



A-570-016  
Investigation  
Public Document  
E&C/VII: The Team

DATE: June 11, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Final Determination in the  
Antidumping Duty Investigation of Certain Passenger Vehicle and  
Light Truck Tires from the People's Republic of China

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## I. SUMMARY

In this final determination, the Department finds that passenger vehicle and light truck tires (passenger tires) from the PRC are being, or are likely to be, sold in the United States at LTFV, as provided in section 733 the Act.<sup>1</sup> The POI is October 1, 2013, through March 31, 2014.

We analyzed the comments submitted by interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the margin calculations for the mandatory respondents in this investigation: the GITI companies and the Sailun Group. We recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this investigation for which we received comments:

- Comment 1: Whether to Modify the Language of the Exclusion on ST Tires
- Comment 2: Whether Slingshot Tires Are Included in the Scope
- Comment 3: Critical Circumstances
- Comment 4: Whether Sailun Group Should Receive a Double Remedy Adjustment
- Comment 5: Whether the Department Applied the Appropriate Double Remedy Adjustment to Cooper
- Comment 6: Whether GITI Companies Should Receive a Double Remedy Adjustment
- Comment 7: Analysis of the Pass-through Rate of the Double Remedy Adjustment
- Comment 8: Whether to Grant Sailun Group an Offset for By-Products

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<sup>1</sup> Please note that a list of abbreviations and short cites for company names, case filings, administrative cases, court cases, and commonly used acronyms are attached to this notice in the Appendix.



- Comment 9: Whether to Include Goodyear Thailand's Financial Statements in the Calculation of the Financial Ratios
- Comment 10: Whether to Include Export Expenses in the SG&A Ratios for SR Tyres and Hihero
- Comment 11: Whether to Include All Labor Related Costs in the Denominator of the Financial Ratios Calculation
- Comment 12: Selection of Surrogate Country
- Comment 13: Valuation of Labor
- Comment 14: Valuation of Market Economy Purchases
- Comment 15: Valuation of Truck Freight
- Comment 16: Calculation of Market Economy Purchases
- Comment 17: Valuation of Brokerage & Handling
- Comment 18: Valuation of GITI Companies' Steam
- Comment 19: Valuation of Sailun Group's Steam
- Comment 20: Valuation of GITI Companies' Ocean Freight
- Comment 21: Valuation of Sailun Group's Ocean Freight
- Comment 22: Valuation of Sailun Group's U.S. Inland Freight
- Comment 23: Valuation of Sailun Group's Reclaimed Rubber
- Comment 24: Sailun Group's Name Change
- Comment 25: Cooper's Name Change
- Comment 26: Shandong Yongtai Chemical Co., Ltd.'s (Yongtai) Name Change
- Comment 27: Application of AFA to all Subject Merchandise Produced by Yongsheng
- Comment 28: Whether the Department Properly Accounted for the Weighted-Average Price of Certain Market Economy Purchases
- Comment 29: Whether the Department Made All Appropriate Adjustments in the Calculation of Sailun Group's U.S. Price
- Comment 30: Whether the Department Should Apply AFA to GITI Companies' Unreported Sales Submitted as a Minor Correction at Verification
- Comment 31: Whether the Department Should Use the GITI Companies' Revised Databases that Include All the Minor Corrections
- Comment 32: Whether the Department Should Reduce the Sailun Group's U.S. Prices by the Amount of the Irrecoverable VAT
- Comment 33: Whether the Irrecoverable VAT Percentage Should Be Applied to the FOB China Value
- Comment 34: Whether the Department Correctly Reduced the U.S. Price by the Amount of the Irrecoverable VAT
- Comment 35: The Department's Authority to Apply a PRC-Wide Rate
- Comment 36: PRC Government Control of the Economy
- Comment 37: Guangzhou Wanli Tire Trading Co. Ltd.'s (Wanli) Separate Rate Status
- Comment 38: Guizhou Tyre Import and Export Co., Ltd.'s (GTCIE) Separate Rate Status
- Comment 39: Double Coin Holdings' (Double Coin) Separate Rate Status
- Comment 40: Shaanxi Yanchang Petroleum Group Rubber Co., Ltd.'s (Shaanxi) Separate Rate Status
- Comment 41: Sichuan Tyre and Rubber Co. Ltd.'s (Sichuan Tyre) Separate Rate Status
- Comment 42: Zhongce Rubber Group Company Limited's (Zhongce) Separate Rate Status
- Comment 43: Shandong Anchi Tyres Co., Ltd.'s (Anchi) Separate Rate Status

Comment 44: America Business Co., Ltd.’s (America Business) Separate Rate Status  
Comment 45: Highpoint Trading, Ltd., (Highpoint) and Federal Tire (Jiangxi), Ltd. (Jiangxi) Separate Rate Status  
Comment 46: Qingdao Jinhaoyang International Co., Ltd.’s (Jinhaoyang) Separate Rate Status  
Comment 47: Qingdao Au-Shine Group Co., Limited’s (Au-Shine) Separate Rate Status  
Comment 48: Qingdao Fuyingxiang Imp. & Exp. Co., Ltd.’s (Fuyingxiang) Separate Rate Status  
Comment 49: Shandong Changfeng Tyres Co., Ltd.’s (Changfeng) Separate Rate Status  
Comment 50: Shandong Fengyuan Tire Manufacturing Co., Ltd.’s (Fengyuan) Separate Rate Status  
Comment 51: Longkou Xinglong Tyre Co., Ltd.’s (Longkou) Separate Rate Status  
Comment 52: Liaoning Permanent Tyre Co., Ltd.’s (Permanent) Separate Rate Status  
Comment 53: Qingdao Fullrun Tyre Corp. Ltd.’s (Fullrun) Separate Rate Status  
Comment 54: Zhejiang Qingda Rubber Co., Ltd.’s (Qingda) Separate Rate Status

## II. BACKGROUND

On January 27, 2015, the Department published the preliminary determination in the LTFV investigation of passenger tires.<sup>2</sup> On March 26, 2015, the Department published the amended preliminary determination of the AD investigation.<sup>3</sup> The Department conducted verification of the Sailun Group from February 2 through February 6, 2015, and from March 9 through March 11, 2015. The Department also conducted verification of the GITI companies from February 9 through February 13, 2015 and from March 11 through March 13, 2015. The Department issued the verification reports for the GITI companies on March 20 and March 27, 2015 and for the Sailun Group on March 20 and March 30, 2015.<sup>4</sup>

Petitioner, GITI companies, Sailun Group, and interested party Cooper requested a hearing to be held concerning the arguments made in the instant investigation.<sup>5</sup> The Department received case and rebuttal briefs from Petitioner, GITI companies, Sailun Group, and various other interested parties between January 31 and April 20, 2015.<sup>6</sup> On April 28 and May 12, 2015, the Department held hearings at its main office building.<sup>7</sup>

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

<sup>3</sup> See *AD Amended Preliminary Determination*.

<sup>4</sup> See GITI Verification Report, GITI CEP Verification Report, Sailun Group Verification Report, and Sailun Group CEP Verification Report.

<sup>5</sup> See Letters from Petitioner, “Re: Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Petitioner’s Request for a Public and Closed Hearing” (February 24, 2015); GITI companies, “Re: Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Request for Hearing” (January 29, 2015); Sailun Group, “Re: *Sailun Hearing Request* in the Antidumping Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China” (January 29, 2015); and Cooper, “Re: Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China/Request For A Hearing” (January 30, 2015).

<sup>6</sup> See the Appendix for complete list of case and rebuttal briefs filed.

<sup>7</sup> See “Transcript of Closed Session of Hearing in the Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from the People’s Republic of China” (May 5, 2015) and “Transcript of Hearing on Scope Issues in the Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from the People’s Republic of China” (May 21, 2015).

### III. SCOPE OF THE INVESTIGATION

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

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

Prefix designations:

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

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

Suffix letter designations:

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

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

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

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

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

- (1) racing car tires; such tires do not bear the symbol “DOT” on the sidewall and may be marked with “ZR” in size designation;
- (2) new pneumatic tires, of rubber, of a size that is not listed in the passenger car section or light truck section of the *Tire and Rim Association Year Book*;
- (3) pneumatic tires, of rubber, that are not new, including recycled and retreaded tires;
- (4) non-pneumatic tires, such as solid rubber tires;
- (5) tires designed and marketed exclusively as temporary use spare tires for passenger vehicles which, in addition, exhibit each of the following physical characteristics:

- (a) the size designation and load index combination molded on the tire's sidewall are listed in Table PCT-1B ("T" Type Spare Tires for Temporary Use on Passenger Vehicles) of the *Tire and Rim Association Year Book*,
  - (b) the designation "T" is molded into the tire's sidewall as part of the size designation, and,
  - (c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by *Tire and Rim Association Year Book*, and the rated speed is 81 MPH or a "M" rating;
- (6) tires designed and marketed exclusively for specialty tire (ST) use which, in addition, exhibit each of the following conditions:
- (a) the size designation molded on the tire's sidewall is listed in the ST sections of the *Tire and Rim Association Year Book*,
  - (b) the designation "ST" is molded into the tire's sidewall as part of the size designation,
  - (c) the tire incorporates a warning, prominently molded on the sidewall, that the tire is "For Trailer Service Only" or "For Trailer Use Only",
  - (d) the load index molded on the tire's sidewall meets or exceeds those load indexes listed in the *Tire and Rim Association Year Book* for the relevant ST tire size, and
  - (e) either
    - (i) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by *Tire and Rim Association Year Book*, and the rated speed does not exceed 81 MPH or an "M" rating; or
    - (ii) the tire's speed rating molded on the sidewall is 87 MPH or an "N" rating, and in either case the tire's maximum pressure and maximum load limit are molded on the sidewall and either
      - (1) both exceed the maximum pressure and maximum load limit for any tire of the same size designation in either the passenger car or light truck section of the *Tire and Rim Association Year Book*; or
      - (2) if the maximum cold inflation pressure molded on the tire is less than any cold inflation pressure listed for that size designation in either the passenger car or light truck section of the *Tire and Rim Association Year Book*, the maximum load limit molded on the tire is higher than the maximum load limit listed at that cold inflation pressure for that size designation in either the passenger car or light truck section of the *Tire and Rim Association Year Book*;
- (7) tires designed and marketed exclusively for off-road use and which, in addition, exhibit each of the following physical characteristics:
- (a) the size designation and load index combination molded on the tire's sidewall are listed in the off-the-road, agricultural, industrial or ATV section of the *Tire and Rim Association Year Book*,
  - (b) in addition to any size designation markings, the tire incorporates a warning, prominently molded on the sidewall, that the tire is "Not For Highway Service" or "Not for Highway Use",
  - (c) the tire's speed rating is molded on the sidewall, indicating the rated speed in MPH or a letter rating as listed by the *Tire and Rim Association Year Book*, and the rated speed does not exceed 55 MPH or a "G" rating, and
  - (d) the tire features a recognizable off-road tread design.

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

#### **IV. USE OF ADVERSE FACTS AVAILABLE**

In the *AD Preliminary Determination*, we determined that Yongsheng was part of the PRC-wide entity because it failed to respond to the Department's questionnaires. In addition, several companies failed to respond to the Department's quantity and value questionnaires issued to determine which companies to select as mandatory respondents for the instant investigation. Because these companies did not qualify for a separate rate, they are considered to be a part of the government-controlled PRC-wide entity. We found that the PRC-wide entity, which includes these companies, withheld necessary information, failed to provide necessary information, and significantly impeded this proceeding within the meaning of sections 776(a)(2)(A)-(C) of the Act, and failed to act to the best of its ability to comply with the Department's requests for information within the meaning of section 776(a)(1) of the Act. As the PRC-wide entity did not provide the Department with requested information, pursuant to the Act, the Department found it appropriate to base the PRC-wide rate on AFA. As AFA, we assigned the PRC-wide entity (including Yongsheng) a dumping margin equal to the highest dumping margin alleged in the petition, which we were able to corroborate, pursuant to section 776(c) of the Act.<sup>8</sup>

#### **V. CRITICAL CIRCUMSTANCES**

The Department preliminarily determined that critical circumstances did not exist for the GITI companies and the Sailun Group, but did exist for Yongsheng, the non-individually investigated companies, and the PRC-wide entity.<sup>9</sup> Subsequently, parties provided additional shipping data and the Department obtained Global Trade Atlas data through January 2015, the month of the *AD Preliminary Determination*. For this final determination, we compared shipments between June 2014 and January 2015 (the month of the publication of the *AD Preliminary Determination*) with shipments between October 2013 and May 2014 to determine whether there were massive imports.<sup>10</sup>

Based on the examination of this shipping data, we find no massive imports by the GITI companies and the Sailun Group, and continue to find critical circumstances for the PRC-wide entity, including Yongsheng.<sup>11</sup> However, in a change from the *AD Preliminary Determination*,

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<sup>8</sup> See Memoranda to the File, "Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Corroboration of Margin Based on Adverse Facts Available" (June 11, 2015) (Final Corroboration Memorandum).

<sup>9</sup> See *AD Preliminary Determination* and accompanying PDM at 28-32.

<sup>10</sup> See Final Critical Circumstances Memorandum.

<sup>11</sup> As the PRC-wide entity has been unresponsive we have continued to apply AFA to the determination of the presence of massive imports for the PRC-wide entity, pursuant to section 733(e)(1)(B) of the Act and 19 CFR

we are finding that imports were not greater than 15 percent and were therefore not “massive” for the non-individually investigated companies not part of the PRC-wide entity.<sup>12</sup> As such, we determine that critical circumstances do not exist for the non-individually investigated companies which have qualified as separate rate companies.

## VI. MARGIN CALCULATIONS

We calculated EP, CEP, and NV using the same methodology stated in the *AD Preliminary Determination* and *AD Amended Preliminary Determination*, except for the changes described in the final analysis memoranda for the GITI companies and Sailun Group.<sup>13</sup>

## VII. DISCUSSION OF THE ISSUES

### Comment 1: Whether to Modify the Language of the Exclusion on Special Trailer (ST) Tires

#### *Petitioner’s Comments:*

- The scope language should be modified to allow certain “N” speed-rated ST tires to be excluded from the scope if the maximum load limit and maximum pressure molded on the tire sidewall exceeded those for listed passenger tire sizes.
- The Department should retain the load index and speed rating marking requirements in the scope exclusions that were suspended pending the final determination. Removing these requirements will negatively impact the ability of CBP to administer any order and will increase the opportunity for circumvention.
- Tires with a less than 12” wheel diameter should not be excluded from the scope. Record information indicates that tires of this size are under development for passenger tires, and if they are eventually listed in the *Yearbook* under the passenger or light truck vehicle chapters, they will be, and should be, included in the scope.

#### *RVIA’s Comments:*

- The warning label (*i.e.*, “For Trailer Use Only”) and the “ST” prefix are sufficient to clearly show that ST tires are not intended for use on passenger vehicles or light trucks. Additional requirements would render the scope redundant, overbroad and include products that are not passenger tires.
- Speed ratings, either numerical or in letter code, are unnecessary to prevent circumvention; the markings applied in current industry practice are sufficient to demonstrate the ST tires are not suitable for use as passenger tires.

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351.206(c)(2)(i). Further, as discussed below in Comment 3: Critical Circumstances, we found Yongsheng to be part of the PRC-wide entity, and as such, found that critical circumstances exist for the company.

<sup>12</sup> See Final Critical Circumstances Memorandum.

<sup>13</sup> See GITI companies Final Analysis Memorandum and Sailun Group Final Analysis Memorandum.

*Carlisle's Comments:*

- The Department should exclude Carlisle's "N" speed rated ST tires marked in the manner suggested in Petitioner's submission of January 22, 2015.
- Carlisle's models of ST tires with a bias ply construction should be excluded from the scope of these investigations because they are tire sizes that are not listed in the passenger tire or light truck tire sections of the *Yearbook*.
- The Department should find that all ST tires that overlap in size exclusively with passenger vehicle tires are outside the scope of the investigation.
- The Department's *CVD Amended Preliminary Determination*<sup>14</sup> is a prior restraint on speech that is causing Carlisle to engage in self-censorship. The Department's action constitutes a violation of the right to freedom of speech guaranteed by the First Amendment, and it continues to cause immediate and irreparable harm to Carlisle.

*Petitioner's Rebuttal Comments:*

- Petitioner has shown that light truck tires, which can also be used on trailers, can have an "ST" marking. Eliminating the requirement that the speed rating be molded on the sidewall of the tire effectively eliminates the basis of the exclusion in physical differences and rests it solely on what warning or label a producer may select to place on the tire. By not requiring these markings, the Department would massively increase the burden on CBP to administer the orders by removing CBP's ability to quickly and easily determine if a tire meets exclusion requirements by simply viewing the information molded on the tire's sidewall.
- The Department should reject Carlisle's request to exclude its bias ply tires from the scope because it is not based on differences between in-scope and out-of-scope merchandise, would encourage circumvention, and is unnecessary to address any of Carlisle's merchandise.
- Excluding tires that overlap with any passenger tire size regardless of overlap with light truck tire sizes would eradicate dividing lines between in-scope and excluded merchandise. Carlisle's request is not clear as to what exclusion it seeks (tires that overlap only passenger sizes but not light truck sizes, or tires that overlap a passenger tire size regardless of any additional overlap with a light truck size), and its request should be declined.
- The requirements that excluded tires bear certain markings, such as load indexes and speed ratings, merely require the disclosure of purely factual, noncontroversial commercial information. As the purpose of the marking requirements is to clearly distinguish between in- and out-of-scope tires for the administrability of the orders and to reduce opportunities for circumvention, the marking requirements are reasonably related to a substantial governmental interest; there is no conflict between the enforcement of the marking requirements and the First Amendment.

*RVIA's and Tredit's Rebuttal Comments:*

- The proposed scope language excluding "N" speed rated tires is overly complex and is certain to make the administrability of the order more difficult, and should not be accepted by the Department.

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<sup>14</sup> See *CVD Amended Preliminary Determination* at 78399.

- Petitioner has presented no arguments or evidence that the proposed requirement of a speed rating inscription, in and of itself, on ST tires is necessary for administrability purposes or to prevent circumvention.
- The only marking likely to prevent consumer confusion is the already present warning language prohibiting use of such tires on anything other than specialty trailers.
- Markings for load index and speed rating are not necessary and provide no increased efficiencies in administering the order; these markings place an undue burden on producers and risks inclusion of admittedly excluded tires.

**Department’s Position:** For this final determination, the Department has clarified the scope language of the AD and CVD investigations such that “N” speed-rated ST tires are excluded from the scope if the maximum load limit and maximum pressure molded on the tire sidewall exceed those for listed passenger tire sizes. The Department is retaining the requirement that ST tires include speed rating and load index markings and is not modifying the scope based on other additional requests from parties, as further explained below. For a complete description of the scope of the investigation for this final determination, *see* Section III, above.

As noted in the Scope Clarification Memorandum, “{i}n determining whether to modify a scope in an investigation, the Department has three primary concerns: (1) ensuring that the revised scope accurately reflects the products for which the petitioner(s) seeks relief; (2) providing interested parties with sufficient opportunity for comments that can be evaluated by the Department; and (3) making sure that the revised scope would be administrable by CBP and that it is not susceptible to circumvention.”<sup>15</sup> With these concerns in mind, we reviewed Petitioner’s modified scope language to exclude “N” speed-rated ST tires that meet certain requirements. Petitioner was concerned that a blanket exclusion of “N” speed-rated ST tires would overlap with in-scope passenger tires. However, with Carlisle’s arguments in mind,<sup>16</sup> Petitioner submitted modified scope language to exclude “N” speed-rated ST tires if the maximum load limit and maximum pressure molded on the tire sidewall exceeded those for listed passenger tire sizes.<sup>17</sup> This modification to the language addressed ST tires, which are designed to provide greater load capacities than passenger tires, while maintaining an administrable exclusion based on the information molded on the tire’s sidewall and objectively found in the *Yearbook*.

While RVIA argues that the suggested language is overly complex, and would take time and effort for CBP to follow, on February 19, 2015, Carlisle submitted additional comments, agreeing with Petitioner’s proposed modification to the scope language.<sup>18</sup> Because both the party requesting the exclusion and the Petitioner have agreed to the modification of the scope language, Petitioner argues, the Department should have no concern amending the exclusion under paragraph (6) of the preliminary clarification to include certain “N” speed-rated tires that meet the higher maximum load limit and maximum inflation requirements.

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<sup>15</sup> *See* Scope Clarification Memorandum at 7.

<sup>16</sup> *See, e.g.*, Letter from Carlisle, “Certain Passenger Vehicle and Light Truck Tires from China: Response to Petitioner’s Opposition to CTP’s Exclusion Request” (December 9, 2014).

<sup>17</sup> *See* Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigations, Petitioner’s Reply to CTP’s Scope Ruling Request” (January 22, 2015).

<sup>18</sup> *See* Letter from Carlisle, “Certain Passenger Vehicle and Light Truck Tires from China Request for Final Scope Ruling – CTP Specialty Trailer Tire Models” (February 19, 2015).

The Department is modifying the scope using Petitioner’s modified scope language that addresses concerns regarding “N” speed-rated ST tires and excludes certain tires for which the Petitioner does not seek relief. The Department’s standard practice is to provide ample deference to petitioner with respect to the definition of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding.<sup>19</sup> Parties have had ample time to comment on this scope modification, and have provided over ten submissions on this issue alone for the Department to consider. Consistent with the Scope Clarification Memorandum, because this scope language modification is limited to physical descriptions relating to ST tires (*i.e.*, physical markings on the actual tires), we find that the modification of the scope language is drafted in a manner that is not overly complex and can be administered and enforced by CBP.<sup>20</sup>

The Department is also reinstating the requirements for load index and speed rating markings (exclusion (6)(d) and (6)(e)).<sup>21</sup> In the *CVD Amended Preliminary Determination*, the Department suspended these requirements, but noted that our intent at that time was to retain the marking requirements for exclusion 6(d) and (e) in the final determinations in the CVD and AD investigations.<sup>22</sup> We also stated that interested parties had the opportunity to address the necessity of these requirements or any amendments thereto, including the threshold speed requirement and associated markings, in case and rebuttal briefs for the Department’s consideration before the final determinations in the CVD and AD investigations. RVIA and Tredit submitted comments stating that the warning label (*i.e.*, “For Trailer Use Only”) and the ST prefix are sufficient to clearly show that ST tires are not intended for use on passenger vehicles or light trucks, and fall outside of the scope of these investigations.<sup>23</sup> Both parties argue that the Department should not require speed rating and load index markings on ST tires. According to these parties, it is common practice in the ST tire industry for “tires that are intended for use at 65 MPH or below . . . to be manufactured with no speed rating inscribed on the sidewalls,” such that “including the unnecessary requirement of an inscribed speed rating would result in the scope covering products (ST tires that do not include speed ratings) that all parties have agreed should not be included, would be burdensome to ST tire producers, and would result in unnecessary scope inquiries in the future.”<sup>24</sup>

While neither Petitioner nor these interested parties disagree on the speed rating of ST tires itself, Petitioner argues that the speed rating and load index marking should be required on these tires to allow the ST tire exclusions to be administrable and to limit the opportunity to circumvent the orders. First, based on the record, there is no requirement that only tires with objective ST tire characteristics are marked with “For Trailer Use Only.” As such, the “For Trailer Use Only” warning provides no indication that the ST tire is physically different from passenger tires.

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<sup>19</sup> See, *e.g.*, *Lumber from Canada Final Determination* IDM at Scope Issues (stating that the Department possesses the authority to define or clarify the scope of an investigation throughout the investigation); *Wire Rod from Japan Final Determination* IDM at Comment I (“Petitioners’ scope definition is afforded great weight because petitioners can best determine from what products they require relief.”); and *Allegheny*, 342 F. Supp. 2d at 1187-88 (explaining the deference given to the Department in determining the scope of AD and CVD orders).

<sup>20</sup> See Memorandum, “Phone Conference with Customs and Border Protection” (October 14, 2014).

<sup>21</sup> See Section III above.

<sup>22</sup> See *CVD Amended Preliminary Determination* at 78399.

<sup>23</sup> See, *e.g.*, RVIA Scope Brief and Tredit Scope Rebuttal Brief.

<sup>24</sup> See RVIA Scope Brief at 2.

Indeed, Petitioner has demonstrated that light truck tires, which can be used on trailers, sometimes bear the “ST” mark.<sup>25</sup> The Petitioner has also demonstrated that there are trailer tires in the market that are marked with the speed rating and load index.<sup>26</sup> The load index and speed rating markings are indicative of innate, and testable, physical characteristic differences. By eliminating the requirement that the load index and speed rating must be molded on the sidewall of the tire, the Department would effectively eliminate the basis of the exclusion in physical differences, and instead rely only on producer warning labels that can easily be manipulated.<sup>27</sup>

Furthermore, if the load index and speed rating is not molded on the sidewall of the tire, CBP would be required to conduct complex testing to determine if the tire meets the scope exclusion requirements, instead of quickly viewing the markings on the sidewall tire. CBP has explained to the Department that an “ST” marking alone would not be sufficient for its officers to determine the type of tire. CBP officials stated that “additional markings required by the Petitioner’s September 29, 2014 proposed scope language they had reviewed before the phone conference would be sufficient for determining the type of tire.”<sup>28</sup>

RVIA argues that CBP officials never stated which additional markings would be sufficient. While RVIA does not argue that the warning label, “ST” marking, and the load index mark should not be required on ST tires, it argues that on top of these markings, Petitioner has not explained how the inclusion of a speed rating marking would better inform CBP or customers that the tire is an ST tire in addition to the three markings. Tredit, pointing to a different case, states that in some instances CBP only needs one marking to differentiate in- and out-of-scope merchandise.<sup>29</sup>

However, comments on the record demonstrate that speed ratings are crucial to Petitioner’s exclusion language. Petitioner states that “the inclusion of speed ratings above “M” in the scope exclusion would create overlap between in-scope and out-of-scope tires and eliminate one of the points of differentiation that CBP has stated are necessary for the administration of the exclusion.”<sup>30</sup> Clearly, Petitioner relies heavily on the speed rating differences to determine in- or out-of-scope merchandise. Additionally, by “ignoring any characteristics for purposes of exclusion other than whether the tire bears a “trailer” label effectively eliminates any

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<sup>25</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigation, Petitioner’s Reply to CTP’s Rebuttal Comments” at Attachment 1 (September 19, 2014).

<sup>26</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigation, Petitioner’s Reply to RVIA’s Scope Comments on Speed Rating Markings and CTP’s Request on Decision Timing” (October 2, 2014).

<sup>27</sup> See Memorandum, “Phone Conference with Customs and Border Protection” (October 14, 2014).

<sup>28</sup> See *id.*; see also Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigation, Petitioner’s Reply to TBC’s Scope Comments on Load Indexes” (September 29, 2014) at Attachment 1 where, in addition to the ST markings, Petitioner recommended such additional markings as “For Trailer Service Only,” “For Trailer Use Only,” the tires load index, and tires speed rating. These additional markings were determined by CBP to be sufficient during the October 14, 2014 phone conference.

<sup>29</sup> See Tredit Rebuttal Scope Brief.

<sup>30</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigations, Petitioner’s Reply to CTP’s Response on Scope and Comments on Unconstitutional Burden” at 4 (December 11, 2014).

significance of physical differences between ST tires and passenger vehicle and light truck tires.”<sup>31</sup> While a load index marking is one difference of physical characteristics, Petitioner argues that speed rating markings in conjunction with load index marking will decrease the opportunity for circumvention of the order.<sup>32</sup> Finally, the number of markings that are required by CBP on some merchandise (e.g., brake rotors) to determine whether the product is in scope has no bearing on the number of marking requirements in this case as the merchandise referred to has no relation to the merchandise in this instant case.

Interested parties also raised the concern that if at the final determination, the Department were to start requiring load index and speed rating markings, the ST tire producers would be subject to undue burden and it would lead to the inclusion of merchandise that the Petitioner agrees should be excluded from the scope of the investigations.<sup>33</sup> This characterization misrepresents the Department’s intent when we temporarily suspended these requirements. In the same notice where the Department suspended certain marking requirements, we also stated “that it is the Department’s current intent to retain the marking requirements for exclusion 6(d) and (e) in its final determinations in the CVD and antidumping duty investigations.”<sup>34</sup> Parties were put on notice six months before the final determinations that such markings could potentially be required. As the comments on the record at that time clearly show, the Department suspended these marking requirements because it was clear that enacting them would suspend parties’ “N” speed-rated ST tires, which Petitioner noted was not part of the merchandise it was seeking relief of. Comments provided by both Carlisle and Petitioner have resolved this issue, leading to a separate scope exclusion to address this concern. The Department has determined that by not requiring these markings, the Department could be potentially creating an easy route for circumvention.

We are, therefore, retaining the speed rating and load index markings. The speed rating and load index markings reflect the physical differences between excluded ST tires and passenger tires. Parties have been on notice for at least six months that such requirements would be resumed, and, as the record demonstrates, can retool their molds so that their ST tires meet this scope exclusion and are not covered by the scope (indeed, as noted above, some ST tires are already marked with speed rating and load index).<sup>35</sup> The addition of these markings also eases the burden on CBP to administer the exclusion, as explained by CBP officials. And lastly, the markings decrease the opportunity for circumvention by making clear to all parties the physical characteristics of the tire.

The Department is not modifying the scope to exclude tires less than 12” in wheel diameter. While Carlisle initially requested this exclusion, it provided no comments regarding its position after the Department issued the Scope Clarification Memorandum, which stated that this issue

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<sup>31</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigation, Petitioner’s Reply to NATM’s Supplemental Scope Comments” (October 9, 2014).

<sup>32</sup> *Id.*

<sup>33</sup> See Tredit Rebuttal Scope Brief.

<sup>34</sup> See *CVD Amended Preliminary Determination* at 78399.

<sup>35</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigation, Petitioner’s Reply to RVIA’s Scope Comments on Speed Rating Markings and CTP’s Request on Decision Timing” (October 2, 2014).

was still pending. The scope of these investigations covers all passenger tires that are included in the passenger car and light truck tire sections of the *Yearbook*, regardless of size. Record evidence demonstrates that there is development of tires that have less than a 12” wheel diameter for use in passenger cars.<sup>36</sup> While the *Yearbook* currently does not list any passenger or light truck tires below a 12” wheel diameter, as noted by Petitioner, sub-12 inch wheel diameter tires are being developed for small city cars.<sup>37</sup> As such, these tires could be included in any updates to the *Yearbook*; therefore, they could be considered in-scope merchandise in the future.<sup>38</sup> In that eventuality, it is unclear from the record alone, that tires of less than 12” wheel diameters would not be for use as passenger tires. Because these tires could be considered in-scope, by excluding them at this time from the scope, we would be denying Petitioner the relief it seeks.

Carlisle requested that the Department exclude its models of ST tires with a bias ply construction from the scope of these investigations because they are tire sizes not listed in the passenger vehicle or light truck tire chapters of the *Yearbook*.<sup>39</sup> Regardless of the tire construction, a careful reading of the scope makes clear that no such finding is required by the Department because the tires referenced by Carlisle are already excluded from the scope. The scope states:

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

If, as Carlisle repeatedly states on the record, its ST tires with a bias ply construction are of a size not listed in the passenger car or light truck tire sections of the *Yearbook*, then they would not be considered in-scope merchandise, and there is no need for the Department to create a separate, redundant company-specific exclusion for these tires. Carlisle appears to take issue with the Department’s statement in the Scope Clarification Memorandum that if bias ply tires were excluded, it “would be opening the door for circumvention, and denying Petitioner the relief they seek.”<sup>40</sup> However, the comment Carlisle was referring to was for a request from interested parties to exclude all diagonal or bias ply tires from the scope.<sup>41</sup> The Department noted that these tires are specifically covered in the Petition, and should therefore not be excluded or else we would be denying Petitioner the relief it seeks. Petitioner notes that “{a}s certain bias ply tires are unquestionably included in the scope, the fact that a tire is bias ply or not cannot distinguish an out-of-scope tire from an in-scope tire.”<sup>42</sup> The Department continues to find that, in general, bias ply tires are in-scope, unless, as noted above, they are of a size not within the passenger vehicle or light truck tire sections of the *Yearbook* or meet other scope exclusions.

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<sup>36</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Scope of the Investigations, Petitioner’s Opposition to CTP’s Exclusion Request” at Attachment 5 (December 5, 2015).

<sup>37</sup> *Id.* at 9 and Attachment 5; see also Petitioner’s Scope Brief at 7.

<sup>38</sup> *Id.*

<sup>39</sup> See Carlisle Scope Brief at 4-10.

<sup>40</sup> See Scope Clarification Memorandum at 13.

<sup>41</sup> *Id.* at 12.

<sup>42</sup> See Petitioner Scope Rebuttal Brief at 11.

Carlisle argues that ST tires that overlap in size with only passenger vehicle tires should be excluded from the scope. Carlisle claims that “{i}nclusion of any of Carlisle’s trailer tires that overlap in size exclusively with PV tires would impermissibly expand the scope of these investigations, contrary to the Department’s claim otherwise.”<sup>43</sup> The load limit and speed index ratings are distinct between ST and passenger tires, as reflected in the sidewall markings required by the DOT, such that no one would ever confuse the two. As Petitioner points out, because “Carlisle’s request is not clear as to what exclusion it seeks (tires that overlap only passenger sizes but not light truck sizes or tires that overlap a passenger tire size regardless of any additional overlap with a light truck size), its request should be declined.”<sup>44</sup> Carlisle’s request appears to be an attempt to exclude its “N” speed-rated ST tires, which as noted above, the Department is already excluding if they meet certain marking requirements. Furthermore, the Department has previously determined to exclude ST tires that meet certain conditions, as explained in the Scope Clarification Memorandum. If an ST tire overlaps in size with a passenger vehicle tire, but meets the scope exclusion requirements, regardless of this overlap, the tire would be excluded. It is unclear from Carlisle’s comments what additional relief it seeks that has not already been addressed by the new criteria in the scope language. The Department is rejecting this request as it would create uncertain scope language, and is unnecessary because all of Carlisle’s “N” speed-rated tires are already excluded from the scope.

Carlisle argues that any requirement that load indexes and speed ratings be marked on excluded tires would unconstitutionally burden free speech by preventing it from “engaging in lawful commercial speech that provides consumers with accurate information concerning the correct speed safety rating for Carlisle’s trailer tires.”<sup>45</sup> Petitioner notes though that the “requirements that excluded tires bear certain markings, such as load indexes and speed ratings, merely require the disclosure of purely factual, noncontroversial commercial information. Contrary to Carlisle’s claims, it is not being asked to refrain from any speech it wants to make, and the speech it claims is burdened is purely commercial.”<sup>46</sup> Carlisle has recognized that the Department’s and CBP’s interest in requiring these markings is “solely to aid in the enforcement of an antidumping and/or countervailing duty determination or order...”<sup>47</sup> Because these markings are required in order to clearly distinguish between in- and out-of-scope tires for the administrability of the orders and to reduce opportunities for circumvention, the requirements are reasonably related to a substantial governmental interest. Therefore, the Department has clarified the scope language of the AD and CVD investigations such that “N” speed-rated ST tires are excluded from the scope if the maximum load limit and maximum pressure molded on the tire sidewall exceed those for listed passenger tire sizes.

## **Comment 2: Whether Slingshot Tires Are Included in the Scope**

### *Petitioner’s Comments:*

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<sup>43</sup> See Carlisle Scope Brief at 11.

<sup>44</sup> See Petitioner Scope Rebuttal Brief at 14.

<sup>45</sup> See Carlisle Scope Brief at 15.

<sup>46</sup> See Petitioner Scope Rebuttal Brief at 5.

