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September 30, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Certain New Pneumatic Off-the-
Road Tires from the People's Republic of China; 2013-2014

Summary

In response to requests from interested parties, the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty ("AD") order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC") in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended ("the Act"). The period of review ("POR") is September 1, 2013, through August 31, 2014. The review covers the following exporters of subject merchandise: mandatory respondents Qingdao Qihang Tyre Co., Ltd. ("Qihang") and Xuzhou Xugong Tyres Co., Ltd. ("Xugong")¹; Qingdao Free Trade Zone Full-World International Trading Co., Ltd. ("Full-World"), Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. ("TWS Xingtai") and Weihai Zhongwei Rubber Co., Ltd. ("Zhongwei"), who each filed separate rates certifications; and separate rate applicant Tianjin Leviathan International Trade Co., Ltd. ("Leviathan").

The Department preliminarily finds that Xugong and Qihang made sales of subject merchandise at less than normal value ("NV") during the POR; Full-World, TWS Xingtai, Leviathan, and Zhongwei are eligible for a separate rate; and Trelleborg Wheel Systems Hebei Co. ("TWS Hebei") and Zhongce Rubber Group Company Limited ("Zhongce") had no shipments during the POR. Additionally, we preliminarily find that Qingdao Haojia (Xinhai) Tyre Co. ("Haojia") did not file a separate rate application, and thus, Haojia will continue to be a part of the PRC-wide entity.

¹ As discussed below, we collapsed Xugong with Xuzhou Armour Rubber Company Ltd. ("Armour") and Xuzhou Hanbang Tyre Co., Ltd. ("Hanbang") as a single entity for the purposes of this review and refer to the collapsed entity as "Xugong", collectively, for the purposes of this notice.



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

Background

On September 2, 2014, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on OTR tires from the PRC for the period of September 1, 2013, through August 31, 2014.² On October 30, 2014, the Department initiated a review of twelve exporters of subject merchandise.³ On February 24, 2015, in response to timely submitted withdrawal requests, the Department rescinded the review with respect to Double Coin Holdings, Ltd. (“Double Coin”), and Guizhou Tyre Co., Ltd. and its affiliate Guizhou Tyre Import and Export Co., Ltd. (collectively, “GTC”).⁴ On April 23, 2015, we extended the time limit for the preliminary results of review by 120 days, pursuant to section 751(a)(3)(A) of the Act, to September 30, 2015.⁵

On October 30, 2014, TWS Xingtai submitted a timely-filed request to be selected as a voluntary respondent in the administrative review.⁶ On November 20, 2014, TWS Hebei submitted a timely-filed statement of no shipments during the POR.⁷ On December 26, 2014, Zhongce submitted a timely-filed statement of no shipments during the POR.⁸

On December 16, 2014, the Department determined, pursuant to section 777(c)(2) of the Act, that it was not practicable to fully investigate each of the companies for whom the Department initiated an administrative review and, in accordance with section 777(c)(2)(B) of the Act, selected as mandatory respondents the two companies accounting for the largest volume of

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 79 FR 51958 (September 2, 2014).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Review*, 79 FR 64565 (October 30, 2014) (“Initiation Notice”).

⁴ See *Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 9695 (February 24, 2015) (“Notice of Partial Rescission”).

⁵ See Memorandum to Christian Marsh entitled, “Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Extension of Deadline for Preliminary Results of 2013-2014 Antidumping Duty Administrative Review,” dated April 23, 2015.

⁶ See Letter from TWS Xingtai entitled, “Request for Voluntary Respondent Status for Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: New Pneumatic Off-The-Road Tires from the People’s Republic of China,” dated November 20, 2014 (“TWS Xingtai Voluntary Respondent Request”).

⁷ See Letter from TWS Hebei, entitled, “Trelleborg Wheel Systems Hebei Co. Statement of No Shipments during the POR: New Pneumatic Off-The-Road Tires from the People’s Republic of China,” dated November 20, 2014 (“TWS Hebei No Shipments Letter”).

⁸ See Letter from Zhongce entitled, “New Pneumatic Off-the Road Tires from the People’s Republic of China (2013-2014): Zhongce Rubber Group Company Limited No Shipment Letter,” dated December 26, 2014 (“Zhongce No Shipment Letter”).

exports during the POR for which reviews were requested: Qihang and Xugong.⁹ Between December 16, 2014, and September 16, 2015, the Department issued and respondents timely responded to the initial and subsequent supplemental questionnaires.

The Department conducted a verification of Xugong's questionnaire responses at Xugong's factory from July 20 through July 24, 2015, in Xuzhou, Jiangsu Province, PRC, and at its U.S. affiliate Armour Tires Inc. ("ATI"), on August 5 and August 6, 2015, in Ontario, California. The Department conducted a verification of Qihang's questionnaire responses at Qihang's offices in Qingdao, Shandong Province, PRC, on July 27 through July 31, 2015.¹⁰

Scope of the Order

The products covered by the order are new pneumatic tires designed for off-the-road and off-highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off-road or off-highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,¹¹ combine harvesters,¹² agricultural high clearance sprayers,¹³ industrial tractors,¹⁴ log-skidders,¹⁵ agricultural implements, highway-towed

⁹ See Memorandum to Melissa Skinner, Director, Office III, entitled "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Respondent Selection," dated December 16, 2014 ("First Respondent Selection Memo"). See also, Memorandum to Melissa Skinner, Director, Office III, entitled "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Selection of Second Respondent for Individual Review," dated December 19, 2014 ("Second Respondent Selection Memo"). The Department had initially selected Xugong and GTC as the mandatory respondents, but as discussed above, GTC timely withdrew its request for review. As a result, the Department determined that although it could examine no more than two producers or exporters, selecting a new mandatory respondent would not inhibit the timely completion of this review. The Department selected the next largest exporter of OTR tires to the United States during the POR, Qihang.

¹⁰ See Memorandum to the File, entitled, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Verification of the Sales and Factors Response of Xuzhou Xugong Tyre Co., Ltd. and Affiliates," dated concurrently with this memorandum ("Xugong's Verification Report"), and Memorandum to the File, entitled, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Verification of the Sales and Factors Response of Qingdao Qihang Tyre Co., Ltd.," dated concurrently with this memorandum ("Qihang's Verification Report").

¹¹ Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

¹² Combine harvesters are used to harvest crops such as corn or wheat.

¹³ Agricultural sprayers are used to irrigate agricultural fields

¹⁴ Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

¹⁵ A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

implements, agricultural logging, and agricultural, industrial, skid-steers/mini-loaders;¹⁶ (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,¹⁷ front end loaders,¹⁸ dozers,¹⁹ lift trucks, straddle carriers,²⁰ graders,²¹ mobile cranes,²² compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid-steers/mini-loaders, and smooth floor off-the-road counterbalanced lift trucks. The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all-inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off-road and off-highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube-type²³ or tubeless, radial or non-radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on-highway or on-road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on-road or on-highway trailers, light trucks, and trucks and buses. Such tires

¹⁶ Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver’s shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

¹⁷ Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

¹⁸ Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

¹⁹ A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform “rough grading” in road construction.

²⁰ A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

²¹ A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform “finish grading.” Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course on to which asphalt or other paving material will be laid.

²² *I.e.*, “on-site” mobile cranes designed for off-highway use.

²³ While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

generally have in common that the symbol “DOT” must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

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

Suffix letter designations:

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

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

Partial Rescission of Review and Preliminary Determination of No Shipments

On September 30, 2014, both Double Coin and GTC submitted timely requests for administrative review. Based on these requests, the Department’s *Initiation Notice* specified that the administrative review covered entries of OTR tires during the POR produced and/or exported by Double Coin and GTC. On November 20, 2014, Double Coin and affiliated companies withdrew their request for review and on December 17, 2014, GTC and affiliated companies withdrew their request for review.²⁴ As no other party requested a review of these companies,

²⁴ See Letter from Double Coin titled “Double Coin’s Withdrawal of Request for Antidumping Administrative Review: Certain New Pneumatic Off-the-Road Tires from China,” dated November 20, 2014; and Letter from GTC titled “GTC Withdrawal of Request for Administrative Review: Sixth Administrative Review of Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires From The People’s Republic Of China (Case No: A-570-912) (POR: September 1, 2013 – August 31, 2014),” dated December 17, 2014.

we rescinded the administrative review, in part, with respect to these companies, pursuant to 19 CFR 351.213(d)(1).²⁵

On November 20, 2014, TWS Hebei submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.²⁶ Also, on December 26, 2014, Zhongce submitted a timely-filed certification indicating that it had no shipments of subject merchandise to the United States during the POR.²⁷ Consistent with our practice, the Department asked CBP to conduct a query on potential shipments made by TWS Hebei and Zhongce during the POR.²⁸ CBP did not provide any evidence to contradict Zhongce's claim of no shipments. CBP did provide possible entries from TWS Hebei, which the Department subsequently requested entry packages for and placed on the record.²⁹ TWS Xingtai placed rebuttal factual information on the record on July 30, 2015.³⁰ Based on TWS Hebei and Zhongce's certifications and our analysis of CBP data and rebuttal information, we preliminarily determine that TWS Hebei and Zhongce did not have any reviewable transactions during the POR.

Consistent with the Department's announced refinement to its assessment practice in non-market economy ("NME") cases, it is appropriate not to rescind the review in part in this circumstance but, rather, to complete the review with respect to TWS Hebei and Zhongce, and issue appropriate instructions to CBP based on a finding of no shipments in the final results of review.³¹

Respondent Selection and Determination Not to Select TWS Xingtai as a Voluntary Respondent

Section 777A(c)(1) of the Act directs the Department to calculate an individual weighted average dumping margin for each known exporter or producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters and producers if it is not practicable to make individual weighted average dumping margin determinations because of the large number of exporters and producers involved in the review. When the Department limits the number of exporters examined in a review pursuant to section 777A(c)(2) of the Act, section 782(a) of the Act directs the Department to calculate individual weighted-average dumping margins for companies not initially selected for individual examination that voluntarily provide the information requested of the mandatory respondents if: (1) the information is submitted by the due date specified for the mandatory respondents and (2) the number of such companies subject to the review is not so

²⁵ See *Notice of Rescission*.

