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September 30, 2014

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Certain New Pneumatic Off-the-  
Road Tires from the People's Republic of China; 2012-2013

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#### SUMMARY

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC") in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended ("the Act"). The period of review ("POR") is September 1, 2012, through August 31, 2013. The review covers the following exporters of subject merchandise: mandatory respondents Double Coin Holdings Ltd. ("Double



Coin”<sup>1</sup> and Guizhou Tyre Co., Ltd. / Guizhou Tyre Import and Export Co., Ltd. (“collectively, GTC”)<sup>2</sup>; separate rates applicants Zhongce Rubber Group Company Limited (“Zhongce”) and Weihai Zhongwei Rubber Co., Ltd. (“Zhongwei”); and Trelleborg Wheel System (Xingtai) China, Co. Ltd. (“Trelleborg”). The Department preliminarily finds that GTC made sales of subject merchandise at less than normal value (“NV”), Zhongce and Zhongwei are eligible for a separate rate, Double Coin failed to demonstrate eligibility for separate rate status and thus has been included in the PRC-wide entity, and Trelleborg had no shipments during the POR.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (“CBP”) to assess antidumping duties on all appropriate entries of subject merchandise during the POR in accordance with 19 CFR 351.212(b)(1). Interested parties are invited to comment on these preliminary results. Unless otherwise extended, we intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

### Background

On September 3, 2013, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on OTR tires from the PRC for the period of

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<sup>1</sup> In *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 67104, 67108 (November 8, 2013) (“*Initiation Notice*”), the review was initiated on Double Coin Group Rugao Tyre Co., Ltd. – renamed Double Coin Group Jiangsu Tyre Co., Ltd. – (“DC Rugao/Jiangsu”), Double Coin Group Shanghai Donghai Tyre Co., Ltd. (“DC Donghai”), and Double Coin Holdings, Ltd. (“DCH” or “Double Coin”). The respondent in this review is DCH, which exported all subject merchandise produced by both its wholly-owned and affiliate factories during the POR. DC Donghai is an affiliated producer of subject merchandise that did not produce OTR tires for export in the POR. *See, e.g.*, Letter from Double Coin entitled, “Section A Response of Double Coin Holdings and China Manufacturers Alliance, LLC,” dated January 22, 2014 (“Double Coin SAQR”). DC Rugao/Jiangsu is a majority DCH-owned subsidiary factory which, along with the 100 percent DCH-owned production factory (*i.e.*, Double Coin Lorry Tyre Branch, *a.k.a.*, Shanghai Heavy Tire), produced the subject merchandise in question during the POR. *Id.* The International Trade Department of DCH is responsible for all export sales of merchandise under consideration produced by both DCH’s Shanghai Heavy Tire factory and the DC Rugao/Jiangsu factory. *Id.* Additionally, the China Manufacturers Alliance (“CMA”) is DCH’s U.S. sales affiliate for all POR sales, and has provided and certified to relevant and requested sales-related information on behalf of the respondent. *Id.* Accordingly, for ease of reference we use “Double Coin” to collectively refer to each of the above production, export, and sales entities that comprise the respondent in this review, but note that DCH is the actual exporter-respondent. Furthermore, as discussed below, we collapsed DCH, Shanghai Heavy Tire, DC Rugao/Jiangsu, and DC Donghai into a single entity for the purposes of this review.

<sup>2</sup> In the *Initiation Notice*, the review was initiated on Guizhou Advance Rubber Co., Ltd. (“GAR”), Guizhou Tyre Co., Ltd., and Guizhou Tyre Import and Export Co., Ltd.. *See* Letter from GTC, entitled, “Section A Response: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated January 29, 2014 (“GTC’s SAQR”). These three companies were collapsed into a collective entity, “GTC”, in the investigation. *See Certain New Pneumatic Off-The-Road Tires From the People’s Republic of China; Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 9278, 9283 (February 20, 2008), unchanged in *Certain New Pneumatic Off-The-Road Tires from the People’s Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485 (July 15, 2008). As such, we refer to the respondent, collectively, as “GTC” throughout this memorandum.

September 1, 2012, through August 31, 2013.<sup>3</sup> The Department initiated a review of nine exporters of subject merchandise.<sup>4</sup>

On November 20, 2013, Trelleborg submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.<sup>5</sup> On December 13, 2013, the Department determined, pursuant to section 777(c)(2) of the Act, that it was not practicable to fully investigate each of the companies for whom the Department initiated an administrative review and, in accordance with section 777(c)(2)(B) of the Act selected as mandatory respondents the two companies accounting for the largest volume of exports during the POR for which reviews were requested.<sup>6</sup> The largest two exporters of the merchandise that were selected as mandatory respondents were GTC and Double Coin.

On May 7, 2014, we extended the time limit for the preliminary results of review by 120 days, pursuant to section 751(a)(3)(A) of the Act, to September 30, 2014.<sup>7</sup>

The Department conducted a verification of GTC's questionnaire responses at GTC and its affiliates from August 11 through August 15, 2014, in Guiyang, Guizhou Province, PRC, and at GTC North America, Inc., on August 26, 2014, in Canton, Ohio, U.S.A. The Department conducted a verification of Double Coin's questionnaire responses at DCH and DC Rugao/Jiangsu, at DCH's headquarters in Shanghai, PRC, on August 19, 2014, and at DC Rugao/Jiangsu in Rugao City, Jiangsu Province, PRC, from August 20, 2014, to August 22, 2014. The Department then conducted the verification of DCH's U.S. sales affiliate, CMA, in Monrovia, California, U.S.A., on August 28 and August 29, 2014.<sup>8</sup>

### Scope of the Order

The products covered by the order are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and

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<sup>3</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 78 FR 54235, 54236 (September 3, 2013).

<sup>4</sup> See *Initiation Notice*, 78 FR at 67108. The Department initiated on the aforementioned three Double Coin companies and three GTC companies, as well as Zhongce, Zhongwei, and Trelleborg.

<sup>5</sup> See Letter from Trelleborg, entitled, "Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. Statement of No Shipments during the POR: New Pneumatic Off-The-Road Tires from the People's Republic of China," dated November 20, 2013 ("Trelleborg No Shipments Letter").

<sup>6</sup> See Memorandum to Melissa Skinner, Director, Office III, entitled "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Respondent Selection," dated December 13, 2013.

<sup>7</sup> See Memorandum to Gary Taverman entitled, "Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated May 7, 2014.

<sup>8</sup> See Memorandum to the File, entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Verification of the Sales and Factors Response of Guizhou Tyre Co., Ltd. and Affiliates," dated concurrently with this memorandum, and Memorandum to the File, entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Verification of the Sales and Factors Response of Double Coin Holdings and China Manufacturers Alliance," dated concurrently with this memorandum ("Double Coin's Verification Report").

warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,<sup>9</sup> combine harvesters,<sup>10</sup> agricultural high clearance sprayers,<sup>11</sup> industrial tractors,<sup>12</sup> log-skidders,<sup>13</sup> agricultural implements, highway-towed implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;<sup>14</sup> (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,<sup>15</sup> front end loaders,<sup>16</sup> dozers,<sup>17</sup> lift trucks, straddle carriers,<sup>18</sup> graders,<sup>19</sup> mobile cranes,<sup>20</sup> compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type<sup>21</sup> or tubeless, radial or non-radial, and intended for sale either to original equipment

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<sup>9</sup> Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

<sup>10</sup> Combine harvesters are used to harvest crops such as corn or wheat.