<sup>47</sup> See Letter from Carlisle, “Certain Passenger Vehicle and Light Truck Tires from China: Unconstitutional Burdens on Speech Created by Implementation of the Department’s Preliminary Affirmative Countervailing Duty Determination” at 8 (December 9, 2014).

- Based on record evidence, the Polaris Slingshot does not necessarily meet the definition of a motorcycle rather than an automobile.
- Several states have denied classifying the Slingshot as a motorcycle, and the physical characteristics of the Slingshot tires are different than the U-shaped cross section of true motorcycle tires.
- The Department should not exclude Slingshot tires from the scope.

*Polaris' Rebuttal Comments:*

- The Polaris Slingshot is a three-wheeled motorcycle, and is classified as a motorcycle (as defined under the National Highway Traffic Safety Administration regulations) in 46 states.
- The tires used on the Slingshot are engineered, produced and sold exclusively for use on the Slingshot vehicle. They are marked with “not for automotive use” on their sidewall.
- The Slingshot tires will not be sold outside of Polaris dealer channels and will be marked with a warning to prevent the use of these tires in automotive applications.
- The Department should find that these tires are not within the scope.

**Department's Position:** The Department determines that Polaris Slingshot tires are in-scope merchandise. The scope clearly states that tires, *regardless of their intended use*, as long as the tire is of a size that is among the numerical size designations listed in the passenger car section or light truck section of the *Yearbook*, are included in these investigations (emphasis added). Record evidence indicates that Polaris' Slingshot does not appear to necessarily meet the definition of a motorcycle rather than an automobile.<sup>48</sup>

Regardless of whether the Slingshot is or is not a motorcycle, the tires used on it, even though they may be engineered and produced exclusively for the Slingshot, meet the definition of automobile tires.<sup>49</sup> Passenger vehicle tires may be and are mounted on certain types of motorcycles.<sup>50</sup> One of the main differences between passenger tires and motorcycle tires is the “U-shaped” profile of motorcycle tires, which allow the tire to maintain contact with the road during turning.<sup>51</sup> Passenger tires remain at the same upright angle during a turn, so no curvature is needed to maintain road contact. However, a motorcycle leans as it turns, changing the area of the tire that is in contact with the road, hence requiring a “U-shaped” profile.<sup>52</sup> One test driver noted that the Slingshot “rides on low-profile, auto-style tires designed specifically for the Slingshot, the treads of which aren't rounded for cornering as they are on a motorcycle, but squared for traction.”<sup>53</sup> Record evidence further supports that unlike a typical motorcycle tire, the Slingshot tires have a profile of a passenger tire that is not “U-shaped.”<sup>54</sup> Polaris notes that its Slingshot tires are not marked with “M/C,” the marking used by the *Yearbook* to indicate a motorcycle tire.<sup>55</sup> Additionally, the sizes of these Slingshot tires are similar to passenger tires.<sup>56</sup>

<sup>48</sup> See Petitioner's January 8 Scope Submission.

<sup>49</sup> See Petitioner's November 18 Scope Comments.

<sup>50</sup> *Id.* at Attachment 1.

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

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

<sup>53</sup> See Petitioner's January 8 Scope Submission at Attachment 3.

<sup>54</sup> See Petitioner's November 18 Scope Comments.

<sup>55</sup> See Letter from Polaris, “Certain Passenger Vehicle and Light Truck Tires from China: Exclusion of Certain Specialty Tires from the Scope of Investigation” (December 30, 2014).

Indeed, Petitioner has shown that some riders use passenger vehicle tires on conventional motorcycles.<sup>57</sup> Despite Polaris' markings that these tires are to be used for Slingshots only, Polaris has not identified any physical difference that would preclude the use of these tires on passenger vehicles. The record evidence demonstrates that based on physical characteristics, Slingshot tires, regardless of their end-use on a Slingshot machine, are passenger tires. Exclusion of these Slingshot tires creates a potential for circumvention denying Petitioner the relief it seeks. Therefore, we are not amending the scope to exclude Polaris' Slingshot tires.

### **Comment 3: Critical Circumstances**

#### *Petitioner's Comments:*

- The Department should revise its preliminary finding with regards to critical circumstances.
- To determine critical circumstances in the *AD Preliminary Determination*, the Department examined imports during the seven month period immediately following the filing of the petition (June 2014 to December 2014) to the seven months prior to the petition filing (November 2013 to May 2014).
- For this final determination, the Department should revise this time period to six months (June 2014 to November 2014) to offset the effects of the *CVD Preliminary Determination*, which were published on November 21, 2014. The Department's practice is to shorten this comparison period to exclude time when preliminary CVD duties are in place.<sup>58</sup>

#### *Cooper's Comments:*

- In the *CVD Preliminary Determination*, the Department analyzed shipment information place on the record by Cooper and made a negative determination of critical circumstances. However, despite providing identical shipping data on the record of this proceeding, the company was subject to critical circumstances in the *AD Preliminary Determination*.
- The Department should recognize the negative determination of critical circumstances from the CVD proceeding and find negative critical circumstances in this AD final determination.
- If necessary, the critical circumstances analysis from the CVD record could be placed on the record of this AD proceeding to support a negative critical circumstances for Cooper. Alternatively, the Department could use monthly shipment data already on the record of this AD proceeding to find negative critical circumstances.

#### *ITG Voma's and Yongsheng's Comments:*

- The Department erred in finding critical circumstances for both Yongsheng and the "separate rate" exporters.
- The massive imports over the relatively short time period are due to established seasonal trends in the purchase and importation of subject merchandise from the PRC.

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

<sup>57</sup> See Petitioner's November 18 Scope Comments at Attachment 1.

<sup>58</sup> See *AD Steel Pipe from the PRC Final Determination* IDM at Comment 14.

- Respondents in this proceeding have placed substantial evidence demonstrating that imports of subject merchandise from the PRC are affected by seasonal trends and that the increase in imports following the petition filings are due to these trends, not the filing of the petition.
- The Department should use Yongsheng’s shipping data to determine whether critical circumstances exist for the company. Yongsheng met all the requirements regarding submission of critical circumstances data.

*API’s Comments:*

- The Department should make company specific determinations as to whether the separate rate companies engaged in massive shipments.
- The Department’s critical circumstance analysis was flawed and should be replaced with a company-specific analysis. Specifically, the analysis (1) excludes HTS numbers under which subject merchandise is classifiable; (2) covers entries and is thus inconsistent with the shipment data provided by respondents; and (3) is not company specific.
- API did not know, nor should it have known, that subject merchandise was sold at LTFV.
- The analysis and finding of critical circumstances should be determined based on the imports of each importer.
- By being grouped together with all non-mandatory respondents and determining their imports were massive, API was denied equal protection of the Fifth and Fourteenth Amendments of the Constitution.

*Kenda’s Comments:*

- The Department should find that critical circumstances do not exist for Kenda.
- Kenda submitted import data on the record prior to the *Preliminary Determination*. This import data demonstrates that its imports did not increase more than 15 percent during the relevant time period.

*Petitioner’s Rebuttal Comments:*

- The Department’s determination on seasonality is supported by evidence on the record.
- The Department properly did not use Yongsheng’s shipping data in determining critical circumstances. Yongsheng, a company selected as a mandatory respondent, withdrew from this investigation, and as such, its shipping data could not be verified, and in-turn was not reliable.
- The Department should reject arguments to uses company specific data for companies that were not fully investigated.

*GITI companies’ Rebuttal Comments:*

- Petitioner’s argument to review imports only over a six month post-petition period to determine critical circumstances is inconsistent with the Department’s long-standing practice.
- The Department should examine the longest period of which import data is available.<sup>59</sup>

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<sup>59</sup> See *Solar Cells I from the PRC Final Determination* IDM at Comment 10C; see also *AD Wheels from the PRC Final Determination* IDM at Comment 6.

- Petitioner cites a single case from 2008 to claim that the six month comparison period should be used.<sup>60</sup> In that instance, the Department found that including shipping data from the CVD preliminary determination month would be distortive. However, this practice has not been replicated in other AD investigations. Further, the record does not support Petitioner’s claim that the *CVD Preliminary Determination* distorts the Department’s critical circumstances.

*Sailun Group’s Rebuttal Comments:*

- The Department should reject Petitioner’s argument to examine imports over a shorter period to determine critical circumstances.
- The Department’s practice is to rely on the longest period for which information is available.<sup>61</sup> As such, the Department should determine critical circumstances for imports from June 2014 to January 2015.
- Petitioner has provided no evidence that the *CVD Preliminary Determination* impacted import data following its publication.
- Due to significant lag time between the order of subject merchandise and the actual shipment of the order, any potential impact by the *CVD Preliminary Determination* would not be seen until several months after its issuance.

**Department’s Position:** As discussed in the “Critical Circumstances” section, the Department has found that critical circumstances still exist for the PRC-wide entity, including Yongsheng, but do not exist for the non-individually investigated companies that qualified for separate rate status. As noted above, a number of these separate rate companies have submitted comments arguing that critical circumstances do not exist for them. Since the Department is finding that there were not “massive” imports for the separate-rate qualifying non-individually investigated companies, we are finding critical circumstances do not exist for these companies. Thus, the arguments raised by these separate rate companies are moot.

Petitioner has argued that the Department should revise its preliminary critical circumstances analysis and shorten the examination period to six months (from June 2014 to November 2014). Specifically, Petitioner argues that the Department failed to account for the impact that the publication of the *CVD Preliminary Determination* would have on import volumes. Petitioner adds that this approach, to shorten the examination period, is consistent with past practice in *AD Steel Pipe from the PRC Final Determination*. The Department disagrees with Petitioner. In determining critical circumstances, the Department’s long standing practice is to examine the longest period for which information is available between the filing of the petition to the publication of the preliminary determination.<sup>62</sup> The Department may deviate from this practice when record information justifies this approach. For example, in *AD Steel Pipe from the PRC Final Determination*, the Department found that including data from the month of the CVD

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<sup>60</sup> See *AD Steel Pipe from the PRC Final Determination* IDM at Comment 14.

<sup>61</sup> See *Magnesium Metal from the PRC Final Determination* IDM at Comment 5; see also *Wire Rod from the PRC Preliminary Determination* PDM at page 17; see also *Shrimp from India Preliminary Determination*, 69 FR at 47119-47119 (unchanged in the final); see also *TV Receivers from the PRC Final Determination* IDM at Comment 3; see also *Silicon Metal from Russia Preliminary Determination*, 67 FR at 59256.

<sup>62</sup> See, e.g., *Solar Cells I from the PRC Final Determination* IDM at Comment 10C.

preliminary determination publication would be distortive<sup>63</sup> and thus adjusted the examination period. However, Petitioner has provided no evidence to demonstrate that the *CVD Preliminary Determination* impacted imports of subject merchandise following its publication. As such, there is no basis for the Department to deviate from its established practice of relying on the longest period of information available in doing its critical circumstances analysis. Therefore, for this final determination we have relied upon imports during the eight month period of June 2014 to January 2015.

Finally, the Department disagrees with the argument that Yongsheng's individual import data should be used to determine whether critical circumstances existed for the company. As discussed in the AD PDM, Yongsheng was selected as a mandatory respondent in this investigation.<sup>64</sup> However, the company chose not to participate in this investigation,<sup>65</sup> other than to submit monthly quantity and value data (*i.e.*, critical circumstances data). However, the Department preliminarily applied AFA to the company, finding it to be part of the PRC-wide entity.<sup>66</sup> Since critical circumstances existed for the PRC-wide entity, the Department found critical circumstances existed for Yongsheng. For purposes of this final determination, we continue to find that including Yongsheng as part of the PRC-wide entity is appropriate, and therefore, we have not examined Yongsheng's individual company shipment data. When a respondent fails to comply with a request for information, the Department may disregard all of the original and subsequent responses.<sup>67</sup> As such, while Yongsheng did provide quantity and value data, as part of its AFA application, the Department is not evaluating the information in any of the company's submissions, and is continuing to find that critical circumstances exist for the PRC-wide entity, of which Yongsheng is a part.

#### **Comment 4: Whether Sailun Group Should Receive a Double Remedy Adjustment**

##### *Petitioner's Comments:*

- Sailun Group has not demonstrated that there is a cost-to-price link for the listed LTAR programs.

##### *Sailun Group's Rebuttal Comments:*

- The Department should continue to provide a double remedy offset for the Sailun Group. Contrary to Petitioner's claims, the Sailun Group provided detailed information substantiating the cost-to-price link.

**Department's Position:** We analyzed Sailun Group's double remedy response in the *AD Preliminary Determination* and found Sailun Group had sufficiently demonstrated a cost-to-price linkage for LTAR programs for Natural Rubber, Synthetic Rubber and Butadiene, Carbon Black and Nylon Cord.<sup>68</sup> There is no new information on the record that would cause us to reconsider our preliminary determination that Sailun Group has demonstrated a cost-to-price linkage for

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<sup>63</sup> See *AD Steel Pipe from the PRC Final Determination* IDM at Comment 14.

<sup>64</sup> See *AD Preliminary Determination* PDM at 2-3.

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

<sup>66</sup> *Id.* at 26

<sup>67</sup> See section 782(d) of the Act.

<sup>68</sup> See Preliminary Double Remedies Calculation Memorandum at 2.

these four LTAR programs. Therefore, we are continuing to grant a double remedy offset to the Sailun Group for this final determination.<sup>69</sup>

### **Comment 5: Whether the Department Applied the Appropriate Double Remedy Adjustment to Cooper**

#### *Cooper's Comments:*

- In the *AD Preliminary Determination*, the Department adjusted for export subsidies using Cooper's actual export subsidy rates from the CVD proceeding, but for domestic subsidies, the Department used the weighted-average domestic subsidy rates of mandatory respondents in the AD investigation rather than the domestic subsidy rates calculated for Cooper in the concurrent CVD case.
- The Department must be consistent in its use of information and cannot ignore Cooper's domestic subsidy rates from the CVD proceeding while using its export subsidy rates from the CVD proceeding. For the final determination, the Department should use Cooper's actual domestic subsidy rates for the double remedies calculation.

#### *Petitioner's Rebuttal Comments:*

- The Department was correct in applying an average domestic subsidies calculated for the two mandatory respondents in this AD investigation to the separate rate applicant Cooper. Under section 777A(f) of the act, in order to receive individual domestic subsidy rates, a company must prove subsidy-cost-price linkage, something a separate rate company is incapable of doing as it is not individually examined. The Department was reasonable in its capping of Cooper's domestic subsidy adjustment to that of other separate rate applicants.
- In comparison, export subsidies are applied automatically and do not have examination requirements under section 772(c)(1)(C) of the Act. The Department was correct to use Cooper's export subsidies in the *AD Preliminary Determination*.

**Department's Position:** Although Cooper has its own company-specific CVD rate, its AD rate is based on the experience of the GITI companies and the Sailun Group, the two mandatory respondents in the AD investigation (Cooper is an unexamined separate rate company in the instant investigation). Pursuant to section 777A(f)(2) of the Act, we "cap" any domestic subsidy adjustment, by adjusting only for a pass-through that eliminates any double remedy, but no more. Thus, for separate rate applicants individually examined in the CVD investigation, *e.g.*, Cooper, we used the lesser of their CVD pass-through adjustment as reflected in the countervailing duty rate applied to Cooper or the weighted-average domestic subsidy (pass-through) adjustment of the AD mandatory respondents for the final determination, on which Cooper's antidumping duty rate is based.<sup>70</sup>

This is consistent with the adjustment for export subsidies, in the *AD Preliminary Determination*, the Department preliminarily determined that Cooper did not receive any export subsidies, and, therefore, we did not apply an export subsidy adjustment to Cooper pursuant to section

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<sup>69</sup> See Final Double Remedies Calculation Memorandum at 2.

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

772(c)(1)(C) of the Act. However, for the final CVD determination, the Department has determined that Cooper has received export subsidies. These export subsidies are countervailed at a lower rate than the weighted-average export subsidy rate applied to the AD mandatory respondents, upon which Cooper's antidumping duty is based.<sup>71</sup> Although Cooper's dumping margin is based on the rates for the mandatory respondents in the AD investigation, there is no double remedy applied to Cooper once its AD rate is adjusted for its calculated export subsidy rate.

#### **Comment 6: Whether the GITI Companies Should Receive a Double Remedy Adjustment**

##### *GITI companies' Comments:*

- In the Preliminary Determination, the Department made no double remedy adjustment for the GITI companies because the GITI companies reduced price due to a decrease in raw materials, specifically natural rubber. The GITI companies did not use the LTAR Natural Rubber program.
- While customers in the tire market track natural rubber prices closely, the GITI companies take into consideration the cost of other raw materials less visible to customers. The GITI companies demonstrated it makes pricing decisions based on changes to variable costs at verification (Verification Exhibit 10).
- The GITI companies also provided data at verification that shows the average price of tires per kg and aggregate unit cost of synthetic rubber, carbon black, and nylon from January 2012 - March 2014.

##### *Petitioner's Rebuttal Comments:*

- The Department's preliminary double remedy adjustment analysis of the GITI companies is correct and should be upheld for the GITI companies in the instant final determination.
- The GITI companies provided untimely new double remedy information at verification which should not be taken into consideration as in *Solar Products from the PRC*. However, even if the new information was properly submitted, it does not establish a cost-price linkage required for an adjustment.

**Department's Position:** We have granted the GITI companies a double remedy adjustment for the Provision of Natural Rubber for LTAR program in this final determination. Consistent with the preliminary determination, we continue to find that the GITI companies demonstrated a subsidy-to-cost linkage for this material input.<sup>72</sup> In particular, we continue to rely on the explicit statements in the GITI companies' double remedy response linking the pricing decision to natural rubber.<sup>73</sup> We note that in the final determination of the companion CVD case, the Department determined that the GITI companies received a countervailable subsidy when it purchased domestic natural rubber under the Provision of Natural Rubber for LTAR program.<sup>74</sup> Thus, because the GITI companies received a countervailable subsidy from this program, we are granting the GITI companies a double remedy adjustment in this final determination.

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<sup>71</sup> See *CVD Final Determination* at "Continuation of Suspension of Liquidation."

<sup>72</sup> See Final Double Remedies Calculation Memorandum at 2.

<sup>73</sup> See Letter from GITI companies, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Double Remedy Questionnaire Response - Giti Tire Global Trading Pte. Ltd.," (November 3, 2014) at 2.

<sup>74</sup> See *CVD Final Determination* IDM at "Provision of Natural Rubber for LTAR."

## **Comment 7: Analysis of the Pass-through Rate of the Double Remedy Adjustment**

### *Petitioner's Comments:*

- The Department's use of Bloomberg data to calculate a pass-through ratio of Chinese costs and Chinese prices in the PRC manufacturing sector has been remanded by the CIT in *Wheatland Tube Co.* The CIT held that the Department did not explain why the Bloomberg data is an adequate proxy for U.S. import prices.
- Petitioner has placed U.S. import prices of subject merchandise and Chinese import prices of inputs on the record for the Department to use as an alternative to the Bloomberg data.
- An analysis of Chinese costs of natural rubber and carbon black and passenger tires import prices shows a negative correlation, which does not support a double remedy adjustment for the related LTAR programs
- An analysis of Chinese costs of synthetic rubber and tire cord and passenger tires import prices show a positive correlation, which does support a double remedy adjustment for the related LTAR programs

### *Cooper's Rebuttal Comments:*

- The Department correctly used Bloomberg data to calculate the ratio of cost-price changes for the PRC manufacturing sectoring and should use Bloomberg data in the final determination.
- Petitioner's reliance on *Wheatland Tube Co.* is misplaced. The CIT remanded the Bloomberg data to Commerce for further explanation, but did not reject its use.
- Petitioner offers its own correlation analysis to show a lack of correlation between Chinese input import prices and US PVLIT prices, but does not address the issue of whether there is a correlation between domestic prices in China and export prices to the US.
- Petitioner's analysis assumes that price changes of each input would have an observable change in the price of subject merchandise. This does not account for other non-subsidized inputs or labor and energy.
- In comparison, the Bloomberg data utilizes China-wide input and output pricing and considers the inputs collectively and not in isolation.
- Further, Petitioner's reliance on Chinese input import prices is misplaced as it does not reflect prices of Chinese domestically produced subsidized inputs.
- Similarly, using only one price for passenger tires could mask for changes in product mix over time as passenger tires are not homogenous.

### *GITI companies' Rebuttal Comments:*

- The Department correctly followed its methodology for analyzing respondent's data for a subsidy-cost-price link and used the Bloomberg data to determine the appropriate offset amount.
- Petitioner relies on *Wheatland Tube Co.*, but *Wheatland Tube Co.* differs from this investigation in the use of Bloomberg data to establish a subsidy-cost-price link when other data is available. Here, the Department analyzed respondent's data and Petitioner's reliance on *Wheatland Tube Co.* is misplaced.

- In *Sinks from the PRC Final Determination*, the Department analyzed whether Bloomberg data provides a reasonable estimate of the pass-through amount of countervailable subsidies and found that it provides the best means of doing so. Petitioner’s proposed methodology is not an apples to apples comparison and does not alter the Department’s conclusion in the *Sinks from the PRC* case.

*Sailun Group’s Rebuttal Comments:*

- Petitioner provided analyses of several correlations, but did not explain how they could be used to derive a pass-through rate. The Department has repeatedly used the Bloomberg to derive the subsidy pass-through rate in prior cases.

**Department’s Position:** As an initial matter, we do not find *Wheatland Tube Co.* applicable to the instant investigation. In *Wheatland Tube Co.*, the Court remanded the determination to the Department because it had failed to consider industry/product-specific price and cost information.<sup>75</sup> On remand, the Department updated its approach and determined that it could obtain industry-specific cost data by requesting information from the individual respondents to the proceeding and therefore also allow the Department to compare cost data against the price at an industry-specific level.<sup>76</sup> In the instant investigation, the Department has followed its updated approach and the respondents have provided industry-specific double remedy questionnaire responses and the Department is providing double remedy adjustments as appropriate. Therefore, the instant investigation is distinguishable from *Wheatland Tube Co.* in that the respondents have provided and we have used industry-specific data in our double remedy adjustment.

We find that Petitioner’s proposed alternative is a flawed comparison of Chinese imported input prices to U.S. import prices of subject merchandise. Petitioner proposes that we calculate pass-through on the basis of changes in the costs of specific inputs and the price of U.S. imports of the subject merchandise. Although the specific inputs are significant inputs, *e.g.*, natural rubber, collectively they do not constitute a broad measure of variable cost and are therefore not a meaningful basis for approximating pass-through. The pass-through concept relates total variable cost to price and concerns how changes in the former affect the latter; it is not a concept that relates individual variable cost components to price. That is not to say in any way that changes in the cost of certain cost components do not affect total variable cost; only that the actual calculation of the pass-through rate must be based on (changes in) a total variable cost measure (or some reasonable proxy thereof). The flaw of basing a pass-through calculation on partial or limited variable cost measures can be seen in Petitioner’s widely divergent results for pass-through calculations of changes in prices of natural and synthetic rubber: zero pass-through for natural rubber; 100 percent for synthetic rubber. These results do not and cannot reasonably approximate pass-through because they are not based on a proper measure of total variable cost. The Department also finds the results in this instance troubling because we consider natural rubber and synthetic rubber complementary inputs for tire production. These widely divergent results for two complementary inputs suggest other factors are affecting Petitioner’s data.

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<sup>75</sup> See *Wheatland Tube Co.* at 1388: the Department “does not really explain in detail why this particular association disqualifies consideration of the more specific industry/product CWP pricing data on the record.”

<sup>76</sup> See *Wheatland Tube Co. Remand* at 7-8.

Conversely, the Bloomberg data was calculated as a ratio of changes in a production price index to changes in a purchasing price index of raw materials, fuels and power (purchasing price index). The purchasing price index is a broad measure of variable cost, and the production price index measures changes in ex-factory prices, *i.e.*, prices that are not specific to any market, but common to all markets (foreign and domestic), and set by the producer before any market-specific add-ons. The broad cost measure that the purchasing price index represents and the “matched” or “paired” nature of the Bloomberg cost and price data – the same (surveyed) enterprises report both the cost and price data – are necessary features of any data that the Department would use for the pass-through calculation. Although the Bloomberg data is aggregated, it exhibits these features. Thus, for the final determination, we continue to use a pass-through ratio constructed from the Bloomberg data.

### **Comment 8: Whether to Grant the Sailun Group an Offset for By-Products**

#### *Petitioner’s Comments:*

- The Department should reverse its preliminary decision to grant the Sailun Group an offset for the by-products generated by Sailun China during its manufacturing process.
- The Department’s practice requires a respondent to substantiate the amount of the by-product generated from the production of subject merchandise during the period in question and to prove that the by-product had commercial value.<sup>77</sup>
- In a number of past cases, the Department did not grant a by-product offset because the respondent could not correlate its by-product sale quantities to production quantities.<sup>78</sup>
- Sailun China has not substantiated its by-product production during the POI, as it has admitted that it only tracks by-product sales and not by-product generation, and it does not treat by-products as inventory items.<sup>79</sup>
- The Department has accepted sales documentation that specifically substantiates period production amounts because the scrap was generated and sold in the same month it was generated,<sup>80</sup> however, this is not the same situation in Sailun China’s case.

#### *Sailun Group’s Rebuttal Comments:*

- While Sailun China does not record by-products in its inventory, this does not mean that the company was unable to show the amount of by-products generated.
- The verification report details the fact that Sailun China maintains both “stock-in” and “stock-out” records in its scrap warehouse, thus, the record does confirm the amount of by-products generated during the POI.<sup>81</sup>
- There can be no concern that the reported by-product is not related to the subject merchandise because the verification report confirms that Sailun China only reported by-product scrap from the tire production process.<sup>82</sup>

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<sup>77</sup> See *Valves from the PRC 2008-2010 AR Final IDM* at Comment 18, and *OCTG from the PRC 2010-2011 AR IDM* at Comment 2.

<sup>78</sup> See *Wind Towers from the PRC Final Determination IDM* at Comment 17; *Roller Bearings from the PRC 2012-2013 AR IDM* at Comment 3; *PET Film from the PRC 2010-2011 AR IDM* at Comment 10; *PET Film from the PRC 2011-2012 AR IDM* at Comment 5.

<sup>79</sup> See *Sailun Group SCDQR* at 14 and *Sailun Group 1st Supplemental SCDQR-2* at 6-8 and 12-13.

<sup>80</sup> See *Wood Flooring from the PRC Final Determination IDM* at Comment 23.

<sup>81</sup> See *Sailun Group Verification Report* at 31-32.

- Petitioner acknowledges that the Department has stated that less documentation regarding by-product production is required when it is sold in the month it is produced.<sup>83</sup> However, Petitioner’s claim that this policy is not applicable to Sailun China because of certain proprietary inconsistencies in its by-product sales is a specious argument, as this was due to events beyond Sailun China’s control. Contrary to Petitioner’s claim, the record confirms that Sailun China’s standard practice is to sell by-products produced each month.<sup>84</sup> Accordingly, Petitioner’s argument should be rejected and the Department should continue to grant the company its by-product offset.

**Department’s Position:** We agree with the Sailun Group that the company should be allowed a scrap offset. The Department explained its practice with regard to a scrap or by-product offset in *OCTG from the PRC 2010-2011 AR*:

“{t}he by-product offset is limited to the total production quantity of the by-product... produced during the POR, so long as it is shown that the by-product has commercial value... the party requesting the offset bears the responsibility for substantiating the quantity of the by-product offset produced and demonstrating that the byproduct has commercial value.”<sup>85</sup>

Therefore, to receive an offset, a company needs to demonstrate that the scrap quantity claimed as the offset was produced during the POR/POI, and that it has commercial value. At verification, the Department officials noted that “the total quantity of scrap tires sales provided corresponds to what Sailun China reported in its questionnaire response. The Department officials also reviewed the accounting vouchers, VAT invoices, and proof of payment for a POI scrap sale. We noted no discrepancies.”<sup>86</sup> Thus, the record shows, and Petitioner does not dispute the fact, that the scrap generated by Sailun China has commercial value.

Petitioner argues that because Sailun China does not treat scrap as inventory items and only tracks scrap sales and not scrap generation, the company has not substantiated its scrap production during the POI. We disagree. As the Department noted in its verification report:

“{a}fter the inspection phase, all of the tires that failed are collected and sent to the scrap area on the factory floor. From the factory floor, the defective tires are sent to the company’s scrap warehouse where they are cut so that they cannot be sold or used as tires. The Department verifiers asked a Sailun China official to explain the timing between collecting the defective tires and selling them as by-product. A company official explained that the defective tires are just collected in the scrap area until the area is full, then they are moved to the scrap warehouse for sale.

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<sup>82</sup> *Id.*

<sup>83</sup> See *Petitioner’s Case Brief* at 55.

<sup>84</sup> See *Sailun Group Verification Report* at Exhibit 24.

<sup>85</sup> See *OCTG from the PRC 2010-2011 AR* IDM at Comment 2.

<sup>86</sup> See *Sailun Group Verification Report* at 32.

...The Department verifiers inquired as to how Sailun China tracks the defective tires that have been moved from the scrap area in the factory to the scrap warehouse and a company official stated that they maintain scrap stock-in records at the scrap warehouse. ...We also picked a scrap sale from the semi-steel scrap warehouse records to review. The company provided the stock-out slip and weighing bill for the sale. We noted no discrepancies.”<sup>87</sup>

Thus, even though Sailun China does not treat the scrap tires as inventory items, the Department found that the company tracks the scrap tires generated during production by maintaining scrap stock-in records at the scrap warehouse. Once the scrap area at the factory is full, the scrap is moved to the scrap warehouse for sale, and the record shows that Sailun China sells the scrap once a month (with the exception of certain proprietary inconsistencies in the timing of scrap tire sales due to reasons beyond Sailun China’s control<sup>88</sup>). From these facts it follows that the quantity of scrap sold during the month would necessarily represent the quantities of scrap generated during that period, which establishes the correlation between scrap sales quantities and scrap generated quantities. Accordingly, we find that Sailun China has demonstrated that the scrap for which the company claims the offset were produced during the POI and that they have commercial value. Furthermore, to assess the reasonableness of Sailun Group’s claimed scrap offset, we performed an analysis of Sailun Group’s reported scrap information as it compares to the difference between the actual weight of a sample tire obtained at verification and the reported total FOPs for that tire type. Our analysis indicates that the scrap offset claimed by Sailun Group is within the yield loss percentage experienced by the company.<sup>89</sup>

Petitioner’s reliance on *Wind Towers from the PRC Final Determination* is misplaced, because in that case the respondent admitted that it did not record the amount of scrap generated in the normal course of business and, more importantly, it could not correlate its scrap production to the sale of the same scrap. Moreover, at verification in that case, the respondent “did not attempt to relate the scrap sales to production for either of its facilities,” and the Department found that the majority of one of the company’s production facility’s by-product sales during the POI occurred in a single month.<sup>90</sup>

Likewise, in *Roller Bearings from the PRC 2012-2013 AR*, the Department denied one respondent’s claim for scrap offset because the respondent did not provide any information regarding the production of scrap during the POR. The other respondent’s claim was based on the yield loss as an indication that scrap was produced during the POR. The Department stated that “the presence of yield loss alone does not amount to evidence of by-product production; as the term indicates the unincorporated steel could be ‘loss’ or waste, not saleable scrap...”<sup>91</sup> In another case cited by Petitioner, *PET Film from the PRC 2010-2011 AR*, the Department denied by-product offset because the respondent “could not correlate the quantity of its by-products produced during the POR with the sales quantity of its by-products.”<sup>92</sup> As described above, the

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<sup>87</sup> *Id.*

<sup>88</sup> See *Sailun Group Rebuttal Brief* at 32 and *Sailun Group SCDQR* at exhibits D-12-A and D-12-B.

<sup>89</sup> See *Sailun Group Final Analysis Memorandum* at Attachment 3.

<sup>90</sup> See *Wind Towers from the PRC Final Determination* IDM at Comment 17.

<sup>91</sup> See *Roller Bearings from the PRC 2012-2013 AR* IDM at Comment 3.

<sup>92</sup> See *PET Film from the PRC 2010-2011 AR* IDM at Issue 10; see also *PET Film from the PRC 2011-2012 AR* IDM at Issue 5.

factual scenario from *PET Film from the PRC 2010-2011 AR* is not applicable in Sailun China's case, where the Department was able to correlate the quantity of scrap produced during the POR with sales of scrap. Therefore, for the final determination, we continue to grant Sailun China the scrap offset.

### **Comment 9: Whether to Include Goodyear Thailand's Financial Statements in the Calculation of the Financial Ratios**

#### *Petitioner's Comments:*

- The Department erred in the preliminary determination by excluding the Goodyear (Thailand) Public Company Ltd. (Goodyear) financial statements from the calculation of the financial ratios because "it did not adequately breakout energy costs while the financial statements of SR Tyres' and Hihero's provided adequate breakouts of energy costs."<sup>93</sup>
- The Department often relies on financial statements that do not include a separate breakout for energy costs.<sup>94</sup>
- The Department has stated that, while financial statements that do not include a separate breakout for energy costs may not contain the level of detail "ideally preferred," such financial statements nevertheless "provide sufficient detail for the Department to calculate the surrogate financial ratios."<sup>95</sup>
- The Department has relied on financial statements that do not breakout energy costs even when there are other usable financial statements on the record that do breakout such costs.<sup>96</sup>
- The Department has a preference for using multiple financial statements, and has relied on this preference as justification for using financial statements that do not break out energy costs even where other financial statements on the record contain such information.<sup>97</sup> Relying on Goodyear as well as Hihero and SR Tyres financial statements would be consistent with the Department's preference for using multiple financial statements and would result in the calculation of broader-based financial ratios.

#### *Sailun Group's Rebuttal Comments:*

- Petitioner does not allege any shortcomings in the two financial statements used by the Department in the preliminary determination.
- The Department's practice is to reject financial statements that do not contain a breakout for energy costs when there are alternative financial statements that contain a line item for energy costs.<sup>98</sup>

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<sup>93</sup> See *Preliminary Surrogate Value Memorandum* at 3.

<sup>94</sup> See *Pipe and Tube from the PRC 2012-2013 AR* IDM at 18; *Crawfish from the PRC 2012-2013 AR Prelim PDM* at 14; *Rod from the PRC 2011-2012 AR* IDM at 17; *Roller Bearings from the PRC 2010-2011 AR Preliminary Surrogate Value Memorandum* at 1; *Roller Bearings from the PRC 2010-2011 AR Final IDM* at 17.

<sup>95</sup> See *Brightening Agents from the PRC Final Determination* IDM at 9.

<sup>96</sup> See *Washers from the PRC 2012-2013 AR Prelim PDM* at 21; *Roller Bearings from the PRC 2010-2011 AR Preliminary Surrogate Value Memorandum* at 10.

<sup>97</sup> See *Shrimp from the PRC 6th AR* IDM at 57; *OCTG from the PRC Final Determination* IDM at 83-84.

<sup>98</sup> See *OTR Tires from the PRC 2012-2013 AR Final IDM* at Comment 6; *Diamond Sawblades from the PRC 2011-2012 AR*; *Wind Towers from the PRC Final Determination*.

- Precedents cited by Petitioner are either distinguishable on facts, were reversed later, or simply do not stand for the proposition stated by the Petitioner.<sup>99</sup>
- Even while using the single best available financial statement that does not contain a breakout of energy costs, the Department acknowledged the distortive effects of applying such a financial statement.<sup>100</sup>
- Petitioner's cite to *Washers from the PRC 2012-2013 AR Prelim* directly contradicts the final results issued in that case.
- The record shows that Goodyear's financial statements are insufficiently disaggregated in other ways also and are potentially distorted by countervailable subsidies.