²⁶ See TWS Hebei No Shipments Letter.

²⁷ See Zhongce No Shipments Letter.

²⁸ See CBP Message Number 5141301, dated May 21, 2015.

²⁹ See Memorandum to the File, entitled "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Placing CBP Data on the Record," dated July 15, 2015.

³⁰ See Letter from TWS Xingtai titled "New Pneumatic Off-the-Road Tires from the PRC: Rebuttal or Clarifying Factual Information Submitted by Trelleborg Wheel Systems (Xingtai) Co. Ltd.," dated July 30, 2015.

³¹ See *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694, 65694-95 (October 24, 2011).

large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the review.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (“TPEA”), which made numerous amendments to the AD and countervailing duty (“CVD”) law, including amendments to section 782(a) of the Act.³² The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.³³

Under Section 782(a) of the Act as recently amended by the TPEA, in determining whether it would be unduly burdensome to examine a voluntary respondent, the Department may consider 1) the complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of these investigations and reviews.

On December 16, 2014, the Department determined, pursuant to section 777(c)(2) of the Act, that it was not practicable to fully investigate each of the companies for whom the Department initiated an administrative review and, in accordance with section 777(c)(2)(B) of the Act, selected as mandatory respondents the two companies accounting for the largest volume of exports during the POR for which reviews were requested, Xugong and GTC.³⁴ Subsequent to GTC’s withdrawal from the instant administrative review, the Department reevaluated the information on the record and selected the remaining largest two exporters of the merchandise as mandatory respondents, Qihang and Xugong.³⁵ TWS Xingtai was not one of the two largest exporters of subject merchandise during the POR.³⁶

The Department also noted that, if it received voluntary responses in accordance with section 782(a) of the Act and 19 CFR 351.204(d), it would evaluate the circumstances at that time in

³² See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) (“TPEA”). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (“*Applicability Notice*”).

³³ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

³⁴ See First Respondent Selection Memo.

³⁵ See Second Respondent Selection Memo. A second memo was necessary as GTC, one of the original companies selected, withdrew from the review. Qihang, the third largest producer, was selected in its place. Although the Department selected Qihang as a mandatory respondent following GTC’s withdrawal, we specified that there has been no change in circumstance that would warrant the Department to revisit its determination that it would not be practicable to individually examine all requested producers and exporters, and that the Department could examine no more than two producers or exporters of subject merchandise.

³⁶ For further detail with respect to TWS Xingtai’s comments on respondent selection and the Department’s decision to select the two largest exporters, and not TWS Xingtai, as mandatory respondents, see the First and Second Respondent Selection Memos.

deciding whether to select an additional respondent for examination.³⁷ On October 30, 2014, the Department received a timely request from TWS Xingtai to be treated as a voluntary respondent.³⁸ Between January 8, 2015, and January 26, 2015, TWS submitted timely responses to the Department's initial questionnaire. Moreover, on September 11, 2015, TWS Xingtai submitted further comments requesting that the Department calculate an individual margin for TWS Xingtai for these preliminary results.³⁹

Although TWS Xingtai timely submitted the information required by section 782(a)(1) of the Act, the Department concludes that it would be unduly burdensome and inhibit timely completion of this review to select and review TWS Xingtai as a third respondent. Specifically, and as explained in the First and Second Respondent Selection Memos, we only have the resources to review two fully participating respondents.

Pursuant to section 782(a) of the Act as recently amended by the TPEA, we have determined that it would be unduly burdensome to examine TWS Xingtai as a voluntary respondent. In coming to our determination, we considered the following factors: 1) the complexity of the issues or information presented in this review; 2) any prior experience of the Department in the same or similar proceedings; 3) the total number of investigations or reviews being conducted by the Department; and 4) such other factors relating to the timely completion of these investigations and reviews.

The issues and information presented in this review are complex. Analysis of both Xugong and Qihang has been complicated due to Xugong's multiple subsidiaries and affiliates as well as both export price ("EP") and constructed export price ("CEP") sales, and Qihang's use of tollers and wide variety of terms of sale. Further, we note that this is the first time that we are reviewing Qihang as a mandatory respondent and, thus, the Department has had to expend additional time gaining experience with this company's records and practices. We have issued four supplemental questionnaires to Xugong and five supplemental questionnaires to Qihang in this review, which include numerous questions concerning the factors of production ("FOP") reporting methodologies, database issues, ownership issues, and general administrative issues.

Acceptance of TWS Xingtai as a voluntary respondent would necessarily require a significant additional level of effort and resources which the Department is unable to spare at this time. Specifically, a sufficient review TWS Xingtai would have required the assignment of an additional analyst to read multiple additional questionnaire responses and issue multiple additional supplemental questionnaires and would have further required that several analysts spend more than one week conducting verification at TWS Xingtai's factory in the PRC and sales office in the United States.

Based on our prior experience in previous reviews, a full review of TWS Xingtai would require writing a margin program specific to TWS Xingtai, evaluating and selecting surrogate values

³⁷ See First Respondent Selection Memo at 8.

³⁸ See TWS Xingtai Voluntary Respondent Request.

³⁹ See TWS Xingtai's submission entitled, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China, A-570-912: Pre-Preliminary Results Comments," dated September 11, 2015 ("Xingtai's Pre-Prelim Comments").

specific to TWS Xingtai, writing additional analysis memoranda and verification reports specific to TWS Xingtai, and performing a collapsing analysis with regards to TWS Xingtai and any possible affiliates.⁴⁰ Moreover, the uncertain nature of any review allows for the possibility that complex situations may arise, requiring yet more time for the analyst and case team to analyze, discuss, and address. Finally, we note that the Department is conducting numerous investigations and reviews, and has recently initiated numerous new investigations.⁴¹

TWS Xingtai further argues that it should be selected as an additional mandatory respondent or voluntary respondent because it is wholly-foreign owned by a company located in a market economy (“ME”) country, and as such, the two mandatory respondents, which are not wholly-foreign owned, would not be “representative” of its behavior.⁴² TWS Xingtai cites to the Court of International Trade’s (“CIT”) recent decision in *Husteel Co.* for support of its “representativeness” argument.⁴³ As an initial matter, we note in that case the CIT remanded the Department to consider whether the production of a specific type of subject merchandise should be considered in selecting a voluntary respondent, and did not hold that such a factor is determinative in respondent selection.⁴⁴ Further, in this review, and as further explained below, we have preliminarily determined that the mandatory respondents, Qihang and Xugong, are entitled to separate rates because they have been able to preliminarily demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. We also have preliminarily determined that TWS Xingtai is entitled to a separate rate in this review. As all three entities have been afforded separate rate treatment, we find TWS Xingtai’s argument without merit.

Finally, in reaching its decision in *Husteel Co.*, the CIT expressly clarified that “[n]othing in {section 782(a) of the Tariff Act} suggests an extraordinary need to accommodate voluntary respondents in order to ensure that margins are representative beyond that required in mandatory respondent selection.” It also stated that “[w]hen the Department of Commerce can show that the burden of reviewing a voluntary respondent would exceed that presented in the typical antidumping or countervailing duty review, the United States Court on International Trade will not second guess Commerce’s decision on how to allocate its resources.”⁴⁵

In sum, we find that we are unable to calculate an individual dumping margin for a voluntary respondent in addition to the individual dumping margins for the two companies individually examined in this review. The additional workload of individually examining a voluntary

⁴⁰ We note that, although TWS Xingtai did participate in a single previous new shipper review, the mere fact that it has participated in a previous review does not mean the effort required to review TWS Xingtai would be diminished.

⁴¹ See First Respondent Selection Memo at 4. Since respondent selection, Office III has also been assigned to the following new investigations: AD/CVD Uncoated Paper from the PRC; AD Uncoated Paper from Australia; AD/CVD Cold-Rolled Steel Flat Products from the Russian Federation; and AD/CVD Certain Corrosion-Resistant Steel Products from Taiwan.

⁴² See Xingtai’s Pre-Prelim Comments at 2-6.

⁴³ *Husteel Co. v. United States*, Slip Op. 2015-100, Ct. No. 14-00215 (CIT Sept. 2, 2015).

⁴⁴ *Id.*

⁴⁵ *Id.*; see also *Longkou Haimeng Machinery Co. v. United States*, 581 F. Supp. 2d 1344, 1351 (CIT 2008) (where the Court found that “It is clear from the language of the SAA and the {Act} itself that Congress has spoken on the matter. The authority to limit the number of respondents for examination rests ‘exclusively’ with Commerce. Therefore, the Court finds that Commerce’s determination to limit its review to three mandatory respondents was within the bounds of its statutory authority.”)

respondent would be unduly burdensome, given the Department's current resource availability, and would inhibit timely completion of this review. Thus, consistent with section 782(a) of the Act, the Department has not considered TWS Xingtai's unsolicited questionnaire responses.

Affiliation and Collapsing

We preliminarily determine that Xugong, Armour, and Hanbang are affiliated, pursuant to section 771(33)(E) of the Act.⁴⁶ In addition, based on the evidence provided in Xugong's questionnaire responses, we also preliminarily determine that Xugong, Armour, and Hanbang should be collapsed and treated as a single entity in this administrative review.⁴⁷ This finding is based on the determination that the level of ownership, management overlap, and intertwined operations of Xugong, Armour, and Hanbang result in a significant potential for manipulation of price or production of subject merchandise, pursuant to 19 CFR 351.401(f).⁴⁸ This preliminary finding is further supported by Xugong's own acknowledgement of cross-ownership, overlapping management, and intertwined operations among Xugong, Armour, and Hanbang.⁴⁹

DISCUSSION OF THE METHODOLOGY

Nonmarket Economy Country

The Department considers the PRC to be an NME country.⁵⁰ In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. Therefore, we continue to treat the PRC as an NME country for purposes of these preliminary results.