<sup>11</sup> Agricultural sprayers are used to irrigate agricultural fields

<sup>12</sup> Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

<sup>13</sup> A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

<sup>14</sup> Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

<sup>15</sup> Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

<sup>16</sup> Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

<sup>17</sup> A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform "rough grading" in road construction.

<sup>18</sup> A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

<sup>19</sup> A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform "finish grading." Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.

<sup>20</sup> *I.e.*, "on-site" mobile cranes designed for off-highway use.

<sup>21</sup> While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P - Identifies a tire intended primarily for service on passenger cars;
- LT - Identifies a tire intended primarily for service on light trucks; and,
- ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156” or plus 0.250”;
- MH - Identifies tires for Mobile Homes;
- HC - Identifies a heavy duty tire designated for use on “HC” 15” tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC - Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all-terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

## Affiliation and Collapsing

We preliminarily determine that DCH (including DCH's production factory Shanghai Heavy Tire), DC Rugao/Jiangsu, and DC Donghai are affiliated, pursuant to section 771(33)(E) of the Act.<sup>22</sup> In addition, based on the evidence provided in Double Coin's questionnaire responses, we also preliminarily determine that DCH (including its Shanghai Heavy Tire factory), DC Rugao/Jiangsu, and DC Donghai should be collapsed and treated as a single entity in this administrative review (collectively, the "DCH Single Entity"). This finding is based on the determination that the level of ownership management overlap, and intertwined operations of DCH, DC Rugao/Jiangsu, and DC Donghai result in a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f).<sup>23</sup> This preliminary finding is further supported by Double Coin's own acknowledgement of the "high-level cross-ownership and management between {Double Coin Holdings and} Double Coin Lorry Tyre Branch and Double Coin Group Jiangsu Tyre Co., Ltd., as well as Double Coin Group Shanghai Donghai Tyre Co., Ltd."<sup>24</sup>

## Preliminary Determination of No Shipments

On November 20, 2013, Trelleborg submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.<sup>25</sup> Consistent with our practice, the Department asked CBP to conduct a query on potential shipments made by Trelleborg during the POR.<sup>26</sup> CBP did not provide any evidence to contradict Trelleborg's claim of no shipments. Based on Trelleborg's certification and our analysis of CBP information, we preliminarily determine that Trelleborg did not have any reviewable transactions during the POR. The Department preliminarily finds that consistent with its practice in non-market economy ("NME") cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to the above named company and issue appropriate instructions to CBP based on a finding of no shipments.<sup>27</sup>

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<sup>22</sup> Double Coin acknowledges these affiliations in its submissions. *See, e.g.*, Double Coin's SAQR. *See* Memorandum to the File, entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Double Coin Affiliation and Collapsing Memorandum," dated concurrently with this memorandum.

<sup>23</sup> *Id.*

<sup>24</sup> *See* Letter from Double Coin, entitled, "Supplemental Section A Response of Double Coin Holdings and China Manufacturers Alliance, LLC Certain New Pneumatic Off-the-Road Tires from China," dated June 16, 2014 at 10.

<sup>25</sup> *See* Trelleborg No Shipments Letter.

<sup>26</sup> *See* CBP Message Number 3352302, dated December 18, 2013.

<sup>27</sup> *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011).

## DISCUSSION OF THE METHODOLOGY

### Nonmarket Economy Country

The Department considers the PRC to be a NME country.<sup>28</sup> In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

### Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate rate status in an NME proceeding.<sup>29</sup> It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,<sup>30</sup> as further developed by *Silicon Carbide*.<sup>31</sup> However, if the Department determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.<sup>32</sup>

In the instant review, the Department received timely-filed separate rate applications or certifications from the DCH Single Entity, GTC, Zhongce, and Zhongwei, and each company was able to demonstrate that they had suspended entries during the POR.<sup>33</sup> These companies have variously stated that they are joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies, and none are wholly foreign-owned. Therefore, the Department must analyze whether these respondents demonstrate an absence of both *de jure* and *de facto* governmental control over export activities, as appropriate.

### *Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated

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<sup>28</sup> See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

<sup>29</sup> See *Initiation Notice*, 78 FR at 67104-05.

<sup>30</sup> See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers").

<sup>31</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide").

<sup>32</sup> See, e.g., *Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China*, 72 FR 52355, 52356 (September 13, 2007).

<sup>33</sup> The Department also received a timely-filed SRA from Trelleborg. However, this SRA was submitted only as a precaution and, as noted above, Trelleborg certified to having no shipments during the POR.

with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.<sup>34</sup>

The evidence provided by each separate rate company supports a preliminary finding the absence of *de jure* governmental control based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) and there are formal measures by the government decentralizing control of companies.<sup>35</sup>

### *Absence of De Facto Control*

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.<sup>36</sup> The Department determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from granting a separate rate.

The Department continues to evaluate its practice with regard to the separate rates analysis in light of the diamond sawblades from the PRC antidumping duty proceeding, and Commerce's determinations therein.<sup>37</sup> In particular, we note that in litigation involving the diamond sawblades proceeding, the U.S. Court of International Trade found the Department's existing separate rates analysis deficient in the circumstances of that case, in which a government-

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<sup>34</sup> See *Sparklers*, 56 FR at 20589.

<sup>35</sup> For (1) Double Coin, see its submissions entitled, "Double Coin's Separate Rate Certification Response," dated January 2, 2014 ("Double Coin's SRC") and Double Coin's SAQR; for (2) Zhongwei, see its submission entitled, "New Pneumatic Off-the-Road Tires from the People's Republic of China Separate Rate Certification," dated January 7, 2014 ("Zhongwei's SRC"); for (3) Zhongce, see its submission entitled, "New Pneumatic Off-the-Road Tires from the People's Republic of China (2012-2013): Separate Rate Application," dated January 8, 2014 ("Zhongce's SRA"); for (4) GTC, see GTC's SAQR.

<sup>36</sup> See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

<sup>37</sup> See Final Results of Redetermination Pursuant to Remand Order for Diamond Sawblades and Parts Thereof from the People's Republic of China (May 6, 2013) in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 885 F. Supp. 2d 1343 (CIT 2012), sustained in *Advanced Technology & Materials Co., Ltd., et al. v. United States*, 938 F. Supp. 2d 1342 (CIT 2013) ("*Sawblades Redetermination*"). This remand redetermination is on the Enforcement and Compliance website at <http://enforcement.trade.gov/remands/12-147.pdf>; see also *Diamond Sawblades and Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 77098 (December 20, 2013) and accompanying Preliminary Decision Memo at 7, unchanged in *Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 1.

controlled entity had significant ownership in the respondent exporter.<sup>38</sup> We concluded that where a government entity holds a majority ownership share, either directly or indirectly, in the respondent exporter, the majority ownership holding in and of itself means that the government exercises or has the potential to exercise control over the company's operations generally, which may include control over, for example, the selection of management, a key factor in determining whether a company has sufficient independence in its export activities to merit a separate rate. Consistent with normal business practices, we would expect any majority shareholder, including a government, to have the ability to control, and an interest in controlling, the operations of its company, including the selection of management and the profitability of the company. Accordingly, we have considered the level of government ownership where necessary.