*GITI companies' Rebuttal Comments:*

- Petitioner concedes that its position is contrary to the Department practice, noting that financial statements without an energy breakout are not "ideally preferred."<sup>101</sup>
- Cases cited by Petitioner are unresponsive, because in all those cases the only usable financial statements on the record were the statements that did not breakout energy cost.
- As Petitioner recognizes, the Department has a preference for using multiple financial statements.<sup>102</sup> In the instant case, however, there are two other financial statements that can be used and that do breakout energy costs.

**Department's Position:** We disagree with Petitioner, and for the final determination we continue to exclude Goodyear's financial statements from the financial ratios calculation. In calculating the financial ratios, it is the Department's practice to use data from the financial statements of market-economy surrogate companies that produce merchandise identical or comparable to the subject merchandise, based on the specificity, contemporaneity, and quality of the data.<sup>103</sup> For the preliminary determination in this investigation, the Department used financial statements of two Thailand producers - SR Tyres and Hihero. These financial statements satisfy all the above criteria for selecting surrogate financial statements, and also provide a breakout for energy costs. Goodyear's financial statements, on the other hand, do not separately identify energy costs, and as such, were excluded from the financial ratios calculation.

Petitioner cites cases where the Department used financial statements that do not provide a breakout of energy costs.<sup>104</sup> However, these cases refer to situations where the only usable surrogate financial statements on the record were financial statements that did not breakout the energy costs. In such instances, the Department uses financial statements with no energy breakout as the best available information on the record. As stated in *Brightening Agents from the PRC Final Determination*:

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<sup>99</sup> See *Petitioner's Case Brief* at 57-60.

<sup>100</sup> See *Brightening Agents from the PRC Final Determination* IDM at Comment 2.

<sup>101</sup> See *Petitioner's Case Brief* at 57-58.

<sup>102</sup> See *Petitioner's Case Brief* at 59.

<sup>103</sup> See *OCTG from the PRC Final Determination* IDM at Comment 13.

<sup>104</sup> See *Pipe and Tube from the PRC 2012-2013 AR* PDM at 18; *Rod from the PRC 2011-2012 AR* IDM at 17; *Crawfish from the PRC 2012-2013 AR Prelim* PDM at 14; *Brightening Agents from the PRC Final Determination* IDM at Comment 2. We note that the issue of the separately recorded energy costs was not discussed in the final results of *Roller Bearings from the PRC 2010-2011 AR Final*, also cited by Petitioner.

The Department agrees with Transfar that PTT's financial statements do not contain the full level of detail that the Department ideally prefers; however, they provide sufficient detail for the Department to calculate the surrogate financial ratios. The Department has previously determined that when, as in this case, the only usable financial statements do not include a separate line item for energy in the reported cost of manufacturing, the Department may conclude that energy is recorded as part of the surrogate producer's factory overhead.<sup>105</sup>

The Department's practice is to reject those financial statements that are not sufficiently detailed, and specifically, that do not contain a breakout for energy costs, when there are alternative financial statements on the record that contain a line item for energy costs. For example, in *Diamond Sawblades from the PRC 2011-2012 AR* the Department stated:

{w}e did not use Alpha's financial statements because they do not contain a sufficient level of detail to complete the financial ratio calculation. As we decided in the Preliminary Results, Alpha's financial statements are insufficiently detailed because they do not provide the labor costs, energy costs, beginning and ending work-in-process costs, and line-item details of financing costs.<sup>106</sup>

Similarly, in *Wind Towers from the PRC Final Determination* the Department found that:

{t}he financial statements of the second Thai producer, Asian Marine, do not conform to the criteria considered by the Department when selecting information to value the financial ratios. Because Asian Marine's financial statements do not itemize raw materials, labor, and energy, an unacceptable degree of estimation would be required to derive the surrogate financial ratios from Asian Marine's financial statements. Consistent with the Department's practice to disregard financial statements that are incomplete and/or not sufficiently detailed to permit the calculation of the one or more of the surrogate financial ratios, the Department does not consider Asian Marine's financial statement suitable for use in the final determination.<sup>107</sup>

We also disagree with Petitioner's assertion that the Department has relied on financial statements that do not breakout energy costs even when there are other usable financial statements on the record that do breakout such costs. The *Washers from the PRC 2012-2013 AR Prelim* cited by Petitioner does not support its argument, as the preliminary results of that case were reversed by the Department in the final results, where the Department excluded financial statements that were not detailed enough:

Mahajak Autopart's financial statements do not disaggregate administrative or cost of manufacturing expenses, both of which normally include related energy expenses... the record in this review contains four additional useable financial statements, all of which appropriately disaggregate energy and other expenses... Therefore, consistent with our past practice, we find that Mahajak Autoparts' financial statements are not sufficiently

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<sup>105</sup> See *Brightening Agents from the PRC Final Determination* IDM at Comment 2.

<sup>106</sup> See *Diamond Sawblades from the PRC 2011-2012 AR* IDM at Comment 16.

<sup>107</sup> See *Wind Towers from the PRC Final Determination* IDM at Comment 2.

detailed to calculate accurate surrogate financial ratios. Further, because we have other useable financial statements, we have not used Mahajak Autoparts' financial statements for the final results.<sup>108</sup>

Petitioner notes, and we agree, that the Department has a preference for using multiple financial statements. However, contrary to Petitioner's assertion, the Department has not relied on this preference as justification for using financial statements that do not break out energy costs even where other financial statements on the record contain such information. The *Shrimp from the PRC 6th AR* cited by Petitioner is not on point, because there the Department found that none of the usable financial statements on the record had a clear breakout of energy costs. Therefore, when petitioners in that case argued that the Department should not use the financial statements of Kongphop Frozen Foods Company Ltd. (Kongphop) because they do not identify energy costs separately, the Department disagreed, citing its general preference of using multiple financial statements (all of which in that case did not separately report energy cost):

Further, we disagree with Petitioner's contention that the Department should not use Kongphop because its financial statement does not identify energy costs. While the Department would generally prefer financial statements which identify energy costs, the Department also prefers to use multiple financial statements. In this instance, we find that including Kongphop and using multiple surrogate financial statements to calculate the surrogate financial ratios, outweighs the Department's reservations that Kongphop does not itemize energy....Further, we note that because Kiang Huat, Kongphop, and Sea Bonanza do not itemize electricity in their financial statements, we will disregard Regal's energy inputs in the calculation of normal value in order to avoid double-counting energy costs... Therefore...we will calculate the surrogate financial ratios using average of the ratios derived from the financial statements of Kiang Huat, Kongphop, and Sea Bonanza.<sup>109</sup>

Moreover, when there are surrogate financial statements on the record that segregate energy costs, the Department may use that financial statement alone for the ratios calculation, even if there are other usable financial statements that do not provide energy breakout. For example, in *OTR Tires from the PRC 2012-2013 AR Final*, of the two financial statements on the record, the Department used only one - Goodyear (Indonesia), because the other did not provide a breakout for energy costs:

...{b}ecause we still have another financial statement (*i.e.*, Goodyear), which no party disputed, we did not use the financial statements of Gajah Tunggal for these final results because Gajah Tunggal's audited financial statements do not contain a line for manufacturing energy.<sup>110</sup>

In the instant case, of the three available financial statements on the record, only Goodyear's statements do not separately record energy costs. Therefore, for the final determination,

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<sup>108</sup> See *Washers from the PRC 2012-2013 AR Final* IDM at Comment 5.

<sup>109</sup> See *Shrimp from the PRC 6th AR* at Comment 12.

<sup>110</sup> See *OTR Tires from the PRC 2012-2013 AR Final* IDM at Comment 6.

consistent with the Department's practice, we continue to exclude Goodyear's financial statements from the financial ratios calculation.

### **Comment 10: Whether to Include Export Expenses in the SG&A Ratios for SR Tyres and Hihero**

#### *Petitioner's Comments:*

- In calculating the financial ratios for SR Tyres and Hihero (Thai surrogate companies), the Department incorrectly excluded from the SG&A expenses, line items for "Export Expenses" and "Export Security Premium."
- The Department's practice is to exclude export related expenses to avoid double-counting if the financial statements indicate that such expenses include the types of export related expenses accounted for elsewhere.<sup>111</sup> However, absent such information, there is no reason to believe that including these expenses in the SG&A expenses would result in double-counting.
- In this case, nothing in either SR Tyres' or Hihero's financial statements provides any indication of the types of expenses encompassed by "Export Expenses" or "Export Security Premium."
- SR Tyre's financial statements include a line item for "Freight Out Charges" and Hihero's financial statements include line items for "Freight" and "Brokerage," all of which were excluded from the financial ratio calculations. The existence of these costs as separate line items affirmatively demonstrates that such costs are not included in the export expense line items at issue.<sup>112</sup> Accordingly, the Department should include these expenses in its calculation of the SG&A expenses.

#### *Sailun Group's Rebuttal Comments:*

- Petitioner's arguments are unpersuasive and contradicted by substantial record evidence. In the preliminary determination, the Department adjusted Sailun China's U.S. price by certain export expenses, and Petitioner fails to point to any specific export-related expense for Sailun China that would not have been captured in the U.S. sales adjustment.<sup>113</sup> As such, it is reasonable to infer that export expenses in SR Tyres' and Hihero's financial statements shall overlap with one or more of the above charges.
- The fact that Hihero's financial statements contain a line item for "Brokerage" does not necessarily imply that the surrogate company would have included therein all of the elements of B&H charges that the Department included in its U.S price adjustment for the preliminary determination.
- The Department should not follow its precedent in *Nails from the PRC 2010-2011 AR* cited by Petitioner, because the Department's rationale in that case did not take into account the possibility that export expenses may include the B&H cost elements.
- Likewise, in other cases cited by Petitioner the Department's decision was based on the details mentioned in the financial statements, rather than a comprehensive evaluation of record evidence including U.S. sale price adjustments.

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<sup>111</sup> See *Nails from the PRC 2010-2011 AR* IDM at 23; *Carbon from the PRC 2008-2009 AR* IDM at 26-27; *Wooden Bedroom Furniture from the PRC 2009 AR* IDM at 30-31.

<sup>112</sup> See *Silicon Metal from the PRC 2008-2009 AR* IDM at 31.

<sup>113</sup> See *Preliminary Surrogate Value Memorandum* at 7.

- In contrast, Sailun China has demonstrated that it is reasonable to infer that the line item “Export expenses” and “Export Security Premium” in the two surrogate financial statements include one or more cost elements of charges that were excluded in the course of U.S. price adjustments.

*GITI companies’ Rebuttal Comments:*

- Not excluding export expenses as suggested by Petitioner would be contrary to the Department’s recent practice.
- The petitioners in the *Hand Trucks from the PRC 2010-2011 AR* proceeding made the same argument as Petitioner does here, and that argument was rejected by the Department.
- To support its position, Petitioner cites to several cases. However, all of them pre-date *Hand Trucks from the PRC 2010-2011 AR*, and, moreover, they are specific to the facts in those cases.

**Department’s Position:** We disagree with Petitioner that “Export Expenses” and “Export Security Premium” expenses should be included in the SG&A ratio calculation. The Department recently addressed a similar issue in *Hand Trucks from the PRC 2010-2011 AR*. There, petitioners suggested that “Transportation and export expenses” should be included as general or selling expenses because “there is insufficient information on the record, and that these expenses could pertain to the transportation of goods, persons, both, or something else entirely.” In its decision, the Department stated:

Transportation and Export expenses’ have been excluded from SG&A because they are deducted from the US price in the margin program and it is the Department’s practice to avoid double counting.

In deriving surrogate financial ratios, “it is the Department’s longstanding practice to avoid double-counting costs where the requisite data are available to do so.”<sup>114</sup> The Department determines that there is a possibility that expenses normally associated with “Export Expenses” on the surrogate financial statements may already be accounted for as the adjustment to the respondent’s U.S. price. For instance, here the Department adjusted Sailun China’s U.S. price by the amount of foreign inland freight and various B&H costs, such as document preparation, customs clearance, technical control, and terminal handling which are not separately listed on the surrogate financial statements and may be categorized as “Export Expenses.”<sup>115</sup> Similarly, the GITI companies’ export expenses are taken into account in the Department’s surrogate values for domestic B&H, domestic inland insurance, freight, or through their reported market economy export expenses.<sup>116</sup> Therefore, because it is plausible that “Export Expenses” here are reported as adjustments to the U.S. price, including them in the SG&A ratio calculation may result in double-counting of expenses and therefore not including “Export Expenses” and “Export Security Premium” in the SG&A calculations is reasonable.

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<sup>114</sup> See *Shrimp from Vietnam 2012-2013 AR* IDM at Comment 5.

<sup>115</sup> See Sailun Group Final Analysis Memorandum.

<sup>116</sup> See GITI companies Final Analysis Memorandum.

Petitioner argues that the existence of separate line items on the surrogate financial statements for costs accounted for in the U.S. price adjustment (e.g., freight and brokerage), affirmatively demonstrates that such costs are not included in the “export expense” line item at issue, and as such, including the export expenses in the financial ratio calculations would not double-count costs accounted for elsewhere. We disagree. As discussed above, there are export-related expenses for which the Department adjusted respondents’ U.S. price and which are not listed separately on the surrogate financial statements. Thus, because of the nature of these expenses it is reasonable to assume that these expenses are included in the “Export Expenses” line item, and as such should be excluded from the financial ratio calculations.

As for the cases cited by Petitioner, we note that they all pre-date the Department’s decision in *Hand Trucks from the PRC 2010-2011 AR*. Moreover, the record in *Wooden Bedroom Furniture from the PRC 2009 AR* does not list specific export expense line items that were at issue there, thus, they cannot be compared with the items in this case. In *Silicon Metal from the PRC 2008-2009 AR* the parties discussed item “Profe fee & other serv. export” recorded on the surrogate financial statements, and it was unclear what this item represents and whether in fact it was related to export expenses.

Therefore, for the final determination, we continue to exclude line items “Export Expenses” and “Export Security Premium” from the calculation of the financial ratios.

#### **Comment 11: Whether to Include All Labor Related Costs in the Denominator of the Financial Ratios Calculation**

*GITI’s companies’ Comments:*

- In the calculation of the financial ratios, the Department included certain labor costs as SG&A expenses rather than labor. These labor costs were recorded on S.R. Tyres’ and Hihero’s financial statements under “Selling and Admin” and “Administrative Expenses” sections of the corresponding financial statements.
- To value labor cost, the Department relied on the data from Thailand NSO Labor Force Survey.
- The Department’s labor methodology states that when the surrogate financial statements include disaggregated overhead and SG&A expense items that are already included in the ILO’s definition of Chapter 6A data, the Department will remove these identifiable costs items from SG&A expenses.<sup>117</sup>
- The financial statements of the surrogate producers contain disaggregated overhead and SG&A expenses, thus, the Department should exclude these items from the SG&A expenses to avoid double-counting of labor costs.
- The NSO data used by the Department includes all employees, *i.e.*, direct production as well as sales and administrative employees.
- The Department recognized this in *Sinks from the PRC Final Determination*, stating that “Here, because the NSO data include all labor costs, the Department has treated itemized SG&A labor costs in the surrogate financial statements as a labor expense rather than an

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<sup>117</sup> See *NME Labor Methodologies*.

SG&A expense, and we have excluded those costs from the surrogate financial ratios.”<sup>118</sup>  
The Department should follow this precedent and reclassify SG&A labor costs from SG&A expense to the labor cost.

*Petitioner’s Rebuttal Comments:*

- The approach proposed by the GITI companies is contrary to the Department’s current practice and the findings of the CIT and should be rejected.
- The Department has recognized that labor expenses that are classified on the surrogate financial statements as SG&A expenses relate to selling and administrative staff - not factory workers - and thus should be categorized as an SG&A expense.<sup>119</sup>
- No information in either S.R. Tyres’ or Hihero’s financial statements indicates that these classifications are not accurate or that manufacturing-related labor costs have been included as part of the selling and administrative expenses.
- The GITI companies’ argument that the labor costs should be excluded from the SG&A expenses because the labor surrogate value, which is based on the NSO Labor Force Survey, includes non-manufacturing labor cost has already been rejected by the Department.<sup>120</sup>
- The GITI companies’ reliance on *Sinks from the PRC Final Determination* is misplaced, because since that determination the Department has rejected such arguments, and the decision was supported by the CIT.<sup>121</sup>
- Here, the Department has followed its practice of treating expenses in the same manner as they are treated in the surrogate financial statement, therefore, the GITI companies’ argument should be rejected.

**Department’s Position:** We agree with Petitioner that labor costs recorded on the surrogate financial statements as selling and administrative expenses should not be excluded from the SG&A ratio calculation. When the surrogate financial statements separately identify manufacturing-related labor costs and selling and administrative labor costs, the Department should rely on such classifications unless there is a reason to believe such classification is not accurate.<sup>122</sup> The GITI companies do not point to any record evidence indicating that these classifications are not accurate or that manufacturing-related labor costs have been included as part of the selling and administrative expenses on the surrogate financial statements. The Department addressed this issue in *Wire Hangers from the PRC 2009-2010 AR*:

{t]he Department determined that individually identifiable labor costs, which are separately identified and classified as manufacturing-related labor costs in the surrogate financial statements...should be categorized as direct labor expenses for purposes of the Department’s calculation of surrogate financial ratios...Conversely, labor expenses categorized in the selling or administrative cost section of financial statements have

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<sup>118</sup> See *Sinks from the PRC Final Determination* IDM at 15.

<sup>119</sup> See *Wire Hangers from the PRC 2009-2010 AR* IDM at 13; *Wooden Bedroom Furniture from the PRC 2009 AR* IDM at 33.

<sup>120</sup> See *Wire Hangers from the PRC 2011-2012 AR* IDM at 20; *Nails from the PRC 2012-2013 AR* IDM at Comment 4.

<sup>121</sup> See *Elkay Mfg. Co.* at 11-28.

<sup>122</sup> See *Wooden Bedroom Furniture from the PRC 2009 AR* IDM at 33.

nothing to do with the factory workers, but rather relate to the selling and administrative staff of the company and should be categorized as SG&A expenses.<sup>123</sup>

The GITI companies, citing to the Department's *NME Labor Methodologies*, argue that because the labor surrogate value in this case is based on the Thailand NSO Labor Force Survey which takes into account both manufacturing and non-manufacturing labor costs, including these labor costs in SG&A expenses results in double counting. We disagree. In *Wire Hangers from the PRC 2011-2012 AR*, where the NSO Labor Force Survey data was also used, the Department found that including the labor costs in the SG&A expenses would not result in double-counting of costs:

Furthermore, in *Labor Methodologies*, we said that 'the Department will adjust the surrogate financial ratios when the available record information - in the form of itemized indirect labor costs - demonstrates that labor costs are overstated.' Here, contrary to Yingqing's argument, there is nothing on the record to suggest that labor costs are overstated, and we find Yingqing's not pointing to any such evidence telling. Moreover, it is the Department's practice to treat labor in its financial ratio calculations in the same manner the surrogate company disaggregates its labor costs.<sup>124</sup>

The Department also addressed this issue in *Nails from the PRC 2012-2013 AR*, noting that even though the NSO Labor Force Survey data is derived from costs for manufacturing and non-manufacturing activities, it does not follow that the labor expenses calculated using the NSO labor rate capture all labor expenses:

The respondents did not report labor hours associated with the selling and administrative staff, as this is not requested in our NME questionnaire. Thus, staff labor costs must be included in the SG&A expenses, and the SG&A labor expenses in each surrogate company's financial statement must be included in the numerator of the SG&A ratio associated with that company.<sup>125</sup>

Further, the GITI companies' reliance on *Sinks from the PRC Final Determination* is misplaced. As discussed above, since that decision the Department has rejected similar arguments. Moreover, the CIT found that the Department's decision in *Sinks from the PRC Final Determination* was not supported by substantial evidence. While recognizing that the NSO labor data was based on costs for both production and non-production related activities, the Court determined that the record did not support the Department's conclusion that the adjustment to the SG&A expense was needed because the NSO labor rate was overstated. The Court said that it was:

{l}ess clear that the NSO labor rate is higher than it would have been had it been derived solely from data on production workers. It may be reasonable to infer that some non-production employees . . . receive higher remuneration than persons engaged in production. The record data, however, do not support an actual finding that the NSO

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<sup>123</sup> See *Wire Hangers from the PRC 2009-2010 AR* IDM at Comment 4.

<sup>124</sup> See *Wire Hangers from the PRC 2011-2012 AR* IDM at Comment 7.

<sup>125</sup> See *Nails from the PRC 2012-2013 AR* IDM at Comment 4.

labor rate was higher—or by what percentage it was higher—than it would have been had it been derived solely from Thai data on production labor...<sup>126</sup>

In its final remand determination in response to the Court’s findings, the Department reversed its decision and concluded that it “does not find it appropriate to re-classify the labor-related SG&A expenses in the surrogate financial statements for purposes of avoiding double-counting in the draft remand redetermination, and we included SG&A labor in the SG&A ratio calculation...”<sup>127</sup>

Based on the above, for the final determination we continue to include selling and administrative labor costs in the calculation of the SG&A expense ratio.

## **Comment 12: Selection of Surrogate Country**

### *API’s Comments:*

- The Department should select Indonesia as the primary surrogate country for this final determination as the record information indicates data from Indonesia to be more reliable.
- The Indonesian labor data on the record is from ILO which is recognized as superior to the Thai NSO data. Further, labor is typically a minor input and the fact that the Indonesian ILO data is less contemporaneous to the Thai data should not be the deciding factor in determining the surrogate country. The Department could apply a labor specific adjustment to account for changes in minimum wage levels.
- The Thai companies’ financial statements provide no hard data indicating how much subject merchandise these companies actually produce. Thus, it is unclear to what extent these companies are significant producers of subject merchandise.
- The Department explicitly found in *OTR Tires from the PRC*<sup>128</sup> that Indonesia offered more reliable SV data than Thailand.

### *Petitioner’s Rebuttal Comments:*

- The selection of Thailand is no longer contested by the mandatory respondents.
- Data from Thailand yields more reliable and contemporaneous value for labor cost, as the most recent ILO labor data for Indonesia dates to 2008, and the minimum wage increased by more than 200 percent while the CPI increased by only 33 percent during that time.
- The Thailand electricity values are more reliable, as Indonesian values likely reflect heavy levels of subsidization.
- In terms of per capita GNI, of the six potential countries listed on the surrogate country memorandum,<sup>129</sup> Thailand is the closest to China, while Indonesia is the least comparable to China. The relative comparability of potential surrogate countries has been noted as an important consideration by the CIT.<sup>130</sup>
- Thailand is a significant producer and exporter of subject merchandise. Further, the record includes usable financial statements from three Thai companies who produce identical and/or comparable merchandise. The Department may improve the accuracy of its preliminary

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<sup>126</sup> See *Elkay Mfg. Co.* at 22.

<sup>127</sup> See *Sinks from the PRC Final Remand Redetermination* at 7-10.

<sup>128</sup> See *OTR Tires from the PRC 2011-2012 NSR* and *OTR Tires from the PRC 2012-2013 AR Prelim.*

<sup>129</sup> See *AD Preliminary Determination PDM* at 10.

<sup>130</sup> See *Ad Hoc Shrimp Trade Action Comm. v. United States*, 882 F. Supp. 2d 1366, 1374 (CIT 2012).

calculations by adding Goodyear Thai's financial statement to minimize the particular circumstances of any one producer.

**Department's Position:** The Department continues to find that Thailand represents the best source to use as the primary surrogate country in this final determination.

As discussed in the PDM, the Department found that both Thailand and Indonesia were economically comparable and significant producers of comparable merchandise.<sup>131</sup> As such, we relied on the quality of the data on the record to determine the appropriate surrogate country. For this proceeding we have found that the quality of the available labor data to be the determining factor in deciding the appropriate surrogate country.

We note that API has not relied on any evidence to support its claim that labor is typically a minor input, and thus should not be the primary factor in determining the appropriate surrogate country. Further, consistent with our preliminary finding, we continue find that Indonesia labor data on the record of this proceeding to be less reliable. As noted in the Preliminary Surrogate Value Memorandum, the only labor data on the record for Indonesia is the ILO Chapter 5B data from 2008, and the CPI adjusted 2008 labor data is thirty percent less than the average minimum wage of the country's provinces during the POI.<sup>132</sup> While API has argued that a labor specific adjustment factor could be applied to adjust for inflation, no such factor has been placed on the record. In addition to not being contemporaneous to the POI, the ILO Chapter 5B data does not include complete direct and indirect labor costs. In the *Labor Methodologies* we noted our preference for using ILO Chapter 6A data instead of ILO Chapter 5B data because there is a rebuttable presumption that ILO Chapter 6A data better accounts for all direct and indirect labor costs.<sup>133</sup> Finally, *Labor Methodologies* does not preclude the use of other sources from evaluating labor cost in NME AD proceedings.<sup>134</sup>

In contrast, the Thai labor data on the record is contemporaneous with or closest in time to the POI, and its cost elements match closely to ILO Chapter 6A data. Specifically, the manufacturing wage is contemporaneous with the POI, and the manufacturing labor cost is from the quarter before the POI (*i.e.*, Q3 2013). Thus, we find that Thai labor data is superior to Indonesia labor data on the record.

API contends that the Thai financial statements do not indicate whether the companies are significant producers of subject merchandise. However, a significant producer of subject merchandise is not a criterion for selecting financial statements. According to 19 CFR 351.408(c)(4), the Department will normally use non-proprietary financial statements from producers of identical or comparable merchandise in the surrogate country.<sup>135</sup> Record information shows that the two contemporaneous Thai financial statements<sup>136</sup> used in calculating surrogate financial ratios in the preliminary determination were producers of identical or

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<sup>131</sup> See *AD Preliminary Determination* PDM at 9.

<sup>132</sup> *Id.* at 12.

<sup>133</sup> See *NME Labor Methodologies*.

<sup>134</sup> See, e.g., *Wire Hangers from the PRC 2012-2013 AR* IDM at 11.

<sup>135</sup> See 19 CFR 351.408(c)(4).

<sup>136</sup> See, *i.e.*, S.T.Tyres.Co. Ltd. and Hihero Co. Ltd.

comparable merchandise.<sup>137</sup> We continue to find that the Thai financial statements are superior to Indonesian financial statements.

Finally, API notes that the Department has relied upon Indonesia as a surrogate country in recent OTR Tires from China administrative reviews.<sup>138</sup> This argument is irrelevant as the Department will make determinations in each case solely on the basis of the record information of that particular proceeding. Thus, while the Department may have found Indonesia to be more reliable in other cases based on the record information of that proceeding, the information on the record of this investigation has led the Department to determine that Thailand provided the best surrogate country for purposes of this proceeding.

### **Comment 13: Valuation of Labor**

#### *GITI companies' and Sailun Group's Comments:*

- The Department should follow its well-established policy by inflating non-contemporaneous Thai NSO tire industry labor data using CPI. The Department's priority is to select the most specific industry labor data available, with contemporaneity being a secondary factor.<sup>139</sup> The Department typically rejects industry-specific data only when it is extremely old, *e.g.*, six years outside of the POR. The 2011 Thai NSO tire industry data is less than three years old.
- The Department's preliminary calculation, which included pre-POI fringe benefits (*i.e.*, bonus, overtime, etc.), does not result in a more accurate labor cost than the inflated tire industry wage data, as there is no evidence that these pre-POI fringe benefits should be applied to the POI wage data.
- In the *AD Preliminary Determination*, the Department determined that the manufacturing average wage rate increased by nearly 38 percent.<sup>140</sup> However, there is no evidence to support the finding that the tire industry wage rate increased at this rate as well. Also, there is no evidence that tire industry wages did not experience a rate of increase closer to the CPI rate (*i.e.*, six percent) than the manufacturing wage rate of increase.
- The Department's preliminary finding that the CPI inflator, *i.e.*, six percent, did not properly reflect the growth in total labor costs is based upon speculation rather than record evidence.
- The record indicates that the average labor cost for the tire industry increased by less than 0.2 percent between 2006 and 2011.<sup>141</sup> Given that *de minimis* increase, it is unlikely that there would be a 38 percent spike between 2011 and the POI. Further, it is reasonable to assume that there was a corresponding decline in the other elements of total costs that largely counterbalanced this increase in the wage element to total labor costs.

#### *Petitioner's Rebuttal Comments:*

- The information on the record demonstrate that wages in the manufacturing industry increased far more than prices generally, and casts substantial doubt on the proposition that the outdated tire industry data can be relied upon to reflect current circumstances. Thus,

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<sup>137</sup> See Petitioner's October 31, 2014 submission at Attachment 15.

<sup>138</sup> See, *e.g.*, *OTR Tires from the PRC 2011-2012 NSR* and *OTR Tires from the PRC 2012-2013 AR Prelim.*

<sup>139</sup> See *NME Labor Methodologies*, 76 FR at 36094.

<sup>140</sup> See Preliminary Surrogate Value Memorandum at 7

<sup>141</sup> See Sailun Group Case Brief at 24.

absent contrary data, in this investigation the contemporaneity problem is of greater concern than the specificity problem.

- Respondents' arguments invert the logical burden of proof, as they did not point to record information that wage trends in the manufacturing industry do not apply in the tire industry.
- The less than 0.2 percent increase in average total labor cost of tire industry between 2006 and 2011 says nothing about wage trends after 2011. There is clear evidence on the record that the wage rate increased substantially after 2011. Therefore, in the absence of other evidence, the Department's conclusion that using current labor cost data (even if less specific to the industry) was preferable to using 2011 data is well founded.

**Department's Position:** For this final determination, the Department has made no changes to its labor rate calculation used in the *AD Preliminary Determination*.

In *Labor Methodologies*, the Department stated that using the data on industry-specific wages from the primary surrogate country is the best approach for valuing the labor input in NME AD proceedings, and that ILO Yearbook Chapter 6A is the preferred labor source as it accounts for all direct and indirect labor costs.<sup>142</sup> The Department does not, however, preclude other sources for evaluating labor costs.<sup>143</sup> Rather, we continue to follow our practice of selecting the best available information. Parties placed on the record the Thai NSO data from two statistical categories: (1) tire industry remuneration for 2006 and 2011 (tire industry data); (2) and manufacturing labor cost for 2013 and 2014 (general manufacturing data).

In the *AD Preliminary Determination*, instead of using the 2011 tire industry data adjusted for inflation, the Department used general manufacturing data based on the finding that the growth in the manufacturing wage (*i.e.*, 38 percent) outpaced the growth in the CPI (*i.e.*, six percent) from 2011 to POI.<sup>144</sup>

Respondents argue that the Department should follow its well-established policy by using the 2011 tire industry data adjusted by CPI, as the *Labor Methodologies* indicates that the Department should select the most specific industry labor data available, with the contemporaneity being a secondary factor. Respondents contend that only old industry-specific data (*i.e.*, over six years old) has been rejected due to a lack of contemporaneity. However, as explained in the PDM, we rejected the tire industry data from 2011 for reasons other than the lack of contemporaneity. Record information demonstrates that using the CPI to inflate the 2011 data may not reflect the actual increase in wages during this period. Specifically, manufacturing wages increased 38 percent between 2011 and the POI, while inflation increased by six percent during this same time period. The fact that manufacturing wage increased significantly more than the rate of inflation during this time period casts substantial doubt as to whether industry-specific data from 2011 can be reliably updated using the CPI to reflect current circumstances.

In *Labor Methodologies*, the Department found that the ILO Chapter 6A is the primary source of labor cost data, in that this data best accounts for all direct and indirect labor costs.<sup>145</sup> Since ILO

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<sup>142</sup> See *Labor Methodologies* at 36093.

<sup>143</sup> See, e.g., *Wire Hangers from the PRC 2012-2013 AR* IDM at 11.

<sup>144</sup> See Preliminary Surrogate Value Memorandum at 7.

<sup>145</sup> See *Labor Methodologies* at 36092-36093.

Chapter 6A data for Thailand is not on the record of this investigation, we compared the direct and indirect labor cost elements in the tire industry data and the general manufacturing data to the same elements described in the ILO Chapter 6A definition. Specifically, the ILO Chapter 6A data comprises compensation of employees, employers' expenditure for vocational training and welfare services (*e.g.*, training), the cost of recruitment and other miscellaneous items (*e.g.*, work clothes, food, housing), and taxes.<sup>146</sup> The general manufacturing data includes cash for average wage, bonus, overtime, other income, as well as in kind compensation for food, clothes, housing, and others. The tire industry data includes wages, salaries, overtime, bonus, fringe benefits (medical care, others), employer's contribution to social security.<sup>147</sup> Thus, the tire industry data includes compensation of employees but excludes employer's expenditure for vocational training and welfare services, the cost of recruitment and other miscellaneous items. As such, we find that the direct and indirect labor costs included in the general manufacturing data to be a closer match to all costs covered by the ILO Chapter 6A labor data. Thus, while the tire industry data is specific to the relevant industry, it is neither contemporaneous with the POI, nor does it reflect the fully loaded labor costs. Therefore, we continue to find that the general manufacturing labor data provides the best available information for purposes of this final determination.

Further, we continue to find that inflating the 2011 tire industry data would likely provide less accurate results based on the information available in this proceeding. As noted above, general manufacturing wages increased by 38 percent between 2011 and the POI, while rate of inflation was only six percent. We note that it is more probable that wage increases in the tire industry are more comparable to the general manufacturing wage increases (*i.e.*, 38 percent) than to the changes in the price level of a market basket of consumer goods and services purchased by households (*i.e.*, CPI, six percent).<sup>148</sup> Moreover, the 0.2 percent increase in average total labor costs between 2006 and 2011 is not a reliable predictor of wage rate changes between 2011 and the POI. There is no evidence on the record to suggest that tire industry wages did not trend in a manner similar to the general manufacturing wage between 2011 and the POI. Given the significant differences between these two rates and the lack of information available on the record, the Department finds that it would be inappropriate to select the 2011 tire industry data and arbitrarily select one of these inflators, when there is a contemporaneous fully loaded labor rate available.

#### **Comment 14: Valuation of Market Economy Purchases**

##### *Petitioner's Comments:*

- The Department should not treat purchases made through suppliers located in a Chinese FTZ as MEP, as they are sales between two entities located in China, and there is no evidence that these prices have not been influenced by the Chinese suppliers. Further, the Department should use MEP prices in accordance with 19 CFR 351.408(c)(1).
- The Department should not use MEP price for inputs produced in Indonesia, as its practice is to disregard prices from countries that maintain broadly available, non-industry specific export subsidies. Further, the information on the record satisfies the criteria identified by the

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<sup>146</sup> <http://laborsta.ilo.org/applv8/data/c6e.html>

<sup>147</sup> See Preliminary Surrogate Value Memorandum at 7.

<sup>148</sup> See [http://en.wikipedia.org/wiki/Consumer\\_price\\_index](http://en.wikipedia.org/wiki/Consumer_price_index).

CIT for determining that there is reason to believe or suspect that prices from Indonesia have been subsidized.

- Further, the Department should not use MEP prices for purchases made through affiliated suppliers not at arm's length. Nor should the Department use the Sigma distance for MEP as the Sigma cap does not apply to MEP.

