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May 21, 2021

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

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

SUBJECT: Decision Memorandum for the Final Determination in the Less-Than-Fair-Value Investigation of Passenger Vehicle and Light Truck Tires from Taiwan

I. SUMMARY

The Department of Commerce (Commerce) determines that passenger vehicle and light truck (PVLT) tires from Taiwan 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 petitioner in this investigation is the United Steel, Paper and Forestry, Rubber Manufacturing, Energy, Allied Industrial and Service Workers International Union (collectively, the petitioner).[1] The mandatory respondents are Cheng Shin Rubber Ind. Co. Ltd. (Cheng Shin) and Nankang Rubber Tire Corp. Ltd. (Nankang).[2] The period of investigation (POI) is April 1, 2019 through March 31, 2020.

After analyzing the comments submitted by interested parties, we have made certain changes to the *Amended Preliminary Determination* with respect to mandatory respondents Cheng Shin and Nankang.[3] We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of issues in this investigation for which we received comments from interested parties:

[1] *See* Petitioner's Letter, "Petition for the Imposition of Antidumping and Countervailing Duties: Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and Vietnam," dated May 13, 2019 (Petition).
[2] *See* Memorandum, "Less-Than-Fair-Value Investigation of Passenger Vehicle and Light Truck Tires from Taiwan: Selection of Respondents for Individual Examination," dated July 28, 2020.
[3] *See Passenger Vehicle and Light Truck Tires from Taiwan: Amended Preliminary Determination of Sales at Less Than Fair Value*, 86 FR 8885 (February 10, 2021) (*Amended Preliminary Determination*), and accompanying Analysis Memorandum.

Comment 1: Whether Commerce Should Utilize Cheng Shin's Affiliate Sales for the Calculation of Normal Value
Comment 2: Whether Commerce Should Treat Home Market Sales as Being at the Same Level of Trade
Comment 3: Whether Commerce Should Grant Certain Post-Sale Price Adjustments and Inland Freight Expenses for Affiliated Sales
Expenses for Affiliate Sales
Comment 4: Whether Commerce Should Exclude Certain Alleged "Out-of-Scope" Tires from Cheng Shin's Margin Calculation
Comment 5: Whether Commerce Should Match Control Numbers in the U.S. and Home Markets Based on Similarities in Product Characteristics
Comment 6: Whether Commerce Should Take Tire Category into Account in Conducting its Matching Analysis
Comment 7: Whether Commerce should Exclude Home Market CONNUMs with Small Quantities from the Dumping Calculation
Comment 8: Whether Commerce Should Remove Maxxis-branded Home Market Sales for the Calculation of Normal Value
Comment 9: Whether Commerce Should Remove Sales Not Intended for Sale in the U.S. Market from the Dumping Calculation
Comment 10: Whether Commerce Should Use the A-to-A Methodology in the Final Determination and Refrain from Zeroing
Comment 11: Whether Commerce Should Allow Certain Non-Operating Income Offsets to the Reported General and Administrative (G&A) Expenses

II. BACKGROUND

On January 6, 2021, Commerce published the *Preliminary Determination* in this investigation.[4] On February 10, 2021, Commerce published the *Amended Preliminary Determination* in this investigation addressing certain ministerial error allegations pertaining to Cheng Shin.[5] Between February 4, 2021 and February 5, 2021, the petitioner, Cheng Shin, and Federal Corporation and Federal Tire North America, LLC (collectively, Federal) requested that Commerce hold a public hearing for the investigation.[6]

On February 24, 2021 and February 25, 2021, Commerce issued supplemental questionnaires to Cheng Shin and Nankang in lieu of performing an on-site verification required under section 782(i) of the Act, to which both parties timely responded.[7] On March 11, 2021, we invited

[4] *See Passenger Vehicle and Light Truck Tires from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 86 FR 508 (January 6, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[5] *See Amended Preliminary Determination*.
[6] *See* Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Hearing Request," dated February 5, 2021; *see also* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Request for Hearing," dated February 4, 2021; and Federal's Letter, "Antidumping Investigation of Passenger Vehicle and Light Truck Tires from Taiwan: Request for Hearing," dated February 5, 2021.
[7] *See* Commerce's Letters, "In Lieu of Verification Questionnaire for Cheng Shin Rubber Ind. Co. Ltd. in the Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from Taiwan," dated February 25, 2021; and "In Lieu of Verification Questionnaire for Nankang Rubber Tire Corp., Ltd. in the Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from Taiwan," dated February 24, 2021.

parties to comment on the *Preliminary Determination* and *Amended Preliminary Determination*.[8] On March 24, 2021 and March 25, 2021, we received case briefs from the petitioner and Cheng Shin.[9] On April 2, 2021 and April 5, 2021, we received rebuttal briefs from the petitioner and Cheng Shin.[10] Commerce held a public hearing via Microsoft Teams on May 13, 2021.[11]

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are passenger vehicle and light truck tires from Taiwan. For a complete description of the scope of this investigation, *see* this memorandum's accompanying *Federal Register* notice at Appendix I.

IV. NANKANG'S WITHDRAWAL AND REQUEST FOR DESTRUCTION OF BUSINESS PROPRIETARY INFORMATION

On January 13, 2021, Commerce received a letter submitted on behalf of Cheng Shin, Nankang, Kenda Rubber Industrial Co., Ltd., and Federal Corporation proposing an agreement to suspend the antidumping duty (AD) investigation on PVLT tires from Taiwan.[12] On March 19, 2021, Commerce submitted a letter to the record of the investigation informing the aforementioned parties that the circumstances surrounding the AD investigation of PVLT tires from Taiwan did not warrant departing from the normal approach of completing the investigation.[13]

a. *Nankang's Withdrawal*

On March 24, 2021, Nankang filed a letter to the record informing Commerce that it was ceasing participation in the investigation and removing its submissions.[14] The letter also requested that Commerce return or destroy all of Nankang's business proprietary information related to the investigation. In its letter, Nankang explained that its participation in the investigation was contingent on the possibility of establishing a suspension agreement between Commerce and certain Taiwanese producers of PVLT Tires.[15] Nankang also expressed its disappointment that

[8] *See* Memorandum, "Less-Than-Fair-Value Investigation of Passenger Vehicle and Light Truck Tires from Taiwan: Briefing Schedule," dated March 11, 2021.
[9] *See* Petitioner's Letter, "Case Brief Submitted on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW)," dated March 24, 2021 (Petitioner's Case Brief); *see also* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Case Brief," dated March 25, 2021 (Cheng Shin's Case Brief).
[10] *See* Petitioner's Letter, "Rebuttal Brief Submitted on Behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW)," dated April 2, 2021 (Petitioner's Rebuttal Brief); *see also* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Rebuttal Brief," dated April 5, 2021 (Cheng Shin's Rebuttal Brief).
[11] *See* Memorandum, "Antidumping Duty Investigation of Passenger Vehicles and Light Truck Tires from Taiwan – Hearing Schedule," dated May 5, 2021.
[12] *See* Cheng Shin, Nankang, Kenda, and Federal's Letter, "Antidumping Investigation of Passenger Vehicle and Light Truck Tires from Taiwan – Proposed Suspension Agreement," dated January 13, 2021.
[13] *See* Commerce's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan – Submission of Proposed Suspension Agreement," dated March 19, 2021.
[14] *See* Nankang's Letter, "Antidumping Investigation of Passenger Vehicle and Light Truck Tires from Taiwan – Nankang Notice of Withdrawal from Investigation," dated March 24, 2021 (Nankang Withdrawal Notice).
[15] *See* Nankang Withdrawal Notice at 1-2.

Commerce did not verify certain information related to the potential use of third-country sales as the basis for their comparison market.[16] According to Nankang, the absence of such considerations led it to withdraw from the investigation and accept a higher margin, based on adverse facts available (AFA), than it otherwise would receive if it had allowed its business proprietary information to remain on the record.[17]

In addition, Nankang argues that its decision to withdraw its submissions and cease participation in the investigation should not be interpreted as a concession that the methodology used in Commerce's *Preliminary Determination* pertaining to Nankang's sales was correct, and maintains that further questions remain regarding the comparability of Nankang's home-market sales, the possibility of basing normal value on third-country sales information provided by Nankang, and the consideration of an adjustment to level of trade (LOT) considerations between Nankang's home market sales and U.S. sales.[18] Nankang submitted a letter notifying Commerce of the withdrawal of its administrative protective order (APO) application and the certification of its destruction of materials under protective order on March 25, 2021.[19]

b. *Kenda's Comments on Nankang's Withdrawal*

On March 24, 2021, Commerce received a letter in lieu of a formal case brief from Kenda Rubber Ind. Co. Ltd., American Kenda Rubber Ind. Co., Ltd., and Americana Tire & Wheel, Division of Americana Development, Inc. (collectively, Kenda).[20] In the letter, Kenda argues that Nankang's request that Commerce withdraw its previous submissions and destroy all of Nankang's business proprietary information in its possession is consistent with Commerce's normal practice concerning information subject to APO.[21] Kenda explains that granting Nankang's request would encourage parties to participate in future proceedings with Commerce and ensure Commerce's ability to gather similar information in future cases, noting that APO submissions are voluntary and contingent on parties' willingness to provide such information.[22]

Kenda also claims that Commerce should apply AFA to Nankang following its request to withdraw from the proceeding, which significantly impedes the investigation.[23] According to Kenda, Nankang's unwillingness to participate in the investigation following its submission of responses in lieu of verification signifies a failure to cooperate to the best of its ability, and merits the application of AFA consistent with Commerce's prior practices in cases where a respondent has withdrawn from an investigation.[24] Kenda notes that applying AFA to Nankang will result in Nankang receiving a higher margin than it did in the *Preliminary Determination*,

[16] *Id*. at 2.
[17] *Id*. at 2-3.
[18] *Id*. at 2.
[19] *See* Nankang's Letter, "Antidumping Investigation of Passenger Vehicle and Light Truck Tires from Taiwan – Withdrawal of APO Application and Certification of Destruction of Materials under Protective Order," dated March 25, 2021.
[20] *See* Kenda's Letter, "Investigation of Passenger Vehicle and Light Truck Tires from Taiwan: Kenda's Letter in Lieu of Case Brief," dated March 24, 2021 (Kenda Comments on Nankang Withdrawal).
[21] *See* Kenda Comments on Nankang Withdrawal at 2.
[22] *Id*.
[23] *Id*. at 3.
[24] *Id*.

and would ensure that Nankang does not benefit from its failure to participate fully in the proceeding.[25]

Finally, Kenda claims that using the margin calculated for Nankang in the *Preliminary Determination* as a basis for the calculation of an all-others rate for the final determination would result in an unreasonable margin.[26] Kenda explains that the use of Nankang's preliminary rate would be unreasonable because it was based on "peculiar and extraordinary circumstances which are, moreover, unverified," and would be ultimately inconsistent with Commerce's statutory obligations to determine a "reasonable" all-others rate.[27] Kenda recommends relying on Cheng Shin's calculated rate for the final determination as a reasonable alternative method for calculating an all-others rate.[28]

c. *Federal's Comments on Nankang's Withdrawal*

On March 26, 2021, Commerce received comments on Nankang's investigation withdrawal from Federal.[29] Federal argues in support of Nankang's request for Commerce to remove Nankang's business proprietary information (BPI) from the record, stating that it is Commerce's general practice to allow parties to withdraw their BPI when the application of AFA ensures that a company does not benefit by its own refusal to participate in the proceeding.[30] According to Federal, permitting a party to withdraw its BPI in such a scenario would satisfy Commerce's goals of promoting public interest in preserving companies' trust in Commerce's proceedings and protecting the integrity of both the administrative process and remedial purpose of antidumping duty laws.[31] Federal claims that Commerce's removal of Nankang's BPI would demonstrate its commitment to preserving a company's control over its BPI, particularly in light of Commerce's reliance on voluntary respondent participation.[32] Federal also notes that removal of Nankang's BPI would also result in a less favorable final result for Nankang, as the highest dumping margin alleged in the petition (116.14 percent) is significantly higher than Nankang's preliminary rate (98.44 percent).[33]