Separate Rates

In the *Initiation Notice*, the Department notified parties of the application process by which exporters may obtain separate rate status in an NME proceeding.⁵¹ It is the Department's policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is

⁴⁶ See the Department's memorandum to Erin Begnal, Director, Office III, entitled, "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Affiliation and Collapsing Memorandum for Xuzhou Xugong Tyres Co., Ltd.," dated concurrently with this memorandum ("Xugong Affiliation and Collapsing Memo"). Xugong acknowledges these affiliations in its submissions. See, e.g., letter from Xugong entitled, "Xuzhou Xugong Tyres Co., Ltd., ("Xugong") Section A Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated January 21, 2015 ("Xugong's SAQR").

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See, e.g., Xugong's SAQR at 3, 6, 15-19 and Exhibit A-6. See also, Xugong's Verification Report at II.H.

⁵⁰ See, e.g., *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Results of the First Administrative Review, Preliminary Rescission, in Part, and Extension of Time Limits for the Final Results*, 76 FR 62765, 62767-68 (October 11, 2011), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012).

⁵¹ See *Initiation Notice*.

sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test established in *Sparklers*,⁵² as further developed by *Silicon Carbide*.⁵³ However, if the Department determines that a company is wholly foreign-owned, then an analysis of the *de jure* and *de facto* criteria is not necessary to determine whether it is independent from government control.⁵⁴

In the instant review, the Department received timely-filed separate rate applications, certifications, and/or Section A responses from Qihang, Xugong, TWS Xingtai, Full-World, Leviathan, and Zhongwei, and each company was able to demonstrate that it had suspended entries during the POR.

Wholly Foreign Owned

Both TWS Xingtai and Leviathan reported that they are wholly-foreign owned by a company located in a market-economy (“ME”) country.⁵⁵ Therefore, there is no PRC ownership of TWS Xingtai or Leviathan and, because the Department has no evidence indicating that either company is under the control of the PRC government, a separate rates analysis is not necessary.⁵⁶ Accordingly, the Department is preliminarily granting separate rate status to TWS Xingtai and Leviathan.

Separate Rates Analysis of Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Qihang, Xugong, Full-World, and Zhongwei variously stated that they are joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies. Therefore, the Department must analyze whether these respondents demonstrate an absence of both *de jure* and *de facto* governmental control over export activities, as appropriate.

⁵² See *Final Determination of Sales at Less Than Fair Value: Sparklers From the People’s Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”).

⁵³ See *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People’s Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”).

⁵⁴ 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).

⁵⁵ See letter from TWS Xingtai entitled, “Separate Rate Certification of Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.: New Pneumatic Off-The-Road Tires from the People’s Republic of China,” dated November 18, 2014, and letter from Leviathan entitled, “New Pneumatic Off-The-Road Tires from the People’s Republic of China: Separate Rate Application Questionnaire Response,” dated December 29, 2014.

⁵⁶ 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); *Brake Rotors From the People’s Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303, 1306 (January 8, 2001), unchanged in *Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People’s Republic of China*, 64 FR 71104 (December 20, 1999).

1. *Absence of De Jure Control*

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.⁵⁷

The evidence provided by Qihang, Xugong, Full-World, and Zhongwei supports a preliminary finding the absence of *de jure* governmental control for each company based on the following: (1) an absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) and there are formal measures by the government decentralizing control of companies.⁵⁸

2. *Absence of De Facto Control*

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.⁵⁹ The Department determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from granting a separate rate.

The evidence provided by Qihang, Xugong, Full-World, and Zhongwei supports a preliminary finding of *de facto* absence of government control based on the following: (1) the companies set their own EPs independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.⁶⁰ Therefore, the Department preliminarily finds that Qihang, Xugong, Full-World, and

⁵⁷ See *Sparklers*, 56 FR at 20589.

⁵⁸ For (1) Qihang, see its submissions entitled, "Certain New Pneumatic Off-The-Road Tires from The People's Republic of China Separate Rate Certification of Qingdao Qihang Tyre Co., Ltd.," dated November 14, 2014 ("Qihang's SRC") and Letter from Qihang, entitled, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Section A Questionnaire Response" dated January 26, 2015 ("Qihang's SAQR"); for (2) Xugong, see Xugong's SAQR; for (3) Full-World, see its submission entitled, "New Pneumatic Off-The-Road Tires from the People's Republic of China: Separate Rate Certification Questionnaire Response," dated December 29, 2014 ("Full-World's SRA"); for (4) Zhongwei, see its submission entitled, "Separate Rate Certification of Weihai Zhongwei Rubber Co., Ltd.: Certain New Pneumatic Off-the-Road Tires from The People's Republic of China," dated December 22, 2014 ("Zhongwei's SRC").

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

⁶⁰ See Qihang's SRC, Qihang's SAQR, Xugong's SAQR, Full-World's SRA, and Zhongwei's SRC.

Zhongwei established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Margin for the Companies Individually Examined

As discussed above, Xugong and Qihang were selected as the mandatory respondents in this proceeding and demonstrated eligibility for a separate rate. Therefore Xugong and Qihang are receiving a separate rate for these preliminary results based on an individual weighted average dumping margin calculated from their own sales and production data, pursuant to Section 777A(c) of the Act.

Margin for the Separate Rate Companies Not Individually Examined

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act establishes a preference to avoid using rates which are zero, *de minimis*, or based entirely on facts available ("FA") in calculating an all others rate. Accordingly, the Department's usual practice has been to average the weighted-average dumping margins for the companies selected for individual examination, excluding rates that are zero, *de minimis*, or based entirely on FA.⁶¹

In this review, we preliminarily calculated a weighted-average dumping margin for both Qihang and Xugong that is above *de minimis* and not based entirely on FA. Therefore, we preliminarily assign to Leviathan, Full-World, TWS Xingtai and Zhongwei a margin of 91.30 percent (*i.e.*, the average of the weighted-average margins calculated for Qihang and Xugong) as the separate rate for this review.

Margin for Companies Not Receiving a Separate Rate

The record indicates that there is one PRC exporter of the merchandise under consideration during the POR, Haojia, which was named in the *Initiation Notice* and for which all review requests were not withdrawn and did not claim that it made no shipments of subject merchandise during the POR, but from which the Department received neither a separate rate application nor certification. Because Haojia has not demonstrated that it is eligible for separate rate status, the Department finds that it has not rebutted the presumption of government control and, therefore, considers it to be part of the PRC-wide entity.

⁶¹ See *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part*, 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

PRC-Wide Entity

Upon initiation of the administrative review, we provided the opportunity for all companies upon which the review was initiated to complete either the separate-rates application or certification.⁶² In NME proceedings, “‘rates’ may consist of a single dumping margin applicable to all exporters and producers.”⁶³ As explained above in the “Separate Rates” section, all companies within the PRC are considered to be subject to government control unless they are able to demonstrate an absence of government control with respect to their export activities. Such companies are assigned a single antidumping duty rate distinct from the separate rate(s) determined for companies that are found to be independent of government control with respect to their export activities. We consider the influence that the government has been found to have over the economy to warrant determining a rate for the entity that is distinct from the rates found for companies that provided sufficient evidence to establish that they operate freely with respect to their export activities.⁶⁴ In this regard, no record evidence indicates that such government influence is no longer present or that our treatment of the PRC-wide entity is otherwise incorrect.

The Department’s change in policy regarding conditional review of the PRC-wide entity applies to this review.⁶⁵ Under this policy, the PRC-wide entity will not be under review unless a party specifically requests, or the Department self-initiates, a review of the entity. Because no party requested a review of the PRC-wide entity in this review, the entity is not under review, and the entity’s rate is not subject to change. As such, the PRC-wide rate from the previous review (*i.e.*, the fifth administrative review) remains unchanged, and the PRC-wide entity is receiving a margin of 105.31 percent.⁶⁶ As explained above in the “Separate Rates” section, the Department preliminarily finds that Haojia does not qualify for a separate rate, and as such, is part of the PRC-wide entity.

Application of Facts Available and Use of Adverse Inferences

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

⁶² The separate-rate application and certification are available at: <http://enforcement.trade.gov/nme/nme-sep-rate.html>.

⁶³ See 19 CFR 351.107(d).

⁶⁴ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People’s Republic of China: Final Results of 2005-2006 Administrative Review and Partial Rescission of Review*, 72 FR 56724 (October 4, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

⁶⁵ See *Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings*, 78 FR 65963, 65970 (November 4, 2013).

⁶⁶ See, e.g., *id.*; and *Certain New Pneumatic Off-the-Road Tires From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 20197, 20199 (April 8, 2015).

subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

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

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

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

On June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁶⁷ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.⁶⁸

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the SAA explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate

⁶⁷ See TPEA and *Applicability Notice*.

⁶⁸ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

than if it had cooperated fully.”⁶⁹ Further, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁷⁰

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

Finally, under the new section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an adverse facts available (“AFA”) margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

Application of Partial AFA for Xugong

As discussed in the “Date of Sale” section below and on the record, Xugong’s terms of sale are set when a container is packed and ships out of the warehouse. Because Xugong’s terms of sale are set based on shipment date, in our supplemental Section C questionnaire, we asked Xugong to report any sales which shipped prior to the end of the POR, even if they were not invoiced until after the POR.⁷¹ In its subsequent supplemental questionnaire response, Xugong stated that it had “added sales to the U.S. sales database that were invoiced within the POR regardless of entry date, in accordance with the Department’s new instructions.”⁷² During the CEP sales verification of ATI, we found that CEP sales transactions executed between ATI and the downstream U.S. customer but shipped directly from Xugong’s Chinese factory (*i.e.*, not from ATI’s U.S. warehouse inventory) indicated that shipments which left the Xugong factory prior to the end of the POR, but which were not invoiced by ATI until after August 31, 2014, were not included in the sales database.⁷³ Because this omission was found

⁶⁹ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong. at 870 (1994) (“SAA”).