*GITI companies' Rebuttal Comments:*

- The Department should continue to accept the GITI companies' MEP prices for Indonesian-produced rubber inputs.
- As the Department's practice is to reject all prices from countries that maintain broadly available, non-industry-specific export subsidies, the CIT has held that for the rejection on the grounds of subsidy distortion, "the 'reason to believe or suspect' standard... must be predicated on particular, specific, and objective evidence."<sup>149</sup> Under this standard, in *Folding Tables and Chairs from the PRC 2007-2008 AR*, the Department has accepted prices paid by a Chinese respondent to a Korean trading company which had purchased the material from third-country producers.
- Record evidence is sufficient to overcome the general presumption, as the GITI companies' MEP prices are higher than the non-subsidized domestic prices. Petitioner identifies two export subsidy programs; one is from a CVD investigation in which the final determination was negative, with a POI almost three years prior to this case's POI,<sup>150</sup> and Petitioner did not identify any of the GITI companies' suppliers that would be eligible for the other program.
- If the Department disregards the GITI companies' MEP prices and selects SV for natural rubber, it should use the PT KPBN natural rubber prices,<sup>151</sup> or Rubber Research Institute of Thailand prices which are not grade-specific but are clearly superior to the Thai import statistics.<sup>152</sup> Thai import statistics for natural rubber and compound rubber should not be used for SV as they are not grade specific, not a broad market average, or representative.
- The GITI companies' purchases through affiliated suppliers were made at arm's length, as prices paid to affiliated suppliers and unaffiliated suppliers are very similar. When such comparison is not available, the GITI companies' MEP prices paid to affiliated suppliers are higher than the most specific potential SV on the record. If the Department disregards MEP prices paid to affiliated suppliers, it should use the MEP price paid to unaffiliated suppliers for the identical or virtually identical FOPs.

*Sailun Group's Rebuttal Comments:*

- Inputs purchased through suppliers located in China FTZs were produced in ME countries and paid for in US dollars. As Petitioner fails to rebut the Department's rationale for treating suppliers located in FTZs as ME suppliers, or to dislodge its reasoned finding that an FTZ is a special economic zone with a separate set of rules and procedure to govern commercial transactions, or to bring forth any evidence to the contrary, it is reasonable to believe that the entities located in China FTZs from whom the Sailun Group purchased its inputs are indeed equivalent to ME suppliers. The record in the instant case does not reveal any evidence suggesting that the transaction with FTZ entities may be potentially tainted.

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<sup>149</sup> See GITI Rebuttal Brief at 21.

<sup>150</sup> See *Shrimp from Indonesia* at 50383.

<sup>151</sup> See GITI Rebuttal Brief at 25.

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

- The Sailun Group's MEP price is not subsidized by export subsidies when comparing it to the Indonesian domestic market price for natural rubber. Further, Petitioner fails to establish that the Sailun Group's suppliers were eligible for the second subsidy program. Moreover, instead of placing any persuasive evidence on record, Petitioner simply surmises that it would be have been unnatural for Indonesian rubber suppliers not to have benefitted from subsidy programs available to rubber exporters.
- The Sailun Group's purchases through affiliated suppliers were made at arm's length. For several FOPs, the Sailun Group paid lower prices to the affiliated suppliers but the differences are insignificant and are consistent with normal price fluctuations within the market price. For several other FOPs, the Sailun Group paid higher prices to the affiliated suppliers. Moreover, the grade-specific market prices further demonstrated that those purchases were made at arm's length.

**Department's Position:** For the final determination, the Department will disregard MEP prices for which the MEPs do not meet all three criteria set in 19 CFR 351.408(c)(1). Specifically, the input must be (1) produced in an ME; (2) purchased from an ME supplier; and (3) paid for in an ME currency. Further, for the final determination, we will not use MEP prices that are from India, Indonesia, South Korea, and Thailand, nor will we use purchases made through affiliated parties that were not made at arm's length. Additionally, the Department will use actual distance instead of Sigma cap for MEP prices.

Regarding some of the Sailun Group's MEPs, we preliminarily accepted prices for purchases made from suppliers located in Chinese FTZs but noted that we would continue to evaluate whether these inputs should be included in the final determination in accordance with 19 CFR 351.408(c)(1).<sup>153</sup> At verification, the Sailun Group explained that it considers any input purchases for which it paid for in U.S. dollars to be a MEP,<sup>154</sup> indicating that it took no consideration as to whether the inputs were produced in an NME or ME country and/or whether the selling prices were negotiated with ME producers for the suppliers located in the Chinese FTZ. These reportedly MEP prices do not meet the Department's criteria because record evidence does not show that the input was produced in an ME or purchased from an ME supplier.<sup>155</sup> Thus, we will disregard the Sailun Group's MEP prices for which the inputs were not produced in ME countries, and the suppliers were not in a ME country, as stipulated in 19 CFR 351.408(c)(1). But, where the inputs are produced in a ME, purchased from a ME supplier, and paid for in ME currency, we will use the MEP prices, unless those MEPs were produced in a country that maintains generally available export subsidies (*i.e.*, India, Indonesia, South Korea, and Thailand) or those purchases were not made at arms-length.<sup>156</sup>

Regarding respondents' comments about inputs produced in Indonesia, the Department has a long-standing practice of disregarding values if it has a reason to believe or suspect that they are affected by subsidies.<sup>157</sup> Specifically, *MEP Final Rule* expressly states that the Department will

<sup>153</sup> See Preliminary Surrogate Value Memorandum.

<sup>154</sup> See Sailun Group Verification Report at 3.

<sup>155</sup> See, *e.g.*, *Hand Trucks from the PRC 2008-2009 AR* IDM at 6; *Coated Paper from the PRC Final Determination* IDM at 42; *OTR Tires from the PRC Final Determination* IDM at 171; *Coated Free Sheet Paper from the PRC Final Determination* IDM at 42; *Retail Carrier Bags from the PRC Final Determination* IDM at 27.

<sup>156</sup> See Final Surrogate Value Memorandum.

<sup>157</sup> See Omnibus Trade and Competitiveness Act of 1988 at 590.

disregard MEP prices that are from a country that it has a “reason to believe or suspect” maintains general export subsidies.<sup>158</sup> The Department’s practice is to disregard import prices from India, Indonesia, South Korea, and Thailand because we have found in other proceedings that these countries maintain broadly available, non- industry-specific export subsidies.<sup>159</sup> Therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.<sup>160</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. Rather, the Department bases its decision on information that is available to it at the time it makes its determination.

Regarding respondents’ comment on the inputs purchased from affiliated suppliers, the Department has stated that it will disregard MEP prices for inputs that are purchased from affiliated suppliers and are not made at arm’s length prices.<sup>161</sup> Further, the Department performs the arm’s length test by comparing the MEP prices paid to affiliated parties and unaffiliated parties,<sup>162</sup> and disregards MEP prices paid to affiliated parties when they are lower. In addition, when MEP prices paid to unaffiliated parties are not available, the Department disregards MEP prices paid to affiliated parties.<sup>163</sup> Finally, the Department applied SV to factors when disregarding the MEP prices for these factors.<sup>164</sup>

Finally we note we inadvertently applied the Sigma cap to MEP in the *AD Preliminary Determination*. The Sigma cap is for transportation factor that has a SV derived from an import statistic, thus, it is not applicable to the MEP. For this final determination, we have used the reported distance for the MEP.

### **Comment 15: Valuation of Truck Freight**

*GITI companies’ and Sailun Group’s Comments:*

- The surrogate truck freight used in the *AD Preliminary Determination* is aberrational as the freight calculated with the surrogate truck freight and the distance from the GITI companies’ plants to port of exit, is almost ten times higher than the GITI companies’ reported U.S. freight expenses (INLFWCU, INLFPWU).
- The Department should use a simple average of two periurban distances (*i.e.*, 88.16 km): (1) the distance from Bangkok city to Laem Chabang Port (*i.e.*, 133 km) and (2) the average distance from nine industrial areas in the Bangkok Metropolitan Region to the Bangkok Port (*i.e.*, 43.33 km).
- Although “periurban area” appeared in *Doing Business 2014* but not in *Doing Business 2015*, the transport cost (*i.e.*, \$210 per container) stayed the same which indicates that the methodology did not change, and both editions refer to the standardized company’s location as Bangkok whose geographic boundary is not specified. In addition, *Doing Business 2014*

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<sup>158</sup> See *MEP Final Rule*, 78 FR at 46802 at Comment 5.

<sup>159</sup> See, e.g., *Steel Threaded Rod from India; Shrimp from Indonesia; Steel Flat Products from Korea* (in the final results); *Washers from Korea; Refrigerators from Korea; Shrimp From Thailand*.

<sup>160</sup> See, e.g., *TV Receivers from the PRC Final Determination IDM* at Comment 7.

<sup>161</sup> See *MEP Final Rule*, 77 FR at 46802.

<sup>162</sup> See *Drill Pipe from the PRC IDM* at 37.

<sup>163</sup> See *Wood Flooring from the PRC 2011-2012 AR*, Issues and Decision Memorandum at 67.

<sup>164</sup> *Id.*

makes clear that the standardized company is in periurban areas which are industrial areas in the Bangkok Metropolitan Region that covers 7,758 square kilometers.

- The port on the 8.3 km map is a “river port”. As the *Doing Business* reports costs associated with transporting goods to the port of exportation for containerized cargo, *i.e.*, a seaport for large commercial container ships rather than the local river port, the Department should not rely on this distance for the final determination.
- The Department should revise the container payload weight from the hypothetical 10,000 kg to the actual weight 28,200 kg published by Maersk shipping line, to calculate a more accurate and commercially realistic average truck freight.

*Petitioner’s Rebuttal Comments:*

- The same transport cost (*i.e.*, \$210) appears in both *Doing Business* 2014 and 2015 because neither report considered a periurban distance. The Trading Across Border Questionnaire asks for the cost of inland transport from warehouse in a surveyed city to seaport which indicates that *Doing Business* does not treat the company’s location and distance transported as the same.
- The 7,758 square kilometers of “periurban area” was from an unrelated article on water use, and there is nothing that suggests that the area in this article is comparable to the periurban area utilized in the *Doing Business* reports.
- Port of Laem Chabang was used in other determinations because *Doing Business 2014* does not directly state the port considered. The *Doing Business 2015* clarified the port to be the Bangkok Port, and the 8.3 km represents the distance from the center of Bangkok city to Bangkok Port.
- The Sailun Group points to nothing on the record to support its conclusion that the Port of Bangkok is not located on the Chao Phraya River or that the Port of Bangkok does not handle containerized traffic.
- The 10,000 kg container weight is the relevant container weight specified in the *Doing Business* methodology.
- A comparison of other Thai rates that the Department has applied in past determinations shows that the current rate is reasonable when compared to a meaningful range of values.

**Department’s Position:** For the final determination, the Department continues to rely on information published in *Doing Business 2015* which is contemporaneous with the POI. Specifically, we have continued to use the container payload weight of 10,000 kg explicitly stated in the *Doing Business* methodology. Moreover, we have continued to use the distance of 8.3 km from Bangkok City to the Bangkok Port, each of which were identified in *Doing Business 2015*, as this represents the best available information on the record of this investigation.

The Department relies on two factors in *Doing Business* reports for determining the distance used to calculate the truck freight surrogate value: the standardized company’s location and the destination port.

The 2012, 2013, and 2014 *Doing Business* reports assumed that the standardized company was located in the “periurban area.”<sup>165</sup> The Department relied on the description of the “periurban area” on the records of those proceedings in selecting distances which started with companies located in the “industrial areas” of the Bangkok Metropolitan Region.<sup>166</sup> In addition, the 2012, 2013 and 2014 *Doing Business* reports did not specifically identify the destination port. Therefore, when the Department relied on information in those reports, the Department used the distance from the “industrial areas” to the port of Laem Chabang, (133 km), or from the industrial areas to the Thai Prosperity Terminal (43.33 km) or the average of these two distances.<sup>167</sup>

However, the *Doing Business 2015* report assumes that the standardized company is located in the Bangkok city, and not the “periurban area,” and explicitly identifies the destination as “Port Name: Bangkok.”<sup>168</sup> The only distance on the record which is consistent with the start and destinations points identified in *Doing Business 2015* is 8.3 km, which represents the best information available in comparison to the other distances. In contrast, the 133 km distance advocated by the respondents is not applicable as it represents the distance from Bangkok city to the Port of Laem Chabang,<sup>169</sup> not the Bangkok Port. Moreover, although Petitioner claimed that the distance of 43.33 km to be the “Average Distance from Bangkok Industrial Areas to Port of Bangkok,” it actually is an average distance from those industrial areas in the Bangkok Metropolitan Region to the Thai Prosperity Terminal, located in the Phra Pradaeng district,<sup>170</sup> whereas the Bangkok Port is located in the Khlong Toei district.<sup>171</sup> Thus, we have not used either of these distances as neither reflects the distance to the Bangkok Port.

We also disagree with respondents’ arguments that the “port at issue” on the map is not “a seaport for large commercial container ships but a local river port.” In fact, information on the record indicates that Bangkok Port is one of the two largest ports in Thailand.<sup>172</sup> Moreover, the “Trading Across Borders Methodology” section of the *Doing Business 2015* report states that it measures costs (including truck freight) associated with “standardized cargo of goods by sea transport” (e.g., 20 ft. containers). Therefore, contrary to respondents’ arguments, information

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<sup>165</sup> See *Hand Trucks from the PRC 2011-2012 AR* IDM at 22, *Roller Bearings from the PRC 2012-2013 AR* IDM at 4, *Wooden Bedroom Furniture from the PRC 2013 NSR and AR* PDM at 17, *Wood Flooring from the PRC 2012-2013 AR* PDM at 20, *Concrete Steel from the PRC Final Determination* IDM at 21, and *Chloro Isos from the PRC 2012-2013 AR* PDM at 19.

<sup>166</sup> See, e.g., *Hand Trucks from the PRC 2011-2012 AR* IDM at 22, *Roller Bearings from the PRC 2012-2013 AR* IDM at 4, *Wooden Bedroom Furniture from the PRC 2013 NSR and AR* PDM at 17, *Wood Flooring from the PRC 2012-2013 AR* PDM at 21, and *Concrete Steel from the PRC Final Determination* IDM at 22; see also Petitioner’s December 19, 2014 submission at Attachment 2.d at the second map.

<sup>167</sup> See, e.g., *Hand Trucks from the PRC 2011-2012 AR* IDM at 22, *Roller Bearings from the PRC 2012-2013 AR* IDM at 4, *Wooden Bedroom Furniture from the PRC 2013 NSR and AR* PDM at 17, *Wood Flooring from the PRC 2012-2013 AR* PDM at 21, and *Concrete Steel from the PRC Final Determination* IDM at 22.

<sup>168</sup> See Petitioner’s December 19, 2014 submission at Attachment 2.a.

<sup>169</sup> See Sailun Group’s November 7, 2014 submission at Exhibit 4A; see also the GITI companies’ November 26, 2014 submission at Google™ direction.

<sup>170</sup> See Petitioner’s December 19, 2014 submission at Attachment 2.d (*Thai Prosperity Terminal Co., Ltd.*, the description under the map).

<sup>171</sup> See the GITI companies’ November 26, 2014 submission at “Port Authority of Thailand.”

<sup>172</sup> *Id.* at Exhibit 3.

on the record indicates that the Bangkok Port is one of two largest ports in Thailand and is capable of handling container ships.

Respondents have noted that the transport cost (*i.e.*, \$210 per container) did not change from *Doing Business 2014* to *Doing Business 2015*,<sup>173</sup> and thus argue that we should continue to use the periurban distance which underpinned the transport cost in 2014. We do not agree with this reasoning. *Doing Business 2015* specifies that the destination is Bangkok Port and assumes that standardized company is located in the Bangkok city, not the “periurban area.” We note further that the questionnaire used to solicit information for *Doing Business 2015* asked logistics providers for the transport cost from a warehouse in a survey city, which is explicitly defined as Bangkok city in the report.<sup>174</sup> Thus, we find that respondents have pointed to no record evidence that would cause us to not rely on explicit statements and information found in *Doing Business 2015*.

The GITI companies’ argument that the freight expense calculated with the surrogate value is nearly ten times higher than its U.S. freight expense is also misplaced. The freight expenses incurred in China are calculated using the distance from its plants to the ports of exit and surrogate truck freight rates which are on the record. Conversely, the distances associated with the GITI companies reported per unit “U.S. freight expenses” are not on the record. In order for the Department to determine whether the GITI companies’ comparison of freight expenses has any meaning, the distances from U.S. port to warehouse, or U.S. warehouse to the unaffiliated customer associated with its per unit “U.S. freight expenses” would need to be on the record. Further, the GITI companies has stated that a difference in the freight cost in Thailand compared to the U.S. is to be expected, but did not specify what is the expected difference, nor explained why the expected difference is reasonable.

Finally, regarding respondents’ argument to use a container payload weight of 28,200 kg in calculating truck freight is not persuasive. The *Doing Business* methodology makes clear that a payload weight of 10,000 kg is one of the assumptions in all *Doing Business* reports.<sup>175</sup> We note that the payload weight of 10,000 kg is the basis for the reported transportation cost in the *Doing Business 2015* report and we will continue use this weight in our calculation of truck freight expense for this final determination.

## **Comment 16: Calculation of Market Economy Purchases**

### *Petitioner’s Comments:*

- In both the GITI companies’ and the Sailun Group’s preliminary calculations, the Department weight-averaged the MEP price two times for the FOPS where the MEPs

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<sup>173</sup> See GITI Case Brief at 14.

<sup>174</sup> See Petitioner’s October 31, 2014 submission at Attachment 12 at Excerpts, *Trading Across Border Survey for Doing Business 2014*, 3.2(II)7 Inland transportation and handling, (loading and unloading) costs from warehouse in <<Survey\_City>> to seaport); See also, Petitioner’s December 19, 2014 submission at Attachment 2.b, *Trading Across Borders Questionnaire for Doing Business 2015*, 3.2(II)7 Cost of inland transport (from warehouse in <<Survey\_City>> to seaport) and handling (loading and unloading). See also *Doing Business 2015 Thailand* at 64: “information on the required documents and the time and cost to complete export and import is collected from local freight forwarders, shipping lines, customs brokers, port officials and banks.”

<sup>175</sup> See Petitioner’s October 31, 2014 submission at Attachment 12 at *Trading Across Border Methodology*.

constituted less than substantially all of the total quantity.

- The Department applied the incorrect total quantity purchased when weight-averaging the MEP price for certain factors where market economy purchases constituted less than substantially all of the total volume.

*Sailun Group's Rebuttal Comments:*

- The Department made a methodological choice in the quantities used for weight-averaging the MEP price. Shandong Jinyu did not have any MEPs of these particular factors.

**Department's Position:** For the final determination, the denominator of the MEP percentage calculation is the total volume purchased by Sailun China and Shandong Jinyu, because they are a single entity, and the threshold of "substantially all" (*i.e.*, 85 percent) is based on total volume purchased of the factor used in the production of subject merchandise.<sup>176</sup> See Comment 28 for additional discussion of the Department's position regarding MEPs.

### **Comment 17: Valuation of Brokerage & Handling**

*Sailun Group's Comments:*

- The Department should use a payload weight of 28,200 kg published by Maersk, not the hypothetical 10,000 kg, to calculate the SV for brokerage and handling, which is consistent with SV calculation for ocean freight.
- The Department should exclude the cost of obtaining a letter of credit (*i.e.*, \$60) from SV calculation for brokerage and handling, as the Sailun Group did not incur such costs.

*Petitioner's Rebuttal Comments:*

- The 10,000 kg container weight is the relevant container weight specified in the *Doing Business* methodology.
- The cost of obtaining a letter of credit is not in the brokerage and handling costs used in this determination.

**Department's Position:** The Department will continue to use the 10,000 kg container payload weight to calculate B&H expenses for this final determination. The *Doing Business* methodology assumed a container payload weight of 10,000 kg in producing the report for making the data comparable across economies.<sup>177</sup> Since the cost is relevant to the container payload weight of 10,000 kg, we have used the 10,000 kg payload weight in our calculation of brokerage and handling

Sailun Group claims that the cost of obtaining a letter of credit (*i.e.*, \$60) is included in the surrogate value for brokerage and handling, but did not reference where specifically in *Doing Business* it is listed. The cost of brokerage and handling is the sum of customs clearance and inspections (*i.e.*, \$50), ports and terminal handling (*i.e.*, \$160), and documents preparation (*i.e.*, \$175).<sup>178</sup> Further, the list of required export documents in the *Doing Business 2015* does not

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<sup>176</sup> See *MEP Final Rule* and 19 CFR 351.408(c)(1).

<sup>177</sup> See Petitioner's October 31, 2014 submission at *Doing Business, Trading Across Borders Methodology*.

<sup>178</sup> See Petitioner's December 19, 2014 submission, *Doing Business 2015* at 64.

include letter of credit.<sup>179</sup> As such, we will not exclude the claimed \$60 letter of credit cost from the SV calculation.

### **Comment 18: Valuation of GITI Companies' Steam**

#### *GITI companies' Comments:*

- The Department should value steam using the reported FOP to produce steam (*i.e.*, steam coal and water) and the surrogate values for these FOPs instead of using the SV for steam.

#### *Petitioner's Rebuttal Comments:*

- The GITI companies' submissions do not show FOPs for coal and water in amounts sufficient to account for the entire cost of steam production including delivery costs. Moreover, the GITI companies have not demonstrated that its reported usage rate is also applicable to the affiliated company from which it purchased steam.

**Department's Position:** For this final determination, we will continue to use the SV from the Glow Energy Public Company Limited annual report to value the GITI companies' steam. GITI Radial Anhui used steam supplied by its affiliated company,<sup>180</sup> for which no FOPs were reported. Further, there is no information on the record to indicate that the FOPs for water and coal reported for GITI Fujian and GITI Hualin are applicable to GITI Radial Anhui. Thus, the record does not have all of the FOPs (*i.e.*, steam coal and water) to properly value steam consumed at all three producers.

### **Comment 19: Valuation of Sailun Group's Steam**

#### *Petitioner's Comments:*

- The Department used an incorrect SV for valuing Sailun Group's steam in the Sailun Group's preliminary SV worksheet.

**Department's Position:** We have used the appropriate surrogate value for steam to value Sailun Group's steam for the final determination.

### **Comment 20: Valuation of GITI Companies' Ocean Freight**

#### *GITI companies' Comments*

- The Department should exclude clean truck fee, pier pass, and chassis usage charges from the SV for the GITI companies' ocean freight, as those expenses are reported in the U.S. sales database, and are supported by the company's verification exhibits.<sup>181</sup>

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<sup>179</sup> *Id.* at 65. Documents to Export are Bill of Lading, Certificate of Origin, Commercial Invoice, Customs Export Declaration, and Terminal Handling Receipts.

<sup>180</sup> See GITI SDQR at 18.

<sup>181</sup> See GITI CEP Verification Report at Exhibit VE 19.

*Petitioner's Rebuttal Comments*

- The GITI companies' verification exhibits show that not all the expenses are included in the USOTHER fields of the GITI companies' U.S. sales database.

**Department's Position:** The GITI companies demonstrated that it reported these three expenses in its U.S. sales database.<sup>182</sup> As such, we have excluded the three charges from the GITI companies' SVs for this final determination.

**Comment 21: Valuation of Sailun Group's Ocean Freight**

*Sailun Group's Comments:*

- The Department should use a container payload weight of 28,800 kg in the SV calculation. It is unreasonable to apply two vastly different container payload weights to GITI companies' and Sailun Group's ocean freight quotes which were quoted by the same source for the same container size.

*Petitioner's Rebuttal Comments:*

- The Department should review the documentation provided by Sailun Group and ensure that any adjustment made relates to the quotes provided.

**Department's Position:** For the final determination, we will apply a container payload weight of 28,800 kg to calculate ocean freight, which is associated with the ocean freight rate quoted by Maersk Lines.

**Comment 22: Valuation of Sailun Group's U.S. Inland Freight**

*Petitioner's Comments:*

- The SV for ocean freight does not include the U.S. inland truck freight from U.S. port to the customer. The Department should include this freight cost in the final determination, and value it using either the SV for truck freight, or the truck freight rates from truckloadrate.com.<sup>183</sup>

*Sailun Group's Rebuttal Comments:*

- Petitioner had the burden to provide an alternative SV for U.S. inland freight, but failed to do so. The Department should use a SV that is based on either the destination delivery charges including price quotes, or add the destination delivery charge to price quotes where they were not included.

**Department's Position:** For this final determination, we adjusted the price quotes where the destination delivery charges were not included, using the destination delivery charges from the price quotes where they were included. We disagree with the alternatives suggested by Petitioner to use freight rates as they would require estimating the distance transported within the U.S.<sup>184</sup>

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<sup>182</sup> *Id.* at 9.

<sup>183</sup> See Sailun Group's SV submission.

<sup>184</sup> See Final Surrogate Value Memorandum.

### **Comment 23: Valuation of Sailun Group's Reclaimed Rubber**

#### *Petitioner's Comments:*

- The Department should use the Thai HTS 400300 not HTS 400400 to value RECLAIMED\_RUBBER01, as it is the most specific SV to those inputs.

#### *Sailun Group's Rebuttal Comments:*

- The description of RECLAIMED\_RUBBER01 matches better with the description of Thai HTS 400400 than that of HTS 400300.

**Department's Position:** We will use the SV for HTS 400300 to value RECLAIMED\_RUBBER01 because it is more specific to the input when compared to HTS 400400. The sub-heading of HTS 4003 is for reclaimed rubber, whereas subheading 4004 is for waste, parings and scrap of rubber.

### **Comment 24: Sailun Group's Name Change**

#### *Sailun Group's Comments:*

- Effective January 2015, Sailun Group became Sailun Jinyu Group Co., Ltd.
- The Department conducted an on-site verification at Sailun China just a few weeks after the name change took effect and confirmed that there were no material changes to the Sailun Group's management, production and sales facilities, supplier relationships, and/or customer base.<sup>185</sup>
- Normally a name change request would be addressed through a changed circumstances review in accordance with section 753 of the Act and 19 CFR 351.216; however, since Sailun China's business license and other documentation confirming the name change were not available until January 2015, which was well after the deadline for submission of new factual information in this investigation, the company had no earlier opportunity to present this information in either this investigation or in a changed circumstances review.
- Therefore, the Department should recognize Sailun China's new name in the instant final determination and in any subsequent instructions to CBP in connection with this investigation.

*Petitioner did not rebut this comment.*

**Department's Position:** The Department acknowledges Sailun China's name change for the final determination and will refer to the company as "Sailun Group Co., Ltd. (aka Sailun Jinyu Group Co., Ltd.)" in its CBP instructions. As noted by the Sailun Group, name changes and successor in interest claims are normally handled under changed circumstances reviews in accordance with section 753 of the Act and 19 CFR 351.216. However, in the instant case, information regarding the name change was fully verified.<sup>186</sup>

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<sup>185</sup> See Sailun Group Verification Report at 6.

<sup>186</sup> *Id.* at Verification Exhibit 4.

## **Comment 25: Cooper's Name Change**

### *Cooper's Comments:*

- The Department should adopt the successor-in-interest determination made for Cooper in the companion CVD investigation.
- The Department should also determine that Cooper's successor-in-interest is entitled to the company's same AD separate rate.

### *Petitioner's Rebuttal Comments:*

- In accordance with its decision in *Steel Gratings from the PRC Final Determination*, the Department should not use the findings in the CVD investigation of passenger tires in the instant AD investigation because these are two separate proceedings with two separate records.
- Without the appropriate information on the record of this proceeding, there is no basis for Cooper's successor-in-interest claim.
- In accordance with 19 CFR 351.216, Cooper can request a changed circumstances review regarding its successor-in-interest claim if the instant case goes to order.

**Department's Position:** The Department has previously stated in AD cases with a companion CVD case that each proceeding is separate and driven by the facts on the record in those respective cases.<sup>187</sup> That said, the Department can only make its determination in this investigation based on the information on the record of this investigation. Moreover, notwithstanding Cooper's claims, we note that the Department found that there was insufficient information on the record to make a successor-in-interest determination in the companion CVDt investigation.<sup>188</sup>

## **Comment 26: Yongtai's Name Change**

### *Yongtai's Comments:*

- The Department should change the official name of the company to Shandong Yongtai Group Co., Ltd. based on the information submitted in its February 27, 2015 name change submission.

*Petitioner did not rebut these comments.*

**Department's Position:** Yongtai filed the updated information after the deadline established by 19 CFR 351.301(c)(5) (*i.e.*, the deadline for new factual information is the earlier of either 30 days before the scheduled date of the preliminary determination or 14 days before the first scheduled verification). In the instant case, the date of the *AD Preliminary Determination* was January 20, 2015, and thus the deadline for filing new factual information was December 22, 2014. Therefore, for this final determination we will not change Yongtai's name, as its February 27, 2015 filing was rejected as untimely.

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<sup>187</sup> See *Steel Gratings from the PRC Final Determination* IDM at 21.

<sup>188</sup> See *CVD Final Determination* IDM at Comment 10.

## **Comment 27: Application of AFA to all Subject Merchandise Produced by Yongsheng**

### *Petitioner's Comments:*

- The Department should apply the AFA rate to all exports of subject merchandise produced by Yongsheng, regardless of the entity exporting the goods, and should instruct CBP accordingly.
- Assigning a combination rates to exporters and the producers they identify in their SRAs allows producers to evade high AD margins by funneling their products through an exporter that received a low margin.
- In the instant case, Yongsheng (who withdrew from the investigation and thus earned an AFA rate) will be able to export its tires to the United States through Crown International and Qingdao Crown using those companies' separate rates and thus evading the AFA rate.
- Based on *Pistachios from Iran*, the Department has precedent to adjust combination rates so that producers cannot evade higher AD rates by selling its merchandise through an exporter with a lower cash deposit rate.<sup>189</sup>
- If parties, like Yongsheng, are able to not cooperate but still avoid paying an AFA rate for its exports, the Department has lost an important means for encouraging participation and for remedying dumping.

### *Crown International's & Qingdao Crown's Rebuttal Comments:*

- In accordance with *Policy Bulletin 05.1*, it is the Department's practice to calculate one separate rate for an exporter and all of the producers which supply subject merchandise to it during the period of investigation.
- In *Carbon from the PRC Preliminary Determination*, the Department stated that the failure of a mandatory respondent to participate in an investigation should not affect its inclusion in a combination rate for another participating mandatory respondent.<sup>190</sup>
- There is no basis under section 776(a)(2) of the Act to apply AFA rates to Crown International and Qingdao Crown for exports of passenger tires produced by Yongsheng when both companies fully cooperated with the Department.

**Department's Position:** The Department finds that all subject tires produced by Yongsheng will be subject to the PRC-wide entity rate. Yongsheng withdrew as a mandatory respondent in the instant investigation on October 6, 2014, after several separate rate applicants had timely filed SRAs on September 19, 2014, listing Yongsheng as one of their respective producers.<sup>191</sup> The Department intends to apply the PRC-wide entity rate to all in-scope tires manufactured by Yongsheng, regardless of which firm exports the tires to the United States. In other words, tires produced by Yongsheng, but exported by other parties, will be subject to the same rate as if those tires were exported by Yongsheng.

Accordingly, the Department has revised its combination rates for Crown International and Qingdao Crown so that tires produced by Yongsheng are not covered by Crown International's

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<sup>189</sup> See *Pistachios from Iran* IDM at Comment 2.

<sup>190</sup> See *Carbon from the PRC Preliminary Determination*, 71 FR at 59730 (unchanged in the Final Determination).

<sup>191</sup> See Letter from Yongsheng, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Withdrawal from Participation as a Mandatory Respondent, Shandong Yongsheng Rubber Group Co., Ltd." (October 6, 2014), Crown International SRA at Exhibit 2, and Qingdao Crown SRA at Exhibit 2.

and Qingdao Crown's separate rate. Moreover, the Department has not included tires produced by Yongsheng in the separate rate combination rates granted to Qingdao Fullrun in this final determination. We excluded merchandise produced by Yongsheng from the combination rates of any separate rate exporters in order to avoid the potential that Yongsheng could evade the application of the PRC-wide entity rate by selling its merchandise through an exporter with a lower cash deposit rate.<sup>192</sup>

The Department notes that both Crown International and Qingdao Crown were preliminarily granted separate rate status in the instant investigation. We note further that exports of tires by Crown International and Qingdao Crown, as well as by Qingdao Fullrun, from all other named tire producers will still be eligible for the separate rate cash deposit rate.

The Department finds that Crown International's and Qingdao Crown's reliance on the Department's statement in *Carbon from the PRC Preliminary Determination* that the failure of Datong Huibao (a mandatory respondent) to participate in an investigation should not affect the inclusion of its factors of production in the company-specific rates calculated for cooperating respondents Jacobi and CCT to be misplaced. In that instance, the application of AFA to subject merchandise exported by Jacobi and CCT but sourced from Datong Huibao would have adversely impacted the cash deposit rate for all of Jacobi's and CCT's sales to the United States.<sup>193</sup> In this case, the exclusion of subject tires produced by Yongsheng will not impact the cash deposit rate for subject tires exported by Crown International, Qingdao Crown, or Qingdao Fullrun when sourced from the other tire producers identified in their respective separate rate applications.

#### **Comment 28: Whether the Department Properly Accounted for the Weighted-Average Price of Certain Market Economy Purchases**

##### *Petitioner's Comments:*

- The Department's calculations improperly weight-averaged certain inputs where MEPs constituted less than 85 percent of total purchases of the FOPs. In the preliminary margin calculations for both the GITI companies and the Sailun Group, the Department's calculations weighted-averaged the inputs' SV by their respective weight of ME versus NME purchases twice.
- For the final determination, the Department should modify its calculations to correct these errors.

*Respondents did not comment on this issue.*

**Department's Position:** We agree with the Petitioner. In the preliminary margin calculation, for certain inputs where MEPs constituted less than 85 percent of total purchases, we

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<sup>192</sup> See *Tung Mung Dev. Co. v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002) ("Commerce has a duty to avoid the evasion of antidumping duties.") ("Only by limiting the application of the separate rate specific combinations of exporters and one or more producers can the Department prevent the "funneling" of subject merchandise through exporters with the lowest rates."). See *Policy Bulletin 05.1* "Separate Rates Practice in Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries.

<sup>193</sup> See *Carbon from the PRC Preliminary Determination* at 59730 (unchanged in the Final Determination).

inadvertently weighted-average the inputs surrogate value by their respective weight of ME and NME purchase quantities, and weight-averaged these again in the per unit tire consumption calculation in the programming. We have modified our calculations to correct these ministerial errors.<sup>194</sup>

**Comment 29: Whether the Department Made All Appropriate Adjustments in the Calculation of Sailun Group’s U.S. Price**

*Petitioner’s Comments:*

- The Department’s margin program did not properly account for certain expenses as reported by the Sailun Group in its U.S. sales database, including warranty expenses “WARRU,” U.S. brokerage and handling costs “USOTHTRU,” and other costs in the fields of “MEFRTINU,” “MEWAREU,” and “MEFRTOUTU.”
- For the final determination, the Department should modify the Sailun Group’s program to correct these ministerial errors.

*Sailun Group’s Rebuttal Comments:*

- For the final determination, the Department should only deduct warranty expenses from the Sailun Group’s gross unit price for its reported CEP sales, not for its EP sales.
- The statute and the Department’s standard questionnaire, as well as the Department’s prior decisions support the argument of not deducting warranty expenses from respondent companies’ EP sales.

**Department’s Position:** We agree with the Petitioner that the preliminary margin calculation for the Sailun Group did not include certain expenses (*e.g.*, USOTHTRU, MEFRTINU, MEWAREU, and MEFRTOUTU) for some of the Sailun Group’s sales made through the Sailun Group’s Canadian affiliates. We have modified our calculations to correct these ministerial errors.<sup>195</sup>

For the Sailun Group’s warranty expenses “WARRU,” we agree with the Sailun Group that such deductions should only be made on the Sailun Group’s gross unit price for its CEP sales, as these selling expenses were associated with the commercial activities occurred in the United States, consistent with 772(d)(1) of the Act and 19 CFR 351.402(b).