In this review, all respondent companies asserted the following: (1) that the export prices are not set by, and are not subject to, the approval of a governmental agency; (2) they have authority to negotiate and sign contracts and other agreements; (3) they have autonomy from the government in making decisions regarding the selection of management; and (4) they retain the proceeds of their export sales and make independent decisions regarding disposition of profits or financing of losses.<sup>39</sup> Additionally, the separate rate companies' responses indicate that their pricing during the POR does not involve coordination among exporters.<sup>40</sup> However, as a result of the Department's evolving practice on this issue in light of the aforementioned diamond sawblades litigation and the facts on the record of this case with respect to partial ownership of certain respondents by government entities, we have further scrutinized the level of government ownership and *de facto* control with respect to each respondent:

#### 1) Non-selected Applicants' Separate Rate Status

The evidence provided in Zhongce's separate rate application and Zhongwei's separate rate certification supports a preliminary finding of an absence of *de facto* government control based on record statements and supporting documentation and certification showing that the companies: (1) set their own export prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding the disposition of profits or financing of losses.<sup>41</sup>

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<sup>38</sup> See, e.g., *Advanced Technology & Materials Co., Ltd. v. United States*, 885 F. Supp. 2d 1343, 1349 (CIT 2012) ("The court remains concerned that Commerce has failed to consider important aspects of the problem and offered explanations that run counter to the evidence before it."); *id.* at 1351 ("Further substantial evidence of record does not support the inference that SASAC's {state-owned assets supervision and administration commission} 'management' of its 'state-owned assets' is restricted to the kind of passive-investor *de jure* 'separation' that Commerce concludes.") (footnotes omitted); *Id.* at 1355 ("The point here is that 'governmental control' in the context of the separate rate test appears to be a fuzzy concept, at least to this court, since a 'degree' of it can obviously be traced from the controlling shareholder, to the board, to the general manager, and so on along the chain to 'day-to-day decisions of export operations,' including terms, financing, and inputs into finished product for export."); *id.* at 1357 ("AT&M *itself* identifies its 'controlling shareholder' as CISRI {owned by SASAC} in its financial statements and the power to veto nomination does not equilibrate the power of control *over* nomination.") (footnotes omitted).

<sup>39</sup> See Double Coin's SRC and SAQR, Zhongwei's SRC, Zhongce's SRA, and GTC's SAQR.

<sup>40</sup> *Id.*

<sup>41</sup> See Zhongwei's SRC at 7-8 and Zhongce's SRA at 9-16.

Therefore, the evidence placed on the record of this investigation by Zhongce and Zhongwei demonstrates an absence of *de jure* and *de facto* government control under the criteria identified in *Sparklers* and *Silicon Carbide*. Accordingly, the Department preliminarily grants separate rates to Zhongce and Zhongwei.<sup>42</sup>

## 2) The DCH Single Entity's Separate Rate Status

DCH is majority-owned by the Huayi Group (“Huayi”).<sup>43</sup> Huayi is wholly-owned by the Shanghai State-owned Assets Supervision and Administration Commission of the State Council (“SASAC”), a central governmental body that oversees important state assets.<sup>44</sup> Because of this level of government ownership, and the control that such ownership on its own establishes, we preliminarily conclude that DCH and, thus the DCH Single Entity, does not satisfy the criteria demonstrating an absence of *de facto* government control over export activities, consistent with our determination in the *Sawblades Redetermination*.<sup>45</sup> Consequently, we preliminarily determine that the DCH Single Entity is ineligible for a separate rate. We note that evidence demonstrates that, through its 100-percent SASAC-owned Huayi assets, the PRC government exercises its rights inherent in majority ownership as would be expected. For instance, Huayi has control over the composition of DCH’s board of directors, which in turn chooses the company’s management.<sup>46</sup> Furthermore, DCH and Huayi have extensively intertwined management and board members.<sup>47</sup>

## 3) GTC's Separate Rate Status

GTC’s largest shareholder, is a SASAC administered entity. However, we find that the facts with respect to GTC do not suggest any intertwining of GTC’s board or management and that of its largest shareholder, which is under supervision of the Guiyang SASAC office. Moreover, several proprietary considerations with respect to type of share ownership and the limits to shareholder power in appointing and influencing the Board of Directors and Board of Supervisors, as codified by the company’s articles of association, demonstrate that a single shareholder is unable to control GTC’s export activities or significantly influence the selection of management.<sup>48</sup> Therefore, the evidence placed on the record of this review by GTC demonstrates an absence of *de jure* and *de facto* government control under the criteria identified

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<sup>42</sup> See “Margin for the Separate Rate Companies” section below.

<sup>43</sup> See Double Coin’s SAQR.

<sup>44</sup> *Id.* SASAC, which is a PRC-government agency, is tasked with, *inter alia*, the responsibilities of the investor, as specified in the Company Law, with regard to state-owned enterprises.

<sup>45</sup> For further analysis, including business proprietary information, with respect to the denial of Double Coin’s separate rate, see Memorandum entitled “2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Analysis of the Preliminary Results Margin Calculation for Double Coin Holdings, Ltd.,” dated concurrently with this memorandum (“Double Coin’s Preliminary Analysis Memo”).

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

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

<sup>48</sup> For further analysis, including business proprietary information, with respect to granting GTC a separate rate, see Memorandum entitled “2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Analysis of the Preliminary Results Margin Calculation for Guizhou Tyre Co., Ltd.,” dated concurrently with this memorandum (“GTC’s Preliminary Analysis Memo”).

in *Sparklers and Silicon Carbide*. Accordingly, the Department is preliminarily granting GTC a separate rate.

### Margin for the Separate Rate Companies

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis*, or based entirely on facts available in calculating an all others rate. Accordingly, the Department's usual practice has been to average the weighted-average dumping margins for the companies selected for individual examination, excluding rates that are zero, *de minimis*, or based entirely on facts available.<sup>49</sup> In this case, one mandatory respondent, Double Coin, is preliminarily found to be part of the PRC-wide entity; the rate we have preliminarily determined for the entity is described below. The other mandatory respondent, GTC, is receiving a separate rate for these preliminary results calculated from its own sales and production data. To determine a rate for the unselected separate rate companies, we find it appropriate to use the margin calculated for GTC, which was also found to be separate from the PRC-wide entity with respect to its export activities, and which rate is not zero or *de minimis* nor based entirely on facts available. Therefore, we preliminarily assign to Zhongce and Zhongwei a margin of, 16.18 percent (*i.e.*, the rate calculated for GTC) as the separate rate for this review.