Federal further argues that Commerce must exclude any total AFA dumping margin calculated for Nankang from the calculation of the all-others rate, citing section 735(c)(5)(A) of the Act. As stated by Federal, Nankang should receive a margin based on AFA, and Commerce must subsequently exclude Nankang's AFA-based margin from the calculation of the all-others margin.[34] Finally, Federal claims that in the event that Nankang does not receive a final dumping margin based on AFA, Commerce must continue to disregard Nankang's final dumping margin for the purpose of calculating an all-others rate because Nankang was not individually

[25] *Id*. at 3-4.
[26] *Id*. at 4.
[27] *Id*.
[28] *Id*.
[29] *See* Federal's Letter, "Less-Than-Fair-Value Investigation of Passenger Vehicles and Light Truck Tires from Taiwan: Response to Nankang's Notice of Withdrawal from Investigation," dated March 26, 2021.
[30] *Id*. at 1-2.
[31] *Id*. at 2.
[32] *Id*. at 3.
[33] *Id*.
[34] *Id*. at 4.

investigated. According to Federal, section 735(c)(5)(A) of the Act requires Commerce to calculate an all-others rate for exporters and producers for which a complete investigation was conducted, rather than exporters and producers it initially selected for investigation.[35] Because Commerce cannot request follow-up information from Nankang and cannot, therefore, complete its investigation, Federal claims that Commerce must disregard the margin applied to Nankang when calculating the all-others rate in accordance with the statute.[36]

d. *Petitioner's Comments on Nankang Withdrawal*

On March 26, 2021, Commerce received comments from the petitioner pertaining to Nankang's BPI and the selection of Nankang's final margin.[37] According to the petitioner, the retention of Nankang's BPI on the record is necessary to preserve Commerce's ability to select an appropriate AFA margin, and Commerce has the authority to retain such information when its removal could undermine the agency's ability to reach an accurate determination in the investigation, diminish the effectiveness of an antidumping remedy, or enable a non-cooperating party to benefit from its refusal to cooperate.[38] The petitioner also cites *Welded Stainless Pressure Pipe from Malaysia* and *Live Cattle from Canada* as examples of cases where Commerce denied a respondent's request to withdraw BPI from the record where it was necessary to preserve the remedial purpose of the law or achieve other statutory goals.[39]

The petitioner claims that while Nankang has already acknowledged that an AFA rate assigned from the petition would be higher than the margin it would have received if its information had remained on the record, the removal of Nankang's BPI would prevent the selection of an appropriate AFA rate.[40] The petitioner argues that Commerce should not have to rely on the petition margin as the basis for AFA if a higher rate is not calculated for Cheng Shin, since the highest petition margin "essentially would do nothing more than preserve a rate that is very similar to the weighted average margin already determined in the preliminary determination for Nankang."[41] The petitioner argues that by leaving Nankang's BPI on the record, Commerce could, instead, use certain transaction-specific margins as the basis for AFA.[42]

Finally, the petitioner argues that Commerce is entitled to account for Nankang's decision to cease cooperation with the agency only after the investigative process was nearly complete, including after the issuance of a verification questionnaire.[43] By allowing Nankang to withdraw its BPI at such a late stage, the petitioner argues that Commerce's analysis would be unduly restricted due to Nankang's manipulation of the investigative process. Without Nankang's BPI information, selection of the highest petition margin may be stymied if Commerce lacks certain

[35] *Id*. at 4-5.
[36] *Id*. at 5.
[37] *See* Petitioner's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Comments Regarding the Retention of Nankang BPI Data and the Selection of AFA," dated March 26, 2021.
[38] *Id*. at 2.
[39] *Id*. (citing *Live Cattle from Canada: Final Determination of Sales at Less Than Fair Value*, 64 FR 56739 (October 21, 1991) (*Live Cattle from Canada*) at 56749).
[40] *Id*. at 3.
[41] *Id*. at 4.
[42] *Id*.
[43] *Id*. at 5.

corroborating evidence. Ultimately, the petitioner requests that Commerce select the highest transaction-specific average-to-average or average-to-transaction margin already calculated for Nankang as the basis for AFA.[44]

e. *Federal and Kenda's Rebuttal to Petitioner's Comments*

On April 1, 2021, Commerce received rebuttal comments from Federal, Kenda, and Hwa Fong Rubber Ind. Co., Ltd. (Hwa Fong) addressing the petitioner's May 26, 2021, comments on Nankang's withdrawal from the investigation.[45] Federal, Kenda, and Hwa Fong argue that the petitioner's arguments are contrary to law because they would require Commerce to ignore its statutory obligations under section 735(c)(5)(A) and use a rate based on AFA as the basis for calculating an all-others rate.[46] According to Federal, Kenda, and Hwa Fong, the petitioner fails to explain why Commerce should depart from its statutory obligation and retain Nankang's BPI on the record, as well as why Commerce would use a transaction-specific AFA rate as the basis for the all-others rate.[47] Instead, Commerce should reject the petitioner's arguments and use only Cheng Shin's calculated rate as the basis for the all-others rate.

Federal, Kenda, and Hwa Fong also claim that it is Commerce's established practice to grant a party's request to withdraw its BPI when the highest alleged petition margin is higher than the rate calculated using the party's information on the record.[48] Federal, Kenda, and Hwa Fong argue that if Commerce were to retain a party's BPI in order to apply an alternate AFA-based margin when a petition margin exists that is higher than the rate calculated using a party's record information, it would contradict Commerce's goals of preserving companies' trust in its proceedings and protecting the integrity of the AD administrative process.[49]

Finally, Federal, Kenda, and Hwa Fong claim that the petitioner's arguments in favor of retaining Nankang's BPI to avoid excluding its rate when calculating an all-others rate are baseless. According to Federal, Kenda, and Hwa Fong, the investigation of *Live Cattle from Canada* cited by the petitioner to support its claims contains facts that distinguish it from the instant investigation, and Commerce has previously identified the case as an outlier and "sole exception" to its practice of removing proprietary data from the record upon the withdrawal of a party's consent.[50] Specifically, they state that in *Live Cattle from Canada*, Commerce retained the withdrawing party's BPI because the rate calculated for the party was higher than the alleged petition rate, which is not applicable in this case. In addition, they note that the industry at issue in *Live Cattle from Canada* was highly fragmented such that Commerce selected six mandatory respondents to the investigation, and ultimately acknowledged that the companies subject to the all-others rate would represent substantially all exports of live cattle to the United States.[51] In this scenario, Commerce observed that the elimination of a non-cooperative company from the

[44] *Id*. at 5-6.
[45] *See* Federal, Kenda, and Hwa Fong's Letter, "Less-Than-Fair-Value Investigation of Passenger Vehicle and Light Truck Tires from Taiwan: Reply to Petitioner's Comments Regarding Nankang's Withdrawal," dated April 1, 2021.
[46] *Id*. at 2-3.
[47] *Id*.
[48] *Id*. at 4.
[49] *Id*. at 5.
[50] *Id*. at 6-7.
[51] *Id*.

all-others rate would be of marginal significance in this investigation, a circumstance that Federal, Kenda, and Hwa Fong claim is not applicable in the instant investigation.[52]

f. *Petitioner's Response to Kenda's Comments*

On April 2, 2021, the petitioner submitted a rebuttal brief containing a response to Kenda's comments on Nankang's request to withdraw from the investigation.[53] The petitioner reiterated its opposition to the removal of Nankang's BPI from the record and emphasized Commerce's discretion to deny such requests in order to preserve the remedial purpose of the law or to achieve statutory goals.[54] The petitioner argues that concerns such as the selection or corroboration of a sufficiently adverse margin, the calculation of an effective all-others rate, and the prevention of the manipulation of the investigative process are all relevant in the case of Nankang, who withdrew at an extremely late stage in the investigation.[55]

According to the petitioner, Nankang has already acknowledged that by withdrawing its submissions, it will be assigned a higher dumping margin than it would otherwise receive had it continued to participate. However, the petitioner claims that the removal of Nankang's BPI will prevent the selection of an "appropriate" AFA margin, arguing that Nankang would have continued to cooperate with Commerce if the respondent's "actual" margin were less than the Petition margin.[56] The petitioner proposes that reliance on the preliminary margin rate or the Petition rate would be inconsistent with the purpose of the application of AFA because it would leave the respondent in a position that is equal to, or better, than if it had continued to cooperate, noting that the Petition rate is "very similar" to the rate calculated for the *Preliminary Determination*.[57]

Finally, the petitioner argues that Commerce should take into account the timing of Nankang's withdrawal from the investigation, which occurred only after the proposed suspension agreement was rejected and its in-lieu-of-verification (ILOV) response had been submitted.[58] According to the petitioner, allowing Nankang to withdraw its BPI at such a late stage would restrict Commerce's analysis and invite manipulation of the investigative process and the calculation of the all-others rate, which should reflect the margin of both mandatory respondents.[59] Precedent for the retention of BPI data for the calculation of an effective all-others rate exists in *Live Cattle from Canada*, in which Commerce recognized that competing considerations must be accounted for when determining whether to deny a respondent's BPI withdrawal request.[60]

Commerce's Position: Nankang has heretofore complied with all requests from Commerce for information, including multiple rounds of pre-preliminary questionnaires and the ILOV questionnaire issued after the preliminary determination. Commerce asked for no additional

[52] *Id*. at 7.
[53] *See* Petitioner's Case Brief at 15-20.
[54] *Id*. at 15.
[55] *Id*. at 15-16.
[56] *Id*. at 17-18.
[57] *Id*.
[58] *Id*. at 18.
[59] *Id*.
[60] *Id*. at 18-19.

information from Nankang following the issuance of the ILOV questionnaire and has no outstanding requests for information as of the publication of these final results. At the time Nankang ceased participation in the investigation on March 24, 2021, it appeared to have cooperated to the best of its ability and no significant concerns have been raised pertaining to the integrity of Nankang's data. In the present case, the information at issue was voluntarily submitted by Nankang and the company certified that the information was complete and accurate. There is no evidence on the record to suggest that the data submitted by Nankang, when compared to the pricing and cost data submitted by other respondents, as well as to general industry trends during the period, are aberrational or suspect on their face. Having reviewed the contents of the record prior to Nankang's withdrawal, Commerce finds there is nothing on the record to indicate that the information submitted by Nankang is not reliable, and that it has all the information necessary to calculate a final antidumping margin for Nankang for the purposes of the final determination.

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (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. Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

Because Commerce received all information from Nankang necessary to draw methodological conclusions for the final determination, and because the information was not withheld from Commerce, the information was provided in the form and manner requested, the proceeding was not significantly impeded, and the information was verified, the facts do not warrant the application of facts available under section 776(a). Consequently, because there is no missing information from the record, there is no basis to resort to facts available under section 776(a), and also no basis to resort to section 776(b) of the Act. Thus, Commerce will calculate a rate for Nankang without resorting to facts available, and thus Nankang's rate will be part of the all-others rate calculation under section 735(c)(5)(A) of the Act.