**Comment 30: Whether the Department Should Apply AFA to GITI Companies’ Unreported Sales Submitted as a Minor Correction at Verification**

*Petitioner’s Comments:*

- The GITI companies presented unreported U.S. sales of subject merchandise during the Department’s verification and placed these sales on the record for the first time in its February 12, 2015 submission of “Minor Corrections.”

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<sup>194</sup> See GITI Final Analysis Memorandum, and the Sailun Group Final Analysis Memorandum.

<sup>195</sup> See Sailun Group Final Analysis Memorandum.

- The Department should apply AFA to these unreported sales by applying the highest margin calculated for any of the GITI companies' reported U.S. sales, following its practice in similar situations.
- In prior cases where a respondent did not report all U.S. sales of subject merchandise until verification, the Department determined that applying the highest calculated margin as partial AFA is appropriate, even when the respondent claims inadvertence and the missing data are offered during verification as "minor corrections".
- The GITI companies failed to conduct a thorough and comprehensive investigation of its records, even though it had all information that it needed to report the complete universe of its U.S. sales prior to verification. In addition, the GITI companies had multiple opportunities prior to verification to submit corrected information, and it did not report these sales in its revised U.S. sales database.
- Information on the record supports a decision to apply AFA, rather than relying on the newly reported data. A number of the sales characteristics and expenses of the sales were not defined or explained by the GITI companies, and were not consistent with the rest of the U.S. sales the GITI companies reported earlier. Therefore, the Department was not able to verify these new sales or any of the details or adjustments the GITI companies have claimed.

*GITI companies' Rebuttal Comments:*

- The Department's practice in determining whether or not sales should be included in the antidumping margin calculation focuses on whether the producer/exporter had knowledge that the destination of the sale was the United States. Evidence on the record demonstrates that the GITI companies did not have the knowledge at the time of the sale that these sales were destined for the United States. As such, the Department should simply ignore these sales for purposes of the final determination.
- The two cases cited by the Petitioner in support of its argument of applying AFA to these sales are distinguishable from the instant investigation. In the instant investigation, the GITI companies inadvertently failed to report a small quantity of sales that were not made through the normal business channel. In *Silica Bricks from the PRC Final Determination*, the omission of sales was discovered during the course of verification, and it was the same company that was responsible for reporting U.S. sales failed to report the unreported sales. In *Solar Cells I from the PRC 2012-2013 AR*, the CEP company unreported or improperly reported certain U.S. sales, and the sales quantities involved were not minor.
- Precedent does not support the application of AFA to these sales, as the GITI companies found these errors during the preparation for verification and reported these sales at the beginning of verification; the sales quantity and value are minor compared to the overall reported sales; the Department accepted these corrections as being minor and inadvertent in nature.
- Due to the uniqueness of these sales, the sales term and payment term codes were different from the rest of the sales, and were not previously reported. The Department had opportunity and verified these sales as the GITI companies provided the details of these transactions at the outset of verification.
- If the Department were to agree with Petitioner and apply AFA to these sales, it should apply a non-aberrational rate, as in the *Orange Juice from Brazil Final Determination*.

**Department's Position:** We disagree with Petitioner that the Department should apply AFA to these unreported sales by applying the highest margin calculated for any of the GITI companies' reported U.S. sales. Section 776(a)(2) of the Act states that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides such information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Pursuant to section 776(b) of the Act, the Department may use information that is adverse to the interest of that party when the party fails to cooperate by not acting to the best of its ability in responding to the Department's request for information.

We find that the GITI companies' explanation for their failure to report these sales indicates that they did not fail to cooperate to the best of their ability in accordance with section 776(b) of the Act, because: (i) the unreported sales constitute a very small percentage of total U.S. sales in quantity and value; (ii) the GITI companies presented these sales to the Department at the start of the verification; and (iii) the sales pattern and the company's accounting system treats these sales differently from all other U.S. sales. Therefore, we find that it is appropriate to assign a dumping margin for these sales based on facts available without an adverse inference, in accordance with section 776(b) of the Act.

We disagree with Petitioner's case citations used in support of its arguments as to why AFA is applicable here. We find that the fact pattern in *Silica Bricks from the PRC Final Determination* is not analogous to the fact pattern in this investigation. In *Silica Bricks from the PRC Final Determination*, the respondent company did not present the unreported sales to the Department at the start of the verification, rather, the Department discovered these additional sales during the course of verification.<sup>196</sup> In addition, in *Silica Bricks from the PRC Final Determination*, the same company that prepared U.S. sales failed to include all U.S. sales in its reporting to the Department.<sup>197</sup> *Solar Cells I from the PRC 2012-2013 AR* also demonstrates a different fact pattern.<sup>198</sup> In *Solar Cells I from the PRC 2012-2013 AR*, the reporting company made significant errors in the reporting of information that led to the respondent's sales either being unreported or improperly reported.<sup>199</sup>

Therefore, as facts available under section 776(a)(1) of the Act, we are including these sales in the U.S. sales database for the final margin analysis, which is consistent with our practice.<sup>200</sup>

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<sup>196</sup> See *Silica Bricks from the PRC Final Determination* IDM at 13.

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

<sup>198</sup> See *Solar Cells I from the PRC 2012-2013 AR* PDM at 19-20.

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

<sup>200</sup> See *Bar from Mexico Final Determination* IDM at Comment 2, *Valves from the PRC Final Determination* IDM at Comment 10.a, and *Pipe and Tube from Mexico Final Determination* IDM at Comment 4.

**Comment 31: Whether the Department Should Use the GITI Companies' Revised Databases that Include All the Minor Corrections**

*GITI Companies' Comments:*

- The GITI companies submitted revised databases to account for minor corrections accepted at verification. Given that the Department accepted the corrections and requested revised databases, the Department should use the latest databases submitted on March 20, 2015 for the final determination.
- The Department should use the revised credit and inventory carrying cost expenses that were recalculated due to the revision of the interest rate to include the factoring of accounts receivable.
- The Department should accept the revised U.S. indirect selling expense ratio to avoid double counting of certain expenses.

*Petitioner's Rebuttal Comments:*

- In addition to the revised credit, inventory carrying costs, and U.S. indirect selling expenses, the GITI companies' new databases also included the GITI companies' previously unreported in-scope sales presented as minor corrections at verification. To the extent that the Department relies on the GITI companies' revised databases, the Department should also apply AFA to those previously unreported sales.

**Department's Position:** We have used the latest revised databases submitted on March 20, 2015, which include all the minor corrections the GITI companies presented at its verifications, for the final margin analysis. The GITI companies presented these corrections at the start of the onsite verifications. As these corrections are minor in nature and the errors are inadvertent, the Department accepted these corrections and requested the GITI companies to submit revised sales and FOP databases including these minor corrections. Therefore, for the final determination, we have relied on these latest databases for the final margin analysis.

Concerning Petitioner's argument to apply AFA to the unreported sales, the Department addressed the issue at Comment 30.

**Comment 32: Whether the Department Should Reduce the Sailun Group's U.S. Prices by the Amount of the Irrecoverable VAT**

*Sailun Group's Comments:*

- The Department does not have the authority under section 772(c)(2)(B) of the Act to deduct taxes from Sailun Group's reported U.S. price that are not export taxes. VAT is not an export tax and the irrecoverable VAT should not be deducted from the U.S. price.
- The Department's preliminary decision of deducting eight percent of irrecoverable VAT from Sailun Group's U.S. price is in direct conflict with the statute.

*Petitioner's Rebuttal Comments:*

- The Department made the correct determination to deduct irrecoverable VAT from U.S. price, as the Department has made this same adjustment in several recent decisions.

- The statute instructs the Department to deduct from EP or CEP the amount of any “export tax, duty, or other charge imposed by the exporting country on the exportation” of subject merchandise.

**Department’s Position:** For the reasons explained below, we continue to deduct the un-refunded (irrecoverable) VAT from the reported EP or CEP.

In 2012, we announced a change of methodology with respect to the calculation of the EP or CEP to include an adjustment of any irrecoverable VAT in certain NME countries, in accordance with section 772(c)(2)(B) of the Act.<sup>201</sup> In this announcement, the Department stated that when an NME government has imposed 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 EPs or CEPs accordingly by the amount of the tax, duty or charge paid, but not rebated. In a typical VAT system, companies do not incur any VAT expense on exports; they receive on export a full rebate of the VAT they pay on purchases of inputs used in the production of exports (“input VAT”), and, in the case of domestic sales, the company can credit the VAT they pay on input purchases for those sales against the VAT they collect from customers.<sup>202</sup> That stands in contrast to the PRC’s VAT regime, where some portion of the input VAT that a company pays on purchases of inputs used in the production of exports is not refunded.<sup>203</sup> This amounts to a tax, duty or other charge imposed on exports that is not imposed on domestic sales. Where the irrecoverable VAT is a fixed percentage of U.S. price, the final step in arriving at a tax-neutral dumping comparison is to reduce the U.S. price downward by this same percentage.<sup>204</sup>

Section 772(c)(2)(B) of the Act authorizes the Department to deduct from EP or CEP the amount, if included in the price, of any “export tax, duty, or other charge imposed by the exporting country on the exportation” of the subject merchandise. We disagree with the Sailun Group’s claims that we do not have the statutory authority to adjust for irrecoverable VAT, or that our methodology unlawfully re-interprets section 772(c)(2)(B) of the Act. Section 772(c)(2)(B) of the Act authorizes us to deduct from EP or CEP the amount, if included in the price, of any “export tax, duty, or other charge imposed by the exporting country on the exportation” of the subject merchandise. Moreover, the Sailun Group argues that they pay no VAT upon export and that the PRC VAT is not an export tax, duty or charge but, rather, a charge on domestic purchases of inputs; however, this misstates what is at issue: the issue is the irrecoverable VAT, not VAT *per se*. Irrecoverable VAT, as defined in PRC law, is a net VAT burden that arises solely from, and is specific to, exports. It is VAT paid on inputs and raw materials (used in the production of exports) that is non-refundable and, therefore, a cost.<sup>205</sup> Irrecoverable VAT is, therefore, an “export tax, duty, or other charge imposed” on exportation of the subject merchandise to the United States.<sup>206</sup> The statute does not define the term(s) “export

<sup>201</sup> See *NME Methodological Change* 77 FR at 36482.

<sup>202</sup> See *Diamond Sawblades from the PRC 2011-2012 AR IDM* at Comment 6; see also *NME Methodological Change* 77 FR at 36483.

<sup>203</sup> See *NME Methodological Change* 77 FR at 36483.

<sup>204</sup> *Id.*

<sup>205</sup> See *Graphite Electrodes from the PRC 2012-2013 AR IDM* at Comment 7.

<sup>206</sup> See, e.g., *Diamond Sawblades from the PRC 2011-2012 AR IDM* at Comment 6 and *Valves from the PRC 2012-2013 AR IDM* at Comment 5.

tax, duty, or other charge imposed” on the exportation of subject merchandise. We find it reasonable to interpret these terms as encompassing irrecoverable VAT because the irrecoverable VAT is a cost that arises as a result of export sales. It is set forth in PRC law and, therefore, can be considered to be “imposed” by the exporting country on exportation of subject merchandise. Further, an adjustment for irrecoverable VAT achieves what is called for under section 772(c)(2)(B) of the Act, as it reduces the gross U.S. price charged to the customer to a net price received by the seller. This deduction is consistent with our longstanding policy, which is consistent with the intent of the statute, that dumping margin calculations be tax-neutral.<sup>207</sup>

Therefore, for the final determination, we continued to apply the irrecoverable VAT offset to the Sailun Groups’ EP or CEP.

**Comment 33: Whether the Irrecoverable VAT Percentage Should Be Applied to the FOB China Value**

*GITI Companies’ Comments:*

- As the proper basis is to apply the irrecoverable VAT percentage to the reported FOB China value, the Department made a mistake by applying the irrecoverable VAT percentage to the CEP gross unit price in the instant investigation.
- The use of the China FOB value for the calculation of the VATTAXU is pursuant to both the Chinese VAT regulations and the Department’s stated practice.
- The GITI companies calculated and reported the VATTAXU adjustment in its U.S. sales database. If the Department were to calculate the irrecoverable VAT expense, the Department should at the very least apply the irrecoverable VAT percentage to the FOB China value that is included in the GITI companies’ U.S. sales database.

*Sailun Group’s Comments:*

- Even if the Department rejects the Sailun Group’s VAT refund methodology, the Department must calculate the applicable VAT adjustment based on FOB price rather than gross unit price.
- In this case, the Sailun Group has reported a transaction-specific FOB value for each sale in its U.S. sales database and the Department has also verified the accuracy of the reported transaction-specific FOB values. The Department should use FOB value instead of gross unit price to calculate the applicable irrecoverable VAT amount.

*Petitioner’s Rebuttal Comments:*

- While the Petitioner agrees that the irrecoverable VAT percentage should not be applied to the unadjusted gross unit price, there is no need to resort to the estimated FOB China values reported by the respondents.
- As the Department has done in several other cases, the Department should apply the irrecoverable VAT percentage to the reported U.S. price, appropriately adjusted to

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<sup>207</sup> See Article 5(3) of Circular 39 that states, “(3) Where the Tax Refund Rate is lower than the applicable tax rate, the amount of tax calculated according to the difference in rates shall be included in the costs of the Exported Goods and Services”; see also *NME Methodological Change* at 77 FR 36483 and *Final Rule* at 62 FR 27369 (citing the SAA).

represent a net U.S. price, by removing selling expense, freight charges and profit as required.

**Department's Position:** We agree with the GITI companies and the Sailun Group that the irrecoverable VAT percentage should be applied to each company's reported FOB China value. The "Notice of the Ministry of Finance and the State Administration on VAT and Consumption Tax Policies for Exported Goods and Labor Services," CAISHUI (2012) No. 39 (Circular), stated that the amount of VAT refund is calculated on the basis of the actual FOB value of the exported goods and labor services. Therefore, we are calculating the irrecoverable VAT amount by applying the irrecoverable VAT percentage to the FOB China value, as reported by the GITI companies and the Sailun Group, consistent with our recent practice.

**Comment 34: Whether the Department Correctly Reduced the U.S. Price by the Amount of the Irrecoverable VAT**

*GITI companies' Comments:*

- The Department made a mistake in calculating the irrecoverable VAT amount by not taking into account the value of bonded raw materials on which the company did not pay VAT.
- The applicable Chinese VAT regulation states that the VAT refund should be determined on the basis of the FOB of exported goods minus the amount of customs bonded imported materials included in exported goods.
- Similar to the *PET Film from the PRC 2012-2013 AR* case in which the Department did not make a deduction for irrecoverable VAT because "the vast majority" of the respondent's raw materials used to produce the subject merchandise were imported under bond, the principle is the same in the instant investigation where the GITI companies provided the same evidence that the Department used to support its determination in *PET Film from the PRC 2012-2013 AR*. The GITI companies have tied its calculation to the irrecoverable VAT formula as promulgated by Chinese VAT regulations and to its VAT declaration forms.

*Sailun Group's Comments:*

- The record does not support the Department's preliminary decision to make an eight percent irrecoverable VAT adjustment to the Sailun Group's U.S. prices. The Department should rely on the Sailun Group's irrecoverable VAT as reported in VATTAXU field of the sales database for each transaction.
- The Sailun Group has demonstrated and reported its actual amount of irrecoverable VAT paid for subject tires exported to the U.S. The Sailun Group also provided all the necessary supporting documentation showing the applicable bonded new material ratio during the POI, which was calculated based on the exporter's historical customs record.

*Petitioner's Rebuttal Comments:*

- The Department correctly reduced the U.S. price by eight percent in the preliminary determination.
- The facts and evidence are different from *PET Film from the PRC 2012-2013 AR* and the instant investigation, where the respondent in that proceeding paid no VAT on inputs

accounting for the vast majority of cost in producing the subject export product and separately tracked production for subject export products that benefited from not paying any VAT. Whereas the GITI companies and the Sailun Group produce a variety of non-subject merchandise and paid no VAT under bond on only part of the imported materials.

- There is no information on the record for either the GITI companies or the Sailun Group that would permit the Department to determine to what extent the reported bonded input ratios, which apply to exported products generally, accurately reflect the actual level of VAT not refunded on subject exported products.

**Department’s Position:** For both the GITI companies and the Sailun Group, record evidence does not support the contention that all of the bonded materials that were exempted from input VAT were actually used in the production of subject merchandise. In addition, neither respondent could demonstrate that the materials entered under bonded warehouse, or the “bonded ratio,” was calculated for subject merchandise only. We could not tie the “bonded ratio” to the calculation of the U.S. price of subject merchandise and the non-funded percentages to amounts reported in those companies’ VAT returns.

Our irrecoverable VAT calculation methodology, as applied in this investigation, consists of performing two basic steps: (1) determining the irrecoverable VAT on subject merchandise, and (2) reducing U.S. price by the amount determined in step one. Information placed on the record of this investigation by the GITI companies and the Sailun Group indicates that, according to the PRC VAT schedule, the standard VAT levy on the subject merchandise is 17 percent and the VAT rebate rate for the subject merchandise is nine percent. For the final determination, therefore, we removed from the U.S. price the amount calculated based on the difference between these rates (*i.e.*, eight percent) applied to the export sales value, consistent with the definition of irrecoverable VAT under Chinese tax law and regulation.

Irrecoverable VAT is (1) the FOB value of the exported good, applied to the difference between (2) the standard VAT levy rate and (3) the VAT rebate rate applicable to exported goods. The first variable, export value, is unique to each respondent while the rates in (2) and (3), as well as the formula for determining irrecoverable VAT, are each explicitly set forth in Chinese law and regulations.

19 CFR 351.401(c) requires that the Department rely on price adjustments that are “reasonably attributable to the subject merchandise.” The PRC’s VAT regime is product-specific, with VAT schedules that vary by industry and even across products within the same industry. These are product-specific export taxes, duties, or other charges that are incurred on the exportation of subject merchandise. Thus, our analysis is consistent with our current VAT policy and our treatment of VAT in recently completed NME cases. Therefore, we have not altered our irrecoverable VAT adjustment methodology for the final determination.

### **Comment 35: The Department’s Authority to Apply a PRC-Wide Rate**

*Double Coin’s/Jinhaoyang’s/Shaanxi’s Comments:*

- According to sections 735(c)(1)(B)(i)(I) and (II) of the Act, the Department is only allowed to determine two types of rates: the weighted-average dumping margin for each

- exporter and producer individually investigated and the estimated all others rate for all exporters and producers not individually investigated.
- Only the CVD provisions of the Act allow for a country-wide subsidy rate; therefore, the fact that there is no equivalent mention of a “country-wide” rate in the AD provisions of the statute means that Congress did not intend to leave the Department with the discretion to determine, on its own, a “country-wide” dumping rate.
  - The “margin” determined for the NME country-wide entity is the rate that applies to companies that are not investigated and do not obtain a separate rate, and not a rate based on information on export prices and normal value submitted by any company under investigation as defined in section 735(c)(1)(B)(i)(I) of the Act.
  - The Department may not create a rate that is not either explicitly or implicitly permitted by the statutory language itself. The Department cannot claim that its China-wide entity AD rate is an “individually investigated” AD rate pursuant to section 735(c)(1)(B)(i)(I) of the Act when the Department has not conducted an investigation of the China-wide NME entity.
  - There is nothing in section 776 of the Act which states that the Department may use “facts available” or “adverse inferences” to determine a country-wide entity rate when that rate is not permitted by the statute for AD cases.
  - There may be a regulatory basis for an AD country-wide rate under 19 CFR 351.107(d), which states that in “an antidumping proceeding involving imports from a nonmarket economy country, ‘rates’ may consist of a single dumping margin applicable to all exporters and producers.” However, the mention of the single dumping margin does not make clear whether this rate is to be considered as an investigated company rate or an “all others” rate, the only two options authorized by the statute.
  - Neither the Department’s notice setting forth the proposed regulations nor its notice adopting the regulation for AD country-wide rate cited any statutory authority or discussed any legal basis for adopting such a rate.<sup>208</sup>
  - Even though the Department’s use of a country-wide rate in AD proceedings was affirmed in *Jiangsu Changbao* for that particular situation, it does not mean that the country-wide rate itself is permitted under the statute. Specifically in *Jiangsu Changbao*, the court stated that the adverse inference provision may be invoked only when selecting from among the facts available, not when deciding whether to resort to facts available. Where there is no basis for applying “facts available” under the statute, there is equally no basis for applying “adverse inferences” to create an AFA rate.
  - The “margin” determined for the NME country-wide entity, which by definition is the rate that applies to companies that are not investigated and do not obtain a separate rate, has nothing to do with the information on export prices and normal value submitted by any company under investigation.
  - There have now been two cases litigated before WTO Panels where the country-wide rate was found to be “as applied” and “as such” inconsistent with the terms of the Antidumping Agreement.<sup>209</sup>
  - The WTO Panels did not rule out the possibility that separate entities with state-ownership might be affiliated in the same manner that private companies with common

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<sup>208</sup> See *AD & CVD Proposed Rules* and *AD & CVD Final Rules* at 62 FR 27304.

<sup>209</sup> See *WTO Shrimp from Vietnam* (2011) and *WTO Shrimp from Vietnam* (2014).

ownership might be affiliated. However, the 2014 WTO Panel did not allow the application of a rate higher than the “all others” rate to such collapsed entities unless the entity or entities constituting the country-wide entity were individually examined. Therefore, state-owned entities which are not individually investigated are entitled to the “all others” rate under U.S. law and the Antidumping Agreement.

*Petitioner’s Rebuttal Comments:*

- The Department has rejected these same arguments in the most recent administrative review of *OTR Tires from the PRC 2012-2013 AR Final* where it explained that NME methodology, “including its assignment of a specific rate to all NME exporters that do not establish their eligibility for a separate rate,” is well established and has been upheld by the courts.<sup>210</sup>
- In *Transcom Inc.*, the CIT held that the application of the NME-entity wide rate to a specific company that has failed to rebut the presumption of government control is not the application of AFA to that company.
- The CAFC stated in *Michaels Stores* that the Department has applied a country-wide rate to all exporters that have not established their *de jure* and *de facto* independence from the GOC.
- The CIT recently reinforced the CAFC’s decision in *Michaels Stores* by stating that “whenever the statute is silent on a particular issue, it is well-settled that Commerce may “formulate policy and make rules to fill any gap left, implicitly or explicitly, by Congress.”
- The separate rate applicants’ arguments that the application of the PRC-wide rate to them is the equivalent of the application of an AFA rate has also been rejected by the Department and by the courts. Specifically, the CIT explained that these are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate fully, whereas the PRC-wide rate applies to a respondent who has not received a separate rate.<sup>211</sup>
- In *Peer Bearing Co. II*, the CIT stated that “there is no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company. It is not directly analogous to the process used in a market economy, where there is no country-wide rate. Here, the rate must be corroborated according to its reliability and relevance to the country-wide entity as a whole.”<sup>212</sup>
- A PRC-entity member assigned a PRC-entity wide rate that was based on AFA is “not assigned an AFA rate specific to the company itself; it was assigned the PRC-wide entity rate based on total AFA; therefore in accordance with *Peer Bearing Co. II*, the application of the PRC-wide rate in this investigation to these respondents is based on their failure to adequately rebut the presumption of government control; it does not constitute the application of AFA to them individually.
- There is no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company. It is not directly analogous to the process used in a market economy, where there is no country-wide rate. Here, the rate must be corroborated

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<sup>210</sup> See *OTR Tires from the PRC 2012-2013 AR Final* IDM at Comment 1.

<sup>211</sup> See *Watanabe Group* at 9 note 8.

<sup>212</sup> See *Peer Bearing Co. II* at 1327.

according to its reliability and relevance to the country-wide entity as a whole. Thus, a PRC-entity member assigned a PRC-entity wide rate that was based on AFA is “not assigned an AFA rate specific to the company itself; it was assigned the PRC-wide entity rate based on total AFA.”<sup>213</sup>

**Department’s Position:** The Department disagrees with Double Coin’s, Jinhaoyang’s, and Shaanxi’s arguments that we have no authority to issue a rate for the NME entity. Rather, the Department’s NME practice, including its assignment of a specific rate to all NME exporters that do not establish their eligibility for a separate rate is well-established<sup>214</sup> and has been upheld by the courts.<sup>215</sup>

The Department considers the PRC to be a non-market economy country under section 771(18) of the Act. In AD proceedings involving NME countries, such as the PRC, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. Therefore, in PRC cases, the Department uses a rate established for the PRC-wide entity, which it applies to all imports from an exporter that has not established its eligibility for a separate rate. 19 CFR 351.107(d) provides that “in an antidumping proceeding involving imports from a nonmarket economy country, ‘rates’ may consist of a single dumping margin applicable to all exporters and producers.”<sup>216</sup> The Department’s practice of assigning a PRC-wide rate has been upheld by the CAFC. In *Sigma Corp.*, the CAFC affirmed that it was within the Department’s authority to employ a presumption for state control in a NME country and place the burden on the exporters to demonstrate an absence of central government control.<sup>217</sup> The CAFC recognized that sections 771(18)(B)(iv)-(v) of the Act recognized a close correlation between an NME economy and government control of prices, output decisions, and allocation of resources and, therefore, the Department’s presumption was reasonable.<sup>218</sup> The application of a PRC-wide rate to all parties which were not

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

<sup>214</sup> See, e.g., *Galvanized Steel from the PRC Final Determination* IDM at 8.

<sup>215</sup> See, e.g., *Sigma Corp.* at 1405.

<sup>216</sup> See *Tetrafluoroethane from the PRC Final Determination* IDM at Comment 1 (explaining the Department’s practice with respect to separate rates as upheld by the CAFC in *Sigma Corp.* at 1405-06, and describing the Department’s practice with respect to the rate assigned to the PRC-wide entity).

<sup>217</sup> See *Sigma Corp.* at 1405-1406 (“We agree with the government that it was within Commerce’s authority to employ a presumption of state control for exporters in a nonmarket economy, and to place the burden on the exporters to demonstrate an absence of central government control. The antidumping statute recognizes a close correlation between a nonmarket economy and government control of prices, output decisions, and the allocation of resources. Moreover, because exporters have the best access to information pertinent to the ‘state control’ issue, Commerce is justified in placing on them the burden of showing a lack of state control.”) (internal citations omitted).

<sup>218</sup> *Id.* See also *Brake Drum & Rotor Mfrs* 44 F.Supp. at 243, quoting *Sigma Corp.* at 1405 (“Under the broad authority delegated to it from Congress, Commerce has employed ‘a presumption of state control for exporters in a non-market economy’ . . . Under this presumption, all exporters receive one non-market economy country (‘NME’) rate, or country-wide rate, unless an exporter can ‘affirmatively demonstrate’ its entitlement to a separate, company-specific margin by showing ‘an absence of central government control, both in law and in fact, with respect to exports.’”); *Michaels Stores, Inc. CIT* at 1315, quoting *SKF USA Inc.* at 1030 (“The regulations clarify, however, that for non-market economies, ‘rates may consist of a single dumping margin applicable to all exporters and producers.’ Moreover, whenever the statute is silent on a particular issue, it is well-settled that Commerce may ‘formulate policy’ and make rules ‘to fill any gap left, implicitly or explicitly, by Congress.’”) (internal citations omitted).

eligible for a separate rate was also affirmed by the CAFC in *Transcom Inc. II* in 2002.<sup>219</sup> In *Transcom Inc. II*, the CAFC also found that a rate based on “best information available” (the precursor to facts available and AFA under the current statute) is not punitive.<sup>220</sup> Thus, contrary to assertions of the SRA respondents, the courts have consistently upheld the Department’s authority to apply a presumption of state control in NME countries and to apply a single rate to all exporters that fail to rebut that presumption. The courts have agreed that, once a respondent has been held to be part of the NME-wide entity, inquiring into said respondent’s separate sales behavior ceases to be meaningful.<sup>221</sup> Therefore, because these companies failed to rebut the presumption of government control, as discussed further below, the Department is no longer required to base the margin assigned to the PRC-wide entity, of which these companies are a part, solely on their individual behaviors.

Double Coin, Jinhaoyang, and Shaanxi also object to the application of the PRC-wide rate to them, at least in part, on the basis that this NME entity rate is an AFA rate. They argue that section 776(b) of the Act requires a party to fail to cooperate to the best of its ability as a prerequisite before the Department is permitted to apply an adverse inference. Therefore, because these companies have fully cooperated, the statutory requirements for AFA have not been met and the Department is not permitted to apply the PRC-entity rate (which is based on AFA) in any manner with respect to their margins. However, in *Advanced Technology II*, the CIT addressed and rejected a similar argument stating “Commerce did not apply adverse facts available to AT&M, Commerce rather found that AT&M had not rebutted the presumption of state control and assigned it the PRC-wide rate. These are two distinct legal concepts: a separate AFA rate applies to a respondent who has received a separate rate but has otherwise failed to cooperate fully whereas the PRC-wide rate applies to a respondent who has not received a separate rate.”<sup>222</sup> As in that case, here, the Department is not applying AFA to Double Coin, Jinhaoyang, and Shaanxi individually, but rather has found that these companies have failed to rebut the presumption of government control and as such, they receive the rate applied to the PRC-wide entity.

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<sup>219</sup> See *Transcom Inc. II* at 1381-83. (The PRC-wide rate, and its adverse inference are applicable to all companies which were initiated on yet failed to show their entitlement to a separate rate. “Accordingly, while section 1677e provides that Commerce may not assign a {best information available}-based rate to a particular party unless that party has failed to provide information to Commerce or has otherwise failed to cooperate, the statute says nothing about whether Commerce may presume that parties are entitled to *independent* treatment under 1677e in the first place” {emphasis added}). *Id.* at 1376 citing *Rhone Poulenc, Inc.* at 1191 (“Instead, the objective of best information available (“BIA”) is to aid Commerce in determining dumping margins as accurately as possible”). The litigation in *Transcom Inc. II* covered three periods of review between June 1990 and May 1993. See *Transcom Inc. II* at 1374-75 and *Roller Bearings from the PRC 1990-1991, 1991-1992, and 1992-1993 ARs* at 61 FR 65527. The term “BIA” is now referred to under the statute as facts available or AFA.

<sup>220</sup> See *Transcom Inc. II* at 1376.

<sup>221</sup> See *Advanced Technology II* at 1351, citing *Watanabe Group Slip-Op* 10-139 at 8 (“Commerce’s permissible determination that {a respondent} is part of the PRC-wide entity means that inquiring into {that respondent}’s separate sales behavior ceases to be meaningful.”) and *Jiangsu Changbao* at 1312 (referencing *Watanabe* at 8) (“losing all entitlement to an individualized inquiry appears to be a necessary consequence of the way in which Commerce applies the presumption of government control... applying a countrywide AFA rate without individualized findings of failure to cooperate is no different from applying such a countrywide AFA rate without individualized corroboration.”).

<sup>222</sup> See *Advanced Technology II*.

Further, these SRA companies argue that the Department has no basis to apply the PRC-wide rate to them based either on other parties' inability to cooperate or the failure of a party to provide information with respect to the PRC-wide entity because such information was never requested by the Department. As mentioned above, in *Sigma Corp.*, the CAFC affirmed that it was within the Department's authority to employ a presumption for state control in a NME country and found the presumption reasonable, noting that sections 771(18)(B)(iv)-(v) of the Act recognized a close correlation between a NME economy and government control of prices, output decisions, and allocation of resources.<sup>223</sup> Having not demonstrated the absence of *de jure* or *de facto* control from the government over their operations, these SRA respondents constitute a part of the PRC-wide entity.

### **Comment 36: PRC Government Control of the Economy**

#### *Double Coin's/Jinhaoyang's/Shaanxi's/Wanli's Comments:*

- The Department's criteria for the presumption of state control affirmed in the *Sigma Corp.* ruling and created in 1991 is outdated and cannot be applied to PRC companies in the present.
- The Department's presumption of state control is not required by or based on statute. In fact, the Court suggested in *Qingdao Taifa Grp. Co. II* that the Department's presumption of state-control in NME cases needs to be revisited.<sup>224</sup>
- Based on the presumption that the government determines where, when and what the entities it controls sells and the prices these entities charge, there was a concern that "central authorities would be able to funnel output from different factories through the company assigned the lowest margin." However, these concerns have absolutely no place under the facts as presently established by the Department.<sup>225</sup>
- The Department's application of countervailing duty law to the PRC contradict its presumption in *Policy Bulletin 05.1* that in the antidumping separate rates practice "all firms within a non-market economy country are subject to government control and thus should all be assigned a single, country-wide rate unless a respondent can demonstrate an absence of both *de jure* and *de facto* control over its export activities."
- By applying U.S. CVD law to Chinese trade cases one can conclude that the Department believes the Chinese government does not interfere with the business activities of Chinese exporting companies.
- In light of the Department's justification for applying CVD law to Chinese companies, the Department should abandon its separate rate policy.
- As observed in certain cases that are subject to both AD and CVD investigations, (*e.g. OTR Tires from the PRC and Solar Cells from the PRC*), the Department continues to use the same NME AD methodology while at the same time imposing CVD methodology on the same company which is arbitrary and capricious.
- The Department's presumption that the export activities of all firms within an NME country are subject to government control and thus should all be assigned a single,

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<sup>223</sup> See *Sigma Corp.* at 1405-1406.

<sup>224</sup> See *Qingdao Taifa Grp. Co. II* at 1384-85.

<sup>225</sup> See *Georgetown Steel* at 1308 and *Sparklers from the PRC Final Determination* 56 FR at 20588.

country-wide rate in AD proceedings, is the opposite of the findings that the Department uses to justify CVD cases in the same countries.

- The Court has ruled against the Department in certain case (e.g. *Changzhou Wujin, SKF USA Inc.*, and *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*) where it felt that the Department was internally inconsistent and self-contradictory regarding GOC control over the PRC economy.
- The *PRC Company Law* (as amended in 2006), the Code of Corporate Governance, as well as each company's AOA requires that all companies make all export decisions independent from Chinese governmental control.
- The Department has found an absence of *de jure* control when a company has supplied business licenses and export licenses, each of which have been found to demonstrate an absence of restrictive stipulations and decentralization of control of the company based on the *PRC Company Law*.<sup>226</sup>
- The Department made numerous findings in the *Georgetown Steel Memorandum* such as:
  - 1) the "current nature of China's economy does not" give rise to the same issues that were litigated in *Georgetown Steel*, many of which were "Soviet-style economies" that were essentially comprised of a single central authority or characterized by central control;
  - 2) even though state-owned entities are still a crucial part of the Chinese economy, the GOC no longer allocates most resources in the economy and that private industry now dominates many sectors of the Chinese economy;
  - 3) "that market forces now determine the prices of more than 90 percent of products traded in China" and that China's "current Labor Law grants the right to set more wages above the government-set minimum wage to all enterprises, including foreign invested enterprises ("FIE"), SOEs and domestic private enterprises;" and
  - 4) many more companies export activities are independent from the PRC government in comparison with the early- to mid-1990s.<sup>227</sup>
- In 2012 the Department found that "the present-day Chinese and Vietnamese economies are sufficiently dissimilar from Soviet-style economies."<sup>228</sup> These findings directly challenge any presumption that there is *de facto* control of pricing by the GOC.
- The Department should adjust its presumption of GOC control over the PRC economy to match the present day reality.