### PRC-Wide Entity

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate-rates application or certification.<sup>50</sup> We preliminarily determine that Double Coin did not demonstrate its eligibility for a separate rate and is properly considered part of the PRC-wide entity. In NME proceedings, "rates' may consist of a single dumping margin applicable to all exporters and producers."<sup>51</sup> As explained above in the "Separate Rates" section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that provided sufficient evidence to establish

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<sup>49</sup> See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

<sup>50</sup> The separate-rate application and certification are available at: <http://enforcement.trade.gov/nme/nme-sep-rate.html>.

<sup>51</sup> See 19 CFR 351.107(d).

that they operate freely with respect to their export activities.<sup>52</sup> In this regard, no record evidence indicates that such government influence is no longer present or that our treatment of the PRC-wide entity is otherwise incorrect.

The only rate ever determined for the PRC-wide entity in this proceeding is 210.48 percent, as determined in the less-than-fair-value investigation.<sup>53</sup> Ordinarily, we would assign the PRC-wide entity that same rate in this administrative review.<sup>54</sup> Double Coin, however, provided the Department with all requested information, which was subsequently verified, necessary to calculate a margin for at least a part of the PRC-wide entity. The Department lacks information to determine what share of production and exports of subject merchandise Double Coin constitutes as part of the PRC-wide government-controlled entity during the current POR. As a result, we are able to calculate a margin for an unspecified portion of a single PRC-wide entity, but cannot do so for another unspecified portion of the entity. As the Department must calculate a single margin for the PRC-wide government controlled entity and there is insufficient information on the record with respect to the composition of the PRC-wide entity, we thus preliminarily calculated a simple average of the previously assigned PRC-wide rate (210.48 percent) and Double Coin's calculated margin (0.69 percent) as the rate applicable to the PRC-wide entity. Accordingly, the Department revised the PRC-wide entity rate to 105.59 percent for these preliminary results.

#### Surrogate Country and Surrogate Value Data

On January 30, 2014, the Department sent interested parties a letter inviting comments on the concurrently released list of potential surrogate countries and primary surrogate country selection, as well as surrogate value ("SV") data.<sup>55</sup> On February 6, 2014, Double Coin provided comments on the economic comparability of the countries listed on the Surrogate Country List, noting agreement that all countries included on the list were comparable and declining to propose

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<sup>52</sup> See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005-2006 Administrative Review and Partial Rescission of Review*, 72 FR 56724 (October 4, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>53</sup> See *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 40485, 40489 (July 15, 2008).

<sup>54</sup> See, e.g., *Certain Activated Carbon From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 26748 (May 8, 2013) and Preliminary Decision Memorandum at 10-11, unchanged in *Certain Activated Carbon From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) ("*Activated Carbon from the PRC*").

<sup>55</sup> See the Department's Letter to All Interested Parties entitled "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated January 30, 2014, which contained the Memorandum from Carole Showers, Director, Office of Policy, Enforcement and Compliance, to Brendan Quinn, Acting Program Manager, Office 3, Enforcement and Compliance, entitled, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Pneumatic Off-the-Road Tires ("OTR") from the People's Republic of China ("China")," dated January 22, 2014 ("Surrogate Country List").

that other non-listed countries be considered.<sup>56</sup> No other party provided comment on the comparability of potential surrogate countries. On March 14, 2014, the Department received comments on the selection of the primary surrogate country from the list of potential surrogates from Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC (“Petitioners”), Double Coin, and GTC.<sup>57</sup> On March 24, 2014, both Petitioners and GTC submitted rebuttal comments on the initial surrogate country selection submissions.<sup>58</sup> On April 14, 2014, Petitioners, Double Coin, and GTC provided initial comment on and information for SV selection.<sup>59</sup> On May 2, 2014, Petitioners, Double Coin, and GTC provided rebuttal SV information and comment.<sup>60</sup> Since these initial submissions, Petitioners, Double Coin, and GTC

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<sup>56</sup> See Letter from Double Coin entitled, “Comments on the Department’s List of Countries at the Same Level of Economic Development as China: Certain New Pneumatic Off-the-Road Tires from China,” dated February 6, 2014.

<sup>57</sup> See Letter from Petitioners, entitled, “Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners’ Comments on Surrogate Country Selection,” dated March 14, 2014; Letter from Double Coin, entitled, “CMA’s and Double Coin’s Surrogate Country Comments Certain New Pneumatic Off-the-Road Tires from China,” dated March 14, 2014; Letter from GTC, entitled, “Surrogate Country Comments for GTCIE: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated March 14, 2014.

<sup>58</sup> See Letter from Petitioners, entitled, “Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners’ Rebuttal Comments on Surrogate Country Selection,” dated March 24, 2014, and Letter from GTC, entitled, “Surrogate Country Rebuttal Comments for GTC: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated March 24, 2014.

<sup>59</sup> See Letter from Petitioners, entitled, “Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners’ Initial Surrogate Value Comments,” dated April 14, 2014 (“Petitioners’ Initial SV Submission”); Letter from Double Coin, entitled, “Double Coin Holdings and China Manufacturers Alliance, LLC’s Surrogate Value Comments: Certain New Pneumatic Off-the-Road Tires from China,” dated April 14, 2014 (“Double Coin’s Initial SV Submission”); Letter from GTC, entitled, “Surrogate Value Comments for GTC: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated April 14, 2014 (“GTC’s Initial SV Submission”).

<sup>60</sup> See Letter from Petitioners, entitled, “Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners’ Rebuttal Surrogate Value Comments,” dated May 2, 2014 (“Petitioners’ Rebuttal SV Submission”); Letter from Double Coin, entitled, “Double Coin’s Rebuttal SV Information: Off-the Road Tires from China,” dated May 2, 2014; Letter from GTC, entitled, “GTC’s Surrogate Value Rebuttal Submission: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated May 2, 2014.

each provided additional SV information on the record,<sup>61</sup> including rebuttal information to the additional SV data from Petitioners and GTC.<sup>62</sup>

### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production ("FOP"), valued in a surrogate market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.<sup>63</sup> The Department determined that Bulgaria, Colombia, Ecuador, Indonesia, South Africa and Thailand are countries whose per capita gross national incomes ("GNI") are comparable to the PRC in terms of economic development.<sup>64</sup>

Petitioners, in their surrogate country comments and comments for the preliminary results, submit that the Department should select Thailand as the primary surrogate country, noting that Thailand is a significant producer of comparable merchandise at a level of development similar to the PRC. They also note that Thailand provides publicly available information to value all costs relevant to this review and, of the potential surrogates, Thailand's GNI is closest to that of the PRC. Additionally, Petitioners assert that: 1) Thailand is a net exporter of OTR tires, whereas Indonesia is a net importer; 2) Thailand provides SVs for all inputs, including multiple sources from which to value rubber; and 3) Thai labor data are more specific to tire production than that of Indonesia.<sup>65</sup>

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<sup>61</sup> See Letter from Petitioners, entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners' Additional Surrogate Value Comments," dated May 2, 2014; Letter from Petitioners, entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners' Third Surrogate Value Comments," dated August 29, 2014; Letter from Double Coin, entitled, "Additional Surrogate Value Information Certain New Pneumatic Off-the-Road Tires from China," dated September 2, 2014; Letter from Petitioners, entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners' Fourth Surrogate Value Comments," dated September 2, 2014 ("Petitioners' September SV Submission"); Letter from GTC, entitled, "GTC's Second Surrogate Value Comments: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated September 2, 2014 ("GTC's Second SV Submission").