⁷⁰ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products From Japan*, 65 FR 42985 (July 12, 2000); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (“*Nippon Steel*”).

⁷¹ See Letter to Xugong entitled “2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Supplemental Section C and D Questionnaire,” dated May 1, 2015 (“Xugong First Supplemental C and D Questionnaire”), at 4.

⁷² See Xugong’s Questionnaire Response entitled “Xuzhou Xugong Tyres Co., Ltd., (“Xugong”) Supplemental A, C, and D Questionnaire Response the Administrative Review of New Pneumatic Off-The-Road Tires from the People’s Republic of China,” dated June 2, 2015, at 6 and Exhibit SQCD-3 (“Xugong June 2, 2015, Supplemental Response”).

⁷³ See Xugong Verification Report.

on the final day of U.S. verification and all shipment records were kept in the PRC for these sales, the quantity and value of omitted sales was unavailable to both ATI/Xugong officials and Department officials (though ATI's company accountant provided an estimate of the number of containers).⁷⁴

As noted above, section 776(a)(2)(B) and (D) of the Act provides that if an interested party fails to provide information within the established deadlines or provides information but the information cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Moreover, section 776(b) of the Act provides that, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference adverse to the interests of that party in selecting the facts otherwise available. In addition, the SAA explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁷⁵

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit ("CAFC") noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "ones maximum effort."⁷⁶ Thus, according to the CAFC, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁷⁷ The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.⁷⁸

The antidumping duty questionnaire issued in this review requires respondents to report all of their relevant U.S. sales during the POR. Xugong and ATI had multiple opportunities to provide the full universe of sales given that the Department issued multiple supplemental questionnaires to Xugong regarding its relevant U.S. sales in accordance with section 782(d) of the Act,⁷⁹ and Xugong purported to make adjustments to reported sales in its responses to the supplemental

⁷⁴ See Xugong Verification Report.

⁷⁵ See SAA, H.R. Rep. No. 103-316, at 870; see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

⁷⁶ See *Nippon Steel*, 337 F.3d at 1382-83.

⁷⁷ *Id.* at 1382.

⁷⁸ *Id.*

⁷⁹ See Xugong First Supplemental C and D Questionnaire and Letters to Xugong entitled "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Second Supplemental Sections A, C, and D Questionnaire," dated May 7, 2015, and "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Third Supplemental Sections C and D Questionnaire," dated June 26, 2015.

questionnaires.⁸⁰ Thus, we preliminarily determine, based on our findings at the CEP sales verification, that Xugong failed to submit requested information within the applicable time limits, and failed to provide information that could be verified. Specifically, based on our discussion with company officials at verification, it is apparent that Xugong did not provide the Department with the complete universe of its POR sales of subject merchandise in its questionnaire or supplemental questionnaire responses. By not reporting all of its U.S. sales in its questionnaire and supplemental questionnaire responses, Xugong failed to provide information within the deadlines established. The Department has previously declined to accept unreported sales information identified at verification and instead relied upon FA or AFA as appropriate.⁸¹

In this case, we find that the application of facts available is appropriate under section 776(a)(2)(B) and (D) of the Act because, as evidenced by its ability at verification to identify that sales were missing, it is clear that Xugong possessed the necessary records to provide a complete U.S. sales database but did not conduct a comprehensive investigation of all relevant records to identify the unreported sales in a timely manner. In addition, we find that Xugong's failure to report all of its U.S. sales of in-scope products during the POR, using the information over which it maintained control at all times, indicates that Xugong did not act to the best of its ability to comply with our requests for information. Hence, we find that the application of AFA is appropriate under section 776(b) of the Act for these unreported sales on AFA. As AFA, we assigned the unreported U.S. sales the highest dumping margin calculated for any reported CEP direct-shipped U.S. sale made by Xugong during the POR.⁸² Because information regarding the quantity or value of these missed sales does not exist on the record, as FA, we determined the average number of days between shipment date and invoice date for these types of sales reported in Xugong's database and then estimated the average quantity and value of goods sold, on average, during an equivalent period of time in the POR and applied the highest dumping margin calculated for any reported U.S. sale to this amount as partial AFA.⁸³

⁸⁰ See e.g., Xugong June 2, 2015, Supplemental Response.

⁸¹ See, e.g., *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710 (June 8, 1999) at Comment 10. In this case, the respondent argued that the Department's acceptance, at the verification of the U.S. sales affiliate (KHSP), "of the previously unreported U.S. sales was appropriate ... {T}he new KHSP sales identified at verification were neither significant nor entirely new. ... KHSP had simply misclassified four of the five previously unreported sales as non-subject merchandise and ... only one was entirely new and previously unidentified." Furthermore, the respondent argued that "the sales at issue can hardly be considered significant given the number of U.S. transactions. ... {A}s in *Pocket Lighters from the PRC*, the Department should accept the new sales presented at verification, as they represent a small percentage of total sales and were neither hidden nor misrepresented." Although the Department noted that KHSP identified the missing sales at the outset of verification and provided a complete packet containing copies of each of the relevant invoices which the Department included on the record as a verification exhibit, the Department noted "that KHSP had three opportunities spread over four months to provide the Department with a complete listing of its U.S. sales. In response to its failure to do so, as adverse facts available, we are applying the highest non-aberrational margin calculated based on {the respondent's} correctly reported CEP transactions to the unreported sales and have included these transactions in our calculation of the overall weighted-average margin." In making this decision, the Department also cited a number of other cases where it applied AFA to unreported sales.

⁸² See Memorandum to the File entitled "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Preliminary Results Margin Calculation for Xuzhou Xugong Tyres Co., Ltd.," dated concurrently with this memorandum ("Xugong's Preliminary Analysis Memo").

⁸³ *Id.*

Finally, because we are relying on Xugong's own information obtained during the course of this review, there is no need to corroborate this information pursuant to section 776(c) of the Act.

Surrogate Country and Surrogate Value Data

On January 26, 2015, the Department sent interested parties a letter inviting comments on the concurrently released list of potential surrogate countries and primary surrogate country selection, as well as surrogate value ("SV") data.⁸⁴ On February 2, 2015, Qihang, TWS Xingtai, and Xugong provided comments on the economic comparability of the countries listed on the Surrogate Country List, requesting that the "non-exhaustive" list also consider Indonesia economically comparable and suitable for selection as the primary surrogate.⁸⁵ Also on February 2, 2015, Petitioners provided comments on the economic comparability of the countries listed on the Surrogate Country List, noting that the current list of economically comparable countries is sufficient for the purpose of selecting a surrogate country in this review and no additional countries need to be proposed for consideration as potential surrogate countries.⁸⁶ On February 5, 2015, the Department received rebuttal comments from Petitioners regarding respondents' comments on the initial list.⁸⁷ On March 4, 2015, TWS Xingtai, Xugong, Qihang, and Petitioners provided comments on surrogate country selection.⁸⁸ On March 16, 2015, Qihang, TWS Xingtai, Xugong, and Petitioners provided rebuttal surrogate country information and

⁸⁴ See the Department's Letter to All Interested Parties entitled "2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Request for Surrogate Country and Surrogate Value Comments and Information," dated January 26, 2015, which contained the Memorandum from Carole Showers, Director, Office of Policy, Enforcement and Compliance, to Erin Begnal, Program Manager, Office 3, Enforcement and Compliance, entitled, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Pneumatic Off-the-Road Tires ("OTR") from the People's Republic of China ("China")," dated January 20, 2015 ("Surrogate Country List").

⁸⁵ See Letter from Qihang entitled, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Surrogate Country Selection Comments," dated February 2, 2016; Letter from TWS Xingtai entitled, "New Pneumatic Off-the-Road Tires from the PRC: Comments Regarding Department's List of Certain Countries at the Same Level of Economic Development by Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.," dated February 2, 2015; Letter from Xugong entitled, "New Pneumatic Off-the-Road Tires from the PRC: Xuzhou Xugong Tyres Co. Ltd.'s Surrogate Country Comments Regarding Economic Comparability," dated February 2, 2015.

⁸⁶ See Letter from Petitioners entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-the Road Tires from China (A-570-912): Petitioner's Rebuttal Comments on the List of Potential Surrogate Countries," dated February 2, 2015.

⁸⁷ See Letter from Petitioners, entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners' Rebuttal Comments on the List of Potential Surrogate Countries," dated February 5, 2015.

⁸⁸ See Letter from TWS Xingtai, entitled, "New Pneumatic Off-the-Road Tires from the PRC: Comments on Surrogate Country Selection of Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.," dated March 4, 2015 ("TWS Xingtai Surrogate Country Comments"); Letter from Xugong entitled, "New Pneumatic Off-the-Road Tires from the PRC: Comments on Surrogate Country Selection of Xuzhou Xugong Tyres Co. Ltd.," dated March 4, 2015 ("Xuzhou Surrogate Country Comments"); Letter from Qihang entitled, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Comments on Surrogate Country Selection," dated March 4, 2015 ("Qihang's Surrogate Country Comments"); Letter from Petitioners, entitled "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners' Comments on Surrogate Country Selection," dated March 4, 2015 ("Petitioners' Surrogate Country Comments").

comment.⁸⁹ On March 19, 2015, Qihang, TWS Xingtai, Xugong, and Petitioners each provided information and comment on the selection of surrogate values.⁹⁰ Since these initial submissions, Petitioners, Qihang, TWS Xingtai, and Xugong each provided additional SV information on the record, including rebuttal information to the additional SV data from Petitioners, Qihang, TWS Xingtai, and Xugong.⁹¹

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOP, valued in a surrogate ME country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) at a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.⁹² Reading sections 773(c)(1) and (c)(4) of the Act in concert, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data.⁹³ The Department determined that Ukraine, Thailand,

⁸⁹ See letter from Petitioners entitled, "Administrative Review of the Antidumping Order of New Pneumatic Off-the-Road Tires from the People's Republic of China (A-570-912): Petitioner's Rebuttal Comments on Surrogate Country Selection," dated March 16, 2015 ("Petitioners' Rebuttal Surrogate Country Comments"); Letter from Qihang entitled, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Rebuttal Comments on Surrogate Country Selection," dated March 16, 2015 ("Qihang Rebuttal Surrogate Country Comments"); Letter from Xugong entitled, "New Pneumatic Off-the-Road Tires from the PRC: Rebuttal Comments on Surrogate Country Selection of Xuzhou Xugong Tyres Co. Ltd.," dated March 16, 2015 ("Xugong Rebuttal Surrogate Country Comments"); and Letter from TWS Xingtai entitled, "New Pneumatic Off-the-Road Tires from the PRC: Rebuttal Comments on Surrogate Country Selection of Trelleborg Wheel Systems (Xingtai) Co., Ltd.," dated March 16, 2015 ("TWS Xingtai Rebuttal Surrogate Country Comments").

