is under control of both or either COSCO and China Merchants (CIMC) Investment Ltd., the two Chinese SOES with major and indirect shareholding in CIMC. Due to SASAC's ultimate ownership in both major shareholders, and due to the apparent control by these shareholders over Hony Capital, we find that Hony Capital is also ultimately controlled by SASAC, and its ownership shares should continue to be included in our state ownership analysis for this final determination.<sup>215</sup>

On November 5, 2020, CIMC submitted arguments rebutting the petitioner's October 27, 2020, claims regarding DCVC's eligibility for a separate rate.<sup>216</sup> Specifically, CIMC argued that CIMC Group is not majority-owned and under the control of SASAC and that the petitioner's claims otherwise are based on inaccurate characterizations of the evidence and faulty calculations of share ownership.<sup>217</sup> CIMC argued that in *53-Foot Containers from China*, Commerce made its finding based, in part, on interpreting the term "substantial shareholder" with respect to Hony Capital to mean that Hony Capital was controlled by COSCO and China Merchants (CIMC) Investment Ltd., which Commerce treated as SOEs.<sup>218</sup> CIMC argued further that the petitioner's argument is flawed because Commerce's interpretation of the term "substantial shareholder" was incorrect and the shareholding percentages for CIMC Group during the POI are different than the shareholding percentages at issue in *53-Foot Containers from China*.<sup>219</sup> CIMC indicated further that, "Commerce's findings in *53-Foot Containers from China*, were with respect to "Hony Capital Management Limited," which is different than the entity at issue in this case, Hony Group Management Limited." CIMC argued further that Commerce's interpretation of the term "substantial shareholders" in *53-Foot Containers from China*, was incorrect because, according to CIMC, the term "substantial shareholder" as it is used in CIMC Group's annual reports has different definitions based on the context in which the term is used."<sup>220</sup>

In CIMC's 2019 annual report, Chapter IX, at page 191, it states the following under note 3 of the annual report:<sup>221</sup>

Note 3: Hony Group Management Limited, through certain subsidiaries (including Broad Ride Limited) holds an interest in the H shares of the Company, and 258,244,615 H

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<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at 3.

<sup>218</sup> *Id.* at 3 and 4.

<sup>219</sup> *Id.* at 4.

<sup>220</sup> *Id.* at 5.

<sup>221</sup> See Petitioner's Section A Comments at Exhibit 3.

shares (L) are held in the capacity as interest of corporation controlled by the substantial shareholder and 171, 757, 600 H Shares (L) are held in the capacity as person having security interest in shares.

In addition, page 191 of CIMC's 2019 annual report includes information concerning substantial shareholders stating the following:<sup>222</sup>

The substantial shareholders of the company are China Merchants Group and China COSCO Shipping ... Except for the above-mentioned China Merchants Group and China COSCO Shipping, no other legal person or individual holds 10% or more of the total issued share capital of the company (excluding HKSCC Nominees Limited).

Moreover, on page 193 of CIMC's 2019 annual report, it provides a "Chart of Shareholding Structure between the Company and the Substantial Shareholders as at the End of the Reporting Period."<sup>223</sup> The chart indicates that SASAC owns 100 percent of both COSCO and China Merchants Group.<sup>224</sup> Consequently, Commerce issued a supplemental questionnaire to CIMC requesting clarification of the information placed on the record as it pertains to separate rates.<sup>225</sup> Specifically, we requested the following information and explanation:<sup>226</sup>

In your November 5, 2020, submission, in response to the petitioners' October 27, 2020, submission, you indicate that "Hony Capital Management Limited," is a different entity than "Hony Group Management Limited." Are these two entities affiliated as defined by section 771(33) of the Tariff Act of 1930, as amended (the Act), or are they the same entity but "Hony Capital Management Limited" subsequently changed its name to "Hony Group Management Limited? Please explain.

In your November 5, 2020, submission, in response to the petitioners October 27, 2020, submission, you indicate that, "{t}he term "substantial shareholder" as it is used in CIMC Group' annual report has different definitions based on the context in which the term is used." Please explain why the term "substantial shareholder" as it is used in CIMC Group's annual report has different definitions. Specifically, please explain why the term "substantial shareholder" as the term is used on page 165 differs from how the term is defined and used on page 166 of CIMC's Group's 2020 Interim Annual Report. In addition, please explain in more detail why the term "substantial shareholder" does not equate with Commerce's definition of substantial shareholder per its regulations.

As we explained in the *Preliminary Determination*, because CIMC failed to submit the entirety of its supplemental questionnaire in a timely manner, we do not have complete responses to critical separate rate inquiries on the record, and therefore, we continue to find that, consistent with section 782(e) of the Act, CIMC has failed to demonstrate its eligibility for separate rate

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<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> See Supplemental Questionnaire.

<sup>226</sup> *Id.* at 3.

status. Thus, for purposes of this final determination, we continue to find CIMC to be part of the China-wide entity.<sup>227</sup>

## IX. RECOMMENDATION

We recommend approving all the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

5/11/2021

X



Signed by: CHRISTIAN MARSH

\_\_\_\_\_  
Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance

<sup>227</sup> See *Preliminary Determination* PDM at 14 and 15.