*Petitioner's Rebuttal Comments:*

- The courts have consistently upheld Commerce's authority to apply a presumption of state control in NME markets and to apply a single rate to all exporters that fail to rebut that presumption. See *Galvanized Steel Wire*.
- In *Sigma Corp.* and *Transcom Inc.*, the CIT held that the Department has the authority under the Act to place the burden on exporters to demonstrate the absence of government control; therefore the PRC-wide rate applied to these SRA is based on their failure to

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<sup>226</sup> See *Carbon Steel Plate from the PRC 2007-2008 AR* IDM at Comment 2; *Hand Tools from the PRC 2004-2005 AR* 71 FR at 54269; *Honey from the PRC 2002-2003 AR* 69 FR at 77186-87 (unchanged in the Final Results); *Diamond Sawblades from the PRC Final Determination* IDM at Comment 9.

<sup>227</sup> See *Georgetown Steel Memorandum* at 8-10.

<sup>228</sup> See *NME Methodological Change* 77 FR at 36481.

rebut the presumption of government control and is not an application of AFA to them individually.

- Respondents argue that the Department's presumption of government control in the PRC is contrary to its findings in the *Georgetown Steel Memorandum* regarding the Chinese economy is incorrect because the courts have consistently upheld the Department's authority to apply a presumption of state control in NME countries and to apply a single rate to all exporters that fail to rebut that presumption.<sup>229</sup>
- In the recently completed administrative review of *OTR Tires from the PRC 2012-2013 AR Final*, the Department explained that "the analysis in the *Georgetown Steel Memorandum* focused only on the concept of the single economic entity that characterized the economies in *Georgetown Steel* and that it would be incorrect to conflate that concept with the concept of the NME-wide entity for antidumping duty assessment purposes."

**Department's Position:** Double Coin, Jinhaoyang, Shaanxi, and Wanli argue that the Department's presumptions with respect to the PRC economy are based on the outdated Soviet-style economies of the early 1990's. However, the Department previously noted that the analysis in the *Georgetown Steel Memorandum* focused only on the concept of the single economic entity that characterized the economies in *Georgetown Steel* and that it would be incorrect to conflate that concept with the concept of the NME-wide entity for AD assessment purposes.<sup>230</sup> Given the reforms discussed in the *Georgetown Steel Memorandum*, the Department found that a single central authority no longer comprises the PRC's economy and that the policy that gave rise to the *Georgetown Steel* litigation does not prevent the Department from concluding that the PRC government has bestowed a countervailable subsidy upon a PRC producer. As such, we agree with Petitioners that the analysis in the *Georgetown Steel Memorandum* is inapplicable to the issue of the PRC-wide entity in antidumping proceedings.

As explained above, in antidumping proceedings involving NME countries such as the PRC, the Department has a rebuttable presumption that the export activities of all firms within the country are subject to government control and influence. This presumption stems not from an economy comprised entirely of the government (*e.g.*, a firm is nothing more than a government work unit), but rather from the NME-government's use of a variety of legal and administrative levers to exert influence and control (both direct and indirect) over the assembly of economic actors across the economy. As such, this presumption is patently different from a presumption that all firms are one and the same as the government, such that they comprise a monolithic economic entity. Moreover, the presumption underlying the separate rates test was upheld in *Sigma Corp.*, where the CAFC affirmed the Department's separate rates test as reasonable, stating that the statute recognizes a close correlation between an NME and government control of prices, output decisions, and the allocation of resources.<sup>231</sup> The CAFC also stated that it was within the Department's authority to employ a presumption of state control for exporters in an NME-country and to place the burden on the exporters to demonstrate an absence of central government control. Firms that do not rebut the presumption are assessed a single AD rate, *i.e.*,

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<sup>229</sup> See *OTR Tires from the PRC 2012-2013 AR Final* IDM at 17.

<sup>230</sup> See *Diamond Sawblades from the PRC 2011-2012 AR* IDM at Comment 4.

<sup>231</sup> See *Sigma Corp.* at 1405-06.

the NME country-wide entity rate.<sup>232</sup> In recognition that parts of the PRC's economy are transitioning away from the state-controlled economy, the Department developed the separate rates test. In an economy comprised of a single, monolithic state entity, it would be impossible to identify separate firms, let alone rebut government control. Rather, the PRC's economy today is neither command-and-control nor market-based; government control and/or influence is omnipresent (which gives rise to the presumption) but not omnipotent (and hence, the presumption is rebuttable).<sup>233</sup>

In the Department's experience applying the separate rate test, the *de jure* factors are not overwhelmingly indicative of the absence of control of export activities in the typical case, but rather they demonstrate an ability on the part of the exporter to control its own commercial decision making. In large part, the laws and regulations that the Department has examined over the years, indicate that a certain level of control has devolved in that the commercial decision-making can lie with the various corporate entities operating under these laws and regulations, which in turn, merits an analysis of the record evidence to ensure that there is an absence of *de facto* aspects of government control over export activities. This is supported by our findings over the years that numerous PRC respondents operating under such laws also maintain *de facto* control over their export functions. These situations where parties are found to be entitled to a separate rate are, however, based on the individual facts with respect to each such party. Because of the centralized control inherent in the PRC's status as a NME country, we presume that decision making of an enterprise in an NME country is under a form of centralized government control (whether at the central, provincial, or local level). Nevertheless, the *PRC Company Law* and other laws and regulations demonstrate that, within the PRC's NME, distance can exist between decisions made at the central government level and decisions made at the firm level with respect to exports. Thus, 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.

Double Coin, Jinhaoyang, Shaanxi, and Wanli argue that the evolving practice on government control in the wake of the *Diamond Sawblades* litigation, as presently implemented, is predicated on outdated presumptions with respect to the PRC economy that the Department already reconsidered in, for example, the *Georgetown Steel Memorandum*. We note that, the Department has not changed its separate rate criteria, but has analyzed the facts provided by these SRA respondents in light of the decisions in the *Diamond Sawblades* litigation.<sup>234</sup> Moreover, the Department previously noted that the analysis in the *Georgetown Steel Memorandum* focused only on the concept of the single economic entity that characterized the economies in *Georgetown Steel*, and that it would be incorrect to conflate that concept with the concept of the NME-wide entity for AD assessment purposes.<sup>235</sup> Given the reforms discussed in the *Georgetown Steel Memorandum*, the Department found that a single central authority no longer comprises the PRC's economy and that the policy that gave rise to the *Georgetown Steel* litigation does not prevent the Department from concluding that the PRC government has

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<sup>232</sup> See 19 CFR 351.107(d), which provides that "in an antidumping proceeding involving imports from a non market economy country, 'rates' may consist of a single dumping margin applicable to all exporters and producers."

<sup>233</sup> See *Georgetown Steel Memorandum* at 9.

<sup>234</sup> See, e.g., *Advanced Technology I* remand, affirmed in *Advanced Technology II*.

<sup>235</sup> See *Diamond Sawblades from the PRC 2011-2012 AR IDM* at Comment 4.

bestowed a countervailable subsidy upon a PRC producer. As such, we find that the analysis in the *Georgetown Steel Memorandum* is inapplicable to the issue of the PRC-wide entity in antidumping proceedings.

The Department also disagrees with the SRA companies' reliance on a partial quote regarding prices in the PRC. The *Georgetown Steel Memorandum* states that "although price controls and guidance remain on certain 'essential' goods and services in China, the PRC Government has eliminated price controls on most products; market forces now determine the prices of more than 90 percent of products traded in China."<sup>236</sup> This quote is a reference to deregulation of prices, *i.e.*, phasing out of the direct, administrative price-setting common in command-and-control economies. It is not a reference, for example, to an absence of direct government control over resource allocations or government control or influence over economic actors that can fundamentally distort the price formation process. Therefore, the reference is not relevant to our requirements that NME companies seeking a separate rate demonstrate the absence of *de jure* or *de facto* control.

### **Comment 37: Wanli's Separate Rate Status**

#### *Wanli's Comments:*

- Contrary to the Department's preliminary findings, Wanli did timely provide a response to the Department's supplemental SRA questionnaire.
- According to section 782 of the Act, the Department has a legal obligation to issue supplemental questionnaires and an opportunity to explain or cure deficient responses if the Department finds that any questionnaire response remains deficient after review.
- Information in Wanli's SRA and supplemental SRA responses demonstrate that it is an independent legal entity that is separate from its shareholder entities, and the GOC is not involved in its daily business and activities.
- The fact that Wanli has maintained a long-term business relationship with its U.S. customer demonstrates that it is free of GOC control.
- Wanli's parent is a privately owned company that is in turn owned by several investment companies. Some of these investment companies are owned to a greater or lesser degree by GOC entities; therefore, any Chinese government entity is far removed from Wanli's decision-making.
- The Department's separate rate test is based on cases (such as *Sparklers from the PRC*, *Silicon Carbide from the PRC*, and *Furfuryl Alcohol from the PRC*) that are around 20 years old, and where the companies concerned were wholly-owned by the GOC.
- The Department found in *Silicon Carbide from the PRC* that GOC ownership is not a threshold barrier to granting a company a separate rate.<sup>237</sup> However in the instant investigation, the Department is ignoring this practice by denying Wanli a separate rate because the government may have the ability to control the company's operations and export activities.

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<sup>236</sup> See *Georgetown Steel Memorandum* at 5, citing The Economist Intelligence Unit, Country Commerce: China, 2006 at 73.

<sup>237</sup> See *Silicon Carbide from the PRC* at 22586-22587.

- The Department should not be relying on or expanding the CIT’s decision and remand in *Advanced Technology* for conducting its analysis of government ownership for SRAs because:
  - 1) the Department made the remand determination under protest;
  - 2) the CIT stated that the concept of the governmental control test for SRAs is fuzzy and thus it made no distinction between actual or theoretical GOC control of a company’s business activities;
  - 3) the CIT decision in this case has not been accepted in other CIT rulings, such as in *Jiangsu Jiasheng*, where the Court stated that the Department’s governmental control analysis is a policy and not in the statute;
  - 4) in *Jiangsu Jiasheng*, the Court stated that even in instances where a company is wholly state-owned with the authority to appoint board members and managers, is not dispositive to of *de facto* government control,<sup>238</sup> and
  - 5) as also noted in *Jiangsu Jiasheng*, the essence of the Department’s separate rate analysis is whether the respondent had “sufficient independence *in their export pricing decisions* from government control to qualify for separate rates.”<sup>239</sup>

*Petitioner’s Comments:*

- Based on Wanli’s ownership structure, the company has not demonstrated an absence of *de facto* government control; therefore, the Department should continue to deny it separate status.
- Wanli benefits from its government ownership because the Wanli brand of tires is on the list of “Key Export Famous Brand Commodity Supported and Developed by the State.”

*Wanli’s Rebuttal Comments:*

- In accordance with *Jiangsu Jiasheng* and section 777A(c)(1) of the Act, a theoretical possibility espoused in a Department policy is not a compelling argument to prevail over the Department’s statutory duty to calculate individual dumping margins “for each known exporter and producer of the subject merchandise.”<sup>240</sup>
- As documented in its SRA, Wanli is a profit-oriented business that sells subject merchandise at competitive prices to an international customer base.<sup>241</sup>
- Petitioner is incorrect that Wanli benefits from the “Key Export Famous Brand Commodity Supported and Developed by the State” subsidy program because this program is generally available to Chinese producers and was countervailed by the Department, along with numerous other Chinese government grants and subsidies, in the *CVD Preliminary Determination*.<sup>242</sup>
- Wanli has to pay the CVD all-others rate for any benefits it receives from the GOC.

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<sup>238</sup> See *Jiangsu Jiasheng* at 1348.

<sup>239</sup> *Id* (emphasis added).

<sup>240</sup> See *Jiangsu Jiasheng* at 1339 footnote 107.

<sup>241</sup> See Wanli SRA at 21-22, Exhibit 7, and Exhibit 8.

<sup>242</sup> See *CVD Preliminary Determination* PDM at 31-49.

*Petitioner's Rebuttal Comments:*

- Information in Wanli's SRA and supplemental SRA response contradicts the company's statements in its brief that "no Chinese Government entity controls its business activities in any way" and that "the involvement of any Chinese government entity is far removed from Wanli's decision-making company officials."
- In *Pencils from the PRC*, the Department stated 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.<sup>243</sup>
- Finally, Wanli's contention that the Department's analysis is based on the government's "theoretical ability" to exercise control without analyzing whether "the Chinese government did indeed exercise restraint or direction..." should be dismissed because the burden of proof to demonstrate that it is not controlled by the government rests with Wanli, and Wanli has not overcome that presumption.
- Although Wanli's separate rate status should not be denied for the reasons identified in the *AD Preliminary Determination*, the Department should continue to deny Wanli separate rate status for the reasons stated in Petitioner's case brief.
- Specifically, Wanli has not been able to demonstrate an absence of *de facto* control.
- Wanli's assertions that the Chinese government entity does not control or is not involved in Wanli's business activities or decision-making, fails for several reasons.<sup>244</sup> The Department has recognized that majority government ownership in and of itself means the government exercises, or has the potential to exercise, control over the company's operations.
- Although Wanli claims detachment from government control, the existence of an intermediary shareholder does not sever the connection between Wanli and the GOC.

**Department's Position:** Wanli did timely submit a response to the Department's supplemental SRA questionnaire. However, our analysis of the information in both Wanli's original and supplemental SRA questionnaire responses indicates that Wanli has not demonstrated the absence of *de jure* and *de facto* government control; therefore, we continue to find them ineligible for a separate rate. Certain information regarding Wanli's ownership is business proprietary; therefore, a complete discussion of Wanli's SRA status is provided in a separate memorandum.<sup>245</sup>

**Comment 38: GTCIE's Separate Rate Status**

*GTCIE's Comments:*

- An annual performance review of GTCIE's parent GTC by Guiyang SASAC to measure the performance of senior management to determine bonuses based on overall company performance has no relationship to the selection of GTCIE's management.
- The information submitted by Petitioner identifying one of ten directors of GTC, the

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<sup>243</sup> See *Pencils from the PRC 2012-2013 AR* IDM at 5.

<sup>244</sup> Due the proprietary nature of these arguments, see Petitioner's Rebuttal Brief at 64 for more details.

<sup>245</sup> See "Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Separate Rate Determinations" dated concurrently with this memorandum (Final Separate Rate Memorandum).

parent company of GTCIE, as a member of the Expert Consultative Committee for the 12<sup>th</sup> Five-Year Plan of Guizhou Province is inconsequential to a separate rate determination for GTCIE in this investigation.

- There is no evidence that Guiyang SASAC has any influence on GTCIE's management selection. Thus, the conclusion that the government can exert control over GTCIE through its ownership of GTC is contrary to the facts on the record.
- GTCIE has been granted separate rate status in the administrative reviews of *OTR Tires from the PRC* based on the identical fact pattern and record.

*Petitioner's Comments:*

- Even though the SASAC is a minority owner of GTC, the record shows that the Guiyang SASAC directly controls GTC's management through its review of GTC's management actions and thus, demonstrates direct government control of GTCIE's 100 percent owner.
- The Department's separate rate analysis focuses on government control, and Guiyang SASAC's review of GTC's management is direct evidence of such control, as well as GTC's 100 percent ownership of GTCIE.
- GTCIE's references to prior determinations under *OTR Tires from the PRC* are immaterial because information showing that the Guiyang SASAC conducts annual reviews of GTC's management was not on those records.

**Department's Position:** The Department continues to find that GTCIE has not demonstrated the absence of *de facto* government control. As noted in GTCIE's SRA, GTC is 33.84 percent owned by SASAC-entity GIIC while the remaining 66.16 percent of the company is owned by various shareholders each owning less than five percent individually.<sup>246</sup> GIIC is the largest single shareholder and, therefore, has the largest block of influence of all the company's shareholders. Therefore the Department disagrees with GTCIE's assessment that the 33.84 percent SASAC-ownership block is insignificant and immaterial. As discussed further in the business proprietary version of the Final Separate Rate Memorandum, the nature of GTC's relationship with GTCIE (when considered in conjunction with the Guiyang SASAC influence over GTC's management) fails to rebut the presumption of government control.

While GTCIE was granted a separate rate in the *OTR Tires from the PRC* case, we note that information regarding the Guiyang SASAC reviews of GTC's management was not on the record of that proceeding and, thus, was not a factor in the Department's analysis of GTCIE's separate rate status in that case. In addition, we observe that the statute does not afford respondents any expectation that a finding from a prior segment will be upheld in a subsequent segment, much less an investigation involving a different product and different parties. Indeed, both the Court and the Department have previously stated that a prior separate rate determination is irrelevant to the decision on the current record.<sup>247</sup>

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<sup>246</sup> See GTCIE's SRA at 13 and Exhibit 6.

<sup>247</sup> See, e.g., *David* at 1361 (“{the respondent} had previously qualified for separate rate status, and subsequently lost it in this review, therefore {the respondent}'s previous rate is irrelevant in the instant case.”); see also *Brake Rotors from the PRC* 7<sup>th</sup> AR IDM at Comment 7 (a prior holding that a respondent was eligible for a separate rate did not impact the decision in the current review that it did not, as there were “‘even more indicia’ of government control” in this review than the prior).

With respect to GTCIE's arguments that the fact that Guiyang SASAC conducts an annual performance review of GTC's senior management to determine annual bonuses based on overall company performance is of no consequence to GTC's or GTCIE's actual selection of management, we note that in *Advanced Technology I*, the CIT stated that managers should be presumed "to be beholden to the board that controls their pay, in particular to the chairman of the board as the *de facto* company head under the PRC model," until proven otherwise.<sup>248</sup> Similarly, we find that as GTC is the controlling shareholder, it is the entity controlling GTCIE's board and management.

### **Comment 39: Double Coin's Separate Rate Status**

#### *Double Coin's Arguments:*

- The Department has denied Double Coin separate rate status eligibility without any evidence that Double Coin's export prices were influenced by "central government control."
- Assuming for purposes of argument, however, that the Department's determination that Double Coin's board of directors was effectively chosen by an agency of the Chinese government, this does not mean that the government exercised control over Double Coin's export activities, as required by the Department's *Policy Bulletin 05.1*.
- The majority ownership of Double Coin by Huayi, a Shanghai SASAC entity, does not mean that the government has control over Double Coin's operations.
- Double Coin is a publicly listed company; therefore, the laws and regulations governing publicly listed companies in the *PRC Code of Corporate Governance* and the *PRC Company Law* limit the rights of shareholders with a majority or controlling interest, and grant certain rights of supervision and control to minority shareholders.
- Double Coin's AOA inhibits Huayi's authority over the company's operations, and its minority shareholders have *bona fide* rights that limit Huayi's control over the company's operations.
- The Department should not confuse the right to appoint the members of the board with effectively exercising control over the board's actions, decisions and policies, as well as confusion over the scope of the board's duties since the board is not directly involved in the day-to-day operations of the company.
- According to Double Coin's AOA, more than a third of the members of the board shall be "independent directors" that are required to act "without the interference of the principal shareholders or the persons in actual control of, or other entities or individuals that have a material interest in Double Coin."
- The Department does not cite any examples in which Huayi or the GOC actually exercised its legal right to control or influence Double Coin's day-to-day business operations or export activities
- Information in the company's SRA demonstrates that all aspects of Double Coin's U.S. sales (e.g. price negotiation as well as finding and handling U.S. customers) were made by the U.S.-based personnel of Double Coin's sales subsidiary China Manufacturers' Alliance.

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<sup>248</sup> See *Advanced Technology I* at 1359. See also, *id.* at 1352 ("...the exclusion of 'day to day operations' from 'oversight' responsibility is a straw man.").

- According to the Department’s *Policy Bulletin 05.1*, the CIT decision in *Hontex*, and *Persulfates from the PRC*, the Department only grants separate rates when an exporter’s export activities are shown to be independent of government control.
- There is no basis for applying “facts available” or “adverse inferences” under the PRC-wide entity rate to Double Coin to determine its dumping margin, since Double Coin fully cooperated in this review.
- The Department is assessing the all-others rate of 87.99 percent for non-individually cooperative respondents to Double Coin based on its finding PRC government control, which is inconsistent with the underlying purpose of the antidumping law, which is to determine whether merchandise is being exported to and sold in the United States below normal value.

*Petitioner’s Rebuttal Comments:*

- Information on the record of this investigation and the Department’s final decision in *OTR Tires from the PRC 2012-2013 AR Final* demonstrates that Double Coin failed to rebut the presumption of government control of its operations because of the substantial intertwining between the boards and management of Double Coin and its fully state-owned majority shareholder, and the fact that board and management appointments are made by the Shanghai government.<sup>249</sup>
- Double Coin is inverting the burden of proof when it argues that the Department cannot cite an example of when Double Coin’s state-owned parent exercised control over the company’s operations when, as the Department noted in *OTR Tires from the PRC 2012-2013 AR Final*, it is up to the respondent to rebut the presumption of government control.<sup>250</sup>
- The Department determined in *OTR Tires from the PRC 2012-2013 AR Final* that “there is undeniable evidence that the 100 percent SASAC-owned majority-owner of Double Coin exerts considerable influence over the board of directors (and, thus, the management and operations of the company). . . .”<sup>251</sup>
- In *OTR Tires from the PRC 2012-2013 AR Final*, the Department rejected Double Coin’s arguments that its AOA prevents its majority SASAC owner from controlling its activities because management of a company should be presumed to be beholden to the board that controls their selection and pay. In Double Coin’s case, the board is controlled by its majority government-owned shareholder.<sup>252</sup>
- The Department also stated in *OTR Tires from the PRC 2012-2013 AR Final* that even if Double Coin demonstrated that its export prices are shielded from government control this would not be enough because export price is just one factor relevant to GOC control.<sup>253</sup>
- In *Advanced Technology II*, the CIT ruled that the argument that PRC law prevents government control of owned companies “is inadequate . . . and it lacks . . . common business sense.”<sup>254</sup>

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<sup>249</sup> See Petitioner’s Pre-Preliminary Determination Comments at 58.

<sup>250</sup> See *OTR Tires from the PRC 2012-2013 AR Final* IDM at 16.

<sup>251</sup> *Id.* at 18.

<sup>252</sup> *Id.* at 16-17.

<sup>253</sup> *Id.*

<sup>254</sup> See *Advanced Technology II* at 1353.

**Department’s Position:** We continue to find for this final determination that Double Coin has not demonstrated the absence of *de jure* or *de facto* government control over its operations. The Department notes that many of Double Coin’s arguments raised in the instant investigation are similar to ones that were dismissed by the CIT in the *Advanced Technology* litigation. For example, Double Coin claims that under *PRC Company Law*, Huayi cannot exercise control over Double Coin in general or over its export activities specifically. In rejecting those arguments, the Court found that the *PRC Company Law* as evidence rebutting the presumption of *de jure* control “is inadequate ... and it lacks ... common business sense.”<sup>255</sup> For Article 20 of the *PRC Company Law* in particular, the CIT stated that it “does not appear that this {article} may reasonably be construed to ‘limit’ the power of the state in the companies in which the state invests.”<sup>256</sup> Furthermore, the CIT addressed Articles 22-27 of the *PRC Code of Corporate Governance*, noting that these articles “reveal little to an inquiry into ‘governmental control’ in the running of a company including its export operations.”<sup>257</sup>

With respect to Double Coin’s arguments that its AOA make clear that managers control the day-to-day operations, the CIT addressed similar arguments made in the *Advanced Technology* litigation. Specifically, the court rejected arguments made by the respondent in that proceeding regarding its management and control of daily operations. The Court stated that managers should be presumed “to be beholden to the board that controls their pay, in particular to the chairman of the board as the *de facto* company head under the PRC model,” until proven otherwise.<sup>258</sup> Similarly, we find that as Huayi is the controlling shareholder, it is the entity controlling Double Coin’s board and management.

We also take issue with Double Coin’s contention that that the Department’s reliance on the idea of potential government control over the company’s operations should not be a standard. As noted in Double Coin’s SRA, Huayi holds 65.66 percent of its shares while the remaining shares are owned by stock market investors whose individual holdings are no more than one percent of the company.<sup>259</sup> Regardless of the restrictions of PRC law and the protections afforded to minority shareholders, Double Coin’s AOA demonstrates that a majority shareholder – and particularly one with 65.66 percent ownership – has near complete control over any shareholder decisions, including decisions which may affect the management and operations of the company.<sup>260</sup> Whether or not Huayi, as Double Coin’s majority shareholder, demonstrably exercised control over Double Coin’s day-to-day operations does not refute the fact that a government-owned entity has near complete control of shareholder decisions of Double Coin.

Double Coin asserts that minority shareholders indeed have *bona fide* rights pursuant to the company’s AOA. Double Coin’s assertions, however, do not demonstrate that it should be given separate rate status. The standard for determining such a status is that an NME exporter is presumed to be under government control until such a presumption is sufficiently rebutted. As

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<sup>255</sup> See *Advanced Technology I* at 1353.

<sup>256</sup> *Id.* at 1354.

<sup>257</sup> *Id.* at 1358.

<sup>258</sup> *Id.* at 1359. See also, *id.*, at 1352 (“...the exclusion of ‘day to day operations’ from ‘oversight’ responsibility is a straw man.”).

<sup>259</sup> See Double Coin’s SRA at 12.

<sup>260</sup> *Id.* at Exhibit 12.

such, the absence of evidence of control or other demonstrable action on behalf of a minority shareholder does nothing to rebut this presumption, nor does the existence of certain minority shareholder rights (such as the ability to bring suit against a board member or manager who acts against the interests of the company, and the right of minority shareholders to call a shareholder meeting) prove the absence of government control.<sup>261</sup> Moreover, Double Coin's general argument that the Department cannot cite a single example in which Huayi actually exercised its legal right to control or influence a day-to-day decision about the manner in which Double Coin sold subject merchandise to the United States is similarly unconvincing, as this also ignores the fact that the burden to rebut the presumption of government control is on the party seeking separate rate status.

Double Coin further argues that Huayi's control of Double Coin's board cannot be equated to control of Double Coin's export activity and that the PRC ownership structure has no effect on sales prices in the United States because the prices are set by Double Coin's U.S. affiliate, China Manufacturers' Alliance (CMA). We note that the respondent in the *Advanced Technology* litigation made similar arguments in that proceeding. The CIT rejected this line of reasoning in *Advanced Technology I*, stating that "the actual setting of price is only one of the four de facto factors described in *Policy Bulletin 05.1*, whereas governmental manipulation of the cost of inputs,... or rationalization of industry or output are among numerous other scenarios of concern that can affect seller pricing."<sup>262</sup> Similarly, we find that Double Coin's arguments regarding U.S. sales by CMA does not overcome the rebuttable presumption of government control.

As discussed under Comment 35, the Department is not assigning the PRC-wide rate to Double Coin as AFA, but is determining that Double Coin is a part of the NME entity to which an entity rate is assigned. The Department does not need to determine whether the 87.99 percent rate is reliable and relevant with respect to Double Coin; rather the PRC-wide rate must only be corroborated as to the PRC-wide entity.<sup>263</sup> As discussed above, the Department has corroborated the 87.99 percent PRC-wide entity rate.<sup>264</sup> The PRC-wide rate for non-cooperative respondents need not be corroborated relative to the commercial reality of companies qualifying for a separate rate.<sup>265</sup>

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<sup>261</sup> Moreover, it remains unclear whether these codified rights are actually exerted and, regardless, it is unclear how evidence demonstrating that minority shareholders routinely called meetings or brought suit against managers would plainly rebut the presumption of control on behalf of the majority state-owned shareholder. The example of minority rights referenced in Double Coin's Case Brief at 20-21, *i.e.*, the conflict of interest rule, (whereby any decision which contains a conflict of interest to Huayi would require the recusal of Huayi's voting shares) might be relevant, but Double Coin did not provide information indicating any such recusals, nor did it provide an explanation of how this recusal process actually works in practice.

<sup>262</sup> See *Advanced Technology I* at 1359-1360.

<sup>263</sup> See *Watanabe Group* at 9, note 8; see also *Peer Bearing Co. II at 1327* ("... there is no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company. It is not directly analogous to the process used in a market economy, where there is no countrywide rate. Here, the rate must be corroborated according to its reliability and relevance to the countrywide entity as a whole.")

<sup>264</sup> See Final Corroboration Memorandum.

<sup>265</sup> See *Shrimp from the PRC 2012-213 AR Final IDM* at Comment 1 ("Accordingly, we find that neither the age of the information used to corroborate the PRC-wide rate used in every segment of this proceeding, nor the fact that lower margins have been calculated for cooperative separate respondents, leads to the conclusion that the PRC-wide rate of 112.81 percent no longer has probative value and is not properly corroborated, a position that has been affirmed by the CIT"), citing *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, at 1347 (CIT 2005) (where the Court explicitly stated that "both this court and the Federal Circuit have determined that in

In conclusion, we continue to find that there is undeniable evidence that the 100 percent SASAC-owned majority-owner of Double Coin exerts considerable influence over the board of directors (and, thus, the management and operations of the company), and that the factual record does not provide sufficient information to rebut the presumption of government control. We note that Double Coin's arguments to the contrary are virtually identical to those made by respondents in other proceedings, which have been similarly rejected by the Department and the CIT. As a result, Double Coin is ineligible for a separate rate and is part of the PRC-wide entity pursuant to the Department's practice, as discussed above.

#### **Comment 40: Shaanxi's Separate Rate Status**

##### *Shaanxi's Comments:*

- The Department does not have the authority to apply a PRC-wide Rate.
- The PRC-wide entity rate is based on AFA and the Department has not established that adverse inferences are warranted for Shaanxi in accordance with the standards set in *Zhejiang DunAn* and section 776(b) of the Act. Especially considering that Shaanxi provided all of its company production and export information as requested by the Department.
- It appears that the Department is assigning Shaanxi the AFA/PRC-wide entity rate because it is part of group of entities, which includes the non-cooperating mandatory respondent Yongsheng, that failed to provide such information.
- The Department's preliminary determination regarding the meaning of government ownership is not supported in accordance with Chinese laws governing companies, publicly listed companies, or Shaanxi's actual operations.
- Shaanxi's status as a limited liability company means that in accordance with Articles 20-22 of the *PRC Company Law*, there are rules in place to limit the rights of majority shareholders, grant rights of supervision and control to minority shareholders, and disallows shareholders from participating in the company's day-to-day operations.
- The *PRC Company Law* also states that SOEs shall also have a board of directors that enjoys the same autonomy in hiring and dismissing management personnel as do boards in non-SOEs.
- Shaanxi's AOA states that shareholders, directors, and senior managers that act against the interest of the company are subject to legal actions in accordance with the *PRC Company Law* and that the most significant company decisions require the minority shareholders' approval.

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cases in which the respondent fails to provide Commerce with information necessary to calculate an accurate antidumping margin, 'it is within Commerce's discretion to presume that the highest prior margin reflects the current margins.')

and *Ad Hoc Shrimp Trade Action Comm. v. United States*, 992 F. Supp. 2d 1285 (CIT 2014) ("where (as here) the non-cooperating respondent is a NME countrywide entity - definitionally presumed to set prices without regard to market conditions - the actual pricing behavior of the cooperative respondents that have demonstrated eligibility for a separate rate (precisely because they have differentiated themselves from the countrywide entity) does not bear upon the credibility of dumping allegations against the NME countrywide entity in the way that the pricing behavior of cooperative market economy respondents reflects on the credibility of dumping allegations against their similarly-situated market participants").

- The parent company’s general statement of control over its member companies, as stated in the 2013 Short-Term Bond Fund Prospectus provided by Petitioner, cannot substitute for evidence of actual control over Shaanxi’s daily business operations.
- No directors or managers of SY Group or the other SASAC entities that are listed in Shaanxi’s organization chart participate in the selection of Shaanxi’s management.
- The SY Group’s prospectus states that with regard to budget control “the Company exerts *effective* control over the operations and production activities.” “Effective control” over a subsidiary is not the same as actual control over Shaanxi’s daily activities.
- According to Shaanxi’s organization chart, the company manages its own human resources functions.
- While the SY Group’s prospectus makes clear that its involvement, if any, in human resources is limited to upper level management, including general managers, Shaanxi appoints its own upper level management in accordance with its AOA.
- The Department’s conclusion that the nature of Shaanxi’s corporate organization gives SASAC the ability to exercise control over the company is premised upon an incorrect understanding of how Shaanxi is governed.
- The Department has not cited an example of when SASAC exercised a legal right to control or influence a day-to-day decision about the manner in which Shaanxi sold subject merchandise to the United States.
- Even if the Department’s preliminary determination regarding SASAC control over Shaanxi is correct, it does not mean that the PRC exercised control over the company’s export activities in accordance with *Policy Bulletin 05.1*.
- Information in the company’s SRA demonstrates that in all aspects of Shaanxi’s U.S. sales (*e.g.* price negotiation as well as finding and handling U.S. customers) there is no evidence of PRC control over the company’s export pricing.

*Petitioner’s Rebuttal Comments:*

- Shaanxi’s assertions that the Chinese government does not have the ability to control its operations or that it is isolated from the government should be rejected, because these arguments are similar to Double Coin’s argument in *OTR Tires from the PRC 2012-2013 AR Final* and have been rejected by the Department.
- Shaanxi’s argument that the record does not demonstrate government control should also be rejected, because the Department employs a presumption of state control and, it is Shaanxi that must affirmatively demonstrate that such control does not exist.
- In *Advanced Technology II*, the CIT ruled that the argument that PRC law prevents government control of owned companies “is inadequate ... and it lacks ... common business sense.”<sup>266</sup>

**Department’s Position:** We continue to find that Shaanxi has not demonstrated the absence of *de jure* and *de facto* control by the Chinese government in light of its ultimate ownership by a SASAC entity. As noted in the Preliminary Separate Rate Memorandum, the 2013 Short-Term Bond Fund Prospectus for Shaanxi’s ultimate parent, Shaanxi Yanchang Petroleum (Group) Co., Ltd. (a wholly-owned SASAC entity), states “{t}he Group exerts control over member companies’ assets and finance through appointments of key financial managers, financial

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<sup>266</sup> See *Advanced Technology II* at 1353.

management procedures, comprehensive budget control, capital management, management of capital raising, and so on.”<sup>267</sup> Shaanxi states in its case brief that this prospectus cannot substitute for evidence of actual control over Shaanxi’s daily business operations. However, the Department observes that Shaanxi never rebutted its parent company’s statement that it controls all of its member companies.

Shaanxi claims that under *PRC Company Law*, majority shareholders and SOEs cannot exercise control over its operations. However, the CIT has found that the *PRC Company Law* as evidence rebutting the presumption of *de jure* control “is inadequate ... and it lacks ... common business sense.”<sup>268</sup> For Article 20 of the *PRC Company Law* in particular, the CIT stated that it “does not appear that this {article} may reasonably be construed to ‘limit’ the power of the state in the companies in which the state invests.”<sup>269</sup>

With respect to Shaanxi’s arguments that its AOA states that shareholders, directors, and senior managers that act against the interest of the company are subject to legal actions in accordance with the *PRC Company Law*, the CIT addressed similar arguments made in the *Advanced Technology* litigation. Specifically, the court rejected arguments made by the respondent in that proceeding regarding its management and control of daily operations. The Court stated that managers should be presumed “to be beholden to the board that controls their pay, in particular to the chairman of the board as the *de facto* company head under the PRC model,” until proven otherwise.<sup>270</sup>

As discussed under Comment 35, the Department is not assigning the PRC-wide rate to Shaanxi as AFA, but is determining that Shaanxi is a part of the NME entity to which a country-wide entity rate is assigned. The Department does not need to determine whether the 87.99 percent rate is reliable and relevant with respect to Shaanxi; rather the PRC-wide rate must only be corroborated as to the PRC-wide entity.<sup>271</sup> As discussed above, the Department has corroborated the 87.99 percent PRC-wide entity rate at the preliminary determination and this remains unchanged for this final determination.<sup>272</sup> The PRC-wide rate for non-cooperative respondents need not be corroborated relative to the commercial reality of companies qualifying for a separate rate.<sup>273</sup>

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<sup>267</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China-Petitioner’s Submission of Factual Information in Response to Certain Separate Rate Applications Filed on September 17, 2014,” at Exhibit 13 (October 1, 2014); see also Petitioner’s November 25, 2014 SRA Comments at 16 where Petitioner notes that the same bond prospectus included in its October 1, 2014 filing states “{t}he prospectus states that Shaanxi Yangchang (Group) retains control of the budget for “...all the subsidiaries...” and “...develop{s} concrete goals for each subsidiary.”