<sup>62</sup> See Letter from GTC, entitled, "GTC's Second Surrogate Value Rebuttal Submission: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated September 9, 2014, and Letter from Petitioners, entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners' Second Rebuttal Surrogate Value Information," dated September 12, 2014.

<sup>63</sup> See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("Policy Bulletin").

<sup>64</sup> See Surrogate Country List.

<sup>65</sup> See Petitioners' Surrogate Country Comments, Petitioners' Rebuttal Surrogate Country Comments, and Letter from Petitioners, entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners' Pre-Preliminary Determination Comments," dated September 8, 2014 at 11-14.

In their respective comments on surrogate country, both respondents Double Coin and GTC propose that the Department select Indonesia as the primary surrogate country because Indonesia is a significant producer of comparable merchandise and because there is reliable data from Indonesia available to value all FOPs. Specifically, they note that Indonesian data provide more specific Harmonized Tariff Schedule (“HTS”) categories from which to value the major natural rubber inputs than do Thai data. They additionally assert that financial statements are available for three Indonesian producers of identical merchandise and two producers of comparable merchandise, whereas Thai statements are only available for one identical producer and one comparable producer.<sup>66</sup>

### Economic Comparability

As discussed above, the Department considers Bulgaria, Colombia, Ecuador, Indonesia, South Africa and Thailand all comparable to the PRC in terms of economic development.<sup>67</sup> Accordingly, unless we find that all of these countries are not significant producers of comparable merchandise, do not provide a reliable source of publicly available surrogate data, or are unsuitable for use for other reasons, or we find that another equally comparable country is an appropriate surrogate, we will rely on data from one of these countries.<sup>68</sup> Therefore, we consider all six countries identified on the Surrogate Country List as having met this prong of the surrogate country selection criteria.

### Significant Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department’s regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the Policy Bulletin for guidance on defining comparable merchandise. The Policy Bulletin states that “in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise.”<sup>69</sup> Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.<sup>70</sup> Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the

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<sup>66</sup> See GTC’s Surrogate Country Comments, GTC’s Rebuttal Surrogate Country Comments, Double Coin’s Surrogate Country Comments, and Letter from GTC, entitled, “GTC’s Pre-Preliminary Comments: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China,” dated September 9, 2014 at 1-4.

<sup>67</sup> See Surrogate Country List.

<sup>68</sup> See, e.g., *Certain Cased Pencils From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order In Part; 2010-2011*, 78 FR 2363 (January 11, 2013) and accompanying Preliminary Decision Memorandum at 6, unchanged in *Certain Cased Pencils From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part; 2010-2011*, 78 FR 42932 (July 18, 2013).

<sup>69</sup> See Policy Bulletin at 2.

<sup>70</sup> The Policy Bulletin also states that “if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise.” *Id.* at note 6.

industry.<sup>71</sup> “In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise.”<sup>72</sup> In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.<sup>73</sup>

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.<sup>74</sup> Moreover, while the legislative history provides that the term “significant producer” includes any country that is a significant “net exporter,”<sup>75</sup> it does not preclude reliance on additional or alternative metrics.

In this case, because production data of comparable merchandise was not available, we analyzed exports of comparable merchandise from both Indonesia and Thailand, as a proxy for production data. We obtained export data using the Global Trade Atlas (“GTA”) for the following HTS categories: 4011.20: New Pneumatic Tires, Of Rubber, Of A Kind Used On Buses Or Trucks; 4011.61: New Pneumatic Tires Or Rubber, Having Herring-Bone Or Similar Tread, Of A Kind Used On Agriculture Or Forestry Vehicles And Machines; 4011.62: New Pneumatic Tires Of Rubber, Herring-Bone Or Sim. Tread, Used On Construction/Industrial Vehicles, Rim Size No More Than 61 Cm, 4011.63: New Pneumatic Tires Of Rubber, Herring-Bone Or Sim. Tread, Used On Construction/Industrial Vehicles, Rim Size Exceeding 61 Cm; 4011.69: New Pneumatic Tires Of Rubber, Having Herring-Bone Or Similar Tread, Nesoi; 4011.92: New Pneumatic Tires, Of Rubber, Of A Kind Used On Agricultural Or Forestry Vehicles And Machines; 4011.93: New Pneumatic Tires, Of Rubber, Of A Kind Used On Construction/Industrial Handling Vehicles/Machines & Having Rim Size < 61 Cm; 4011.94: New Pneumatic Tires, Of Rubber, Of A Kind Used On Construction/Industrial Handling Vehicles/Machines And Having A Rim Size > 61 Cm.

Both Indonesia and Thailand had significant exports of merchandise under HTS categories identified in the scope of the order.<sup>76</sup> Because neither of the potential surrogate countries has

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<sup>71</sup> See *Sebacic Acid from the People’s Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) (“{T}o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.”).

<sup>72</sup> See Policy Bulletin at 2.

<sup>73</sup> *Id.* at 3.

<sup>74</sup> See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

<sup>75</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

<sup>76</sup> See Memorandum to the File, entitled, “2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Results Surrogate Value Memorandum,” dated concurrently with this memorandum (“Preliminary SV Memo”), at 1-3 and Attachment XIV.

been definitively disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

### Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.<sup>77</sup> There is no hierarchy among these criteria.<sup>78</sup> It is the Department's practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.<sup>79</sup> In this case, because there are neither data nor surrogate financial statements for Bulgaria, Colombia, Ecuador or South Africa on the record, these countries will not be considered for primary surrogate country selection purposes at this time. Thus, the Department is left with Indonesia or Thailand as a potential surrogate country.

Indonesia has good quality import price data available for all raw materials in GTA, including sufficient import data for natural rubber inputs. Thailand has good quality data available for all raw materials except natural rubber, the primary input in OTR tires. In general, during the POR, Thailand did not have sufficient import data for input-specific natural rubber inputs (*i.e.*, no data for input-specific HTS 4001.21 category for smoked rubber and limited data for imports of HTS 4001.22 used to value "technically-specified" inputs, resulting in Petitioners suggesting that the broad-basket four-digit 4001 category, along with the limited 4001.22 category be used to value rubber inputs).<sup>80</sup> Whereas Double Coin placed on the record natural rubber data from the website of the International Rubber Consortium and Agricultural Futures Exchange of Thailand as an alternative SV source for rubber inputs should the Department select Thailand as the primary surrogate country, the record is unclear as to how the data are calculated and whether they represent prices of actual sales transactions or if they are commodities indices.<sup>81</sup> As such, we find that Indonesia provides superior price information from which to value the major rubber inputs in comparison to the information available from Thailand.

Petitioners placed two complete financial statements from Thailand onto the record.<sup>82</sup> One of the financial statements is from a producer of identical merchandise while the other is from a producer of comparable merchandise.<sup>83</sup> Petitioners, Double Coin, and GTC placed five complete financial statements from Indonesia onto the record.<sup>84</sup> Three of these statements are

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<sup>77</sup> See, e.g., *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>78</sup> See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>79</sup> See Policy Bulletin.