In the process of considering Nankang's request, Commerce must ensure that the removal of the BPI information would not affect the integrity of the proceeding. Commerce previously established in *Live Cattle from Canada* that a respondent's request to withdraw information from the record of an investigation may be denied where it is necessary to preserve the fundamental integrity of the process and remedial purpose of the law. As was previously the case in *Live Cattle from Canada*, the facts surrounding Nankang's decision to withdraw from participating in this proceeding are unusual and have significant ramifications for Commerce's administration of antidumping laws. Commerce does not have subpoena power, and the submission of information is voluntary. To administer the antidumping law, Commerce depends heavily upon the willingness of the parties to provide extensive BPI. As a result, there is a public interest in preserving the trust of companies subject to its proceedings that such information will have

limited use and will remain largely within the control of the companies submitting such information. However, once a party voluntarily submits BPI in an antidumping proceeding, the submitting party relinquishes some control over that information to Commerce. For example, after Commerce issues a final determination, a submitting party may not withdraw its proprietary information. Once the record of a proceeding is closed, no information may be added to, or withdrawn from, the administrative case record. Equally compelling is the public's interest in the agency enforcing the antidumping law and preserving the integrity of its proceedings. While there is no statutory provision expressly dealing with the withdrawal of BPI once it has been submitted, the courts have recognized "the inherent power of an administrative agency to protect the integrity of its own proceedings."[61] Thus, the agency has the discretion to deny a respondent's request to withdraw information where it is necessary to preserve the fundamental integrity of the process and the remedial purpose of the law.

Here, if Commerce were to base Nankang's final margin on facts otherwise available rather than the proprietary information in its questionnaire responses, Nankang's margin would also be excluded from the calculation of the all-others rate. For a discussion of the specific disparities of Nankang and Cheng Shin's total exports to the United States compared to all other producers/exporters see Nankang's Final Determination Calculation Memorandum.[62] If Cheng Shin remains the only mandatory respondent with a calculated rate for the final determination, this rate will also serve as the sole basis for the all-others rate, which would apply to a substantial portion of exports and, therefore, act as a critical component in the effectiveness of the antidumping duty remedy, should the investigation lead to an antidumping duty order.[63] Because all other producers/exporters represent a significant proportion of the PLVT tire imports from Taiwan, an artificially low all-others rate resulting from a removal of Nankang's margin would substantially deprive the U.S. industry of the full remedy intended under the law.[64]

As in *Live Cattle from Canada*, Commerce must weigh competing interests that are important to the administration of antidumping law, balancing any potential negative impact that refusing to allow a respondent to withdraw information may have on its ability to obtain BPI in future proceedings against any negative impact on the integrity of the proceeding if withdrawal is permitted, and determine where the public interest lies. Accordingly, considering the facts and circumstances of this investigation, we find it in the public interest to retain Nankang's BPI in this investigation. By not permitting a withdrawal of BPI in this investigation, Commerce will preserve the remedial purpose of the law and the fundamental integrity and effectiveness of its investigation. Allowing Nankang to withdraw its BPI would have a substantial impact on the all-others rate and, in turn, would deprive the U.S. industry of the full relief intended under the law, as intended by Congress.

Given that Commerce has determined that Nankang has complied with all of Commerce's requests for information and that it has all the information on the record provided by Nankang to

[61] *See Alberta Gas Chemicals, Ltd. v. Celanese Corp.*, 650 F.2d 9, 12.
[62] *See* Memorandum, "Nankang Rubber Tire Corp. Ltd. Final Determination Analysis," dated concurrently with this memorandum (Nankang's Final Analysis Memorandum).
[63] For the specific percentage of exports of subject merchandise to the U.S. by all other producers/exporters, *see* Nankang's Final Analysis Memorandum.
[64] For a discussion of Nankang's volume of exports to the United States and how that affects the all-others rate calculation, *see* Nankang's Final Analysis Memorandum.

calculate a final dumping margin, and that withdrawal of Nankang's data would have a substantial impact on the all-others rate, Commerce has determined that retention of those data is necessary to preserve the integrity of the process and the remedial purpose of the law. Therefore, Commerce has based Nankang's margin on its verified questionnaire responses and included that margin in the calculation of the all-others rate. Because Nankang's information was verified and not otherwise found to be unreliable, Commerce finds that Nankang's request for withdrawal of BPI from the proceeding does not preclude the calculation of the final determination to reflect the entirety of the information submitted to the record by Nankang. Moreover, because Commerce is declining to select a rate based on AFA for Nankang's final dumping margin, the arguments provided by interested parties regarding the basis on which an AFA rate should be selected (*i.e.*, the highest rate listed in the petition or the highest transaction-specific margin calculated for Nankang) are also rendered moot.

V. CHANGES FROM THE PRELIMINARY DETERMINATION[65]

- We corrected a programming error in Nankang's calculations for the *Preliminary Determination* noted by the petitioner.[66]
- We accepted two proposed minor corrections for Nankang pertaining to a corrected per-unit bank charge and a per-unit domestic inland freight to port charge for two requested U.S. sales traces.[67]
- We inserted certain programming language into the ME Macros that corrects the method by which zero-value home market variables are treated during the weight-averaging process for both respondents.[68]
- We accepted an updated sales database from Cheng Shin to include product matching control numbers (CONNUMs) with "H" and "U" identifiers.
- We removed the brokerage and handling fee in our margin calculation pertaining to a certain customer in the U.S. market, as such fee was handled by the customer itself.
- We changed the date of sale for certain sales where Cheng Shin reported clerical errors.

VI. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Utilize Cheng Shin's Affiliate Sales for the Calculation of Normal Value

Petitioner's Case Brief[69]:

- Commerce should not use the sales between Cheng Shin and its affiliate reseller Maxxis Trading Company Limited (Maxxis TW) as a basis for normal value.
- The transactions between Cheng Shin and Maxxis TW are not real "sales" because there was no title/ownership transfer between the two parties, nor was consideration exchanged.

[65] Changes for Cheng Shin are from the *Amended Preliminary Determination*.
[66] *See* Nankang's Final Analysis Memorandum at 3.
[67] *Id*. at 4-5.
[68] *Id*. at 5-6; *see also* Memorandum, "Cheng Shin Rubber Ind. Co. Ltd. Final Determination Analysis," dated concurrently with this memorandum (Cheng Shin's Final Analysis Memorandum).
[69] *See* Petitioner's Case Brief at 3-9.

- A positive arm's-length test result does not require Commerce to use affiliated sales as the basis for normal value. Rather, Commerce "may" use them if it is satisfied that prices are comparable.
- Commerce treats affiliated resellers differently than affiliated consumers. Commerce's questionnaire specifically asks respondents to report the affiliate's resales to unaffiliated customers during the POI, rather than sales to affiliates, except in cases where affiliated resellers consume all or some of the merchandise.

Cheng Shin's Rebuttal Brief[70]:

- Commerce correctly used transactions between Cheng Shin and Maxxis TW in its margin analysis because these sales are made in the ordinary course of trade and passed the arm's-length test.
- The transactions between Cheng Shin and Maxxis TW included the transfer of title and consideration. Maxxis TW is not acting on behalf of Cheng Shin as an agent, and Cheng Shin paid no commission in the home market, such that Cheng Shin fully sold the merchandise to Maxxis TW. In addition, Maxxis TW has proven that it issues delivery notices for its sales, which it can only do because it possesses title of the goods.
- Commerce's regulations state that it will "normally" not rely on resales where prices to affiliates are comparable. Thus, it is Commerce's established practice to use transactions between affiliated parties where such transactions are made at arm's length.
- Commerce has established that sales made to an affiliate for consumption and those made purely for resale should not be treated differently when applying the arm's-length test.

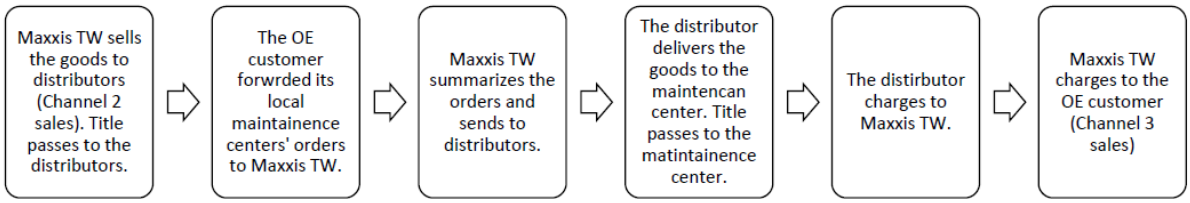
Commerce Position: We disagree with the petitioner that Commerce should not use the sales between Cheng Shin and its reseller Maxxis TW as a basis for normal value. Pursuant to 19 CFR 351.403(c) and (d), it is within Commerce's discretion to ask for sales Cheng Shin made to affiliated parties or "upstream" sales, and that this information should continue to form the basis for normal value calculation based upon passing the arm's-length test in the final determination.

The petitioner argues that there were no sales made between Cheng Shin and Maxxis TW because, in order to have a sale, you need a transfer of title and consideration paid. Because subject merchandise was shipped directly from Cheng Shin to the customer, and Maxxis TW has no warehousing in Taiwan, the petitioner concludes that ownership remained with CST and did not first transfer to Maxxis TW.[71] We disagree.

Cheng Shin provided a flowchart that detailed the sales process between Maxxis TW and the unaffiliated customer.[72] This flowchart, provided below, illustrates when, in the sales process, title passes from CST to Maxxis TW. According to Cheng Shin,[73] as we can see in the first box, Maxxis TW sells the goods to the distributors and title passes in the process. It is, therefore, reasonable to conclude that, if Maxxis TW is selling the goods to the distributors and title is passing to the distributors with that transaction, that Maxxis TW first had claim to the title itself,

[70] *See* Cheng Shin's Rebuttal Brief at 3-6.
[71] *See* Petitioner's Case Brief at 8.
[72] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. -Supplemental Section ABC Response," dated December 16, 2020 at Exhibit 2SB-4.
[73] *Id*.

in order to transfer it to another. Accordingly, what is missing from this flowchart, but confirmed through Cheng Shin's questionnaire responses[74] and detailed below, is that Cheng Shin first sells the goods to Maxxis TW. Thus, it is reasonable to find that, because we know Maxxis TW later has the title to transfer to unaffiliated customers, that Maxxis first obtains this title through the first stage of this transaction, the sale between Cheng Shin and Maxxis TW. It is also reasonable to find that this same process is followed for all sales channels involving Cheng Shin and Maxxis TW.



See Exhibit 2SB-4 of Cheng Shin's December 26, 2020 ABCSQR.

The petitioner is correct that Cheng Shin ships directly to the customer for sales made through Maxxis TW. However, a physical retention of the goods is not required in order for title to transfer or for the transactions to qualify as sales. Notably, it is Maxxis TW (and not Cheng Shin) who issues the delivery notice to the customer.[75] According to Cheng Shin, for Maxxis TW to be able to issue the delivery notice is further evidence that Maxxis TW has title of the goods, and Cheng Shin merely serves as a carrier of goods for these sales.[76] We agree. Finally, Cheng Shin has provided supporting documentation, such as sales invoices, sales revenue vouchers and ledgers,[77] which demonstrate an exchange of consideration for transactions between Cheng Shin and Maxxis TW. We note that the petitioner points to no evidence on the record which would suggest that the resales made by Maxxis TW to the unaffiliated customer are, instead, made directly by Cheng Shin to the unaffiliated customer.

The petitioner claims that Commerce practice dictates that in similar sale scenarios, normal value should be calculated based solely on the direct sales to unaffiliated customers made by Cheng Shin and the resales subject merchandise made by Maxxis TW to the unaffiliated customer, or "downstream" sales.[78] This is also incorrect. According to Commerce's *Affiliated Party Sales in the Ordinary Course of Trade*,[79] "we believe an arm's-length analysis is appropriate 'whenever there are transactions between parties within the meaning of section 771(33) {definition of affiliation person} of the Act.' Therefore, if two parties are affiliated, any transactions between them are subject to paragraphs (c) and (d) of 19 C.F.R. 352.403, allowing use of transactions between affiliated party sales only if found to be made at arm's length." It is undisputed that Cheng Shin and Maxxis TW are affiliated parties.

[74] *See* Cheng Shin's ILOV Response at Exhibits VE-1-A and VE-1-E.
[75] *Id*. at VE-3.
[76] *See* Cheng Shin's Rebuttal Brief at 6.
[77] *See* Cheng Shin's ILOV Response at Exhibits VE-1-A and VE-1-E.
[78] *See* Petitioner's Case Brief at 5-6.
[79] *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002)

The petitioner points to the language in 19 CFR 351.403(c) which states[80]:

> **(c)** ***Sales to an affiliated party.*** If an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.