⁹⁰ See letter from Petitioners entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-the-Road Tires from China (A-570-912): Petitioner's First Surrogate Value Submission," dated March 19, 2015 ("Petitioners' Initial SV Comments"); Letter from Qihang entitled, "Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co., Ltd – Initial Surrogate Value Submission," dated March 19, 2015 ("Qihang Initial SV Submission"); Letter from Xugong entitled, "New Pneumatic Off-the-Road Tires from the PRC: Provision of Initial Surrogate Values by Xuzhou Xugong Tyres Co., Ltd.," dated March 19, 2015 ("Xugong Initial SV Submission"); and Letter from TWS Xingtai entitled, "New Pneumatic Off-the-Road Tires from the PRC: Provision of Initial Surrogate Values by Trelleborg Wheel Systems (Xingtai) Co., Ltd.," dated March 19, 2015 ("TWS Xingtai Initial SV Submission").

⁹¹ See Letter from Xugong entitled, "New Pneumatic Off-the-Road Tires from the PRC: Provision of Rebuttal Surrogate Values by Xuzhou Xugong Tyres Co. Ltd.," dated March 30, 2015 ("Xugong's Rebuttal SV Submission"); Letter from TWS Xingtai, entitled, "New Pneumatic Off-the-Road Tires from the PRC: Provision of Rebuttal Surrogate Values by Trelleborg Wheel Systems (Xingtai) Co. Ltd.," dated March 30, 2015 ("TWS Xingtai's Rebuttal SV Submission"); Letter from Qihang, entitled, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co., Ltd. - 1st Rebuttal Surrogate Value Submission," dated May 2, 2014 ("Qihang Rebuttal SV Submission"); and Letter from Petitioners entitled, "Administrative Review of the Antidumping Duty Order on New Pneumatic Off-The-Road Tires from China (A-570-912): Petitioners' First Surrogate Value Rebuttal Submission," dated March 30, 2015 ("Petitioners' Rebuttal SV Submission"); Letter from Xugong entitled, "New Pneumatic Off-the-Road Tires from the PRC: Provision of Further Surrogate Values by Xuzhou Xugong Tyres Co., Ltd.," dated May 8, 2015 ("Xugong Additional SV Submission").

⁹² See Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) ("*Policy Bulletin*").

⁹³ *Id.*

Ecuador, South Africa, Bulgaria, and Romania are countries whose per capita gross national incomes (“GNI”) are comparable to the PRC in terms of economic development.⁹⁴

Petitioners submit that the Department should select Thailand as the primary surrogate country, noting that Thailand is a significant producer of comparable merchandise at a level of economic development similar to the PRC. They also note that Thailand provides publicly available information to value all costs relevant to this review and, of the potential surrogates that produce tires, Thailand’s GNI is closest to that of the PRC. Additionally, Petitioners assert that: 1) Thailand is a net exporter of OTR tires, whereas Indonesia is a net importer; 2) Thailand provides SVs for all inputs, including multiple sources from which to value rubber; and 3) Thai labor data is more specific to the POR than that of Indonesia.⁹⁵ Finally, Petitioners and Xugong put surrogate value information for Peru on the record, noting that though Peru’s GNI falls within the bookends of the high and low GNI of countries specifically listed on the Surrogate Country, the data for Thailand are more complete and contemporaneous.⁹⁶

In their respective comments on surrogate country selection, both Xugong and Qihang propose that the Department select Indonesia as the primary surrogate country because Indonesia was used in the most recent OTR annual review, is a significant producer of comparable merchandise, and because there is reliable data from Indonesia available to value all FOPs. Specifically, they note that Indonesian data provide more specific Harmonized Tariff Schedule (“HTS”) categories from which to value the major natural rubber and reclaimed rubber inputs than do Thai data. They additionally assert that financial statements are available for three Indonesian producers of identical merchandise and two producers of comparable merchandise, whereas Thai statements are only available for one identical producer and one comparable producer.⁹⁷

Economic Comparability

Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department’s longstanding practice has been first to identify those countries which are at the same level of economic development as the PRC based on per capita GNI data reported in the World Bank’s World Development Report.⁹⁸ We note that identifying potential surrogate countries based on GNI data has been affirmed by the CIT.⁹⁹

As explained in the Department’s *Policy Bulletin*, “[t]he surrogate countries on the list are not ranked.”¹⁰⁰ This lack of ranking reflects the Department’s long-standing practice that, for the purpose of surrogate country selection, the countries on the list “should be considered

⁹⁴ See Surrogate Country List.

⁹⁵ See Petitioners’ Surrogate Country Comments, and Petitioners’ Rebuttal Surrogate Country Comments.

⁹⁶ See Xugong Additional SV Submission; Petitioners’ Rebuttal SV Submission.

⁹⁷ See Qihang’s Surrogate Country Comments, Qihang’s Rebuttal Surrogate Country Comments, Xugong’s Surrogate Country Comments, and Xugong’s Rebuttal Surrogate Country Comments.

⁹⁸ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 79 FR 19053 at Comment I.a.

⁹⁹ See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (CIT 2009).

¹⁰⁰ See *Policy Bulletin*.

equivalent”¹⁰¹ from the standpoint of their level of economic development based on GNI as compared to the PRC’s level of economic development and recognition of the fact that the concept of “level” in an economic development context necessarily implies a range of GNIs, not a specific GNI. This long-standing practice of providing a non-exhaustive list of countries at the same level of economic development as the NME country fulfills the statutory requirement to value FOPs using data from “one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country...”¹⁰² In this regard, “countries that are at a level of economic development comparable to that of the nonmarket economy country” necessarily includes countries that are at the same level of economic development as the NME country.

Because the non-exhaustive list is only a starting point for the surrogate country selection process, the Department also considers other countries that interested parties propose that meet the statutory requirements. Countries on the segment record that are at the same level of economic development as the PRC are given equal consideration for the purposes of selecting a surrogate country. Countries which are not at the same level of economic development as the PRC’s, but still at a level of economic development comparable to the PRC, are selected only to the extent that data considerations outweigh the difference in levels of economic comparability. As noted above, GNI is the primary indicator of a country’s level of economic development.

As discussed above, the Department considers Ukraine, Thailand, Ecuador, South Africa, Bulgaria, and Romania all comparable to the PRC in terms of economic development¹⁰³ and no party has contested this finding. Therefore, we consider all six countries identified on the Surrogate Country List as having met this prong of the surrogate country selection criteria.

Additionally, although Peru was not included in the Surrogate Country List, Peru’s GNI falls within the range of GNIs for those countries listed in the Surrogate Country List. Because Peru’s GNI falls within the highest GNI and lowest GNI (*i.e.*, the “bookends”) of the countries listed in the Surrogate Country List, for economic comparability, the Department finds Peru to also be at the same level of economic development as the PRC for these preliminary results.

As a general rule, the Department selects a surrogate country that is at the same level of economic development as the NME unless it is determined that none of the countries are viable options because: (a) they either are not significant producers of comparable merchandise, (b) do not provide sufficient reliable sources of publicly available SV data, or (c) are not suitable for use based on other reasons, such as overwhelming data availability concerns. Surrogate countries that are not at the same level of economic development as the NME country are selected only to the extent that data considerations outweigh the difference in levels of economic development.¹⁰⁴ As discussed below, we have determined that certain countries identified on the Surrogate Country List are significant producers which provide sufficient data from which to derive SVs, and find that respondents have identified no overwhelming data concerns to compel the Department to abandon its standard practice. Accordingly, the Department did not consider

¹⁰¹ *Id.*

¹⁰² *See* section 773(c)(4) of the Act.

¹⁰³ *See* Surrogate Country List.

Indonesia, which was not identified in the Surrogate Country List and has a reported GNI below that of the lowest country identified on said list, as an appropriate surrogate country, given the viability of other potential surrogate countries.

Significant Producers of Identical or Comparable Merchandise

Section 773(c)(4)(B) of the Act requires the Department to value FOPs in a surrogate country that is a significant producer of comparable merchandise. Neither the statute nor the Department's regulations provide further guidance on what may be considered comparable merchandise. Given the absence of any definition in the statute or regulations, the Department looks to other sources such as the *Policy Bulletin* for guidance on defining comparable merchandise. The *Policy Bulletin* states that "in all cases, if identical merchandise is produced, the country qualifies as a producer of comparable merchandise."¹⁰⁵ Conversely, if identical merchandise is not produced, then a country producing comparable merchandise is sufficient in selecting a surrogate country.¹⁰⁶ Further, when selecting a surrogate country, the statute requires the Department to consider the comparability of the merchandise, not the comparability of the industry.¹⁰⁷ "In cases where the identical merchandise is not produced, the Department must determine if other merchandise that is comparable is produced. How the Department does this depends on the subject merchandise."¹⁰⁸ In this regard, the Department recognizes that any analysis of comparable merchandise must be done on a case-by-case basis:

In other cases, however, where there are major inputs, *i.e.*, inputs that are specialized or dedicated or used intensively, in the production of the subject merchandise, *e.g.*, processed agricultural, aquatic and mineral products, comparable merchandise should be identified narrowly, on the basis of a comparison of the major inputs, including energy, where appropriate.¹⁰⁹

Further, the statute grants the Department discretion to examine various data sources for determining the best available information.¹¹⁰ Moreover, while the legislative history provides

¹⁰⁴ See Surrogate Country Memo. See also, *e.g.*, *Certain Cased Pencils From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order In Part; 2010-2011*, 78 FR 2363 (January 11, 2013) and accompanying Preliminary Decision Memorandum at 6, unchanged in *Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Determination To Revoke Order In Part; 2010-2011*, 78 FR 42932 (July 18, 2013).