<sup>80</sup> See Petitioners' Initial SV Comments.

<sup>81</sup> For further discussion, see Preliminary SV Memo.

<sup>82</sup> See Petitioners' Initial SV Submission and September SV Submission.

<sup>83</sup> For further discussion, see Preliminary SV Memo.

<sup>84</sup> See Petitioners' Initial SV Submission, Petitioners' Rebuttal SV Submission, Petitioners' September SV Submission, Double Coin's Initial SV Submission, GTC's Initial SV Submission, and GTC's Second SV Submission.

from producers of identical merchandise, while the other two are from producers of comparable merchandise.<sup>85</sup> After examining the useable Indonesian and Thai financial statements, the Department preliminarily determined that the multiple financial statements from Indonesian producers of identical merchandise are preferable to the single set of Thai statements from a producer of identical merchandise.<sup>86</sup>

With respect to the valuation of labor, Petitioners provided Thailand National Statistics Office's 2007 Industrial Census data specific to the "Manufacture of rubber tyres and tubes; retreading and rebuilding of rubber tyres."<sup>87</sup> Alternatively, the most industry-specific labor data available for Indonesia is 2008 ILO Chapter 5B information for "Manufacture of Rubber and Plastics Products."<sup>88</sup> Upon examination of available labor data, we agree with Petitioners that the Thai labor information offers more industry-specific (albeit not as current) data with respect to the valuation of labor used in the tire production industry than that of Indonesia, and from a preferable source.<sup>89</sup>

However, the Department preliminarily does not find that that the relative specificity of Thai labor data outweigh the fact that – as discussed above – Indonesia provides superior financial statement information from which to calculate financial ratios derived from multiple producers of identical merchandise and provides superior information to value one of the main FOPs (*i.e.*, natural rubber) from the GTA source. As such, we preliminarily determine that the data availability of SV information from Indonesia is superior to that of Thailand.

Therefore, the Department preliminarily finds Indonesia to be a reliable source for SVs because Indonesia is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data for all inputs. Given the above facts, the Department preliminarily selects Indonesia as the primary surrogate country for this review.<sup>90</sup> A detailed explanation of the SVs is provided below in the "Normal Value" section of this notice.

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<sup>85</sup> For further discussion, *see* Preliminary SV Memo.

<sup>86</sup> *Id.* Of the five Indonesian statements on the record, we determine that two are usable for the purpose of calculating surrogate financial ratios. First in accordance with our preference for using statements from producers of identical merchandise, where statements from both identical and comparable producers are on the record, we will calculate ratios using only statements from producers of identical products. *See, e.g., Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 41744 (July 16, 2012) and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, of the three statements from identical producers, two broke out energy costs, whereas one did not. *See* Petitioners' Initial SV Submission, Petitioners' Rebuttal SV Submission, Petitioners' September SV Submission, Double Coin's Initial SV Submission, GTC's Initial SV Submission, and GTC's Second SV Submission, as discussed in the Preliminary SV Memo. As the break-out of energy costs allows the Department to calculate such expenses in accordance with our NV practice of using SVs and actual consumption on a CONNUM-specific basis, we disregarded the set of statements which were unable to break-out energy costs. *See* Preliminary SV Memo. In contrast there is only one set of statements from an identical producer from Thailand on the record (albeit one with energy costs broken out). *See* Petitioners' Initial SV Submission and September SV Submission, as discussed in the Preliminary SV Memo.

<sup>87</sup> *See* Petitioners' Initial SV Submission.

<sup>88</sup> *See, e.g., id.*

<sup>89</sup> For further discussion, *see* Preliminary SV Memo.

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

## Date of Sale

The Department's regulations at 19 CFR 351.401(i) state as follows:

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.<sup>91</sup>

Both Double Coin and GTC indicated invoice date as the date of sale in accordance with the manner in which revenues are reported in its audited financial statements and the Department's expressed preference for invoice date, noting that the invoice finalizes the essential terms of each sale.<sup>92</sup> Double Coin later clarified that, while invoice date is the appropriate date of sale for all sales from the U.S. warehouse, for direct-shipped sales made by CMA but shipped directly from the PRC to the U.S. customer, the shipment date from the PRC is the more appropriate date of sale, given the Department's practice of not allowing date of sale to be after shipment date.<sup>93</sup> Accordingly, Double Coin reported the shipment date as the date of sale for all direct shipped sales. At verification, we confirmed that the terms of sale are set by the shipment date and Double Coin appropriately reported the date of sale for all sales in accordance with the Department's standard practice.<sup>94</sup>

Therefore, we preliminarily find that the invoice date is the most appropriate date of sale for GTC's sales and Double Coin's sales from U.S. inventory and shipment date is the most appropriate date of sale for Double Coin's direct shipped sales, as record evidence indicates that the terms of sale were set on these dates.

## Comparisons to Normal Value

To determine whether Double Coin and GTC's sales of OTR tires to the United States were made at less than fair value, we compared GTC's export price ("EP") or constructed export price ("CEP") sales and Double Coin's CEP sales to NV, as described in the "Export Price and Constructed Export Price" and "Normal Value" sections, below.

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<sup>91</sup> 19 CFR 351.401(i); *see also* Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090-1092 (CIT 2001) (upholding the Department's rebuttable presumption that invoice date is the appropriate date of sale).

<sup>92</sup> *See* Double Coin's SAQR at 17 and GTC's SAQR at 16.

<sup>93</sup> *See* Letter from Double Coin, entitled, "Section C Response of Double Coin Holdings and China Manufacturers Alliance, LLC: Certain New Pneumatic Off-the-Road Tires from China," dated February 18, 2014 ("Double Coin's SCQR") at 17.

<sup>94</sup> *See* Double Coin's Verification Report.

## A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average prices (“the average-to-average (‘A-A’) method”) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction (“A-T”) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>95</sup> In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.<sup>96</sup> The Department finds that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.<sup>97</sup> The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-A method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the A-A method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP or CEP and NV for the individual dumping margins.

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<sup>95</sup> See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>96</sup> See, *e.g.*, *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 3, and *Hardwood and Decorative Plywood From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

<sup>97</sup> See, *e.g.*, *Activated Carbon from the PRC*, and accompanying Issues and Decision Memorandum at Comment 2.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* test is a generally recognized statistical measure of the extent of the difference between the mean of a test group and the mean of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the net prices to a particular purchaser, region or time period differ significantly from the net prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large. Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the means of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference was considered significant, and the sales in the test group were found to have passed the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the A-T method to all sales as an alternative to the A-A method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an A-T method to those sales identified as passing the Cohen’s *d* test as an alternative to the A-A method, and application of the A-A method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the A-A method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether using only the A-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

Interested parties may present arguments in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

## B. Results of the Differential Pricing Analysis

For GTC, based on the results of the differential pricing analysis, the Department preliminarily finds that 65.1 percent of GTC's export sales pass the Cohen's *d* test, thus confirming the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, the Department determines that the A-A method can appropriately account for such differences because there is no significant difference between the A-A, the A-T, or the mixed alternative margins.<sup>98</sup> Therefore, the Department did not consider an alternative comparison method to the A-A method, and no additional argument to the contrary has been placed on the record. Accordingly, the Department preliminarily determined to use the A-A method to calculate the weighted-average dumping margin for GTC.<sup>99</sup>

For Double Coin, based on the results of the differential pricing analysis, the Department preliminarily finds that 23.31 percent of Double Coin's export sales pass the Cohen's *d* test, and does not confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods.<sup>100</sup> Therefore, the Department did not consider an alternative comparison method to the A-A method, and no additional argument to the contrary has been placed on the record. Accordingly, the Department preliminarily determined to use the A-A method to calculate the weighted-average dumping margin for Double Coin.