The petitioner notes that with the use of the word "may," Commerce can use affiliated party sales that pass the arm's-length test to calculate normal value, but is not required to do so. Yet, the petitioner ignores 19 CFR 351.403(d) and the two regulations must be read together for their full context. Section 351.403(d) of Commerce's regulations states that "sales through an affiliated party" (*i.e.*, sales from Cheng Shin through Maxxis TW) are to be considered as follows:

> If an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. **However, the Secretary normally will not calculate normal value based on the sale by an affiliated party** if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question **or if sales to the affiliated party are comparable, as defined in paragraph (c) of this section.** (emphasis added)

Here, Cheng Shins sales to Maxxis TW do account for more than five percent of the total value of Cheng Shin's direct sales in the home market.[81] However, these sales are also "comparable" as defined by 19 CFR 351.403(c), meaning that they pass the arm's-length test. Thus, pursuant to 19 CFR 351.403(d), Commerce will calculate normal value using affiliate sales made at arm's length.

We note that, although the petitioner argues there is a difference in how Commerce treats sales made to an affiliate for consumption and those made for resale,[82] the petitioner did not provide evidence or cite any relevant cases to support its claim that Commerce made such a distinction. Sections 351.403(c) and (d) of our regulations make no mention of consumption or suggestion that Commerce should only collect affiliate sales data when the affiliate consumed all or some of the merchandise.[83]

Cheng Shin did not provide any evidence that the initially unreported Cheng Shin to Maxxis TW sales either passed or failed the arm's-length test. As such, in order to conduct the arm's-length test, we asked Cheng Shin in a subsequent supplemental questionnaire to provide a separate

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[80] *See* Petitioner's Case Brief at 5.
[81] *See Passenger Vehicle and Light Truck Tires from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 86 FR 508 (January 6, 2021) (*Preliminary Determination*), and accompanying PDM.
[82] *See* Petitioner's Case Brief at 5-6.
[83] *See* 19 CFR 351.403(c) and (d).

database including sales made between Cheng Shin and Maxxis TW.[84] In the *Amended Preliminary Determination*, because the affiliated sales passed the arm's-length test, we used them as a basis for Cheng Shin's normal value calculation.[85] Based on the analysis provided above, we see no reason to change our methodology for the final determination and have not done so.

Comment 2: Whether Commerce Should Treat Home Market Sales as Being at the Same Level of Trade

Petitioner's Case Brief[86]:

- The petitioner argues that if Commerce continues to utilize the transactions between Cheng Shin and Maxxis TW as a basis for the calculation of normal value, the results of the arm's-length test would be invalid because the sales made to Maxxis TW and Cheng Shin's direct sales to the unaffiliated customer are made at different LOTs.
- Cheng Shin's revised selling functions chart indicates different selling function intensities for transactions between Cheng Shin and Maxxis TW compared to transactions between Cheng Shin and its unaffiliated customers. The result of the arm's-length test would not be valid as a result because the sales between Cheng Shin and Maxxis TW are not at the same LOT as sales between Cheng Shin and the unaffiliated customer, since only prices within the same LOT should be compared. Thus, if comparisons in the same LOT are not available, the sales between Cheng Shin and Maxxis TW cannot be used in the calculation of normal value.
- Commerce misapplied the burden of proof with regard to LOT. When an adjustment is unfavorable, Commerce allows for an adjustment without requiring a demonstration of entitlement, including in the context of LOT issues. In this case, the burden of proof is on Cheng Shin to demonstrate that only one LOT exists in the home market. As the party in possession of evidence, Cheng Shin failed to do so in their responses. In particular, Cheng Shin failed to provide a quantitative analysis supporting a determination that the two categories of transactions under the arm's-length test did not take place at the same LOT.

Cheng Shin's Rebuttal Brief[87]:

- The petitioner's claims regarding Cheng Shin's LOT reporting have no merit. Cheng Shin claims no LOT adjustment, and Commerce correctly determined that all sales in the home market were made at the same LOT.
- The petitioner failed to provide support for its claim that differences in the intensity of selling activities reported by Cheng Shin translate into price impacts across these two channels. Without evidence that differences in selling activities impact price, the petitioner's claims have no merit. Cheng Shin has fully cooperated to provide all

[84] *See* Commerce's Letter, "Sections A,B and C Supplemental Questionnaire in the Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from Taiwan," dated December 7, 2020.
[85] *See Passenger Vehicle and Light Truck Tires from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 86 FR 508 (January 6, 2021) (*Preliminary Determination*), and accompanying PDM at13.
[86] *See* Petitioner's Case Brief at 9-13.
[87] *See* Cheng Shin's Rebuttal Brief at 6-8.

necessary qualitative and quantitative evidence supporting its home market selling activities.

Commerce Position: We continue to find, as we did in the *Preliminary Determination*, that Cheng Shin made home market sales during the POI at only one LOT.

As a threshold matter, we note that petitioner first alleged that Cheng Shin's home market sales were made at two different LOTs in its case brief. As such, Commerce was not able to collect any new factual information on this issue.

With respect to petitioner's arguments regarding the selling functions chart submitted by Cheng Shin, there are five categories in the selling functions chart for which Commerce asks respondents to provide information and report a level of intensity of associated selling expenses on a scale of zero to 10. These five are: provision of sales support, provision of training services, provision of technical support, provision of logistical services and performance of sales related administrative activities. For the two home market sales channels in question, Chen Shin reported a disparity in selling activities for certain categories.[88] Petitioner asserts that because Cheng Shin sells in its home market via two different channels, those channels are at different LOTs.

However, evidence on the record, as reported by Cheng Shin, does not demonstrate substantial differences between the two channels. Furthermore, Commerce has previously stated that differences, even substantial differences, in selling functions/activities alone cannot determine LOT differences. As 19 CFR. 351.412 states: "the Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in that stage of marketing."[89] The fact that sales are made in the same market via different channels of distribution is not sufficient to indicate they are made at different LOTs, consistent with Commerce's practice.

Therefore, for the reasons noted above, we continue to follow our *Preliminary Determination*, and have treated all home market sales as being at the same LOT.

Comment 3: Whether Commerce Should Grant Certain Post-Sale Price Adjustments and Inland Freight Expenses for Affiliate Sales

Petitioner's Case Brief[90]:

- Commerce should not allow Cheng Shin to claim home market freight expenses between Cheng Shin and Maxxis TW if Commerce utilizes affiliate sales for the calculation of normal value.

[88] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Section A Supplemental Response," dated October 6, 2021 at Exhibit SA-2-a. Because the pertinent parts of Cheng Shin's selling functions chart are BPI, *see also* Cheng Shin's Final Analysis Memorandum for further details.
[89] *See* Cheng Shin's Rebuttal Brief at 7.
[90] *See* Petitioner's Case Brief at 14-15.

- Cheng Shin incorrectly reported its home market inland freight expenses. Subject merchandise is shipped directly from Cheng Shin to the unaffiliated customer, thus Cheng Shin never ships to Maxxis TW. Commerce should deny the claimed adjustments for inland freight.
- In the preliminary determination, Commerce rejected Billing Adjustments (BILLADJH), Rebate-Quality Issues (REBATE1H), and Rebate- Competitiveness and Other Promotion (REBATE2H) adjustments when calculating normal value due to reporting failures. However, the petitioner argues that Commerce should allow "unfavorable" billing adjustments, those that would increase normal value, even in the absence of Cheng Shin's ability to prove its entitlement to the adjustment.

Cheng Shin's Rebuttal Brief[91]:

- Commerce should continue to allow an adjustment for inland freight expenses.
- If Commerce allows the consideration of "unfavorable" billing adjustments for BILLADJH, REBATE1H, and REBATE2H when calculating normal value, it should allow for all price adjustments in all three categories. Using only the "unfavorable" adjustments would result in a distorted antidumping margin that does not reflect the "business realities" of Cheng Shin's sales.

Commerce Position: We disagree with the petitioner and will continue to deny the BILLADJH, REBATE1H, and REBATE2H post-sale billing adjustments to Cheng Shin's normal value calculation, and we continue to allow adjustments to normal value for Cheng Shin's reported inland freight expenses.

In the preliminary calculation of normal value, we deducted the inland freight from Cheng Shin's selling prices as reported by Cheng Shin because Cheng Shin reported that it delivered the products directly to end customers.[92] Cheng Shin provided the freight schedules for the two unaffiliated delivery companies used to deliver the merchandise to the home market. The inland freight for each transaction was calculated by multiplying the rates in the freight schedules by the distance to each customer.[93] Cheng Shin has stated that the selling price includes its shipment cost to the end-customers and, as part of its ILOV questionnaire response, Cheng Shin provided invoices showing freight was included in the price.[94] Therefore, there is sufficient evidence to allow the adjustment of inland freight.

With respect to the post-sale billing adjustments, it is Commerce's established practice, according to 19 CFR 351.401(c), that we not accept a price adjustment that was made after the time of sale unless the interested party demonstrates its entitlement to such an adjustment.[95] In the *Preliminary Determination*, we found that certain post-sale adjustments reported by Cheng Shin (BILLADJH, REBATE1H, and REBATE2H) were made after the time of sale. Specifically, Commerce asked Cheng Shin "for each type of post-price adjustment provide a

[91] *See* Cheng Shin's Rebuttal Brief at 8.
[92] *See* Memorandum, "Cheng Shin Rubber Ind. Co. Ltd. Preliminary Determination Analysis," dated December 29, 2021 at 3.
[93] *See* Cheng Shin's Supp B and C Responses at Exhibit SC-2.
[94] *See* Cheng Shin's ILOV Responses.
[95] *See* Commerce's Preliminary Determination Analysis at 3.

narrative description explaining why each adjustment was made."[96] In response, Cheng Shin provided only a revised rebate worksheet, but no further explanation or rationale for these rebates was given, nor was any additional information provided for billing adjustments.[97]

Therefore, Commerce did not make any adjustments to normal value for BILLADJH, REBATE1H, and REBATE2H fields and will continue to reject these post-sale adjustments for the final determination.[98]

The petitioner also argued that Commerce should calculate "unfavorable" billing adjustments, whether or not Cheng Shin's established its entitlement to any post-sales price adjustments. We disagree. As stated above, we do not accept post-sales price adjustments unless the interested party demonstrates its entitlement to such an adjustment. Based on the record evidence, we have denied Cheng Shin's claimed post-sale price adjustments (BILLADJH, REBATE1H and REBATE2H) because Cheng Shin did not establish its entitlement to such adjustments.

Comment 4: Whether Commerce Should Exclude Certain Alleged "Out-of-Scope" Tires from Cheng Shin's Margin Calculation

Cheng Shin's Case Brief[99]*:*

- Commerce preliminarily determined that "Temporary Use Light Truck Spares Tires" (TULTS tires) are excluded from the scope of investigation. In order to calculate a fair and accurate dumping margin, Commerce should exclude certain Cheng Shin tires satisfying the exclusionary language prescribed in the *Preliminary Determination*, from its dumping calculation.
- For these "out-of-scope" model tires, the product characteristic "tire service type" was assigned based on European Tyre and Rim Technical Organization (ETRTO). This CONNUM product characteristic assignment followed Commerce's instruction in its August 18, 2020, product characteristic communication.
- Although these models meet the standards of passenger tires, this classification does not contradict the fact that these tire models were co-designed with, then marketed to, an exclusive buyer who ordered and designed these tires exclusively as spare tires for other service types. Cheng Shin provided this exclusive buyer's email confirmation in its response to the ILOV to prove this point.