¹⁰⁵ See *Policy Bulletin* at 2.

¹⁰⁶ The *Policy Bulletin* also states that "if considering a producer of identical merchandise leads to data difficulties, the operations team may consider countries that produce a broader category of reasonably comparable merchandise." *Id.* at note 6.

¹⁰⁷ See *Sebacic Acid from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 65674, 65676 (December 15, 1997) ("[T]o impose a requirement that merchandise must be produced by the same process and share the same end uses to be considered comparable would be contrary to the intent of the statute.")

¹⁰⁸ See *Policy Bulletin* at 2.

¹⁰⁹ *Id.* at 3.

¹¹⁰ See section 773(c) of the Act; see also *Nation Ford Chem. Co. v. United States*, 166 F.3d 1373, 1377 (Fed. Cir. 1990).

that the term “significant producer” includes any country that is a significant “net exporter,”¹¹¹ it does not preclude reliance on additional or alternative metrics.

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

Ukraine, Ecuador, South Africa, Bulgaria, Romania, Peru and Thailand all had significant exports of merchandise under the HTS categories identified in the scope of the order.¹¹² Because none of the potential surrogate countries has been definitively disqualified through the above analysis, the Department looks to the availability of SV data to determine the most appropriate surrogate country.

Data Availability

When evaluating SV data, the Department considers several factors including whether the SV is publicly available, contemporaneous with the POR, represents a broad-market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input.¹¹³ There is no hierarchy among these criteria.¹¹⁴ It is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.¹¹⁵ In this case, because there are neither data nor surrogate financial statements for Bulgaria, Romania, Ecuador, Ukraine, or South Africa on the record, these countries will not be

¹¹¹ See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Rep. No. 100-576, at 590 (1988).

¹¹² See Memorandum to the File, entitled, “2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Preliminary Results Surrogate Value Memorandum,” dated concurrently with this memorandum (“Preliminary SV Memo”).

¹¹³ See, e.g., *Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value*, 77 FR 75984 (December 26, 2012) and accompanying Issues and Decision Memorandum at Comment 1.

¹¹⁴ See, e.g., *Certain Preserved Mushrooms from the People's Republic of China: Final Results and Final Partial Rescission of the Sixth Administrative Review*, 71 FR 40477 (July 17, 2006) and accompanying Issues and Decision Memorandum at Comment 1.

¹¹⁵ See *Policy Bulletin*.

considered for primary surrogate country selection purposes at this time. Thus, the Department is left with a choice of Peru or Thailand for selection as the primary surrogate country.

Additionally, the Department has identified and placed on the record a domestic Thai data source to value natural rubber. This data source is contemporaneous with the POR, represents a broad-market average, and appears more specific to the rubber inputs than the broader GTA import data. Through Peru is not a domestic producer of natural rubber, Peru also has sufficient import data available through GTA. As such, we find that both Peru and Thailand have sufficient price information from which to value the major rubber inputs, though the data from Thailand, with its domestic rubber data source, are slightly superior as Thailand has detailed tracking of its domestic production, which are more contemporaneous with the POR.¹¹⁶

The record contains three complete and useable financial statements from Thailand for manufacturers of identical merchandise,¹¹⁷ whereas Xugong placed two complete financial statements on the record for Peru for manufacturers of comparable merchandise. One financial statement for Thailand and one financial statement for Peru do not adequately break out energy costs and, therefore, are not usable. After examining the useable Peruvian and Thai financial statements, the Department preliminarily determines that the multiple financial statements from Thai producers of identical merchandise are preferable to the single set of Peruvian statements from a producer of comparable merchandise.¹¹⁸

The Department preliminarily finds that Thailand has superior financial statement information from which to calculate financial ratios derived from multiple producers of identical and comparable merchandise, and provides superior information to value one of the main FOPs (*i.e.*, natural rubber) from a domestic source. As such, we preliminarily determine that the data availability of SV information from Thailand is superior to that of Peru.

Therefore, the Department preliminarily finds Thailand to be a reliable source for SVs because Thailand is at a comparable level of economic development pursuant to 773(c)(4) of the Act, is a significant producer of comparable merchandise, and has publicly available and reliable data for all inputs. Given the above facts, the Department preliminarily selects Thailand as the primary

¹¹⁶ The record contains a domestic Thai data source to value natural rubber, *i.e.*, daily prices as reported by the Rubber Research Institute of Thailand (“RRIT”) and compiled by the Association of Natural Rubber Producing Countries (“ANRPC”). This data source is contemporaneous with the POR, represents a broad-market average, and appears more specific to respondents’ rubber inputs than the broader GTA import data. *See* Preliminary SV Memo.

¹¹⁷ *See* Preliminary SV Memo and Petitioners’ Rebuttal Surrogate Country Submission at Attachment 1.

¹¹⁸ *Id.* First, in accordance with our preference for using statements from producers of identical merchandise, where statements from both identical and comparable producers are on the record, we will calculate ratios using only statements from producers of identical products. *See, e.g., Hand Trucks and Certain Parts Thereof From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 77 FR 41744 (July 16, 2012) and accompanying Issues and Decision Memorandum at Comment 2. Furthermore, of the four statements from Thai producers, three broke out energy costs, whereas one did not. Of the two statements from Peruvian producers, one broke out energy costs and one did not. As the break-out of energy costs allows the Department to calculate such expenses in accordance with our NV practice of using SVs and actual consumption on a CONNUM-specific basis, we disregarded the statements which were unable to break out energy costs. *See* Preliminary SV Memo.

surrogate country for this review.¹¹⁹ A detailed explanation of the SVs is provided below in the “Normal Value” section of this notice.

Date of Sale

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

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹²⁰

Both Xugong and Qihang indicated shipment date as the date of sale in accordance with the time when terms are fixed. Specifically, as tires are shipped without packing material and each container is filled as much as possible, the quantity of tires sent in a container may change from the original order as the container is packed.¹²¹ 19 CFR 351.401(i) states that the Department will use the date of invoice, as recorded in the producer or exporter’s records kept in the ordinary course of business, as the date of sale. However, the regulations permit the Department to use a different date if it better reflects the date on which the exporter or producer establishes the material terms of sale.¹²² Because the Department found no evidence on the record contrary to Xugong and Qihang’s claims that material terms of sale are set at shipment, for these preliminary results, the Department has used the shipment date as the date of sale.¹²³ At verification, we confirmed that the terms of sale are set by the shipment date, and that Xugong and Qihang

¹¹⁹ *Id.*

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

¹²¹ *See* Xugong’s SAQR and Qihang’s SAQR. Originally, Qihang stated that the date of the commercial invoice was the date of sale, but after a supplemental questionnaire, it was determined that final terms of sale are set at the date of shipment. *See* Qihang SCSQR. For Xugong, date of sale was identified as date of shipment, though Xugong did argue that for CEP sales, date of entry or at least the date shipment left port should be used. The Department determined that terms of sale are in fact set at date of shipment for all sales, EP and CEP, and that date would be used ubiquitously. *See* Xugong SCSQR.

¹²² The Department’s regulations state that it normally will use the invoice date as the date of sale unless a better date reflects the date on which the material terms of sale are established. *See* 19 CFR 351.401(i); *see also Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756, 38768 (July 19, 1999) (stating that “the Department considers the date of sale to be the date on which all substantive terms of sale are agreed upon by the parties”). However, the Department has made it its practice to use the date of shipment as the date of sale when the date of invoice is after the date of shipment, because, normally, once merchandise is shipped to the customer, the material terms of sale have been established. *See Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review*, 72 FR 62824 (November 7, 2007), and accompanying Issues and Decision Memorandum at Comment 1

¹²³ *See, e.g., Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey*, 65 FR 15123 (March 21, 2000), and accompanying Issues and Decision Memorandum at Comment 1.

appropriately reported the date of sale for all sales, with the exception of certain Xugong sales as described above in the section, “*Application of Partial AFA for Xugong*,” in accordance with the Department’s standard practice.¹²⁴

Comparisons to Normal Value

To determine whether Xugong’s and Qihang’s sales of OTR tires to the United States were made at less than fair value, we compared Xugong’s EP or CEP sales and Qihang’s EP sales to NV, as described in the “Export Price and Constructed Export Price” and “Normal Value” sections, below.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates dumping margins by comparing weighted-average NVs to weighted-average prices (“the average-to-average (‘A-A’) method”) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs to the prices of individual export transactions (the average-to-transaction (‘A-T’) method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of administrative reviews, the Department finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.¹²⁵ In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of A-T comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.¹²⁶ The Department finds that the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.¹²⁷ The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department’s additional experience with addressing the potential masking of dumping that can occur when the Department uses the A-A method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of prices for comparable merchandise that differs significantly among purchasers, regions, or

¹²⁴ See Xugong’s Verification Report and Qihang’s Verification Report.

¹²⁵ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and accompanying Issues and Decision Memorandum at Comment 1.

¹²⁶ See, e.g., *Xanthan Gum From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33350 (June 4, 2013) and accompanying Issues and Decision Memorandum at Comment 3, and *Hardwood and Decorative Plywood From the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 58273 (September 23, 2013), and accompanying Issues and Decision Memorandum at Comment 3.

¹²⁷ See, e.g., *Certain Activated Carbon From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 70533 (November 26, 2013) and accompanying Issues and Decision Memorandum at Comment 2.