### Export Price and Constructed Export Price

#### *Export Price*

Pursuant to section 772(a) of the Act, the EP is "the price at which subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c) of the Act. The Department considers the U.S. prices of certain sales by GTC to be EPs in accordance with section 772(a) of the Act because they were the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States. We calculated EPs based on the sales price to unaffiliated purchaser(s) in the United States.

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<sup>98</sup> See GTC's Preliminary Analysis Memo.

<sup>99</sup> In these preliminary results, the Department applied to GTC and Double Coin the weighted-average dumping margin calculation method adopted in *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). In particular, the Department compared monthly weighted-average EPs and/or CEPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

<sup>100</sup> See Double Coin's Preliminary Analysis Memo.

In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the sales price for various PRC expenses such as foreign inland freight, brokerage and handling, and international movement costs. Where such expenses were provided by PRC service providers or paid for in renminbi, we based those charges on SV rates from Indonesia. *See* “Factor Valuation” section below for further discussion of SV rates.

### *Constructed Export Price*

In accordance with section 772(b) of the Act, the CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,” as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for certain of GTC’s sales and all of Double Coin’s sales because the sales were made by U.S. sales affiliates in the United States (GTC North America, Inc. and CMA, respectively).

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, to the reported gross unit prices for billing adjustments and early payment discounts, to arrive at the price at which the subject merchandise is first sold in the United States to an unaffiliated customer. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These included, where applicable, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, ocean freight, marine insurance, U.S. inland freight from port of importation to the warehouse, U.S. freight from warehouse to customer, U.S. warehousing, U.S. customs duties, and U.S. brokerage and handling. In accordance with section 772(d)(1) of the Act, the Department deducted, where applicable, commissions, credit expenses, inventory carrying costs, and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In accordance with section 772(d) of the Act, we calculated CMA and GTC North America’s credit expenses and inventory carrying costs based on its short-term interest rate. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.<sup>101</sup>

### Value-Added Tax

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any un-refunded (herein “irrecoverable”) value-added tax (“VAT”) in certain non-market economies in accordance with section 772(c)(2)(B) of the Act.<sup>102</sup> The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent’s EP and

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<sup>101</sup> For a detailed description of all adjustments, *see* Double Coin’s Preliminary Analysis Memo and GTC’s Preliminary Analysis Memo.

<sup>102</sup> *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).

CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.<sup>103</sup> Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.<sup>104</sup>

In both an initial and supplemental questionnaire, the Department instructed GTC and Double Coin to report value-added taxes on merchandise sold to the U.S. and identify which taxes are not rebated upon export.<sup>105</sup> In response, both respondents stated their disagreement with our product-specific methodology and reported that their total VAT refund exceeded VAT paid for export sales during the POR and, thus, reported no value in the VAT field of their respective sales databases.<sup>106</sup>

However, our practice is that we will not consider allocations across all company sales or across sales of products with different VAT schedules but, rather, to use the difference between the VAT rate and the refund rate, consistent with PRC regulations, unless the company can show otherwise for the subject merchandise.<sup>107</sup> Instead, the Department's methodology, as explained above and applied in this review, incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this review by both GTC and Double Coin indicates that according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is 9 percent.<sup>108</sup> For the purposes of these preliminary results, therefore, we removed from U.S. price the difference between the rates (*i.e.*, 8 percent), which is the irrecoverable VAT as defined under Chinese tax law and regulation.<sup>109</sup>

### Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various

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<sup>103</sup> *Id.*; see also *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.

<sup>104</sup> *Id.*

<sup>105</sup> See the Department's Letter to both Double Coin and GTC, entitled, "2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Supplemental Tax Questionnaire," dated April 30, 2014.

<sup>106</sup> See Double Coin's Letter, entitled, "VAT Tax Supplemental Questionnaire Response of Double Coin Holdings and China Manufacturers Alliance, LLC, Certain New Pneumatic Off-the-Road Tires from China," dated May 14, 2014 ("Double Coin VAT Response"), and GTC's Letter, entitled, "Supplemental VAT Questionnaire Response: Fifth Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated May 28, 2014 ("GTC VAT Response").

<sup>107</sup> See, e.g., *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 6.

<sup>108</sup> See, e.g., Double Coin's VAT Response at 2-3 and GTC's VAT Response at 1-2.

<sup>109</sup> See Double Coin's and GTC's Preliminary Analysis Memoranda.

aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that a respondent provide information regarding the weighted-average FOPs across all of the company's plants and/or suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier. This methodology ensures that the Department's calculations are as accurate as possible.<sup>110</sup>

The Department calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). Under section 773(c)(3) of the Act, FOPs used by Double Coin and GTC in the production of OTR Tires include, but are not limited to, (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department based NV on Double Coin's and GTC's reported FOPs for materials, energy, and labor.

### Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by Double Coin and GTC, the Department calculated NV based on the FOPs reported by Double Coin and GTC for the POR. The Department used Indonesian import data and other publicly available Indonesian sources in order to calculate SVs for Double Coin and GTC's FOPs. To calculate NV, the Department multiplied Double Coin's and GTC's reported per-unit FOP quantities by publicly available SVs.<sup>111</sup> The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.<sup>112</sup>

As appropriate, the Department adjusted input prices by including freight costs to render them delivered prices. Specifically, the Department added to Indonesian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where it relied on an import value. This adjustment is in accordance with the decision of the Federal Circuit in *Sigma Corp. v. United States*, 117 F.3d 1401, 1408 (Fed. Cir. 1997). Additionally, where necessary, the Department adjusted SVs for inflation and exchange rates, and the Department converted all applicable FOPs to a per-kilogram basis.

Furthermore, with regard to the Indonesian import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, India, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly

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<sup>110</sup> See, e.g., *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>111</sup> See Preliminary SV Memo at Attachments I and II.

<sup>112</sup> See, e.g., *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

available, non-industry-specific export subsidies.<sup>113</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>114</sup> Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized.<sup>115</sup> Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an "unspecified" country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.<sup>116</sup> Therefore, we have not used prices from these countries either in calculating the Indonesian import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.<sup>117</sup> Where the Department finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our statement of policy as outlined in *Antidumping Methodologies: Market Economy Inputs*,<sup>118</sup> the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts

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<sup>113</sup> See, e.g., *Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014); *Certain Frozen Warmwater Shrimp From the Republic of Indonesia: Final Negative Countervailing Duty Determination*, 78 FR 50383 (August 19, 2013); *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 55241 (September 10, 2013), unchanged in final *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 5378 (January 31, 2014); *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012); *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012); *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013).