<sup>268</sup> See *Advanced Technology I* at 1353.

<sup>269</sup> *Id.* at 1354.

<sup>270</sup> *Id.* at 1359. See also, *id.*, at 1352 (“...the exclusion of ‘day to day operations’ from ‘oversight’ responsibility is a straw man.”).

<sup>271</sup> See *Watanabe Group* at 9, note 8; see also *Peer Bearing Co. II* at 1327 (“... there is no requirement that the PRC-wide entity rate based on AFA relate specifically to the individual company. It is not directly analogous to the process used in a market economy, where there is no countrywide rate. Here, the rate must be corroborated according to its reliability and relevance to the countrywide entity as a whole.”)

<sup>272</sup> See *AD Preliminary Determination PDM* at 27-28.

<sup>273</sup> See *Shrimp From the PRC 2012-2013 AR Final IDM* at Comment 1 (“Accordingly, we find that neither the age of the information used to corroborate the PRC-wide rate used in every segment of this proceeding, nor the fact that

## Comment 41: Sichuan Tyre's Separate Rate Status

### *Sichuan Tyre's Comments:*

- The company is ultimately, but not directly, majority owned by the Yibin City SASAC.
- Sichuan Tyre is insulated from SASAC control through two levels of intermediate ownership.
- In accordance with the *PRC Company Law*, neither SASAC nor the intermediate owner has any shareholder rights in Sichuan Tyre.
- The *PRC Company Law* stipulates that the SASAC authorities nominate persons for the position of directors, supervisors and senior management “in accordance with the articles of association of the companies” and that if the SASAC authorities interfere in the production and operation activities of its Funded Enterprises, the responsible individual will be subject to criminal penalties.
- The regulations governing SASAC entities provides that the government shall “rigorously implement the law and regulation of State-owned assets so as to separate the public administration function of government from that of investors of State-owned assets” and “maintain the separation of government and enterprise and implement the separation of ownership and right of operation.”
- In accordance with *Sparklers from the PRC* and *Silicon Carbide from the PRC*, the Department is supposed to fully consider the controlling law and regulations governing the operations of the SASAC entity when determining the absence of *de facto* and *de jure* government control.
- Information in Sichuan Tyre's SRA and supplemental SRA questionnaire response (such as its business license and sales documentation) demonstrates the absence of *de facto* and *de jure* control over the company's operations.
- Neither the Yibin City SASAC nor the intermediate owner had any role in the selection of Sichuan Tyre's board of directors, board of supervisors, or management.
- Although there are shared board members and senior management among Sichuan Tyre and some of its shareholders, none of the board members, supervisor members or senior management of these companies holds any positions with the Yibin City SASAC or the immediate owner.

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lower margins have been calculated for cooperative separate respondents, leads to the conclusion that the PRC-wide rate of 112.81 percent no longer has probative value and is not properly corroborated, a position that has been affirmed by the CIT”), citing *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, at 1347 (CIT 2005) (where the Court explicitly stated that “both this court and the Federal Circuit have determined that in cases in which the respondent fails to provide Commerce with information necessary to calculate an accurate antidumping margin, ‘it is within Commerce's discretion to presume that the highest prior margin reflects the current margins.’”) and *Ad Hoc Shrimp Trade Action Comm. v. United States*, 992 F. Supp. 2d 1285 (CIT 2014) (“where (as here) the non-cooperating respondent is a NME countrywide entity - definitionally presumed to set prices without regard to market conditions - the actual pricing behavior of the cooperative respondents that have demonstrated eligibility for a separate rate (precisely because they have differentiated themselves from the countrywide entity) does not bear upon the credibility of dumping allegations against the NME countrywide entity in the way that the pricing behavior of cooperative market economy respondents reflects on the credibility of dumping allegations against their similarly-situated market participants”).

- There is no indication in the case record that that any director, supervisor, manager or employee of Sichuan Tyre is a member of the Communist Party, through whom the Party exerts control over the company's export operations.
- Even though the term "party" is mentioned in Sichuan Tyre's AOA, these references cannot be interpreted to mean that there is Communist Party operational control over Sichuan Tyre's export operations.
- Article 48 of Sichuan Tyre's AOA provides that three supervisors are elected by the shareholders and one by the worker's committee. Given that the Yibin City SASAC is not a shareholder of Sichuan Tyre, it therefore has no role in the election of any supervisors.
- The role of the Board of Supervisors is to "exercise its oversight role" over the board of directors and senior management. Thus even if the Yibin City SASAC had the authority to appoint supervisors, the oversight role of such supervisors does not confer operational control of Sichuan Tyre's export activities to SASAC.
- The Yibin City SASAC is not a direct shareholder of Sichuan Tyre and thus is not involved in any activities and responsibilities entrusted to shareholders (such as determining the company's operational guidelines and investment plans; electing and replacing directors and supervisors; representing the shareholders; considering and approving annual budgets; considering and approving company profit distribution plans; and to adopting resolutions relating to other major issues of the company) in accordance with Article 19 of the company's AOA.
- The AOA specifically prohibits directors and management to be employed by a government agency.

*Petitioner's Rebuttal Comments:*

- The fact that the Yibin City SASAC is not a direct shareholder does not isolate Sichuan Tyre from control by the Yibin City SASAC. The Department has recognized that direct or indirect majority ownership by government provides control over a company's operations.
- The Interim Regulations governing SASACs grants the Yibin City SASAC the authority to appoint and remove those in management positions of SOEs, and conflicts with the contention that these regulations demonstrate that the Yibin City SASAC does not interfere with or influence the company's operations. Thus, the regulation does not establish the absence of government control.

**Department's Position:** We continue to find that Sichuan Tyre has not established the absence of *de jure* or *de facto* control due to the fact that its ultimate majority shareholder is the Yibin City SASAC. Certain information regarding Sichuan Tyre's ownership is business proprietary; therefore, a complete discussion of its SRA status is provided in a separate memorandum.<sup>274</sup> The Department notes that many of Sichuan Tyre's arguments raised in the instant investigation are similar to ones that were dismissed by the CIT in the *Advanced Technology* litigation. For example, Sichuan Tyre claims that under *PRC Company Law*, the Yibin City SASAC cannot exercise control over its operations. In rejecting those arguments, the Court found that the *PRC Company Law* as evidence rebutting the presumption of *de jure* control "is inadequate ... and it

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<sup>274</sup> See Final Separate Rate Memorandum.

lacks ... common business sense.” For Article 20 of the *PRC Company Law* in particular, the CIT stated that it “does not appear that this {article} may reasonably be construed to ‘limit’ the power of the state in the companies in which the state invests.”

With respect to Sichuan Tyre’s arguments that its AOA makes clear that managers control the day-to-day operations, the CIT addressed similar arguments made in the *Advanced Technology* litigation. Specifically, the court rejected arguments made by the respondent in that proceeding regarding its management and control of daily when it stated that managers should be presumed “to be beholden to the board that controls their pay, in particular to the chairman of the board as the *de facto* company head under the PRC model,” until proven otherwise.<sup>275</sup> Similarly, we find that as the Yibin City SASAC is the ultimate shareholder, it is the entity controlling Sichuan Tyre’s board and management.

#### **Comment 42: Zhongce’s Separate Rate Status**

##### *Zhongce’s Comments:*

- The documentation submitted by Zhongce in its SRA (such as its business license and registration as well as its sales documentation) demonstrated the *de facto* and *de jure* absence of government control over its operations.
- The Department’s reliance on *Diamond Sawblades from the PRC* in its preliminary decision to deny Zhongce a separate rate is improper because, unlike that case, none of Zhongce’s board members are government officials nor is there any government involvement in the selection of Zhongce’s board members.
- According to *Jiangsu Jiasheng, Qingdao Taifa Grp. Co. I*, and *Diamond Sawblades from the PRC*, the potential for government control and the fact that a particular director was appointed by a company that was indirectly owned by the government are not dispositive of government control.
- The Department has previously found an absence of government control for companies that exhibited far more direct level of state ownership than the observed in Zhongce’s case.<sup>276</sup>

##### *Petitioner’s Rebuttal Comments:*

- Contrary to Zhongce’s arguments, evidence on the record shows that Zhongce is controlled by the government.
- Zhongce’s arguments that the principles endorsed in *Diamond Sawblades* are not applicable overlooks what the court actually said; that managers are considered “to be beholden to the board that controls their pay, in particular to the chairman of the board as the *de facto* company head under the PRC model” until proven otherwise. Zhongce has failed to rebut the presumption of government control, and is therefore ineligible for a separate rate.

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<sup>275</sup> See *Advanced Technology I* at 1359. See also, *id* at 1352 (“...the exclusion of ‘day to day operations’ from ‘oversight’ responsibility is a straw man.”).

<sup>276</sup> See, e.g., *Pencils from the PRC Final Determination*, *Hot-Rolled Steel from the PRC Final Determination*, *AD Steel Pipe from the PRC II Final Determination*, *Carbon Steel Plate from the PRC 2007-2008 AR*, and *Solar Cells I from the PRC Final Determination*.

**Department’s Position:** We continue to find that Zhongce has not rebutted the presumption of *de jure* and *de facto* control due to the ultimate government ownership of the company. Certain information regarding Zhongce’s ownership is business proprietary; therefore, a complete discussion of its SRA status is provided in a separate memorandum.<sup>277</sup>

With respect to Zhongce’s arguments that the information it placed on the record of this investigation makes clear that managers control the day-to-day operations, the CIT addressed similar arguments made in the *Advanced Technology* litigation. Specifically, the court rejected arguments made by the respondent in that proceeding regarding its management and control of daily operations. We note that in that case, the CIT stated that managers should be presumed “to be beholden to the board that controls their pay, in particular to the chairman of the board as the *de facto* company head under the PRC model,” until proven otherwise.<sup>278</sup> Similarly, we find that as government entities are the ultimate shareholders, it is these entities that control Zhongce’s board and management.

We also take issue with Zhongce’s contention that that the Department should not rely on the idea of potential government control over a company’s operations when conducting its separate rate analysis. Regardless of the restrictions listed in the *PRC Company Law* and Zhongce’s AOA, information on the record indicates that government entities have significant influence over the company’s decisions and operations.<sup>279</sup>

#### **Comment 43: Anchi’s Separate Rate Status**

##### *Anchi’s and API’s Comments:*

- The supplemental questionnaire issued to Anchi by the Department did not request proof price negotiation documentation.
- Anchi provided price negotiation documents in its initial SRA response demonstrating that the company exported the subject tires to United States-based customer America Pacific Industries.
- The Department erred in not granting Anchi its own separate rate.
- Anchi provided the requested price negotiation documents.
- The amount of government ownership in Anchi is *de minimis* and has no effect on the company’s operation.

##### *Petitioner’s Comments:*

- Anchi did not provide complete translated versions of its capital verification report, consolidated financial statement, or AOA for one of its shareholders, Rubber Industry as requested by the Department.
- Anchi’s separate rate status should not be denied for the reasons identified in the *AD Preliminary Determination*; however, the Department should continue to deny Anchi separate rate status because Anchi did not fully respond to the Department’s request for

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<sup>277</sup> See Final Separate Rate Memorandum.

<sup>278</sup> See *Advanced Technology I* at 1359. See also, *id* at 1352 (“...the exclusion of ‘day to day operations’ from ‘oversight’ responsibility is a straw man.”).

<sup>279</sup> See Zhongce SRA at 10, 14, 17, Exhibit 11, and Exhibit 15.

information regarding the government ownership of its intermediate and ultimate shareholders.

- These deficient responses by Anchi demonstrate that it has failed to establish its eligibility for separate rate status.

*Anchi's and API's Rebuttal Comments:*

- Anchi explained in its supplemental SRA questionnaire response that Rubber Industry decided late in the process to provide its information and thus Anchi did not have time to have the information fully translated.
- Anchi did not address Rubber Industry's GOC ownership or its relationship with the GOC because Rubber Industry only owns 1.66 percent of Anchi.
- Based on the definition of affiliated parties in section 771(33) of the Act, specifically the section defining an affiliate as any person owning five percent or more of shares, Rubber Industry's 1.66 percent shares are insignificant and thus information regarding its government ownership is not relevant.
- The Department did not express any concerns regarding Rubber Industry's government ownership in its preliminary decision to deny Anchi a separate rate.

**Department's Position:** In the preliminary determination, we stated that Anchi did not provide proof of price negotiations with its U.S. customer but instead provided an affidavit from another U.S.-based company. However, as Anchi noted in its case brief, it submitted the requested documentation in a filing which covered responses from multiple separate rate applicants. Our analysis of Anchi's SRA and supplemental SRA response indicates that Anchi has, in fact, filed the requisite documentation for our separate rate analysis. In addition, our analysis of information submitted by Anchi shows that it has demonstrated that it is eligible for a separate rate. While Anchi did not provide Rubber Industry's capital verification report and only partially translated its AOA and financial statement, we find that information on the record indicates that Rubber Industry only owns 1.66 percent of Anchi (the remaining 98.34 percent shares are held by two companies that are owned by private individuals).<sup>280</sup> Moreover, there is no indication in Anchi's AOA that Rubber Industry can exercise control over Anchi's operations as a minority shareholder. Therefore, for the final determination, we determine that Anchi has demonstrated an absence of both *de jure* and *de facto* government control over its export activities.

**Comment 44: America Business' Separate Rate Status**

*America Business' Comments:*

- Contrary to the Department's preliminary finding, America Business' sales documentation is connected based on information in the purchase order and the sales contract which reflects the same exact sale, the same parties, the same 17 items, the same sizes, the same load index, the same pattern numbers, the same quantity, the same prices, and the same total value.
- In addition, the invoice and the sales contract contain the same listed number which in turn can be linked to the payment documentation.

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<sup>280</sup> See Anchi's SRA at 8-10.

- In its SRA and supplemental SRA, America Business certified that its bank notices referenced the same subject sales transaction and that the payment information corresponds to the invoice.
- America Business provided a certification explaining why its bank notices were illegible by attesting that these bank copies represent the “maximum effort to obtain and submit the most complete and legible photocopies of the documents possible” and “due to the humid climate, the moisture had made the paper more and more illegible over time.” Therefore, in accordance with *SNR Roulements* and 19 CFR 351.401(g)(3), the Department “must consider the records maintained by the party in question in the ordinary course of business.”
- The discrepancy between the date of the purchase order and the commercial invoice should not matter because pursuant to the ruling in *Hornos* and 19 CFR 351.401(i), the Department will normally employ the invoice date as the date of sale for the subject merchandise at issue.
- Additionally, because this was a partial shipment transaction, as contractually agreed to in the sales agreement, the actual sale of the subject merchandise is on the commercial invoice. This is because the commercial invoice is the only document containing the contractual terms for this sale and shipment.
- The commercial invoice lists a date within the POI.
- America Business provided the full email chain, with translations, that now completely demonstrate the independent negotiations between seller America Business and the U.S. customer.
- America Business’ owner has no relationship with any level of the GOC, its agencies, or any PRC state asset management company.
- America Business demonstrated the lack of *de facto* government control, by providing the following sales documentation: 1) commercial invoice; 2) purchase order; 3) sales contract; 4) price negotiation emails; 5) proof of payment; 6) price list; 7) bill of materials; and 8) packing list. Each one of these documents link to another and together, they demonstrate that America Business independently negotiated a POI sale to an unaffiliated U.S. customer.

*Petitioner’s Rebuttal Comments*

- Contrary to its argument, America Business has not provided documentation demonstrating independent price negotiations with an unaffiliated U.S. customer and thus has not demonstrated its eligibility for a separate rate.

**Department’s Position:** Further review of America Business’ SRA and supplemental SRA response shows that America Business has not demonstrated an absence of *de jure* government control over its export activities. Therefore, the Department continues to find that America Business is not eligible for separate rate status for this final determination. Due to the business proprietary nature of America Business’ company information and Petitioner comments, please see the Final Separate Rate Memorandum for further discussion of America Business’ separate status.

#### **Comment 45: Highpoint's and Jiangxi's Separate Rate Status**

##### *Highpoint's/Jiangxi's Comments:*

- The Department's supplemental SRA questionnaire did not articulate or explain that separate and complete applications were required from each company in order for the Department to make a separate rate determination.
- There is sufficient information on the record to demonstrate that Highpoint and Jiangxi are foreign-owned enterprises and thus qualify for a separate rate.
- The Department misunderstood that both Highpoint and Jiangxi were listed in the SRA not as individual applicants but to assist the Department for the purposes of determining the combination rate for both companies.
- The Department did not conduct a complete *de jure* and *de facto* analysis of Highpoint and Jiangxi, as established in *Sparklers from the PRC* and *Silicon Carbide from the PRC*, prior to denying a timely-filed separate rate application.
- The Department denied Highpoint and Jiangxi separate rate status even though Petitioner did not cite any deficiencies in its SRA.

**Department's Position:** Further review of Highpoint's SRA shows that it is a wholly foreign-owned company and thus is eligible for a separate rate<sup>281</sup>. Therefore, for the final determination, we determine that Highpoint has demonstrated an absence of both *de jure* and *de facto* government control over its export activities and are granting it a separate rate.

#### **Comment 46: Jinhaoyang's Separate Rate Status**

##### *Jinhaoyang's Comments:*

- The information provided by Jinhaoyang in its SRA (such as its business license, export license, ownership information, financial statements, and price negotiation documentation) demonstrated the absence of *de facto* and *de jure* government control over the company's operations.
- Jinhaoyang timely provided all of the information requested by the Department and thus fully cooperated.
- Even though the sales invoices provided by Jinhaoyang were only samples, it never was, and never was intended to be, a documentation of all of Jinhaoyang's export quantity. As noted in *Artisan Manufacturing*, the Department uses SRAs to identify the absence of government control while Q&V data is used to select mandatory respondents.
- The Department's decision to deny Jinhaoyang an SRA because it's application did not have information for a sale of in-scope merchandise during the POI would be understandable if the company did not have any export sales at all during the POI; however, Jinhaoyang's Q&V response shows that the company had exports of subject merchandise to the United States during this period.
- The Department's request for revised in-scope sales information was ambiguous regarding what sales are covered and when contacted for clarification, a Department official stated that Jinhaoyang did not have to reply to the request.

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<sup>281</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).

- Petitioner did not identify Jinhaoyang as one of the many companies that did not have an in-scope sale during the POI in its SRA deficiency comments.
- Jinhaoyang eventually submitted documentation of an in-scope sale after the deadline established by the Department.
- In accordance with *Martino S.p.A.* the purpose of applying adverse inferences is to give respondents an incentive to cooperate and not to assess punitive margins.
- In *Artisan Manufacturing*, the CIT held that the Department’s application of adverse inferences constituted an abuse of discretion because the respondent’s failure to provide information was minor; the acceptance of the late filing would not interfere with the Department’s ability to conduct its investigation; and the application of adverse inferences to the respondent would be “particularly severe.”
- Based on the facts of the CIT ruling in *Artisan Manufacturing* it would be unreasonable for the Department to refuse to accept Jinhaoyang’s supplemental submission and to deny separate rate treatment to Jinhaoyang based on Jinhaoyang’s late submission.
- Petitioner was erroneous in its February 10, 2015, filing to cite to the court rulings in *Peer Bearing Co. I and II* and *PSC VSMPO–AVISMA* as well as the Department’s findings in *Honey from the PRC* as precedent for the Department to not accept a late filing because the circumstances in all of those cases are different from Jinhaoyang’s circumstances for submitting its late filing in the instant investigation.

*Petitioner’s Rebuttal Comments:*

- Jinhaoyang has not addressed the reason why the Department did not grant it separate rate status, *i.e.*, because Jinhaoyang submitted sales documentation for non-subject merchandise.
- Jinhaoyang’s assertion that the Q&V information on the record supports the claim that it exported subject merchandise is incorrect. The quantity and value data was submitted before the Department modified the scope and does not demonstrate that Jinhaoyang exported subject merchandise.
- The argument that the Department should accept Jinhaoyang’s untimely filed supplemental separate rate application should be rejected because Jinhaoyang has not demonstrated extraordinary circumstances that warrant the acceptance of its untimely filed information, in accordance with *Peer Bearing Co. I and II*, *PSC VSMPO–AVISMA*, and *Honey from the PRC*.

**Department’s Position:** Jinhaoyang did not timely submit sales documentation for subject merchandise despite having four opportunities to do so. First, the Department’s SRA states that “...to be considered for separate-rate treatment, the applicant must have a relevant U.S. sale of subject merchandise...”<sup>282</sup> Jinhaoyang did not provide documentation of a sale of in-scope merchandise. Second, on September 30, 2014, Petitioner filed comments in response to Jinhaoyang’s SRA questioning whether Jinhaoyang’s sale to the United States (referenced in its SRA) was in scope.<sup>283</sup> Jinhaoyang did not respond to these comments. Third, Petitioner referred to its September 30 2014 filing in its November 25 2014, submission regarding SRA

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<sup>282</sup> See SRA at 2.

<sup>283</sup> See Letter from Petitioner, “Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China—Petitioner’s Deficiency Comments Regarding Qingdao Jinhaoyang’s Separate Rate Application” (September 30, 2014).

deficiencies.<sup>284</sup> Jinhaoyang did not respond to these comments. Finally the Department issued a general questionnaire to all SRA respondents giving them an opportunity to submit sales documentation for an in-scope sale if the documentation they initially submitted in their SRA was no longer in-scope in accordance with the amended scope language.<sup>285</sup> The Department's supplemental questionnaire gave the SRA respondents until December 5, 2014 to respond. Jinhaoyang did not respond to the Department's request for updated sales information.

Although Jinhaoyang alleges that it spoke with a Department official, and it was told that it did not need to reply, the Department does not have any record of such communication. Irrespective of this allegation, Jinhaoyang is aware that all information must be submitted in writing, in proper form, by the deadlines provided in order to be considered by the Department.<sup>286</sup> Thus, it was Jinhaoyang's responsibility to determine whether it had submitted sales documentation for subject merchandise. In addition, it was also Jinhaoyang's responsibility to monitor ACCESS for comments raised by Petitioner and the Department which included comments on the issue of whether Jinhaoyang's sale was in scope and to rebut those comments in the proper manner. We have not considered Jinhaoyang's untimely February 4, 2015, supplemental filing of an in-scope sale and have removed it from the record of the instant investigation.<sup>287</sup> Therefore, we continue to find that Jinhaoyang does not qualify for a separate rate because there is no information on the record indicating that it had a qualifying in-scope sale of subject merchandise to the United States during the POI.

#### **Comment 47: Au-Shine's Separate Rate Status**

##### *Petitioner's Comments:*

- The Department should reverse its preliminary decision to grant Au-Shine separate rate status because it has not properly documented why it is eligible for a separate rate.

*Au-Shine did not rebut Petitioner's comments.*

**Department's Position:** Further analysis of Au-Shine's SRA reveals that the company did not submit sufficient documentation to qualify for separate rate status. Please refer to the Final Separate Rate Memorandum for a complete BPI discussion of Petitioner's arguments and the Department's position.

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<sup>284</sup> See Letter from Petitioner, "Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Petitioner's Deficiency Comments Regarding Separate Rate Applications" (November 25, 2014) at 2

<sup>285</sup> See Memorandum to Thomas Gilgunn, Program Manager, "Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China" (November 28, 2014).

<sup>286</sup> See 19 CFR 351.302(d).

<sup>287</sup> See Letter to Qingdao Jinhaoyang International Co., Ltd. "Re: Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Rejection of New Factual Information" (June 11, 2014).

## Comment 48: Fuyingxiang's Separate Rate Status

### *Fuyingxiang's Comments:*

- Fuyingxiang's counsel monitored ACCESS for submissions but did not learn of the SRA supplemental questionnaire issued to it until the *AD Preliminary Determination*.
- Petitioner did not submit any comments regarding deficiencies in Fuyingxiang's SRA; therefore, it was not expecting a supplemental questionnaire from the Department.
- The Department only served Fuyingxiang its supplemental SRA questionnaire via ACCESS and not via U.S. mail which is a ministerial error on the part of the Department.
- Fuyingxiang's initial SRA contains ample evidence of independent price negotiations and thus its qualifications for separate rate status.
- In accordance with court rulings in *Chaparral Steel Company, Knitwear, PSC VSMPO–AVISMA, Heimerich & Payne*, and *Grobest*, antidumping laws are intended to be remedial rather than punitive.

### *Petitioner's Comments and Rebuttal Comments:*

- Fuyingxiang failed to respond to both of the Department's supplemental questionnaires and thus failed to provide information demonstrating the lack of *de facto* government control.
- Fuyingxiang's argument regarding not receiving the Department's supplemental questionnaires via U.S. mail is invalid because the Department has stated that parties and their representatives are responsible for obtaining documents from ACCESS.
- There was no evidence in Fuyingxiang's SRA that it made a sale of subject merchandise during the POI or of any independent price negotiations, and therefore it is not eligible for a separate rate.
- Fuyingxiang failed to respond to two supplemental questionnaires. The burden is on the applicant to overcome the presumption of government control and, where this burden is not met, it is appropriate to deny separate rate status.
- Fuyingxiang's submission of a sales contract and purchase order in its SRA is insufficient to demonstrate independent price negotiations and, therefore, its application should be denied.

**Department's Position:** Fuyingxiang failed to respond to both of the Department's supplemental questionnaires. Without the information requested in these supplemental questionnaires, we are unable to fully examine or determine whether Fuyingxiang demonstrated the absence of *de jure* and/or *de facto* governmental control over its operations. As such, we continue to deny Fuyingxiang a separate rate. With respect to Fuyingxiang's argument that the Department's service of its supplemental questionnaire via ACCESS instead of U.S. mail was a ministerial error, we note Fuyingxiang made an entry of appearance in this case on August 1, 2014.<sup>288</sup> As noted in the ACCESS Handbook, all interested parties on the public service list of a case are sent email digests which constitute official notice to an interested party or its representative that a document is available in ACCESS and that it is a part of the official record of the proceeding.<sup>289</sup> We note that neither Fuyingxiang nor its representative have argued that it is not on the public service list or that it did not receive an email digest from ACCESS covering

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<sup>288</sup> See Letter from Fuyingxiang, "Passenger Vehicle and Light Truck Tires from the People's Republic of China: Entry of Appearance and Administrative Protective Order Application" (August 1, 2014).

<sup>289</sup> See the ACCESS Handbook on Electronic Filing Procedures at 19-20 (March 27, 2015).

each of the Department's supplemental questionnaires on the date they were issued. Finally, the Department ceased mailing all documents (e.g. BPI, public, and public versions) to parties after we fully implemented Release 3 of ACCESS in April of 2014.<sup>290</sup>

#### **Comment 49: Changfeng's Separate Rate Status**

##### *Changfeng's Comments:*

- Changfeng demonstrated in its initial SRA that there was absence of both *de facto* and *de jure* government control of the company.
- In its supplemental SRA questionnaire response, the company fully explained that it and Shandong Hengfeng do not have any common shareholders, although several of the shareholders are siblings and that the two companies are separate entities with separate production facilities.
- Nothing on the record regarding Changfeng's and Shandong Hengfeng's relationship indicates that Changfeng is ineligible for a separate rate.
- Contrary to the Department's assertion in the Preliminary Separate Rate Memorandum, Petitioner never made any references to Shandong Hengfeng in its comments regarding Changfeng's sales documentation nor does Changfeng's sales documentation in its SRA mention Shandong Hengfeng.
- Changfeng cooperated fully with the Department and provided all of the required sales documentation and therefore is not deserving of an AFA rate.

##### *Petitioner's Rebuttal Comments:*

- Changfeng has failed to provide sufficient clarity on its relationship with Hengfeng and, therefore, the Department should continue to deny Changfeng separate rate status.

**Department Position:** Further review of Changfeng's SRA and supplemental SRA indicates that Changfeng and Hengfeng are separate entities and that Changfeng is the only entity that requested a separate rate for the subject tires it manufactures and exports to the United States. Moreover, our analysis indicates that Changfeng has demonstrated an absence of both *de jure* and *de facto* government control over its export activities. Therefore, the Department has granted Changfeng a separate rate for this final determination. Due to the business proprietary nature of certain information regarding Changfeng's application, please see the Final Separate Rate Memorandum for the discussion of the Department's position.

#### **Comment 50: Fengyuan's Separate Rate Status**

##### *Petitioner's Comments:*

- The Department should reverse its preliminary decision to grant Fengyuan a separate rate because it has failed to provide the Department with full information on all of its intermediate and ultimate shareholders which prevents the Department from determining the extent to which the government may have ownership in the company. Therefore, the company failed to establish the absence of *de jure* or *de facto* control.

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<sup>290</sup> See Letter from the Department "Re: Discontinuation of Courtesy Copies of E&C Documents" (April 23 2014) [https://access.trade.gov/help/Announcement\\_Cessation\\_of\\_Courtesy\\_Copies.pdf](https://access.trade.gov/help/Announcement_Cessation_of_Courtesy_Copies.pdf).

*Fengyuan did not rebut Petitioner's Comments.*

**Department's Position:** The Department agrees with Petitioner and will not grant Fengyuan a separate rate for this final determination. Due to the business proprietary nature of Petitioner's arguments and Fengyuan's information, please see the Final Separate Rate Memorandum for further discussion of Fengyuan's separate rate status.

#### **Comment 51: Longkou's Separate Rate Status**

*Petitioner's Comments:*

- The Department should reverse its preliminary decision to grant Longkou a separate rate because Longkou has not provided appropriate documentation of independent price negotiations and thus has not demonstrated its eligibility for separate rate status.

*Longkou's Rebuttal Comments:*

- Contrary to Petitioner's argument, Longkou provided sales documentation for a sale to a U.S. customer.
- Even though Longkou made its sale to an offshore trading company, the company knew that the sale was destined for the United States.
- The trading company wanted to avoid direct contact between Longkou and the ultimate U.S. customer to protect the privacy of all parties involved.
- Based on the information on the record, Longkou should still qualify as a separate rate company.

**Department's Position:** The Department assigns separate rates only to exporters that have demonstrated their independence from *de jure* and *de facto* control by an NME government. Longkou's SRA and supplemental SRAs do not support the company's claim that it exported the sale at issue to the United States. Rather the sales documentation provided by Longkou indicates that it sold the tires at issue to a trading company who then sold the tires to a U.S. customer. There is no information on the record which shows that Longkou negotiated with or made a sale to an unaffiliated customer in the United States. Moreover, information on the record directly contradicts Longkou's belated claim it sold the tires at issue to an "offshore trading company." Therefore, based on the information provided by Longkou, the Department will not grant it a separate rate for this final determination.

#### **Comment 52: Permanent's Separate Rate Status**

*Petitioner's Comments:*

- The Department should reverse its preliminary decision to grant Permanent a separate rate because it has not provided the documents necessary to demonstrate independent price negotiations and thus has not demonstrated its eligibility for separate rate status.

*Permanent's Rebuttal Comments:*

- Permanent provided updated sales documentation for an in-scope sale in response to the Department's general supplemental questionnaire regarding initial SRAs based on the sale of non-subject tires.
- Permanent's situation is similar to Longkou's in that it made its U.S. sale through an offshore trading company and did not have a direct sale to the U.S. customer.

**Department's Position:** The Department assigns separate rates only to exporters that have demonstrated their independence from *de jure* and *de facto* control by an NME government. Permanent's SRA and supplemental SRAs do not support the company's claim that it exported the sale at issue to the United States. Rather the sales documentation provided by Permanent indicates that it sold the tires at issue to a trading company who then sold the tires to a U.S. customer. There is no information on the record which shows that Permanent negotiated with or made a sale to an unaffiliated customer in the United States. Moreover, information on the record directly contradicts Permanent's belated claim it sold the tires at issue to an "offshore trading company." Therefore, based on the information provided by Permanent, the Department will not grant it a separate rate for this final determination.

**Comment 53: Fullrun's Separate Rate Status**

*Fullrun's Comments:*

- Fullrun's initial and supplemental SRAs clearly demonstrate the absence of *de facto* and *de jure* government control.
- The Department did not itemize or examine any deficiencies in Fullrun's SRA regarding its independent price negotiation authority.
- The Department's decision to give Fullrun an AFA/PRC-wide entity rate is contrary to the law considering that the company cooperated fully and that the Department never gave it a chance to correct any deficiencies.

*Petitioner did not rebut Fullrun's comments.*

**Department's Position:** We preliminarily denied Fullrun a separate rate because the proof of payment documentation was illegible and the price negotiation documentation did not appear to be for the same sale for which it was using as the basis of its separate rate application.<sup>291</sup> Fullrun re-submitted in its case brief a legible copy of the same bank notice it provided in its supplemental SRA response as proof of receipt of payment.<sup>292</sup> Upon re-examining Fullrun's SRA and supplemental SRA response (in conjunction with the clarification in its case brief regarding the price negotiation documents provided in its SRA and supplemental SRA), the Department will grant Fullrun separate rate status for this final determination because the company has demonstrated an absence of both *de jure* and *de facto* government control over its export activities.

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<sup>291</sup> See Preliminary Separate Rate Memorandum at 6.

<sup>292</sup> See Fullrun Supplemental SRA at Exhibit 4 and Fullrun Case Brief at Exhibit 1. The Department notes that from a close examination of the documents provided in the aforementioned exhibits that they are indeed the same and thus is not a submission of new factual information by Fullrun.

## Comment 54: Qingda's Separate Rate Status

### *Qingda's Comments:*

- The Department failed to serve its supplemental SRA questionnaire to Qingda via U.S. mail.
- Qingda overlooked the posting of the supplemental SRA questionnaire on ACCESS; however, the company should be given the opportunity to correct this oversight.
- Even without the supplemental questionnaire response, Qingda placed enough evidence on the record in its original SRA detailing its qualifications for separate rate status.
- In accordance with court rulings in *Chaparral Steel Company, Knitwear, PSC VSMPO–AVISMA, Heimerich & Payne*, and *Grobst*, antidumping laws are intended to be remedial rather than punitive.

### *Petitioner's Comments:*

- Qingda failed to respond to both of the Department's supplemental questionnaires issued to them by the Department; therefore, they did not meet the burden necessary to demonstrate a lack of *de facto* control.
- Qingda's argument regarding not receiving the Department's supplemental questionnaires via U.S. mail is invalid because the Department has relied on serving parties through the ACCESS system since May 2014.
- Without information on a U.S. export sale of in scope merchandise and sufficient documentation, the Department cannot make a determination as to whether Qingda sold subject merchandise free of government control.