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

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

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

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, we examine whether

using only the A-A method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the A-A method only. If the difference between the two calculations is meaningful, this demonstrates that the A-A method cannot account for differences such as those observed in this analysis, and, therefore, an alternative method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margin between the A-A method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margin moves across the *de minimis* threshold.

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

B. Results of the Differential Pricing Analysis

For Xugong, based on the results of the differential pricing analysis, the Department preliminarily finds that over 66 percent of Xugong's export sales pass the Cohen's *d* test, thus confirming the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. As such, the Department finds that these results support consideration of an alternative to the average-to-average method. However, the Department preliminarily determines that the A-A method can appropriately account for such differences because there is no significant difference between the A-A, the A-T, or the mixed alternative margins.¹²⁸ Therefore, the Department did not consider an alternative comparison method to the A-A method, and no additional argument to the contrary has been placed on the record. Accordingly, the Department preliminarily determined to use the A-A method to calculate the weighted-average dumping margin for Xugong.¹²⁹

For Qihang, based on the results of the differential pricing analysis, the Department preliminarily finds that over 66 percent of Qihang's export sales pass the Cohen's *d* test, thus confirming the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. As such, the Department finds that these results support consideration of an alternative to the average-to-average method. However, the Department preliminarily determines that the A-A method can appropriately account for such differences because there is no significant difference between the A-A, the A-T, or the mixed alternative

¹²⁸ See Xugong's Preliminary Analysis Memo.

¹²⁹ In these preliminary results, the Department applied to Xugong and Qihang the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs and/or CEPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

margins.¹³⁰ Therefore, the Department did not consider an alternative comparison method to the A-A method, and no additional argument to the contrary has been placed on the record. Accordingly, the Department preliminarily determined to use the A-A method to calculate the weighted-average dumping margin for Qihang.¹³¹

Export Price and Constructed Export Price

Export Price

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

In accordance with section 772(c)(2)(A) of the Act, where appropriate, we made deductions from the sales price for various PRC expenses such as foreign inland freight, brokerage and handling, and international movement costs. Where such expenses were provided by PRC service providers or paid for in renminbi (“RMB”), we based those charges on surrogate values from Thailand.¹³² For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* Qihang’s Preliminary Analysis Memo and Xugong’s Preliminary Analysis Memo.

Constructed Export Price

In accordance with section 772(b) of the Act, the CEP is “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller

¹³⁰ See Memorandum to the File entitled “2013-2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People’s Republic of China: Analysis of the Preliminary Results Margin Calculation for Qingdao Qihang Tyre Co., Ltd.,” and dated concurrently with this memorandum (“Qihang’s Preliminary Analysis Memo”).

¹³¹ In these preliminary results, the Department applied to Xugong and Qihang the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012). In particular, the Department compared monthly weighted-average EPs and/or CEPs with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

¹³² See “Factor Valuation” section below and Preliminary SV Memo for further discussion of surrogate value selection.

affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,” as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for certain of Xugong’s sales because the sales were made by its U.S. sales affiliate in the United States (*i.e.*, ATI).

We calculated CEP based on delivered prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, to the reported gross unit prices for billing adjustments and early payment discounts, to arrive at the price at which the subject merchandise is first sold in the United States to an unaffiliated customer. We made deductions from the U.S. sales price for movement expenses in accordance with section 772(c)(2) of the Act. These included, where applicable, foreign inland freight from plant to the port of exportation, foreign brokerage and handling, ocean freight, U.S. inland freight from port of importation to the warehouse, U.S. freight from warehouse to customer, U.S. warehousing, U.S. customs duties, and U.S. brokerage and handling. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, for a detailed description of all adjustments made to U.S. price for each company, *see* Xugong’s Preliminary Analysis Memo.

In accordance with section 772(d)(1) of the Act, the Department deducted, where applicable, commissions, credit expenses, interest revenue, warranty expenses, advertising expenses, repackaging costs, inventory carrying costs, and indirect selling expenses from the U.S. price, all of which relate to commercial activity in the United States. In accordance with section 772(d) of the Act, we calculated ATI’s credit expenses and inventory carrying costs based on its short-term interest rate. In addition, we deducted CEP profit in accordance with sections 772(d)(3) and 772(f) of the Act.¹³³

Value-Added Tax

In 2012, the Department announced a change of methodology with respect to the calculation of EP and CEP to include an adjustment of any un-refunded (herein “irrecoverable”) value-added tax (“VAT”) in certain non-market economies in accordance with section 772(c)(2)(B) of the Act.¹³⁴ The Department explained that when an NME government imposes an export tax, duty, or other charge on subject merchandise, or on inputs used to produce subject merchandise, from which the respondent was not exempted, the Department will reduce the respondent’s EP and CEP prices accordingly, by the amount of the tax, duty or charge paid, but not rebated.¹³⁵ Where the irrecoverable VAT is a fixed percentage of EP or CEP, the Department explained that the final step in arriving at a tax neutral dumping comparison is to reduce the U.S. EP or CEP downward by this same percentage.¹³⁶

¹³³ For a detailed description of all adjustments, *see* Xugong’s Preliminary Analysis Memo and Qihang’s Preliminary Analysis Memo.

¹³⁴ *See Methodological Change for Implementation of Section 772(c)(2)(B) of the Tariff Act of 1930, as Amended, In Certain Non-Market Economy Antidumping Proceedings*, 77 FR 36481 (June 19, 2012).

¹³⁵ *Id.*; *see also Chlorinated Isocyanurates from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*; 2011-2012, 79 FR 4875 (January 30, 2014) and accompanying Issues and Decision Memorandum at Comment 5.A.

¹³⁶ *Id.*

In an initial questionnaire, the Department instructed Xugong and Qihang to report value-added taxes on merchandise sold to the United States and to identify which taxes are not rebated upon export.¹³⁷ In response, both respondents stated their disagreement with our product-specific methodology and reported that their total VAT refund exceeded VAT paid for export sales during the POR and, thus, reported no value in the VAT field of their respective sales databases.¹³⁸

However, our practice is that we will not consider allocations across all company sales or across sales of products with different VAT schedules but, rather, to use the difference between the VAT rate and the refund rate, consistent with PRC regulations, unless the company can show otherwise for the subject merchandise.¹³⁹ Instead, the Department's methodology, as explained above and applied in this review, incorporates two basic steps: (1) determine the irrecoverable VAT on subject merchandise, and (2) reduce U.S. price by the amount determined in step one. Information placed on the record of this review by Xugong indicates that according to the Chinese VAT schedule, the standard VAT levy is 17 percent and the rebate rate for subject merchandise is 9 percent.¹⁴⁰ For the purposes of these preliminary results, therefore, we removed from U.S. price the difference between the rates for Xugong (*i.e.*, 8 percent), which is the irrecoverable VAT as defined under Chinese tax law and regulation.¹⁴¹ Information placed on the record by Qihang indicates that it made ME purchases through a bonded warehouse. For these purchases, a bonded import adjustment is made by the PRC Government, which is taken into account in our calculations.¹⁴² For the purposes of these preliminary results, for Qihang we removed from the U.S. prices the difference between the rates (*i.e.*, 8 percent), as adjusted for the bonded imports.¹⁴³

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) the merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(e) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that a

¹³⁷ See, e.g., the Department's initial questionnaires to Xugong and Qihang entitled, "2013-2014 Administrative Review of the Antidumping and Countervailing Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China," dated December 17, 2014, and December 19, 2014, respectively.

¹³⁸ See Xugong's letter entitled, "Xuzhou Xugong Tyres Co., Ltd. ("Xugong") Section C Questionnaire Response for the Administrative Review of New Pneumatic Off-The-Road Tires from the People's Republic of China," dated February 27, 2015 ("Xugong SCQR"), and Qihang's letter entitled, "Certain New Pneumatic Of-The-Road Tires from the People's Republic of China: Qingdao Qihang Tyre Co. Ltd. – Section C and Double Remedies Questionnaire Responses," dated February 27, 2015 ("Qihang SCDRQR").

¹³⁹ See, e.g., *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 35723 (June 24, 2014) and accompanying Issues and Decision Memorandum at Comment 6.

¹⁴⁰ See, e.g., Xugong SCQR at 56-59, and Qihang SCDRQR at 43-50.

¹⁴¹ See Xugong's Preliminary Analysis Memo.

¹⁴² See Cai Shui No. 39, 2012, and Qihang's Preliminary Analysis Memo.

¹⁴³ See Qihang's Preliminary Analysis Memo.

respondent provide information regarding the weighted-average FOPs across all of the company's plants and/or suppliers that produce the merchandise under consideration, not just the FOPs from a single plant or supplier. This methodology ensures that the Department's calculations are as accurate as possible.¹⁴⁴

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

Factor Valuations

In accordance with section 773(c) of the Act, for subject merchandise produced by Xugong and Qihang, the Department calculated NV based on the FOPs reported by Xugong and Qihang for the POR. The Department used Thai import data and other publicly available Thai sources in order to calculate SVs for Xugong's and Qihang's FOPs. To calculate NV, the Department multiplied Xugong's and Qihang's reported per-unit FOP quantities by publicly available SVs.¹⁴⁵ The Department's practice when selecting the best available information for valuing FOPs is to select, to the extent practicable, SVs which are product-specific, representative of a broad market average, publicly available, contemporaneous with the POR, and exclusive of taxes and duties.¹⁴⁶

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

Furthermore, with regard to the Thai import-based SVs, we have disregarded import prices that we have reason to believe or suspect may be subsidized.¹⁴⁷ We have reason to believe or suspect that prices of inputs from Indonesia, India, South Korea, and Thailand may have been subsidized because we have found in other proceedings that these countries maintain broadly available, non-

¹⁴⁴ See, e.g., *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire From the People's Republic of China*, 79 FR 25572 (May 5, 2014) and accompanying Issues and Decision Memorandum at Comment 7.