<sup>114</sup> See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7.

<sup>115</sup> See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988); see also *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30763 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007).

<sup>116</sup> See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People's Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China*, 70 FR 24502 (May 10, 2005).

<sup>117</sup> See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

<sup>118</sup> See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) ("*Market Economy Inputs*").

provide adequate grounds to rebut the presumption.<sup>119</sup> When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.<sup>120</sup>

Information reported by Double Coin and GTC demonstrates that certain inputs were sourced from an ME country and paid for in ME currencies both in excess of the 85 percent threshold for certain inputs and below the 85 percent threshold for other inputs. Accordingly, the Department implemented its ME purchase methodology (outlined above) to value Double Coin and GTC's ME purchases, as appropriate, and applied freight expenses to the ME prices of the inputs where necessary.<sup>121</sup> The information reported by each respondent also demonstrates that certain inputs were purchased from countries which maintain broadly available, non-industry-specific export subsidies; thus, consistent with our practice and the legislative history, we have not used the actual price paid for these inputs (or portion of inputs) and instead valued them using an SV.<sup>122</sup>

The Department used Indonesian Import Statistics from GTA to value all raw materials, all packing inputs, and certain energy inputs that Double Coin and GTC used to produce subject merchandise during the POR, except as listed below.<sup>123</sup>

We valued trans-Pacific ocean freight (from the PRC to the United States) paid in RMB or provided by an NME-freight carrier using quotes posted on Descartes (<http://rates.descartes.com>).<sup>124</sup> Because the international shipping terms for certain sales by both respondents includes both the ocean freight and U.S. inland freight, but Descartes quotes are only applicable to port-to-port ocean freight, we added an additional average inland freight value (from Descartes) to account for U.S. freight to the customer for these certain sales.<sup>125</sup>

We valued electricity and water using values from Indonesian utilities. Specifically, we valued electricity using an average value from an Indonesian electricity company, PT PLN (Persero). We valued water using a value from an Indonesian water utility, Pam Jaya, specifically "Group IV B," which includes factories and industry.<sup>126</sup>

We valued brokerage and handling ("B&H") using a price list of export procedures necessary to export a standardized cargo of goods in Indonesia. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Indonesia that is published in *Doing Business 2014: Indonesia* by the World Bank.<sup>127</sup>

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<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *See* Preliminary SV Memo.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

We used Indonesian transport information in order to value the freight-in cost of the raw materials. The Department preliminarily determined the best available information for valuing truck freight to be from *Doing Business 2014: Indonesia*. This World Bank report gathers information concerning the distance and cost to transport products in a 20-foot container, weighing 10 metric tons, from the largest city in Indonesia to the nearest seaport. We calculated the per-unit inland freight costs using the distance from Jakarta to the nearest seaport. We calculated a per-kg, per-kilometer surrogate inland freight rate based on the methodology used by the World Bank.<sup>128</sup>

The Department preliminarily determined the best available information for valuing rail freight to be a rate from the “The Market for Railways in Indonesia” report published by the Australia Indonesia Partnership. Rates were given on a metric ton basis per kilometer basis, and we calculated a per-kg, per-kilometer surrogate railway freight rate using this data.<sup>129</sup> We then inflated the average rate to be contemporaneous with the POR, using the Producer Price Index for Indonesia, as published by the International Monetary Fund.

In NME antidumping duty proceedings, the Department prefers to value labor solely based on data from the primary surrogate country.<sup>130</sup> In *Labor Methodologies*, the Department explained that industry-specific wage data from the primary surrogate country was the best available information because it is consistent with how the Department values all other FOPs, and it results in the use of a uniform basis for FOP valuation – the use of data from a primary surrogate country.<sup>131</sup> It is the Department’s practice to value labor using industry-specific data reported by the International Labor Organization’s (“ILO”) in Chapter 6A of the *Yearbook of Labor Statistics* (“ILO Chapter 6A”), which reflects all costs related to labor (*i.e.*, wages, benefits, housing, training, etc.). It is the Department’s preference to value labor using ILO Chapter 6A data under the rebuttable presumption that ILO Chapter 6A data better accounts for all direct and indirect labor costs.<sup>132</sup>

In these preliminary results, because Indonesia does not report labor data to the ILO under Chapter 6A, we are unable to use ILO’s Chapter 6A data to value the respondents’ labor wage and instead will use the industry-specific wage rate using earnings or wage data reported under ILO’s Chapter 5B. The labor rate category which most closely matches OTR tires is ISIC-Revision 3 “Division: 25 - Manufacture of Rubber and Plastics Products.” As a consequence, for the preliminary results, the Department finds that the best available information for valuing labor is Indonesia Chapter 5B, Revision 3, Division 25 data from 2008, which is relatively specific to the industry being examined, a broad-market average, closely contemporaneous with the POR, and covers the entire industry.<sup>133</sup>

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<sup>128</sup> *Id.*

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

<sup>130</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

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

<sup>132</sup> *Id.* at 36093.

<sup>133</sup> For more information on the labor SV calculations, see Preliminary SV Memo.

We valued the cost of insuring goods transported from the PRC to the United States using the marine insurance rate published by RJG Consultants on October 4, 2010.<sup>134</sup> We did not inflate this value since it is a percent of the value of goods shipped.

We valued the cost of warehousing using a publicly available price quote from GIC Logistics Group in Indonesia.<sup>135</sup> We converted the rate from cubic meters per month to cubic meters per day and applied a conversion factor for kilograms per cubic meter to determine an average rate in kilograms per day.

To value factory overhead, selling, general and administrative expenses (“SG&A”), and profit, we used information from the financial statements of Indonesian OTR tire producers PT Gajah Tunggal Tbk (“Gajah Tunggal”) and PT Goodyear Indonesia Tbk (“Goodyear”), both for the year ending on December 31, 2013.<sup>136</sup> From these Indonesian financial statements we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (“ML&E”) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A.<sup>137</sup>

For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* the Preliminary SV Memo.

#### Adjustment Under Section 777A(f) of the Act

In applying section 777A(f) of the Act in this administrative review, the Department examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to section 773(c) of the Act, has increased the weighted average dumping margin for the class or kind of merchandise.<sup>138</sup> For a subsidy meeting these criteria, the statute requires the Department to reduce the antidumping duty by the estimated amount of the increase in the weighted average dumping margin subject to a specified cap.<sup>139</sup>

In order to examine the effects of concurrent countervailable subsidies in calculating antidumping margins for respondents in this review, the Department requested that both Double Coin and GTC submit information with respect to subsidies relevant to their eligibility for an adjustment to the calculated weighted-average dumping margin.<sup>140</sup> However, both Double Coin and GTC each indicated that they would not submit a response to this questionnaire, due to the

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<sup>134</sup> *See* Preliminary SV Memo.

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

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*, at Attachments VI and VII.

<sup>138</sup> *See* section 777A(f)(1)(A)-(C) of the Act.

<sup>139</sup> *See* section 777A(f)(1)-(2) of the Act.

<sup>140</sup> *See* Letter from the Department separately addressed to Double Coin and GTC, entitled, “2012-2013 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Double Remedies Questionnaire,” dated July 17, 2014.