**Department's Position:** Qingda failed to respond to both of the Department's supplemental questionnaires. Without the information requested in these supplemental questionnaires, we are unable to fully examine or determine whether Qingda demonstrated the absence of *de jure* and/or *de facto* governmental control over its operations. As such, we continue to deny Qingda a separate rate. Finally, with respect to Qingda's argument that the Department's service of its supplemental questionnaire via ACCESS instead of U.S. mail was a ministerial error, we note Qingda made an entry of appearance in this case on August 6, 2014.<sup>293</sup> As noted in the ACCESS Handbook, all interested parties on the public service list of a case are sent email digests which constitute official notice to an interested party or its representative that a document is available in ACCESS.<sup>294</sup> We note that neither Qingda nor its representative have argued that it is not on the public service list or that it did not receive an email digest from ACCESS covering each of the Department's supplemental questionnaires on the date they were issued. Finally, the Department ceased mailing all documents (*e.g.* BPI, public, and public versions) to party's after we fully implemented Release 3 of ACCESS in April of 2014.<sup>295</sup>

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<sup>293</sup> See Letter from Qingda, "Re: Passenger Vehicle and Light Truck Tirs from the People's Republic of China: Entry of Appearance and Administrative Protective Order" (August 6, 2014)

<sup>294</sup> See the ACCESS Handbook on Electronic Filing Procedures at 19-20 (March 27, 2015).

<sup>295</sup> See Letter from the Department Re: Discontinuation of Courtesy Copies of E&C Documents (April 23 2014) [https://access.trade.gov/help/Announcement\\_Cessation\\_of\\_Courtesy\\_Copies.pdf](https://access.trade.gov/help/Announcement_Cessation_of_Courtesy_Copies.pdf).

## VIII. RECOMMENDATION

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

✓  
Agree

\_\_\_\_\_  
Disagree

Paul Piquado  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

11 JUNE 2015  
Date

## APPENDIX

### I. ACRONYM AND ABBREVIATION TABLE

<b>Acronym/Abbreviation</b>	<b>Full Name or Term</b>
AD	Antidumping Duty
AFA	Adverse Facts Available
AOA	Articles of Association
B&H	Brokerage and handling
BPI	Business proprietary information
CAFC	Court of Appeals for the Federal Circuit
CBP	U.S. Customs and Border Protection
CCT	Cooper Chengshan (Shandong) Tire Co., Ltd.
CEP	Constructed Export Price
CFR	Code of Federal Regulations
CIT	Court of International Trade
CKT	Cooper (Kunshan) Tire Co., Ltd.
Cooper	CTRC, CKT, and CCT (collectively)
CPI	Consumer Price Index
CTRC	Cooper Tire & Rubber Company
CVD	Countervailing Duty
Department	Department of Commerce
Dynamic	Dynamic Tire Corp.
EP	Export Price
FIE	Foreign Invested Enterprise
FOP	Factors of Production
FTZ	Foreign Trade Zone
GITI Anhui Radial	GITI Radial Tire (Anhui) Company Ltd.
GITI companies	GTT, GITI USA, GITI Anhui Radial, GITI Fujian, and GITI Hualin (collectively)
GITI Fujian	GITI Tire (Fujian) Company Ltd.
GITI Hualin	GITI Tire (Hualin) Company Ltd.
GITI USA	GITI Tire (USA) Ltd.
GNI	Gross National Income
GOC	Government of The People's Republic of China
GTT	Giti Tire Global Trading Pte. Ltd.
Husky	Husky Tire Corp.
IDM	Issues and Decision Memorandum
ILO	International Labor Organization
Jinyu HK	Jinyu International Holding Co., Limited
LTAR	Less than adequate remuneration
LTFV	Less than fair value
ME	Market Economy
MEP	Market Economy Purchase
NME	Non-Market Economy

NSO	National Statistical Office of Thailand
NV	Normal Value
PDM	Preliminary Decision Memorandum
Petitioner	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC
POI	Period of Investigation
POR	Period of Review
PRC	The People's Republic of China
Q&V	Quantity and Value
RVIA	Recreation Vehicle Industry Association
Sailun BVI	Sailun Tire International Corp.
Sailun China	Sailun Group Co., Ltd.
Sailun Group	Sailun China, Sailun BVI, Shandong Jinyu, Jinyu HK, Seatex, Dynamic, Husky, and Seatex Singapore (collectively)
SASAC	State-Owned Assets Supervision and Administration Commission
Seatex	Seatex International Inc.
SG&A	Sales and General & Administrative
Shandong Jinyu	Shandong Jinyu Industrial Co., Ltd.
SOE	State-Owned Enterprise
SRA	Separate Rate Application or Applicant
ST	Specialty Trailer
SV	Surrogate Value
Tredit	Tredit Tire and Wheel Company, Inc.
VAT	Value Added Tax
WTO	World Trade Organization
Yearbook	Tire and Rim Association Year Book
Yongsheng	Shandong Yongsheng Rubber Group Co., Ltd.

## II. LITIGATION TABLE

Short Cite	Cases
<i>Advanced Technology I</i>	<i>Advanced Technology &amp; Materials Co., Ltd., et al. v. United States</i> , 885 F. Supp. 2d 1343 (CIT 2012)
<i>Advanced Technology II</i>	<i>Advanced Technology &amp; Materials Co., Ltd., et al. v. United States</i> , 938 F. Supp. 2d 1342 (CIT 2013)
<i>Allegheny</i>	<i>Allegheny Bradford Corp. v. United States</i> , 342 F. Supp. 2d 1172 (2004)
<i>Artisan Manufacturing</i>	<i>Artisan Manufacturing Corp. and Shenzen Kehuaxing Industrial Ltd. v. United States</i> , 978 F. Supp. 1334 (CIT 2014)
<i>Brake Drum &amp; Rotor Mfrs.</i>	<i>The Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers v. United States</i> , 44 F.Supp.2d 229 (CIT 1999)
<i>Changzhou Wujin</i>	<i>Changzhou Wujin Fine Chem.Factory Co., Ltd. v. United States</i> , 701 F.3d 1367 (CAFC 2012)
<i>Chaparral Steel Company</i>	<i>Chaparral Steel Company v. United States</i> , 901 F.2d 1097 (CAFC April 17, 1990)
<i>Elkay Mfg. Co.</i>	<i>Elkay Mfg. Co. v. United States</i> , No. 13-00176, Slip Op. 14-150 (CIT 2014)
<i>Georgetown Steel</i>	<i>Georgetown Steel Corp. v. United States</i> , 801 F.2d 1308 (CAFC 1986)
<i>Grobest</i>	<i>Grobest &amp; I-Mei Indus. (Vietnam) Co. v. United States</i> , 815 F. Supp. 2d 1342
<i>Heimerich &amp; Payne</i>	<i>Heimerich &amp; Payne v. United States</i> , 24 F.Supp. 2d 304 (1998)
<i>Hontex</i>	<i>Hontex Enters. Inc. v. United States</i> , 248 F. Supp. 2d 1323 (CIT 2003)
<i>Hornos</i>	<i>Hornos Electricos de Venezuela v. United States</i> , 27 CIT 1522 (2003)
<i>Jiangsu Changbao</i>	<i>Jiangsu Changbao Steel Tube Co., Ltd. v. United States</i> , 884 F. Supp.2d 1295 (CIT 2012)
<i>Jiangsu Jiasheng</i>	<i>Jiangsu Jiasheng Photovoltaic Tech. Co., Ltd. v. United States</i> , 28 F. Supp. 3d 1317 (CIT 2014)
<i>Knitwear</i>	<i>Knitwear &amp; Sportswear Association v. United States</i> , 15 CIT 548, 779 F. Supp. 1364 (1991))
<i>Martino S.p.A.</i>	<i>F. Ili De Cecco di Filippo Fara S. Martino S.p.A. v. United States</i> , 216 F.3d 1027 (Fed. Cir. 2000)
<i>Michaels Stores, Inc. CAFC</i>	<i>Michaels Stores, Inc. v. United States</i> , 766 F.3d 1388 (CAFC 2014)
<i>Michaels Stores, Inc. CIT</i>	<i>Michaels Stores, Inc. v. United States</i> , 931 F. Supp. 2d 1308 (CIT 2013)
<i>Motor Vehicle Mfrs. Ass'n of U.S., Inc.</i>	<i>Motor Vehicle Manufacturers Association of U.S., Inc. v. State Farm Mutual Automobile Insurance Co.</i> , 463 U.S. 29, 48 (1983)
<i>Peer Bearing Co. I</i>	<i>Peer Bearing Co. – Changshan v. United States</i> , 298 F. Supp. 2d 1328 (CIT 2003)
<i>Peer Bearing Co. II</i>	<i>Peer Bearing Company – Changshan v. United States</i> , 587 F. Supp.2d 1319 (CIT 2008)

<i>PSC VSMPO–AVISMA</i>	<i>PSC VSMPO–AVISMA Corp. v. United States</i> 688 F.3d 751 (CAFC 2012)
<i>Qingdao Taifa Grp. Co. I</i>	<i>Qingdao Taifa Group Co. v. United States</i> , 637 F. Supp. 2d 1231(CIT 2009)
<i>Qingdao Taifa Grp. Co. II</i>	<i>Qingdao Taifa Grp. Co. v. United States</i> , 760 F. Supp. 2d 1379 (CIT 2010)
<i>Rhone Poulenc Inc.</i>	<i>Rhone Poulenc, Inc. v. United States</i> , 899 F. 2d 1185 (CAFC 1990)
<i>Sigma Corp.</i>	<i>Sigma Corp. v. United States</i> , 117 F.3d 1401 (CAFC 1997)
<i>SKF USA Inc.</i>	<i>SKF USA Inc. v. United States</i> , 263 F.3d 1369 (CAFC 2001)
<i>SNR Roulements</i>	<i>SNR Roulements v. United States</i> , 341 F.Supp.2d 1334 (CIT 2004)
<i>Transcom Inc.</i>	<i>Transcom Inc. v. United States</i> , 182 F.3d 876 (CAFC 1999)
<i>Transcom Inc. II</i>	<i>Transcom Inc. v. United States</i> , 294 F.3d 1371 (CAFC 2002)
<i>Watanabe Group</i>	<i>Watanabe Group v. United States</i> , 2010 Ct. Intl. Trade LEXIS 144; Court No. 09-00520, slip op 2010-139
<i>Wheatland Tube Co.</i>	<i>Wheatland Tube Co. v. United States</i> , 26 F. Supp. 3d 1372 (CIT 2014)
<i>Wheatland Tube Co. Remand</i>	<i>Final Remand Redetermination Pursuant to Court Remand, Wheatland Tube Co. v. United States</i> , Consol. Court No. 12-00298, Slip. Op. 14-137 (CIT 2014)
<i>Zhejiang DunAn</i>	<i>Zhejiang DunAn Hetian Metal Co. v. United States</i> , 652 F.3d 1331, 1346 (CAFC 2011)

### III. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Note: if “certain” is in the title of the case, it has been excluded from the title listing.

<b>Short Cite</b>	<b>Administrative Case Determinations</b>
<i>AD Amended Preliminary Determination</i>	<i>Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Amended Affirmative Preliminary Determination, 80 FR 15987 (March 26, 2015)</i>
<i>AD Preliminary Determination</i>	<i>Passenger Vehicle and Light Truck Tires From the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Affirmative Determination of Critical Circumstances; In Part and Postponement of Final Determination, 80 FR 4250 (January 27, 2015)</i>
<i>AD Steel Pipe from the PRC Final Determination</i>	<i>Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China, Final Determination of Sales at Less Than Fair Value and Critical Circumstances Determination, 73 FR 31970 (June 5, 2008)</i>
<i>AD Steel Pipe from the PRC II Final Determination</i>	<i>Certain Circular Welded Carbon Quality Steel Line Pipe from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009)</i>
<i>AD Wheels from the PRC Final Determination</i>	<i>Steel Wheels From the People’s Republic of China: Notice of Final Determination of Sales at Less Than Fair Value and Partial Affirmative Final Determination of Critical Circumstances, 77 FR 17021 (March 23, 2012)</i>
<i>Bar from Mexico Final Determination</i>	<i>Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014)</i>
<i>Brake Rotors from the PRC 7<sup>th</sup> AR</i>	<i>Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review, 70 FR 69937 (November 18, 2005)</i>
<i>Brightening Agents from the PRC Final Determination</i>	<i>Stilbenic Optical Brightening Agents From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 77 FR 17436 (March 26, 2012)</i>
<i>Carbon from the PRC 2010-2011 AR</i>	<i>Activated Carbon From the People’s Republic of China; 2010-2011; Final Results of Antidumping Duty Administrative Review, 77 FR 67337 (November 9, 2012)</i>
<i>Carbon from the PRC Preliminary Determination</i>	<i>Preliminary Determination of Sales at less Than Fair Value and Postponement of Final Determination: Certain Activated Carbon From the People’s Republic of China, 71 FR 59721 (October 11, 2006)</i>
<i>Carbon Steel Plate from the PRC 2007-2008 AR</i>	<i>Cut-to-Length Carbon Steel Plate From the People’s Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Duty Order, 75 FR 8301 (February 24, 2010)</i>
<i>Chloro Isos from the PRC 2012-2013 AR</i>	<i>Chlorinated Isocyanurates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 43391 (July 25, 2014)</i>
<i>Coated Free Sheet Paper from the PRC Final Determination</i>	<i>Coated Free Sheet Paper from the People’s Republic of China, Final Determination of Sales at Less Than Fair Value, 72 FR 60632 (October 25, 2007)</i>
<i>Coated Paper from the PRC Final Determination</i>	<i>Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 59217 (September 20, 2010)</i>

<i>Concrete Steel from the PRC Final Determination</i>	<i>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)</i>
<i>Crawfish from the PRC 2012-2013 AR Final</i>	<i>Freshwater Crawfish Tail Meat From the People's Republic of China, 79 FR 75535 (December 18, 2014)</i>
<i>Crawfish from the PRC 2012-2013 AR Prelim</i>	<i>Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review; 2012-2013, 79 FR 60134 (October 6, 2014)</i>
<i>CVD Amended Preliminary Determination</i>	<i>Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Amended Affirmative Preliminary Determination, 79 FR 78398 (December 30, 2014)</i>
<i>CVD Final Determination</i>	<i>Passenger Vehicle and Light Truck Tires From the People's Republic of China, Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination (June 11, 2015)</i>
<i>CVD Preliminary Determination</i>	<i>Passenger Vehicle and Light Truck Tires From the People's Republic of China, Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, and Alignment of Final Determination with Final Antidumping Determination, 79 FR 71093 (December 1, 2014)</i>
<i>Diamond Sawblades from the PRC 2011-2012 AR</i>	<i>Diamond Sawblades and Parts Thereof From the People's Republic of China, 79 FR 35723 (June 24, 2014)</i>
<i>Diamond Sawblades from the PRC Final Determination</i>	<i>Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China, 71 FR 29303 (May 22, 2006)</i>
<i>Drill Pipe from the PRC</i>	<i>Drill Pipe From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Critical Circumstances, 76 FR 1966 (January 11, 2011)</i>
<i>Folding Tables and Chairs from the PRC 2007-2008 AR</i>	<i>Folding Metal Tables and Chairs from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 68568 (December 28, 2009)</i>
<i>Furfuryl Alcohol from the PRC Final Determination</i>	<i>Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China, 60 FR 22544 (May 8, 1995)</i>
<i>Galvanized Steel from the PRC Final Determination</i>	<i>Galvanized Steel Wire From the People's Republic of China, Final LTFV Determination, 77 FR 17430 (March 26, 2012)</i>
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<i>Hand Trucks from the PRC 2008-2009 AR</i>	<i>Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results and Final Rescission in Part, of Antidumping Duty Administrative Review, 2008-2009 Administrative Review, 76 FR 36083 (June 21, 2011)</i>
<i>Hand Trucks from the PRC 2010-2011 AR</i>	<i>Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 28801 (May 16, 2013)</i>

<i>Hand Trucks from the PRC 2011-2012 AR</i>	<i>Hand Trucks and Certain Parts Thereof from the People's Republic of China, 79 FR 44008 (July 29, 2014)</i>
<i>Honey from the PRC 2002-2003 AR</i>	<i>Honey From the People's Republic of China: Preliminary Results, Partial Rescission, and Extension of Final Results of Second Antidumping Duty Administrative Review, 69 FR 77184 (December 27, 2004)</i>
<i>Hot-Rolled Steel from the PRC Final Determination</i>	<i>Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 49632 (September 28, 2001)</i>
<i>Lumber from Canada Final Determination</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products From Canada, 67 FR 15539 (April 2, 2002)</i>
<i>Magnesium Metal from the PRC Final Determination</i>	<i>Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Magnesium Metal From the People's Republic of China, 70 FR 9037 (February 24, 2005)</i>
<i>Nails from the PRC 2010-2011 AR</i>	<i>Steel Nails From the People's Republic of China; Final Results of Third Antidumping Duty Administrative Review; 2010-2011, 78 FR 16651 (March 18, 2013)</i>
<i>Nails from the PRC 2012-2013 AR</i>	<i>Steel Nails from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 18816 (April 8, 2015)</i>
<i>OCTG from the PRC 2010-2011 AR</i>	<i>Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 74644 (December 17, 2012)</i>
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<i>Orange Juice from Brazil Final Determination</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Certain Orange Juice from Brazil, 71 FR 2183 (January 13, 2006)</i>
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<i>OTR Tires from the PRC 2011-2012 NSR</i>	<i>New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2011-2012, 78 FR 33341 (June 4, 2013)</i>
<i>OTR Tires from the PRC 2012-2013 AR Final</i>	<i>New Pneumatic Off-the-Road Tires from the People's Republic of China, Final Results 2012-2013 Antidumping Duty Administrative Review, 80 FR 20197 (April 15, 2015)</i>
<i>OTR Tires from the PRC 2012-2013 AR Prelim</i>	<i>New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 61291 (October 10, 2014)</i>
<i>OTR Tires from the PRC Final Determination</i>	<i>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)</i>

<i>Pencils from the PRC 2012-2013 AR</i>	<i>Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2012-2013, 79 FR 78795 (December 31, 2014)</i>
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<i>PET Film from the PRC 2011-2012 AR</i>	<i>Polyethylene Terephthalate Film, Sheet, and Strip From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012, 79 FR 37715 (July 2, 2014)</i>
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<i>Roller Bearings from the PRC 2010-2011 AR Final</i>	<i>Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 3396 (January 16, 2013)</i>
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<i>Shrimp from India Final Determination</i>	<i>Notice of Final Determination of Sales at Less Than Fair Value and Negative Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From India, 69 FR 76916 (December 23, 2004)</i>

<i>Shrimp from India Preliminary Determination</i>	<i>Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from India, 69 FR 47111 (August 4, 2004)</i>
<i>Shrimp from Indonesia</i>	<i>Certain Frozen Warmwater Shrimp From the Republic of Indonesia: Final Negative Countervailing Duty Determination, 78 FR 50383 (August 19, 2013)</i>
<i>Shrimp from Thailand</i>	<i>Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination, 78 FR 50379 (August 19, 2013)</i>
<i>Shrimp from the PRC 6<sup>th</sup> AR</i>	<i>Frozen Warmwater Shrimp From the People's Republic of China: Final Results, Partial Rescission of Sixth Antidumping Duty Administrative Review and Determination Not To Revoke in Part, 77 FR 53856 (September 4, 2012)</i>
<i>Shrimp from the PRC 2012-2013 AR Final</i>	<i>Frozen Warmwater Shrimp From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 57872 (September 26, 2014)</i>
<i>Shrimp from Vietnam 2012-2013 AR</i>	<i>Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review, 2012-2013, 79 FR 57047 (September 24, 2014)</i>
<i>Silica Bricks from the PRC Final Determination</i>	<i>Silica Bricks and Shapes From the People's Republic of China, Final Determination Sales at Less Than Fair Value, 78 FR 70918 (November 27, 2013)</i>
<i>Silicon Carbide from the PRC</i>	<i>Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994)</i>
<i>Silicon Metal From Russia Preliminary Determination</i>	<i>Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Silicon Metal From the Russian Federation, 67 FR 59253 (September 20, 2002)</i>
<i>Silicon Metal from the PRC 2008-2009 AR</i>	<i>Silicon Metal From the People's Republic of China: Final Results and Partial Rescission of the 2008-2009 Administrative Review of the Antidumping Duty Order, 76 FR 3084 (January 19, 2011)</i>
<i>Sinks from the PRC Draft Remand Redetermination</i>	<i>Final Results of Redetermination Pursuant to Court Remand in Elkay Mfg. Co. v. United States, Ct. No. 13-00176, Slip Op. 15-330 (April 20, 2015)</i> <a href="http://www.cit.uscourts.gov/SlipOpinions/index.html">http://www.cit.uscourts.gov/SlipOpinions/index.html</a>
<i>Sinks from the PRC Final Determination</i>	<i>Drawn Stainless Steel Sinks from the People's Republic of China: Investigation, Final Determination, 78 FR 13019 (February 26, 2013)</i>
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<i>Solar Cells I from the PRC Final Determination</i>	<i>Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, and Affirmative Final Determination of Critical Circumstances, in Part, 77 FR 63791 (October 17, 2012)</i>
<i>Solar Products from the PRC Final Determination</i>	<i>Crystalline Silicon Photovoltaic Products From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 79 FR 76970 (December 23, 2014)</i>
<i>Solar Products from the PRC Preliminary Determination</i>	<i>Crystalline Silicon Photovoltaic Products From the People's Republic of China: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 79 FR 44399 (July 31, 2014)</i>

<i>Sparklers from the PRC Final Determination</i>	<i>Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China, 56 FR 20588 (May 6, 1991)</i>
<i>Steel Flat Products from Korea</i>	<i>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)</i>
<i>Steel Grating from the PRC Final Determination</i>	<i>Steel Grating from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 75 FR 32366 (June 8, 2010)</i>
<i>Steel Threaded Rod from India</i>	<i>Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances, 79 FR 40712 (July 14, 2014);</i>
<i>Tetrafluoroethane from the PRC Final Determination</i>	<i>1,1,1,2-Tetrafluoroethane from the People's Republic of China: Final Determination of Sales at Less Than Fair Value Antidumping Duty Investigation, 79 FR 62597 (October 20, 2014)</i>
<i>TV Receivers from the PRC Final Determination</i>	<i>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)</i>
<i>Valves from the PRC 2008-2010 AR Final</i>	<i>Frontseating Service Valves From the People's Republic of China: Final Results of Antidumping Duty Administrative Review of the Antidumping Duty Order, 2008-2010, 76 FR 70706 (November 15, 2011)</i>
<i>Valves from the PRC 2012-2013 AR</i>	<i>Frontseating Service Valves From the People's Republic of China, 79 FR 71385 (December 2, 2014)</i>
<i>Valves from the PRC Final Determination</i>	<i>Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances, 74 FR 10886 (March 13, 2009)</i>
<i>Washers from Korea</i>	<i>Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination, 77 FR 75975 (December 26, 2012)</i>
<i>Washers from the PRC 2012-2013 AR Final</i>	<i>Helical Spring Lock Washers From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 FR 13833 (March 17, 2015)</i>
<i>Washers from the PRC 2012-2013 AR Prelim</i>	<i>Helical Spring Lock Washers From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 66356 (November 7, 2014)</i>
<i>Wind Towers from the PRC Final Determination</i>	<i>Utility Scale Wind Towers From the People's Republic of China, Final Determination of Sales at Less Than Fair Value, 77 FR 75992 (December 26, 2012)</i>
<i>Wire Hangers from the PRC 2009-2010 AR</i>	<i>Steel Wire Garment Hangers From the People's Republic of China: Final Results and Final Partial Rescission of Second Antidumping Duty Administrative Review, 77 FR 12553 (March 1, 2012)</i>
<i>Wire Hangers from the PRC 2011-2012 AR</i>	<i>Steel Wire Garment Hangers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Review, 2011-2012, 79 FR 31298 (June 2, 2014)</i>
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<i>Wire Rod from Japan Final Determination</i>	<i>Final Determination of Sales at Less Than Fair Value: Certain Carbon Alloy Wire Rod from Japan, 59 FR 5987 (February 9, 1994)</i>

<i>Wood Flooring from the PRC 2012-2013 AR</i>	<i>Multilayered Wood Flooring from the People's Republic of China, 80 FR 1388 (January 9, 2015)</i>
<i>Wood Flooring from the PRC Final Determination</i>	<i>Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 Fed. Reg. 64318 (October 18, 2011)</i>
<i>Wooden Bedroom Furniture from the PRC 2009 AR</i>	<i>Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 2009, 76 FR 49729 (August 11, 2011)</i>
<i>Wooden Bedroom Furniture from the PRC 2013 NSR</i>	<i>Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013, 80 FR 7576 (February 11, 2015)</i>

**IV. NON-IDM MEMORANDA AND OTHER SHORT-CITED EXHIBITS/DOCUMENTS**

<b>Short Cite</b>	<b>Full Name</b>
America Business Case Brief	America Business Co., Ltd., Certain Passenger Vehicle And Light Truck Tires from the People’s Republic of China: Case Brief (April 10, 2015)
API Case Brief	American Pacific Industries, Inc., Certain Passenger Vehicle and Light Truck Tires from China; AD Case A-570-016; Case Brief on Non-scope Issues (April 9, 2015)
API Rebuttal Brief	American Pacific Industries, Inc., Certain Passenger Vehicle and Light Truck Tires from China; AD Case A-570-016; Rebuttal Case Brief on Non-scope Issues (April 20, 2015)
Carlisle Scope Brief	Carlisle (Meizhou) Rubber Products Co. Ltd., Certain Passenger Vehicle and Light Truck Tires from China Case Brief re Scope - CTP Specialty Trailer Tire Models (April 6, 2015)
Changfeng Case Brief	Shandong Changfeng Tyres Co. Ltd., Certain Passenger Vehicle and Light Truck Tires from China: Case Brief (April 9, 2015)
Cooper Case Brief	Case Brief of Respondents Cooper Tire & Rubber Company, Cooper (Kunshan) Tire Co., Ltd., and Cooper Chengshan (Shandong) Tire Co., Ltd. (April 10, 2015)
Cooper Rebuttal Brief	Rebuttal Brief of Respondents Cooper Tire & Rubber Company, Cooper (Kunshan) Tire Co., Ltd., and Cooper Chengshan (Shandong) Tire Co., Ltd. (April 20, 2015)
Crown Rebuttal Brief	Qingdao Crown Chemical Co., Ltd. (“Crown Chemical”) and Crown International Corporation (“CIC”) Passenger Vehicle and Light Truck Tires from the People's Republic of China; Submission of Rebuttal Brief (April 20, 2015)
Double Coin Case Brief	Double Coin Holdings and China Manufacturers Alliance, Case Brief of Double Coin Holdings and China Manufacturers Alliance Passenger Vehicle and Light Trucks from China (April 10, 2015)
Final Double Remedies Calculation Memorandum	Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Double Remedies Final Calculation Memorandum (June 11, 2015)
Final Separate Rate Memorandum	Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Separate Rate Determinations (June 11, 2015)
Final Surrogate Value Memorandum	Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Final Surrogate Value Memorandum (June 11, 2015)
Fullrun Case Brief	Qingdao Fullrun Tyre Corp., Ltd, Certain Passenger Vehicle and Light Truck Tires From the People’s Republic of China: Qingdao Fullrun Tyre Corp. Ltd.- Administrative Case Brief (April 10, 2015)
Fuyingxiang Case Brief	Qingdao Fuyingxiang Imp. & Exp. Co. Ltd., Certain Passenger Vehicle and Light Truck Tires from China: Case Brief (April 10, 2015);
GITI 1st Supplemental SCQR	Passenger Vehicle and Light Truck Tires from the People’s Republic of China: 1st Supplemental Section C Questionnaire Response, Part II - Giti Tire Global Trading Pte. Ltd. (December 8, 2014)
GITI 1st Supplemental SDQR	Passenger Vehicle and Light Truck Tires from the People’s Republic of China: 1st Supplemental Questionnaire Response, Part I - Giti Tire Global Trading Pte. Ltd.” (December 1, 2014)

GITI 2nd Supplemental SDQR	Passenger Vehicle and Light Truck Tires from the People’s Republic of China: 2 <sup>nd</sup> Supplemental Section D Questionnaire Response - Giti Tire Global Trading Pte. Ltd. (December 31, 2014)
GITI Case Brief	Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Case Brief-Giti Tire Global Trading Pte. Ltd. (April 10, 2015)
GITI CEP Verification Report	Verification Report of U.S. Sales of Giti Tire (USA) Ltd. in the Antidumping Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China (March 27, 2015)
GITI Companies Final Analysis Memorandum	Final Analysis Memorandum for GITI Tire Global Trading Pte. Ltd. (June 11, 2015)
GITI Rebuttal Brief	Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Re-Submission Rebuttal Brief-Giti Tire Global Trading Pte. Ltd. (April 23, 2015)
GITI SAQR	Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Section A Questionnaire Response - Giti Tire Global Trading Pte. Ltd.,” (October 2, 2014)
GITI SCQR	Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Section C Questionnaire Response - Giti Tire Global Trading Pte. Ltd. (October 27, 2014)
GITI SDQR	Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Section D Questionnaire Response - Giti Tire Global Trading Pte. Ltd. (October 27, 2014)
GITI Supplemental SACQR	Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Supplemental Sections A and C Questionnaire Response - Giti Tire Global Trading Pte. Ltd.” (December 31, 2014)
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Highpoint/Federal Rebuttal Brief	Rebuttal Brief: Highpoint Trading, Ltd and Federal Tire (Jiangxi), Ltd, Certain Passenger Vehicle and Light Truck Tires/rom China
ITG/Yongsheng Case Brief	ITG Voma Corporation and Shandong Yongsheng Rubber Group Co., Ltd., Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Case Brief of ITG Voma Corp. and Shandong Yongsheng Rubber Group Co., Ltd. (April 10, 2015)
Jinhaoyang Case Brief	Qingdao Jinhaoyang International Co., Ltd., Case Brief of Qingdao Jinhaoyang International Co., Ltd. Passenger Vehicle and Light Trucks from China (April 10, 2015)

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RVIA Scope Rebuttal Brief	Passenger Vehicle and Light Truck Tires from the People’s Republic of China: Rebuttal Brief of the Recreation Vehicle Industry Association (April 13, 2015)
Sailun Group 1st Supplemental SCDQR-1	Sailun Supplemental Sections C&D Questionnaire Responses (In Part) in the Antidumping Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People’s Republic of China (January 9, 2015)
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Sailun Group Case Brief	Sailun Direct Case Brief in the Antidumping Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (April 10, 2015)
Sailun Group CEP Verification Report	Verification of the U.S. Sales Responses of Sailun Group Co., Ltd., in the Antidumping Duty Investigation of Passenger Vehicle and Light Truck Tires from the People's Republic of China (March 30, 2015)
Sailun Group Final Analysis Memorandum	Final Analysis Memorandum for the Sailun Group (June 11, 2015)
Sailun Group Rebuttal Brief	Sailun Rebuttal Brief in the Antidumping Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (April 20, 2015)
Sailun Group SAQR-1	Sailun China Response to Questions 3. A, 3.C and 3. D of Section A Questionnaire in the Antidumping Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (October 20, 2014)
Sailun Group SAQR-2	Sailun Section A Questionnaire Response in the Antidumping Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (November 13, 2014)
Sailun Group SCDQR	Sailun Sections C&D Responses in the Antidumping Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (December 2, 2014)
Sailun Group Verification Report	Verification of the Sales and Factors Response of Sailun Group Co., Ltd., Sailun Tire International Corp., Shandong Jinyu Industrial Co., Ltd., Jinyu International Holding Co., Limited, Seatex International Inc., Dynamic Tire Corp., Husky Tire Corp., and Seatex PTE. Ltd. in the Antidumping Investigation of Passenger Vehicle and Light Truck Tires from the People's Republic of China" (March 20, 2015)
Sailun Group's 1st Supplemental SAQR	Sailun Supplemental Section A Questionnaire Response in the Antidumping Duty Investigation on Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (December 29, 2014)
Scope Clarification Memorandum	Scope Clarification in the Antidumping Duty and Countervailing Duty Investigations of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China," (November 21, 2014)
Shaanxi Case Brief	Shaanxi Yanchang Petroleum Group Rubber Co., Ltd., Case Brief of Shaanxi Yanchang Petroleum Group Rubber Co., Ltd. Passenger Vehicle and Light Trucks from China (April 10, 2015)
Shandong Anchi Case Brief	Shandong Anchi Tyres Co., Ltd., Passenger Vehicle and Light Truck Tires from P. R. China: Brief of Preliminary Separate Rate Determinations (January 28, 2015)
Shandong Anchi <i>et al</i> Rebuttal Brief	Shandong Anchi Tyres Co., Ltd. ("Anchi"), Longkou Xinglong Tyre Co., Ltd. ("Longkou Xinglong"), Liaoning Permanent Tyre Co., Ltd. ("Permanent"), Rebuttal Case Brief (April 16, 2015)
Shandong Anchi March 23 <sup>rd</sup> Case Brief	Shandong Anchi Tyres Co., Ltd., Passenger Vehicle and Light Truck Tires from P. R. China: Brief of Preliminary Separate Rate Determinations (March 23, 2015)
Sichuan and Kenda Case Brief	Sichuan Tyre and Rubber Co. Ltd. and Kenda Rubber (China) Co., Ltd., Passenger Vehicle and Light Truck Tires from the People's Republic of China; Submission of Case Brief (April 13, 2015)

Sichuan Tyre Case Brief	Sichuan Tyre and Rubber Co. Ltd., Passenger Vehicle and Light Truck Tires from the People's Republic of China; Submission of Case Brief (April 13, 2015)
Tredit Scope Rebuttal Brief	Tredit Tire and Wheel Company, Inc., Certain Passenger Vehicle and Light Truck Tires from China: Case Rebuttal Brief on the Scope of the Investigations (April 13, 2015).
Wanli Case Brief	Certain Passenger Vehicle and Light Truck Tires from the PRC Case Brief of Guangzhou Wanli Tire Trading Co. Ltd. (April 10, 2015)
Wanli Rebuttal Brief	Certain Passenger Vehicle and Light Truck Tires from the PRC Rebuttal Brief of Guangzhou Wanli Tire Trading Co. Ltd. (April 20, 2015)
Yongtai Case Brief	Certain Passenger Vehicle and Light Truck Tires from China: Case Brief of Shandong Yongtai Group Co., Ltd. (April 9, 2015)
Zhongce Case Brief	Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: ZC Rubber's Case Brief (April 9, 2015);

V. MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)

<b>Short Cite</b>	<b>Full Name</b>
<i>AD &amp; CVD Final Rules</i>	<i>Notice of Final Rule, Antidumping Duties, Countervailing Duties</i> , 62 FR 27296 (May 19, 1997)
<i>AD &amp; CVD Proposed Rules</i>	<i>Notice of Proposed Rulemaking and Request for Public Comment</i> , 61 FR 7308 (February 27, 1996)
<i>Georgetown Steel Memorandum</i>	Memorandum to David M. Spooner, Assistant Secretary of Commerce, Countervailing Duty Investigation of Coated Free Sheet Paper from the People's Republic of China – Whether the Analytical Elements of the Georgetown Steel Opinion are Applicable to China's Present-Day Economy (March 29, 2007)
NME Labor Methodologies	Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, 76 FR 36092 (June 21, 2011)
<i>NME Methodological Change</i>	<i>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</i> , 77 FR 36481 (June 19, 2012)
<i>Policy Bulletin 05.1</i>	Import Administration Policy Bulletin, No. 05.1, <i>Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries</i> (Apr. 5, 2005)
<i>PRC Company Law</i>	The Company Law of the PRC (2006)
SAA	Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103316, at 870 (1994)
TAA of 1979	Trade Agreements Act of 1979
The Act	Tariff Act of 1930, as amended
VAT Policy Circular	Circular on Value-Added Tax and Consumption Tax Policies on Exported Goods and Services
WTO Shrimp from Vietnam (2011)	<i>United States – Antidumping Measures on Certain Shrimp from Vietnam</i> (DS 404) (September 2011)
WTO Shrimp from Vietnam (2014)	<i>United States – Antidumping Measures on Certain Shrimp from Vietnam</i> (DS 429) (November 2014)