¹⁴⁵ See Preliminary SV Memo.

¹⁴⁶ See, e.g., *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 2.

¹⁴⁷ See Section 505 of the TPEA (June 29, 2015); see also, *Applicability Notice*, 80 FR at 46795.

industry-specific export subsidies.¹⁴⁸ Additionally, consistent with our practice, we disregarded prices from NME countries and excluded imports labeled as originating from an “unspecified” country from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies.¹⁴⁹ Therefore, we have not used prices from these countries either in calculating the Thai import-based SVs or in calculating ME input values.

Pursuant to 19 CFR 351.408(c)(1), when a respondent sources inputs from an ME supplier in meaningful quantities (*i.e.*, not insignificant quantities) and pays in an ME currency, the Department uses the actual price paid by the respondent to value those inputs, except when prices may have been distorted by findings of dumping and/or subsidization.¹⁵⁰ Where the Department finds ME purchases to be of significant quantities (*i.e.*, 85 percent or more), in accordance with our statement of policy as outlined in *Market Economy Inputs*,¹⁵¹ the Department uses the actual purchase prices to value the inputs. Alternatively, when the volume of an NME firm’s purchases of an input from ME suppliers during the period is below 85 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department will weight-average the ME purchase price with an appropriate SV, according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.¹⁵² When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 85 percent threshold.¹⁵³

Information reported by Qihang and Xugong demonstrates that certain inputs were sourced from an ME country and paid for in ME currencies both in excess of the 85 percent threshold for

¹⁴⁸ See, e.g., *Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014); *Certain Frozen Warmwater Shrimp From the Republic of Indonesia: Final Negative Countervailing Duty Determination*, 78 FR 50383 (August 19, 2013) (although our overall determination was negative, the Department found broadly available export subsidies existed in Indonesia); *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review*; 2011, 78 FR 55241 (September 10, 2013), unchanged in final *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*; 2011, 79 FR 5378 (January 31, 2014); *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012); *Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012); *Certain Frozen Warmwater Shrimp From Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (although our overall determination was negative, the Department found broadly available export subsidies existed in Thailand).

¹⁴⁹ See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates From the People’s Republic of China*, 69 FR 75294, 75301 (December 16, 2004), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People’s Republic of China*, 70 FR 24502 (May 10, 2005).

¹⁵⁰ See, e.g., *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997).

¹⁵¹ See *Use of Market Economy Input Prices in Nonmarket Economy Proceedings*, 78 FR 46799 (August 2, 2013) (“*Market Economy Inputs*”).

¹⁵² *Id.*

¹⁵³ *Id.*

certain inputs and below the 85 percent threshold for other inputs. Accordingly, the Department implemented its ME purchase methodology (outlined above) to value both Qihang and Xugong's ME purchases, as appropriate, and applied freight expenses to the ME prices of the inputs where necessary.¹⁵⁴ The information reported by each respondent also demonstrates that certain inputs were purchased from countries which maintain broadly available, non-industry-specific export subsidies; thus, consistent with our practice and the statute, we have not used the actual price paid for these inputs (or portion of inputs) and instead valued them using an SV.¹⁵⁵

For the preliminary results, the Department used Thai Import Statistics from GTA to value raw materials, byproducts, packing inputs, and certain energy inputs that Xugong and Qihang used to produce subject merchandise during the POR, except as listed below.¹⁵⁶ Parties placed data from the GTA for Thailand on the record for the aforementioned items, and the GTA is a source that is regularly used by the Department because the data therein meet the Department's SV criteria. The record shows that data in the Thai import statistics, as well as those from the other sources, are generally contemporaneous with the POR, product-specific, and tax-exclusive.¹⁵⁷

The Department valued natural rubber inputs using the average of daily prices of natural rubber during the POR, as reported by the RRIT and recorded by the ANRPC.¹⁵⁸ This source is (1) publicly available, (2) in the primary surrogate country, and (3) spans the POR. The ANRPC compiles the prices of natural rubber from Kuala Lumpur, Bangkok, Kottayam, and Malaysia on a daily basis. The prices for Thailand are the country-wide "Official Noon Price," on a free on board basis, as reported by the RRIT and Department of Agriculture for natural rubber of grades RSS3 and STR20.

We valued trans-Pacific ocean freight (from the PRC to the United States) paid in RMB or provided by an NME-freight carrier using the *Cost of Doing Business in Thailand 2014* report, as sourced from the Thailand Board of Investment.¹⁵⁹ Because the international shipping terms for certain sales by both respondents includes both the ocean freight and U.S. inland freight, but the *Cost of Doing Business in Thailand* quotes are only applicable to port-to-port ocean freight, we added an additional average inland freight value from Descartes (<http://rates.descartes.com>) to account for U.S. freight to the customer for these certain sales.¹⁶⁰

We valued electricity and water using values from the *Cost of Doing Business in Thailand 2014* report issued by the Thailand Board of Investment.¹⁶¹ We valued steam using data published in the 2014 annual report of Glow Energy Public Company Limited, a Thai company that supplies electricity, steam, and water for industrial use.¹⁶²

¹⁵⁴ See Preliminary SV Memo.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

We valued brokerage and handling (“B&H”) using information in the World Bank’s *Doing Business 2015: Thailand* report. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand that is published in *Doing Business 2015: Thailand* by the World Bank.¹⁶³

We valued truck freight using data published in the World Bank’s *Doing Business 2015: Thailand* for inland transportation and handling relating to importing and exporting a standardized cargo of goods.¹⁶⁴

In *Labor Methodologies*, the Department determined that the best methodology to value labor is to use industry-specific labor rates from the primary surrogate country.¹⁶⁵ The Department does not, however, preclude all other sources from evaluation labor costs.¹⁶⁶ Rather, we continue to follow our practice of selecting the best available information to determine SVs for inputs such as labor. In this case, we valued labor using data reported by the Thailand National Statistics Office *Labor Force Survey of Whole Kingdom Quarter 4 2013 – Quarter 3, 2014*, which is specific to manufacture and contemporaneous with or closest in time to the POR.¹⁶⁷

To value factory overhead, selling, general and administrative expenses (“SG&A”), and profit, we used information from the financial statements of Thai OTR tire producers Hihero Co, Ltd. (“Hihero”), for the year ending December 31, 2013, and S.R. Tyres Co. Ltd. (“S.R. Tyres”), and Hwa Fong Rubber Ind. Co., Ltd. (“Hwa Fong”) both for the year ending December 31, 2014.¹⁶⁸ From these Thai financial statements we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (“ML&E”) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, cost of manufacture); and the profit rate as a percentage of the cost of manufacture plus SG&A.¹⁶⁹

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

Adjustment Under Section 777A(f) of the Act

In applying section 777A(f) of the Act in this administrative review, the Department examines: (1) whether a countervailable subsidy (other than an export subsidy) has been provided with respect to a class or kind of merchandise, (2) whether such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and (3) whether the Department can reasonably estimate the extent to which that countervailable subsidy, in combination with the use of NV determined pursuant to

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing The Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

¹⁶⁶ *See Steel Wire Garment Hangers From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 65616 (November 5, 2014) and Issues and Decision Memorandum at 11.

¹⁶⁷ *See* Preliminary SV Memo.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

section 773(c) of the Act, has increased the weighted average dumping margin for the class or kind of merchandise.¹⁷⁰ For a subsidy meeting these criteria, the statute requires the Department to reduce the antidumping duty by the estimated amount of the increase in the weighted average dumping margin subject to a specified cap.¹⁷¹

In order to examine the effects of concurrent countervailable subsidies in calculating antidumping margins for respondents in this review, the Department requested that both Xugong and Qihang submit information with respect to subsidies relevant to their eligibility for an adjustment to the calculated weighted-average dumping margin. However Xugong indicated that it would not submit a response to this questionnaire.¹⁷² Qihang did submit the requested questionnaire and the Department is preliminarily granting an adjustment to the calculation of the cash deposit rate for ADs for Qihang, pursuant to section 777A(f) of the Act, in the manner described below. In making these adjustments, the Department has not concluded that concurrent application of NME ADs and CVDs necessarily and automatically results in overlapping remedies. Rather a finding that there is an overlap in remedies, and any resulting adjustment, is based on a case-by-case analysis of the totality of facts on the administrative record for that segment of the proceeding as required by the statute.

Qihang demonstrated that the LTAR programs for natural and synthetic rubber for LTAR impacted their cost of manufacture.¹⁷³ We preliminarily determine that Qihang's questionnaire responses indicate a subsidies-to-cost linkage for this LTAR. Qihang provided information indicating that the price at which it sells subject merchandise to its customers is impacted by the cost of raw materials and energy.¹⁷⁴ Thus, Qihang's questionnaire responses indicate a cost-to-price linkage for the provision of rubber for LTAR. Based on the foregoing, we are making an adjustment to the Qihang's dumping margin under section 777A(f) of the Act.

In the CVD investigation, the Department determined program-specific rates of subsidized rubber.¹⁷⁵ Thus, the Department has the necessary information from the prior CVD proceeding to make the adjustment in this proceeding in the manner described above for purposes of these preliminary results.¹⁷⁶

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

¹⁷⁰ See section 777A(f)(1)(A)-(C) of the Act.

¹⁷¹ See section 777A(f)(1)-(2) of the Act.

¹⁷² See Letter from Xugong entitled "New Pneumatic Off-the-Road Tires from the PRC: Response to Department Letter of April 6, 2015 of Xuzhou Xugong Tyres Co. Ltd.," dated April 10, 2015.

¹⁷³ See Qihang SCDRQR at Double Remedies Questionnaire Response.

¹⁷⁴ *Id.*

¹⁷⁵ See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) and accompanying Issues and Decision Memorandum. See also Qihang's Preliminary Analysis Memo.

¹⁷⁶ See Qihang's Preliminary Analysis Memo.

Recommendation

We recommend applying the above methodology for these preliminary results.

✓

Agree

Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

September 30, 2015

Date