Petitioner's Rebuttal Brief[100]:

- In its product characteristics comments, filed on July 20, 2020, Cheng Shin did not state that light truck spare tires would be classified as passenger car tires in the Tire and Rim Association's (TRA) yearbook, or elsewhere. In its scope comments, Cheng Shin did not claim that the tires it sought to exclude were classified as passenger car tires in the TRA

[96] *See* Commerce's Letter, "Sections B and C Supplemental Questionnaire in the Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from Taiwan," dated October 30, 2020 at question 6c.
[97] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Supplemental Section B & C Response," dated November 16, 2020 at Exhibit SB-5.
[98] *Id*.
[99] *See* Cheng Shin's Case Brief at 4-8.
[100] *See* Petitioner's Rebuttal Brief at 3-5.

yearbook or in the European standard. As the exclusion language describes the excluded tires as "for light trucks," there is no need to modify the conclusion reached in Commerce's *Amended Preliminary Determination*.

- The original questionnaire instructed the respondents to list the "tire service type" in field 3.1, specifying whether the tire in question was intended for passenger car service (code: 01); light truck service (code 02) or special trailer service (code 03). However, Cheng Shin reported in its sales data these model tires as being for passenger car service, not light truck service.
- When Commerce notified parties of the product characteristics the instructions were to follow the TRA classification in their reporting of the service type, not the standard of the ETRTO. In its ILOV responses, Cheng Shin stated for the first time that these models would also be classified as a certain service type under the TRA. However, it is unsupported on the record and is contradicted in Cheng Shin's own comments.

Commerce Position: We disagree with Cheng Shin and, for the final determination, we continued to include these sales in Cheng Shin's final margin calculation.

In the *Preliminary Determination*, Commerce added the following exclusionary language to the scope:

> Specifically excluded from the scope are the following types of tires:
> …
> (5) **tires designed and marketed exclusively as temporary use spare tires for light trucks**
> which, in addition, exhibit each of the following physical characteristics:
> (a) the tires have a 265/70R17, 255/80R17, 265/70R16, 245/70R17, 245/75R17, 245/70R18,or 265/70R18 size designation.
> (b) "Temporary Use Only" or "Spare" is molded into the tire's sidewall;
> (c) the tread depth of the tire is no greater than 6.2 mm; and
> (d) Uniform Tire Quality Grade Standards ("UTQG") ratings are not molded into the tire's sidewall with the exception of 265/70R17 and 255/80R17 which may have UTGC molded on the tire sidewall; (emphasis added)

In the *Preliminary Determination* and *Amended Preliminary Determination*, we included sales of the tires in question in our margin calculation.[101] We determined that Cheng Shin did not provide record evidence to indicate that these sales met the criteria to be regarded as out of scope. Specifically, for all of the alleged CONNUMs that are outside the scope of this investigation, we found that in Cheng Shin's U.S. database for product characteristics "tire service type," they were not listed as for light trucks. Thus, from the outset, none of the CONNUMS in question meet the exclusionary language.

Throughout its questionnaire responses, Cheng Shin has consistently reported in its sales data that these model tires are not for light truck service. We requested that Cheng Shin provide

[101] *See Preliminary Determination* PDM.

additional documentation to prove that these models met the exclusion language.[102] In its ILOV responses, for the first time, Cheng Shin stated that the tire models in question were developed under the standard of the ETRTO and, thus, the tire service type reported for the models in question was based on the ETRTO classification.[103] Furthermore, Cheng Shin claims that it reported based on the standards as instructed by Commerce. This is incorrect. In its letter of August 18, 2020, regarding product characteristics Commerce instructed all parties to report the tire service type according to the TRA classification of the reported tire model as identified in the 2019 TRA yearbook.[104] Furthermore, Cheng Shin is not arguing that these tires should have been classified as a service type different than that as reported under the TRA. Rather, Cheng Shin clearly states that the sizes and characteristics of these tires fit within both service types for light truck spare tires and for the other service type as reported.[105] Thus, it appears from the record that these tires have an intended dual use and, thus, could not have been designed and marketed exclusively for light trucks.

Cheng Shin argues that this dual classification does not prevent these tire models from exemption under paragraph 5 of the scope because these tire models were co-designed with, then marketed to, one buyer for use as light truck tires. [106] In its ILOV response, Cheng Shin only provided one document to prove that these tires were "designed and marketed exclusively as temporary use or spare tires for light trucks." This exhibit is proprietary. Details of the contents of this exhibit can be found in Cheng Shin's Final Determination Calculation Memorandum. After analyzing the details and nature of this exhibit, Commerce has determined it was not generated as part of Cheng Shin's normal course of business and Commerce does not find it persuasive in light of the evidence on the record, which demonstrates that the tires were designed for both passenger cars and light trucks..

Furthermore, despite Cheng Shin's arguments that these models were designed exclusively based on the customer's specific demands and needs, *i.e*., for light trucks, the purchase agreements and technical drawings included as part of its ILOV response do not indicate a light truck design exclusivity as necessary under the scope exclusion language. Again, as the details here are BPI, please see Cheng Shin's Final Determination Calculation Memorandum, which clearly show the models in question can be used for either light trucks or passenger cars.[107]

Further, the information on the record conflicts with the requirements of the exclusion language in the scope. In fact, in Cheng Shin's supplied CONNUMs concordance table,[108] Cheng Shin lists for each sale whether it is classified according to Cheng Shin as subject or non-subject merchandise. For the tire models in question, contrary to Cheng Shin's claim, this exhibit does

[102] *See* Commerce's Letter, "In Lieu of Verification Questionnaire for Cheng Shin Rubber Ind. Co. Ltd. In the Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from Taiwan," dated February 25, 2021.
[103] Verification at VE-12.
[104] *See* Commerce's Letter, "Passenger Vehicle and Light Truck Tires from Korea, Taiwan, Thailand and Vietnam: Product Characteristics," dated August 18, 2020.
[105] How Cheng Shin reported these models is BPI; for a further description please *see* Cheng Chin's Final Determination Calculation memorandum.
[106] *See* Cheng Shin ILOV Response at 6-7 and Exhibit VE-7-B.
[107] *Id*. at Exhibit-VE-7A.
[108] Exhibit 2 SC-4 December 16 supp.

not support Cheng Shin's arguments. *See* Cheng Shin's Final Analysis Memorandum for further details.

Therefore, based on the information on the record and the analysis provided above, we continue to find that these contested tire models are within the scope of this investigation.

Comment 5: Whether Commerce Should Match Control Numbers in the U.S. and Home Markets Based on Similarities in Product Characteristics

Cheng Shin's Case Brief:

- As previously noted in Cheng Shin's preliminary determination ministerial error comments, Commerce failed to match CONNUMs in the U.S. and home markets based on similarity of product characteristics. Because CONNUMs were reported without an "H" or "U" at the end to denote the market in which they were sold, an overwriting error occurred in Commerce's calculations.[109]
- The error resulting from a lack of "H" or "U" identifiers resulted in significant distortions and inflated margins when Commerce selected home-market CONNUMs with the smallest VCOM differences from the targeted U.S.-market CONNUMs, regardless of how much the product characteristics differ between them.[110]
- Commerce should utilize the database filed by Cheng Shin on February 10, 2021, containing CONNUMs with appropriate "H" and "U" identifiers in the margin calculations for the final determination.[111]
- Failure to correct this error would result in inaccurate antidumping duty margins unsupported by the record of the investigation.[112]

The petitioner did not comment on this issue.

Commerce's Position: Commerce first addressed Cheng Shin's claims regarding CONNUM-matching in the U.S. and home markets in the Ministerial Error Memorandum published on February 3, 2021.[113] At that time, Commerce determined that no ministerial error was committed within the meaning of 19 CFR 351.224(f) because we used the information on the record as it was reported by Cheng Shin, and because Commerce was unaware of Cheng Shin's failure to report "H" and "U" identifiers on the CONNUMs in its home market and U.S. market databases prior to the *Preliminary Determination*. Commerce also announced our intention to request updated sales databases from Cheng Shin that included CONNUMs with "H" and "U" identifiers that would be used for the final determination.

Commerce issued a post-preliminary supplemental questionnaire to Cheng Shin on February 4, 2021 requesting updated home market and U.S. market databases containing corrected product

[109] *See* Cheng Shin's Case Brief at 8-9.
[110] *Id*. at 9.
[111] *Id*.
[112] *Id*.
[113] *See* Memorandum, "Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from Taiwan: Allegations of Significant Ministerial Errors in the Preliminary Determination," dated February 3, 2021 (Ministerial Error Memorandum).

characteristic variables.[114] Cheng Shin submitted the corrected databases in Exhibits 3SB-1-A and 3SB-1-B of its questionnaire response on February 10, 2021.[115] Commerce has since incorporated these databases into its margin calculations for the purpose of this final determination, such that Cheng Shin's margin now accurately reflects the correct matching methodology for product characteristics between its home market and U.S. market sales.[116]

Comment 6: Whether Commerce Should Take Tire Category into Account in Conducting its Matching Analysis

Cheng Shin's Case Brief:

- Accurate margins can only be calculated if product applications are accounted for, since they directly correlate to the physical characteristics of a tire. Cheng Shin's questionnaire responses demonstrate that tires with similar CONNUMs may have different applications that render them incomparable for matching purposes.[117]
- Specifically, Cheng Shin's responses explain that different usage applications are attributed to passenger tires (passenger car/SUV, competition, and winter) and light truck tires (highway terrain, all-terrain, mud terrain, extreme off road, and commercial). Different tread designs and physical constructions are attributed to each application. Commerce must account for these physical differences when conducting its matching methodology to ensure an apples-to-apples comparison of merchandise.[118]
- To facilitate a matching methodology that incorporates these characteristics, Cheng Shin has added an additional field to its home market and U.S. sales databases labelled "CATEGORY" (Field 1.1). Failure to account for tire applications and the unique physical characteristics associated with each application would distort Commerce's matching methodology and the resulting margin calculation.[119]

Petitioner's Rebuttal Brief:

- Commerce should reject Cheng Shin's arguments in favor of incorporating a field identifying "tire category" when conducting its product characteristic matching methodology. Matching criteria were established at the beginning of the investigation based on comments from interested parties and Commerce's prior experience examining the merchandise. Cheng Shin did not propose the addition of such a category at that time.[120]
- Commerce established the product-matching criteria for this case based on the physical characteristics of the merchandise, consistent with the statute and with its long-standing practices. Commerce has previously rejected past attempts to unduly narrow its statutory

[114] *See* Commerce's Letter, "Post Preliminary Supplemental Questionnaire in the Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from Taiwan," dated February 4, 2021.
[115] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd.'s Post-Preliminary Supplemental Questionnaire," dated February 10, 2021.
[116] *See* Cheng Shin's Final Analysis Memorandum.
[117] *See* Cheng Shin's Case Brief at 12.
[118] *Id*. at 13-15.
[119] *Id*. at 15.
[120] *See* Petitioner's Rebuttal Brief at 7-8.

instruction based on merchandise applications, and it should reject Cheng Shin's request in this case as well.[121]

Commerce's Position: Commerce agrees with the petitioner that Cheng Shin's product-matching methodology should not incorporate a "CATEGORY" field accounting for certain product applications attributed to the subject merchandise by Cheng Shin.

In the *Initiation Notice*, Commerce established a 20-day deadline for parties to file comments on the product characteristics of the investigation, and an additional 10 days to file rebuttal comments.[122] Following requests filed by Cheng Shin and Atturo Tire Corp,[123] Commerce extended the deadlines to submit comments on the scope and product characteristics for the investigation by one week.[124] Cheng Shin filed comments on the product characteristics of the subject merchandise on July 20, 2020.[125] In the comments, Cheng Shin requested that Commerce amend the "SERVICE_TYPE" characteristic (Field 3.1) and exclude consideration of the "TRACTION_GRADE" and "TEMP_GRADE" characteristics (Fields 3.12 and 3.13, respectively), but made no mention of adding a "CATEGORY" field that would denote tire applications.[126] Cheng Shin's rebuttal product characteristic comments also did not discuss the addition of a "CATEGORY" field.[127]

Cheng Shin first reported the unsolicited "CATEGORY" field in its November 16, 2020, Supplemental BCQR, arguing that "certain tires, though under similar CONNUMs, have different applications and thus are not comparable to each other, no matter how close their CONNUMs are."[128] In its pre-preliminary response comments filed on December 28, 2020, Cheng Shin reiterated its request that Commerce account for "tire categories" in the matching analysis used as the basis for the preliminary margin calculations, claiming that product applications impact and dictate the physical characteristics of a tire and that Commerce's failure

[121] *Id*. at 8.
[122] *See Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 38854 (June 29, 2020) (*AD Initiation Notice*).
[123] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Scope Comments Extension Request," dated July 9, 2020; *see also* Atturo Tire Corp's Letter, "Passenger Vehicle and Light Truck Tires from Republic of Korea, Taiwan, Thailand. and the Socialist Republic of Vietnam: Extension Request for Filing Comments on Scope," dated July 10, 2020.
[124] *See* Memorandum, "Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Deadline for Scope Comments and Product Characteristic Comments," dated July 10, 2020.
[125] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Cheng Shin Rubber Ind. Co. Ltd.'s Product Characteristic Comments," dated July 20, 2020.
[126] *Id*. at 2-3.
[127] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from the Republic of Korea, Taiwan, Thailand, and the Socialist Republic of Vietnam: Cheng Shin Rubber Ind. Co. Ltd.'s Product Characteristic Rebuttal Comments," dated July 30, 2020.
[128] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shin Rubber Ind. Co. Ltd. – Supplemental Section B & C Response," dated November 16, 2020 (Cheng Shin's November 16, 2020 BCSQR) at SC-6 and SC-7.

to account for them would result in distorted antidumping margins.[129] However, Commerce declined to incorporate this reported category into its model-matching methodology used in its *Preliminary Determination*.

It is Commerce's established practice to discuss and confirm the physical characteristics of the subject merchandise criteria prior to the due date of the initial questionnaire to investigation respondents in order to standardize the criteria needed for Commerce's model-matching methodology.[130] Cheng Shin's request to incorporate an additional field into the model-matching criteria was submitted nearly four months after the deadline had passed to submit comments on the physical characteristics that Commerce would use as the basis for the investigation. These characteristics also apply to all countries subject to the scope of the concurrent investigations of PVLT tires from the Republic of Korea, Thailand, and Vietnam, and any changes to the model-matching criteria would require amending data reported for all respondents in the applicable investigations.

In the past, Commerce has affirmed that it is not necessary to ensure that home market models are technically substitutable or applied to the same end-use as the corresponding U.S. model when calculating antidumping duties.[131] Cheng Shin claims that product application "impacts and dictates the physical characteristics of the tires," and submits documentation in Exhibit SC-7 of its November 16, 2020 BCSQR which, according to Cheng Shin, "details both the operational and physical differences of tires used for different applications."[132] However, the three applications proposed for the "CATEGORY" variable proposed by Cheng Shin (*i.e.*, passenger car/SUV, competition, and winter applications) each appears to encompass a number of physical characteristics attributed by Cheng Shin to each application.[133] In doing so, Cheng Shin appears to group certain tire features, attributes, and performance claims into "applications" under an additional product characteristic.[134] The physical characteristics established by Commerce are intended to capture physical differences in subject merchandise, rather than collections of characteristics (including non-physical characteristics, such as performance claims) that are grouped together into alleged "applications." Furthermore, Cheng Shin purports that because the tires may physically differ from one another, "CATEGORY" must be added to our model matching criteria – but Commerce has already established physical characteristics for this exact reason – to distinguish one product from another. Thus, Cheng Shin fails to support its claims regarding the creation of a "CATEGORY" product characteristic.

The Court of Appeals for the Federal Circuit (Federal Circuit) has confirmed Commerce has "considerable discretion" to construct a methodology for identifying the foreign like product in

[129] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Response to Petitioner's Comments," dated December 28, 2020 at 5-6 (Cheng Shin's Pre-Preliminary Comments).
[130] *See, e.g., Acetone from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 85 FR 8285 (February 13, 2020); and *Certain Walk-Behind Lawn Mowers and Parts Thereof from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 27384 (May 20, 2021).
[131] *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, Final Results of AD Annual Reviews, 2003-2004*, 70 FR 54711 (Sept. 16, 2005), and accompanying Issues and Decision Memorandum (IDM) at Comment 2 (citing *Koyo Seiko Ltd. v. United States*, 66 F.3d 1204, 1210 (Fed. Cir. 1995)).
[132] *See* Cheng Shin's November 16, 2020 BCSQR at 12 and Exhibit SC-7.
[133] *Id*. at SC-6 and SC-7.
[134] *Id*.

antidumping proceedings that need only support the methodology with "substantial evidence and a reasoned explanation."[135] Therefore, Commerce continues to reject Cheng Shin's request to amend the model-matching criteria after the deadline to consider physical characteristics of the subject merchandise has passed.

Comment 7: Whether Commerce Should Exclude Home Market CONNUMs with Small Quantities from the Dumping Calculation

Cheng Shin's Case Brief:

- Commerce should exclude tires sold in small quantities to home market customer from its dumping calculations. According to the statute and Commerce's regulations, home market sales involving small quantities of merchandise are considered outside the ordinary course of trade and, thus, are not comparable to U.S. sales that generally involve larger quantities of merchandise.[136]
- Generally, the U.S. and Taiwanese tire markets already differ in a number of respects. All-season tires are sold prominently in the U.S. market, while the majority of tires sold in Taiwan are summer tires. U.S. tire models are generally not in high demand in Taiwan, and vice versa.[137]
- Commerce is instructed to achieve a "fair comparison" between export prices and normal value when calculating dumping margins. Sales for comparison must be made in "usual commercial quantities" and occur in the ordinary course of trade. When gauging whether a sale is outside the ordinary course of trade, Commerce must consider all circumstances particular to the sales in question, including "the express terms of the provisions at issue, the objective of those provisions, and the objectives of the antidumping scheme as a whole."[138]
- Small-quantity CONNUMs in the home market are sold in a "nearly customized" way, such that "rare" models in the home market must be excluded from an apples-to-apples comparison to "common" models in the U.S. market.[139]

Petitioner's Rebuttal Briefs:

- Commerce should continue to reject Cheng Shin's arguments regarding the exclusion of "rare" home-market sales models sold in small quantities. Commerce has appropriately considered all products produced and sold by Cheng Shin in the Taiwanese market that fall under the scope of the investigation to be foreign like products for the purpose of product comparisons.[140]
- Cheng Shin argues that commerce routinely excludes sales outside the ordinary course of trade from its antidumping analysis to ensure accurate and fair margins, but

[135] *See SKF USA, Inc. v. United States*, 263 F.3d 1369, 1381 (Fed. Cir. 2001); *see also Manchester Tank & Equip. Co. v. United States*, 483 F. Supp. 3d 1309 (CIT 2020).
[136] *See* Cheng Shin's Case Brief at 17-18.
[137] *Id*. at 17.
[138] *Id*. at 16-17.
[139] *Id*. at 17.
[140] *See* Petitioner's Rebuttal Brief at 9.

it does not successfully support its claim that the sales it wishes to disqualify were not made in the ordinary course of trade.[141]

Commerce's Position: Commerce agrees with the petitioner that Cheng Shin did not show that the home market sales in question are made outside the ordinary course of trade or in unusual commercial quantities. Normal value is defined as the price at which the foreign like product is first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade.[142] Section 771(15) of the Act defines sales made in the "ordinary course of trade" as follows:

> Ordinary course of trade. The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:
>
> (A) Sales disregarded under section 773(b)(1).
>
> (B) Transactions disregarded under section 773(f)(2).
>
> (C) Situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price.

The party claiming that a sale is not in the ordinary course of trade bears the burden of proof.[143] Commerce considers the totality of the circumstances, under 19 CFR 351.102(b)(35):

The Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's-length price.

When calculating NV, Commerce looks to sales made in the ordinary course of trade in usual commercial quantities. Cheng Shin therefore also argues that the sales in question are made in unusual quantities. "Usual commercial quantities" are defined under section 771(17) of the Act as follows:

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[141] *Id*. at 9-10.
[142] *See* section 773(B)(i) of the Act.
[143] *See United States Steel Corp. v. United States*, 953 F. Supp. 2d 1332, 1341-43 (CIT 2013).

> The term "usual commercial quantities," in any case in which the subject merchandise is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

This definition requires that there be a clear price to quantity correlation among sales in the home market or a positive correlation between different quantities and different prices and also requires a comparison of the aggregate volumes of merchandise sold at each quantity.[144] Here, Cheng Shin has failed to show either requirement for the quantities to not be considered "usual commercial quantities."

In its November 16, 2020 BCSQ, Cheng Shin submitted comments addressing the comparison of home market and U.S. market sales. In these comments, Cheng Shin argued that home market CONNUMs that were sold "in the sales quantity less than a certain percentage (say five percent) of a U.S. CONNUM" should not be used in the calculation of normal value, even when comparing identical or similar CONNUMs between markets.[145] According to Cheng Shin, comparing "rare" models in one market to "popular" models in another market would constitute an unfair methodology.[146] However, Cheng Shin fails to elaborate on why such comparisons would result in an inaccurate antidumping margin, as well as the analytical basis for excluding sales of identical or similar home market CONNUMs that fall below a seemingly arbitrary five percent quantity threshold to qualify a model as "rare." In addition, under the statute, Commerce is directed to determine whether the market is viable based on the volume of foreign like product sold in the home market. The viability test pertains to the home market in its entirety. Cheng Shing appears to be seeking to establish a CONNUM-specific viability test in this case. However, there is no CONNUM-specific viability test. Once the market as a whole for purpose of sales of foreign like product is established, the comparison is based on sales of identical or similar merchandise that rests on the physical characteristics of the merchandise and not on the volume of the sales.

Cheng Shin addresses this issue again in its pre-preliminary comments, arguing that Commerce would distort its calculated dumping margin if small-quantity sales were used in an apples-to-apples comparison.[147] However, Cheng Shin again fails to provide evidence to support its claim that the inclusion of small-quantity sales would result in an inaccurate normal value calculation; nor does Cheng Shin provide any evidence to suggest that small-quantity sales occur outside the ordinary course of trade. Cheng Shin also contrasts certain home market sales as occurring in "nearly-customized ways" in comparison to certain "massive, standard transactions" in the U.S.

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[144] *See Notice of Final Results of Antidumping Duty Administrative Review: Furfuryl Alcohol from Thailand*, 67 FR 76380 (December 12, 2002), and accompanying IDM.
[145] *See* Cheng Shin's November 16, 2020 BCSQR at SC-6.
[146] *Id*.
[147] *See* Cheng Shin's Pre-Preliminary Comments at 2-3; *see also* Cheng Shin's Case Brief at 16.

market, but does not explain its basis for describing the circumstances of a sale as either "nearly-customized" or "standard."[148]

Nothing in Cheng Shin's responses suggests that so-called "small quantity" sales would fall outside the "ordinary course of trade" or were conducted outside of "usual commercial quantities" as defined in sections 771 and 773 of the Act. As such, Commerce has not modified its position on this issue for the final determination, and did not exclude home market sales made in small quantities.

Comment 8: Whether Commerce Should Not Compare Sales of Maxxis-Brand Tires in the Home Market to Certain Sales in the U.S. Market

Cheng Shin's Case Brief:

- Commerce should not compare sales of Maxxis-branded tires in the home market to certain sales in the U.S. market. If Commerce does compare them, the prices of these sales should be adjusted to address differences in profit levels to avoid inflating Cheng Shin's antidumping margins.[149]
- Commerce's final antidumping calculations should reflect Cheng Shin's commercial realities. Cheng Shin produced a certain model for a U.S. brand sold to a U.S. customer that was not ultimately sold under the Maxxis brand. In contrast, all home market sales involve Maxxis-branded tires.[150]
- In this case, accommodating for these circumstances using "traditional" LOT methodology is not possible because none of the sales at issue in the United States occur in the home market. Cheng Shin has demonstrated the distortions that occur with supporting documentation in Exhibit SC-10 of its November 16, 2020 BCSQR.[151]

Petitioner's Rebuttal Brief:

- Commerce should not modify its treatment of Maxxis-branded home market sales in the determination of normal value. Cheng Shin failed to demonstrate that the home market sales in question are not made in the ordinary course of trade and, thus, there is no basis in the statute or in Commerce's practice and regulations to exclude these sales from the normal value calculations on the basis of profit margin.[152]

Commerce's Position: Commerce agrees with the petitioner that the treatment of the Maxxis-branded home market sales in question should not be modified for the final determination, and that such sales should continue to be included in the normal value calculation. Cheng Shin argues that Maxxis brand home market sales should not be compared to certain sales in the U.S. market, yet makes no argument that any of these sales are outside the ordinary course of trade. Additionally, a product's brand is not considered by Commerce to be a physical characteristic to serve as the basis for the construction of CONNUMs in model-matching comparisons between home market sales and U.S. sales.

[148] *See* Cheng Shin's Case Brief. at 3.
[149] *See* Cheng Shin's Case Brief at 18.
[150] *Id*.
[151] *Id*. at 18-19.
[152] *See* Petitioner's Case Brief at 10.

Cheng Shin also argues that if Commerce chooses not to exclude certain sales of Maxxis-branded tires in the home market, Commerce should instead adjust home market prices to address differences in profit levels between the Maxxis-branded home market sales and the sales to which they are compared in the U.S. market. As noted in Commerce's initial questionnaire, in accordance with 19 CFR 351.411, when normal value is based on sales in the foreign market of a product which is similar, but not identical, to the product sold in the United States, Commerce may adjust normal value to account for differences in the variable costs of producing the two products. The adjustment for comparisons of similar merchandise is limited to differences in the costs associated with the different in physical characteristics, which is based on the difference in variable costs. Commerce is not authorized to make an adjustment for differences in profit.[153] As a result, Commerce did not make a profit adjustment and continued to include those home market sales in the normal value calculation.

Comment 9: Whether Commerce Should Remove Sales Not Intended for Sale in the U.S. Market from Dumping Calculation

Cheng Shin's Case Brief[154]:

- Sales made to a particular customer were made with the agreement prior to sale that the tires would not be sold in the U.S. market. Commerce must exclude these tires from Cheng Shin's antidumping calculation in the final determination.
- Cheng Shin's submission contains detailed correspondence between the parties discussing the fact that the tires were for export only and could not be sold in the U.S. market.

Petitioner's Rebuttal Brief[155]:

- The record supports that these tires were, in fact, sold in the U.S. market.
- Commerce has determined that sales which are delivered to a U.S. destination are treated as "sales for exportation to the United States," even if underlying paperwork may indicate possible subsequent export to a third country.

Commerce's Position: In its November 16, 2020 Section BC supplemental responses, Cheng Shin removed certain sales from its U.S. sales database. We later asked that Cheng Shin revise its U.S. sales database once again and put back these sales.[156] These sales are produced by Cheng Shin and sold to its US affiliate Maxxis International USA (UCS) and then sold to an unaffiliated customer in the United States. Cheng Shin argued for the removal of these sales from its U.S. sales database because this subject merchandise would be exported to non-U.S. countries after entry into the U.S. We stated in the *Preliminary Determination*, it is Commerce's established practice to treat as "sales for exportation to the United States" sales made to unaffiliated parties which are delivered to a U.S. destination, regardless of whether any

[153] *See* Commerce's Letter, Initial AD Questionnaire, dated August 5, 2020 at Appendix I, Glossary of Terms, Difference in Merchandise Adjustments.
[154] *See* Cheng Shin's Case Brief at 20-21.
[155] *See* Petitioner's Rebuttal Brief at 13-14.
[156] *See* Commerce's Letter, "Sections A, B and C Supplemental Questionnaire in the Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from Taiwan," dated December 7, 2020.

underlying paperwork may indicate possible subsequent export to a third country."[157] Cheng Shin has not addressed this precedent in its case brief. For our final determination we continued to include these sales in the calculation of Cheng Shin's antidumping margin.

Comment 10: Whether Commerce Should Use the A-to-A Methodology in the Final Determination and Refrain from Zeroing

Cheng Shin's Case Brief[158]:

- Commerce's differential pricing methodology (DPM) and potential use of zeroing is inconsistent with Commerce's international obligations and should not be used in the final determination.
- There is no pattern of price differences based upon purchasers, regions, or time period. Cheng Shin sold product to the United States based upon market conditions and normal commercial practices.
- The different margin rates calculated by Commerce differ only slightly. This cannot be considered a significant pricing difference.
- The U.S. Court of International Trade, in *Beijing Tianhai Indus. Co. v. United States*, explained that "the statute requires more than a finding of greater dumping before the use of the A-T methodology is permitted." The court further explained that if Commerce simply needed to find greater dumping prior to using the A-to-T methodology, the explanation requirement of section. 777A(d)(1)(B)(ii) of the Act would be "effectively a nullity."
- In the Appellate Body decision by the World Trade Organization (WTO) in Large *Residential Washers from Korea*, the Appellate Body indicated that zeroing within the pattern of transactions violates both Art. 2.4.2., and the fair comparison requirement set forth in Art. 2.4 of the Antidumping Agreement (AD Agreement). To remain consistent with U.S. obligations under the WTO, Commerce should refrain from zeroing in the final determination.[159]

Petitioner's Rebuttal Brief[160]:

- With regard to the differential pricing methodology and zeroing, Commerce's methodologies have been upheld in court.
- Since Commerce used the average-to-average comparison method, this issue is moot.

Commerce's Position: Commerce disagrees with Cheng Shin that it is unlawful to zero in the context of applying an alternative comparison methodology based on the average-to-transaction (A-to-T) method, as Commerce is doing for Cheng Shin in this final determination. The Federal Circuit has affirmed Commerce's application of zeroing (*i.e.*, the denial of offsets for non-

[157] *See* PDM at 9-10.
[158] *See* Cheng Shin's Case Brief at 21-23.
[159] *See* United States – Antidumping and Countervailing Measures on Large Residential Washers from Korea, Report of the Appellate Body, WT/DS464/AB/R. (Sept. 7, 2016) (Large Residential Washers from Korea).
[160] *See* Petitioner's Rebuttal Brief at 14.

dumped U.S. sales) in the context of the application of an alternative comparison methodology based on the A-to-T method.[161]

Regarding Cheng Shin's differential pricing argument, as explained in the *Preliminary Determination*, Commerce's differential pricing analysis is reasonable, including the use of the test Cohen's *d* test as a component in this analysis, and it is not contrary to the law.

With Congress' enactment of the URAA, section 777A(d) of the Act states:

> (d) Determination of Less Than Fair Value.--
>
> (1) Investigations.--
>
> (A) In General. In an investigation under subtitle B, the administering authority shall determine whether the subject merchandise is being sold in the United States at less than fair value--
>
> (i) by comparing the weighted average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or
>
> (ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.
>
> (B) Exception. The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if--
>
> (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
>
> (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).
>
> (2) Reviews.--In a review under section 751, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that corresponds most closely to the calendar month of the individual export sale.

The SAA expressly recognizes that:

> New section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an Ato-

[161] *See Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1322 (Fed. Cir. 2017); *see also Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337, 1345-49 (Fed. Cir. 2017).

> A or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, *i.e.*, where targeted dumping may be occurring.[162]

The SAA further discusses this new section of the statute and Commerce's change in practice to using the A-to-A method:

> In part the reluctance to use the A-to-A methodology had been based on a concern that such a methodology could conceal "targeted dumping." In such situations, an exporter may sell at a dumped price to particular customers or regions, while selling at higher prices to other customers or regions."[163]

With the enactment of the URAA, Commerce's standard comparison method in an LTFV investigation is normally the A-to-A method. This is reiterated in Commerce's regulations, which state that "the Secretary will use the {A-to-A} method unless the Secretary determines another method is appropriate in a particular case."[164] As recognized in the SAA, the application by Commerce of the A-to-A method to calculate a company's weighted-average dumping margin has raised concerns that dumping may be masked or hidden. The SAA states that consideration of the average-to-transaction (A-to-T) method, as an alternative comparison method, may respond to such concerns where the A-to-A method, or the T-to-T method, "cannot account for a pattern of prices that differ significantly among purchasers, regions, or time periods, *i.e.*, where targeted dumping may be occurring."[165] Neither the Act nor the SAA state that "targeted dumping" only occurs where there is a pattern of prices that differ significantly. In other words, the U.S. sales which constitute a pattern are not necessarily the only sales where "targeted dumping" may be occurring or dumping may be masked. As stated in the Act, the requirements for considering whether to apply the A-to-T method are that there exists a pattern of prices that differ significantly and that Commerce explains why either the A-to-A method or the T-to-T method cannot account for such differences.

Accordingly, Commerce finds that the purpose of section 777A(d)(1)(B) of the Act is to evaluate whether the A-to-A method is the appropriate tool to measure whether, and if so to what extent, a given respondent is dumping the subject merchandise at issue in the U.S. market.[166] While "targeting" and "targeted dumping" may be used as a general expression to denote this provision of the statute,[167] these terms impose no additional requirements beyond those specified in the

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[162] *See* SAA at 843.
[163] *See* SAA at 842.
[164] *See* 19 CFR 351.414(c)(1). This approach is also now followed by the Department in administrative and new shipper reviews. *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (where the Department explained that it would now "calculate weighted-average margins of dumping and antidumping duty assessment rates in a manner which provides offsets for non-dumped comparisons while using monthly average-to-average ("A–A") comparisons in reviews, paralleling the WTO-consistent methodology that the Department applies in original investigations").
[165] *See* SAA at 843 (emphasis added).
[166] *See* 19 CFR 351.414(c)(1).
[167] *See, e.g.*, *Samsung v. United States*, 72 F. Supp. 3d 1359, 1364 (CIT 2015) ("Commerce may apply the A-to-T methodology 'if (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that

statute for Commerce to otherwise determine that the A-to-A method is not appropriate based upon a finding that the two statutory requirements have been satisfied. Furthermore, "targeting" implies a purpose or intent on behalf of the exporter to focus on a sub-group of its U.S. sales. The Federal Circuit has already found that the purpose or intent behind an exporter's pricing behavior in the U.S. market is not relevant to Commerce's analysis of the statutory provisions of section 777A(d)(1)(B) of the Act.[168] The Federal Circuit has stated:

> Section {777A(d)(1)(B) of the Act} does not require Commerce to determine the reasons why there is a pattern of export prices for comparable merchandise that differs significantly among purchasers, regions, or time periods, nor does it mandate which comparison methods Commerce must use in administrative reviews. As a result, Commerce looks to its practices in antidumping duty investigations for guidance. Here, the {U.S. Court of International Trade (CIT)} did not err in finding there is no intent requirement in the statute, and we agree with the CIT that requiring Commerce to determine the intent of a targeted dumping respondent "would create a tremendous burden on Commerce that is not required or suggested by the statute."[169]

As stated in section 777A(d)(1)(B) of the Act, the requirements for considering whether to apply the A-to-T method are that there exists a pattern of prices that differ significantly and that Commerce explains why either the A-to-A method or the T-to-T method cannot account for such differences. Commerce's application of a differential pricing analysis in this investigation provides a complete and reasonable interpretation of the language of the statute, regulations and SAA to identify when pricing cannot be appropriately taken into account when using the standard A-to-A method, and it provides a remedy for masked dumping when the conditions exist.

As stated in the *Preliminary Determination*, the first stage of the differential pricing analysis addresses the first statutory requirement, *i.e.*, a pattern of prices that differ significantly[170] and includes the Cohen's *d* and ratio tests. The purpose of the Cohen's *d* test is to determine whether, for comparable merchandise, the prices to a given purchaser, region or time period differ significantly from the prices of all other sales. The Cohen's *d* coefficient, as a measure of "effect size" is considered as a true measure of the significance of the differences in two groups of data.[171] As stated in the *Preliminary Determination*, the Cohen's *d* coefficient quantifies the significance of the difference in the prices between the test and comparison groups which can be assessed based on three different thresholds established by Dr. Cohen, *i.e.*, small, medium and

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differ significantly among purchasers, regions, or period of time, and (ii) the administering authority explains why such differences cannot be taken into account using' the A-to-A or T-to-T methodologies. Id. § 1677f-1(d)(1)(B). Pricing that meets both conditions is known as 'targeted dumping.'")

[168] *See JBF RAK LLC v. United States*, 991 F. Supp. 2d 1343, 1355 (CIT 2014); *aff'd JBF RAK LLC v. United States*, 790 F.3d 1358 (Fed. Cir. 2015) (*JBF RAK*), *see also Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. United States*, 608 Fed. Appx. 948 (Fed. Cir. 2015) (*Borusan*).

[169] *See JBF RAK*, 790 F. 3d at 1368 (internal citations omitted).

[170] *See Preliminary Determination* PDM at 4-6.

[171] *See generally, Certain Hot-Rolled Steel Flat Products from Japan: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 81 FR 53409 (August 12, 2016), and the accompanying IDM at 24-25.

large, where "the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups."[172]

The purpose of the ratio test is to Cohen's *d* evaluate whether the extent of the significant price differences, found as a result of the test, constitute a pattern of prices that differ significantly. As such, the ratio test aggregates the value of the U.S. sales which demonstrate significant price differences (*i.e.*, that pass the Cohen's *d* test), which assesses the frequency and relative importance of the discernible and repeated sequence of pricing at significantly different prices which occurred within the exporter's pricing behavior during the period under examination. In Timken, the CIT found that Commerce's differential pricing methodology "lawfully identifies a pattern of export prices that differ significantly."[173]

Cheng Shin appears to not understand the complete framework of the differential pricing analysis and the purpose of the Cohen's *d* and ratio test when considering whether there existed a pattern of price differences during the POI. The purpose of the Cohen's *d* test is not to evaluate whether a pattern exists, but rather to examine whether the prices of merchandise to a distinct purchaser, region or time period differ significantly with the prices of comparable merchandise to all other purchasers, regions or time periods, respectively. The pattern is then discerned based on testing the extent of these prices that differ significantly with the ratio test. In the final determination for Cheng Shin, the Cohen's *d* and ratio tests find that 70.45 percent of Cheng Shin's U.S. sale value are at prices that differ significantly, which confirms that Cheng Shin's pricing behavior exhibits a pattern of prices that differ significantly.[174]

The SAA states that when considering whether a pattern of prices that differ significantly exists, Commerce "will proceed on a case-by-case basis."[175] Further, in the *Preliminary Determination*, Commerce invited interested parties to "present arguments and justifications"[176] to modify the definitions used in the differential pricing analysis. Cheng Shin did not challenge the 0.8 Cohen's *d* coefficient threshold, nor the 33 percent and 66 percent thresholds in the ratio test.

For Cheng Shin, whose result of the ratio test in the final determination is 70.45 percent, the relevant threshold is 66 percent, above which Commerce will consider the application of the A-to-T method to all U.S. sales. More importantly, the different margin rates calculated for the final determination has changed so that there is now a meaningful difference, a change of more than 25 percent between the A-to-A method and the A-to-T method. Cheng Shin has provided no support based on the unique characteristics of subject merchandise for the use of a threshold greater than 66 percent to confirm the existence of a pattern of prices that differ significantly and to consider an alternative comparison methodology based on applying the A-to-T method to all U.S. sales.

Cheng Shin appears to conflate Commerce's Cohen's *d* test with the calculation of individual dumping margins. The Cohen's *d* test only examines U.S. sales, with no reference to NVs, to

[172] *See Preliminary Determination* PDM at 5-6.
[173] *See Timken Company v. United States*, 179 F. Supp. 3d 1168, 1179 (CIT 2016) (*Timken*).
[174] *See* Cheng Shin's Final Analysis Memorandum.
[175] *See* SAA at 843.
[176] *See Preliminary Determination* PDM at 6.

determine whether U.S. prices differ significantly. The comparison of prices between each pair of test and comparison groups is made for "comparable merchandise" which is defined as "the product control number and all characteristics of the U.S. sales, other than purchaser, region, and time period, that Commerce uses in making comparisons between EP or CEP and NV for the individual dumping margins."[177] Accordingly, given Cheng Shin's apparent misunderstanding here, we find its argument misplaced.

Additionally, we find Cheng Shin's reliance on *WTO Large Residential Washers from Korea* to be misplaced. The WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA). In this regard, we note that Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.[178] As is clear from the discretionary nature of the scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Commerce's discretion in applying the statute.[179]

Finally, we note that the United States has fully complied with all adverse panel and Appellate Body reports adopted by the Dispute Settlement Body with regards to Article 2.4.2 of the AD Agreement. With regard to the A-T method, specifically, and an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the AD Agreement, Commerce has issued no new determination, and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URAA. Based upon the foregoing, we used the A-T method to calculate Cheng Shin's dumping margin in this final determination.

Comment 11: Whether Commerce Should Allow Certain Non-Operating Income Offsets to the Reported General and Administrative (G&A) Expenses

Cheng Shin's Case Brief[180]*:*

- Commerce, at the preliminary determination, improperly disallowed certain non-operating income offsets associated with affiliated transactions from the reported G&A expenses.[181]
- The exclusion of these non-operating income offsets from the G&A expenses is contrary to Commerce's practice of calculating G&A expenses based on the company-wide G&A expenses incurred by the producing company and allocated over the producing company's company-wide cost of sales.[182]
- The reported non-operating income offsets were taken directly from Cheng Shin's books and records and include income related to gains on disposal of fixed assets, commissions, technical services, and trademark licenses.[183]

[177] *See Preliminary Determination* PDM at 4-8.
[178] *See, e.g.*, 19 USC Section 3353, 3358 (sections 123 and 129 of the URAA).
[179] *See, e.g.*, 19 USC Section 3538(b)(4) (implementation of WTO Reports is discretionary.)
[180] *See* Cheng Shin's Case Brief at 10-12.
[181] *Id.* at 10.
[182] *Id.*
[183] *Id.*

- Cheng Shin argues that in reporting this income to Commerce, it not only provided an explanation of what this income was, but also provided the account where the income was reported and the period in which the income was earned.[184]
- These disallowed non-operating income offsets associated with affiliated transactions are related to the production of the subject merchandise and, accordingly, there is no basis for their exclusion.[185]
- While Commerce excluded the income, it did not exclude the expenses related to the affiliated transactions that were reported to Commerce and similarly explained in Cheng Shin's supplemental response dated November 24, 2020 at Exhibit SD-15.[186] It is nonsensical that the Commerce found it had sufficient information to include the expenses, yet apparently based upon the exact same information excluded the income offsets.
- Should Commerce continue to exclude the income for the affiliated transactions, it must also exclude the related expenses.[187]

Petitioner's Rebuttal Brief[188]*:*

- The petitioner contends that Cheng Shin's claim that Commerce, in the preliminary determination, wrongly disallowed certain non-operating income offsets derived from certain affiliated party transactions, is without merit.[189]
- Contrary to Cheng Shin's assertions, Commerce has previously made adjustments when reported values were derived from transactions with affiliated parties that were not shown to be comparable to market values.[190]
- Commerce asked Cheng Shin to describe each income item included in the total "Other Non-operating income (Net)" used as offsets to the G&A expenses and explain why it is appropriate to include it as an offset." No such explanations were provided.[191]
- Cheng Shin in its supplemental response only mentioned that each of these income items were associated with income from affiliated companies. No further information was provided.[192] In addition, Cheng Shin did not place information on the record to demonstrate that the non-operating income transactions with affiliated parties fairly reflect market values.
- The petitioners conclude that, for the final determination there is no need to modify the adjustments made at the preliminary determination to calculate the G&A expense ratio.[193]

Commerce's Position: Consistent with the preliminary determination, for the final determination, we have continued to disallow the non-operating income offsets that are in

[184] *Id.*
[185] *See* Cheng Shin's Case Brief at 11.
[186] *Id.* at 12.
[187] *See* Cheng Shin's Case Brief at 12.
[188] *See* Petitioner's Rebuttal Brief at 6-7.
[189] *Id.* at 6
[190] *Id*.
[191] *Id.*
[192] *Id.* at 6-7.
[193] *Id.* at 7.

question from the reported G&A expenses. We agree with the petitioners that while Cheng Shin in its supplemental questionnaire response[194] mentioned in very general terms what the income items were associated with and that each income item was related to transactions with affiliated parties, they did not provide the requested descriptions of such transactions or information to substantiate why it was appropriate to allow these items as offsets to the reported G&A expenses.[195]

Commerce has reasonably placed the burden to establish entitlement for offsets to the reported costs on the party seeking the adjustment or offset and the party with access to the necessary information.[196] Accordingly, Commerce has acknowledged in its practice that the burden to substantiate a reported offset is placed on the claiming party to demonstrate its eligibility for such an adjustment.[197] Here, Commerce requested that Cheng Shin provide a description of each income item included in the total "Other Non-operating income (NET)" used to offset the G&A expense numerator, and explain why it is appropriate to include it as an offset to the reported cost.[198] Cheng Shin failed to fully describe the transactions giving rise to the income items in questions and explain why it is appropriate to include each item as an offset to its G&A expenses. Consequently, Cheng Shin failed to substantiate its entitlement for the offsets in question. Specifically, Cheng failed to substantiate what the gain on the disposal of fixed assets was associated with, such as the routine disposal of fixed assets, entire facility, land, *etc.* Commerce has a practice for how each of these types of fixed asset disposals are treated for reporting purposes, and due to Cheng Shin's failure to provide the necessary information about these assets, the record lacks the necessary data needed to substantiate the claimed offset. Further, Cheng Shin failed to establish what the gains on commissions and trademark licenses were related to (*i.e.*, selling activities, production activities, separate lines of business, *etc.*). Likewise, Cheng Shin failed to explain whether the income from the technical services should be considered a separate line of business or a part of the general operations of the company as a whole. Moreover, Cheng Shin failed to establish that all of these affiliated transactions in question were arm's-length values as required under section 773(f)(2) of the Act.

In regard to Cheng Shin assertions that if Commerce disallows the offsets to the reported G&A expenses then the related expenses should likewise be excluded, we disagree. As noted above, the burden to establish entitlement for any adjustment or offset falls on the seeking party with access to the necessary information. Here, Cheng Shin has failed to establish an entitlement to the allowance of certain offsets, and likewise, has failed to establish an entitlement to exclude any related expenses.

[194] *See* Cheng Shin's Letter, "Passenger Vehicle and Light Truck Tires from Taiwan: Cheng Shing Rubber Ind. Co. Ltd. – Supplemental Section D Response," dated November 24, 2020 at Exhibit SD-15.
[195] *See* Petitioners' Rebuttal Brief at 7.
[196] *See* Section 351.401(b)(1) of Commerce's regulations.
[197] *See, e.g.*, Common Alloy Aluminum Sheet from Bahrain IDM at Comment 9
[198] *See* Commerce's Letter, "Antidumping Duty Less Than Fair Value Investigation of Passenger Vehicle and Light Truck Tires from Taiwan," dated November 6, 2020 at 7.

VII. RECOMMENDATION

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

☒ ☐

Agree Disagree

5/21/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance